

is corrected by adding, after the last semicolon, “97AB (NIMA);”.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 48 CFR Parts 801, 825, 832, 836, 846, and 852

RIN 2900–AJ56

#### VA Acquisition Regulation: Construction and Architect-Engineer Contracts

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR). This document updates position titles, makes minor grammatical corrections and revisions, revises and updates section numbers and titles, relocates material to correspond to the Federal Acquisition Regulation (FAR), and delegates authority. In addition, the document updates regulations and adds coverage regarding the authority of the National Cemetery Administration to award architect-engineer contracts. Also, it replaces a general prescription directing the use of all VAAR clauses relating to construction contracts with specific prescriptions for each clause, removes obsolete or duplicative material, updates the VAAR regarding the requirement for certificates of current cost or pricing data, and provides agency procedures regarding disclosure of the Government cost estimate on construction contracts. This document also removes a “guaranty” clause from the VAAR and provides agency procedures for VA contracting officers to use the FAR “warranty” clause for construction contracts exceeding the micro-purchase threshold in order to protect the best interests of the Government. In addition, this document revises provisions regarding the acceptance of foreign construction materials to correspond to changes made in the FAR and to comply with the Trade Agreements Act and the North American Free Trade Agreement.

**DATES:** *Effective Date:* August 29, 2002.

**FOR FURTHER INFORMATION CONTACT:** Don Kaliher, Acquisition Program Management Team (0495A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810

Vermont Ave., NW, Washington, DC 20420, telephone (202) 273–8819.

**SUPPLEMENTARY INFORMATION:** On September 27, 2001, we published in the **Federal Register** (66 FR 49331) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation to make changes to part 836, Construction and Architect-Engineer Contracts, and related parts. Comments were solicited concerning the proposed rule for 60 days, ending November 26, 2001. We did not receive any comments.

Based on the rationale set forth in the proposed rule, we are adopting the provision of the proposed rule as a final rule with nonsubstantive changes discussed below.

The proposed rule included collections of information regarding clauses and provisions for use in both commercial and non-commercial item, service, and construction solicitations and contracts. The Office of Management and Budget (OMB) has approved the information collections under OMB Control Numbers 2900–0622 and 2900–0623.

The intent of the proposed rule was to update the VAAR to match the FAR regarding the requirement for submission of certificates of current cost or pricing data, but the proposed rule referenced an incorrect dollar threshold of \$500,000. The FAR threshold for submission of certificates of current cost or pricing data has been revised to \$550,000 and will be adjusted in the future to account for inflation. Therefore, to match the FAR, § 836.578(b) has been revised to clarify when cost or pricing data is required and § 836.578(c) has been revised to reference the FAR threshold for submission of cost of pricing data rather than a specific dollar amount and for clarity. In addition, the FAR requires the approval of the head of the contracting activity prior to requiring submission of cost or pricing data for pricing actions below this threshold, so a reference to this approval requirement has been added to § 836.578(c).

The intent of the proposed rule was to update the VAAR to correspond to the FAR regarding the acceptance of foreign construction materials and to comply with the Trade Agreements Act (TAA) and the North American Free Trade Agreement (NAFTA). The proposed rule designated Alternate I to the clause at 852.236–89 for use when NAFTA applied to a solicitation. This was incorrect. Under the current dollar thresholds in the FAR, Alternate I should reference the TAA rather than NAFTA, since the dollar threshold for application of the TAA is less than the

dollar threshold for the application of NAFTA. Therefore, Alternate I has been revised to apply to the TAA to correspond with the FAR.

Also, we revised § 832.111 for purposes of clarity and §§ 836.209, 836.602–2, 836.602–4, and 836.603 to update titles and/or for purposes of clarity.

#### Paperwork Reduction Act

This document contains provisions constituting a collection of information that have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 2900–0622 and 2900–0623.

#### Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The changes are small-business neutral and will not have a significant economic impact on a substantial number of small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### List of Subjects

##### 48 CFR Part 825

Foreign currencies, Foreign trade, Government procurement.

##### 48 CFR Parts 832 and 846

Government procurement.

##### 48 CFR Parts 801, 836 and 852

Government procurement, Reporting and recordkeeping requirements.

Approved: May 1, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

## PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 801 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

### 801.103–70 [Redesignated as 801.104–70]

2. Section 801.103–70 is redesignated as section 801.104–70.

3. In section 801.301-70, paragraph (b) introductory text is added; paragraph (b)(1) is revised; and the table in paragraph (c) is amended by removing "852.236-81", and adding in its place "852.236-82", and by adding in numerical order the following section and OMB control numbers to read as follows:

**801.301-70 Paperwork Reduction Act requirements.**

\* \* \* \* \*

(b) Contractors will not be requested to maintain systems of records unless prescribed in FAR or VAAR.

(1) A deviation to this prohibition may be processed in accordance with 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in the FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

\* \* \* \* \*

(c) \* \* \*

48 CFR part or section where identified and de- scribed	Current OMB control No.
* * *	* *
852.236-80 (Alt. I) .....	2900-0422
* * *	* *
852.236-89 .....	2900-0622
852.236-91 .....	2900-0623
* * *	* *

**PART 825—FOREIGN ACQUISITION**

4. The authority citation for part 825 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

5. Subpart 825.9 is amended by:

A. Redesignating subpart 825.9 as 825.10 and revising the subpart heading.

B. Redesignating section 825.901 as 825.1001 and revising the section heading.

The redesignations and revisions read as follows:

**Subpart 825.10—Additional Foreign Acquisition Regulations**

**825.1001 Waiver of right to examination of records.**

6. Subpart 825.11 and section 825.1102 are added to read as follows:

**Subpart 825.11—Solicitation Provisions and Contract Clauses**

**825.1102 Solicitation provisions and contract clauses.**

(a) The Buy American Act (41 U.S.C. 10a-d), except as modified by the Trade Agreements Act (TAA) and the North American Free Trade Agreement (NAFTA)), requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify VA's position on foreign material, the contracting officer shall insert the clause at 852.236-89, Buy American Act, in solicitations and contracts for construction that contain the FAR clause at 52.225-9, Buy American Act'Balance of Payments Program'Construction Materials.

(b) For solicitations and contracts for construction that include the FAR clause at 52.225-11, Buy American Act'Balance of Payment Program'Construction Materials Under Trade Agreements, with its Alternate I (i.e., subject only to the TAA), insert the clause at 852.236-89, Buy American Act, with its Alternate I.

(c) For solicitations and contracts that include the FAR clause at 52.225-11 without its Alternate I (i.e., subject to both the TAA and NAFTA), insert the clause at 852.236-89, Buy American Act, with its Alternate II.

**PART 832—CONTRACT FINANCING**

7. The authority citation for part 832 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

8. Subpart 832.1, consisting of section 832.111, is added to read as follows:

**Subpart 832.1—Non-Commercial Item Purchase Financing**

**832.111 Contract clauses for non-commercial purchases.**

(a) In solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, but that do not contain a section entitled "Network Analysis System (NAS)," the contracting officer shall insert the clause at 852.236-82, Payments under fixed-price construction contracts (without NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b) In solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and that also contain a section entitled

"Network Analysis System (NAS)," the contracting officer shall insert the clause at 852.236-83, Payments under fixed-price construction contracts (including NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

**PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

9. The authority citation for part 836 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**836.202 [Amended]**

10. Section 836.202 is amended by:

A. In paragraph (b), removing "of contract" and adding, in its place, "of a contract".

B. In paragraph (c), adding a comma immediately after "FAR 52.236-5"; removing "the clause" and adding, in its place, "the contracting officer shall include the clause"; and removing "shall be included".

11. Section 836.203 is added to read as follows:

**836.203 Government estimate of construction costs.**

The overall amount of the Government estimate shall not be disclosed until after award of the contract. After award, the overall amount may then be disclosed upon request.

**836.208 [Removed]**

12. Section 836.208 is removed.

13. Section 836.209 is revised to read as follows:

**836.209 Construction contracts with architect-engineer firms.**

When it is considered necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to the firm or person that designed the project, prior approval will be requested from the facility director or manager or, for National Cemetery Administration contracts, the Director, Office of Construction Management, for contracts involving nonrecurring maintenance (NRM) funds or from the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request. This section does not apply to design-build contracts, as defined at FAR 36.102.

**836.211 [Removed]**

14. Section 836.211 is removed.

15. Section 836.213–4 is added to read as follows:

**836.213–4 Notice of award.**

The contracting officer shall provide the contractor a notice of award (letter of acceptance) for any contract award in excess of \$25,000.

**836.371 [Redesignated as 836.213–70]**

16. Section 836.371 is amended by:  
A. Redesignating section 836.371 as 836.213–70.

B. In paragraph (b), removing “requested. It will” and adding, in its place, “requested, or any other method that provides signed evidence of receipt. The notice to proceed will”; and removing “post office.” and adding, in its place, “post office or on the proof of delivery provided by the delivery service.”

C. In paragraph (d), removing “mail is used, the certified mail receipt card returned by the post office will” and adding, in its place, “mail or other method of delivery is used, the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service will”.

**836.3 [Removed]**

17. Subpart 836.3 is removed.

18. Section 836.501 is added to read as follows:

**836.501 Performance of work by the contractor.**

The contracting officer shall insert the clause at 852.236–72, Performance of work by the contractor, in solicitations and contracts for construction that contain the FAR clause at 52.236–1, Performance of Work by the Contractor. When the solicitations and contracts include a section entitled “Network Analysis System (NAS),” the contracting officer shall use the clause with its Alternate I.

19. Section 836.521 is added to read as follows:

**836.521 Specifications and drawings for construction.**

The contracting officer shall insert the clause at 852.236–71, Specifications and drawings for construction, in solicitations and contracts for construction that contain the FAR clause at 52.236–21, Specifications and Drawings for Construction.

20. Sections 836.570 through 836.579 are added to read as follows:

**836.570 Correspondence.**

The contracting officer shall insert the clause at 852.236–76, Correspondence, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**836.571 Reference to “standards.”**

The contracting officer shall insert the clause at 852.236–77, Reference to “standards,” in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**836.572 Government supervision.**

The contracting officer shall insert the clause at 852.236–78, Government supervision, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**836.573 Daily report of workers and materials.**

The contracting officer shall insert the clause at 852.236–79, Daily report of workers and materials, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

**836.574 Subcontractors and work coordination.**

The contracting officer shall insert the clause at 852.236–80, Subcontracts and work coordination, in solicitations and contracts for construction expected to exceed the micro-purchase threshold. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

**836.575 Schedule of work progress.**

The contracting officer shall insert the clause at 852.236–84, Schedule of work progress, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold and that do not contain a section entitled “Network Analysis System (NAS).”

**836.576 Supplementary labor standards provisions.**

The contracting officer shall insert the clause at 852.236–85, Supplementary labor standards provisions, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**836.577 Worker’s compensation.**

The contracting officer shall insert the clause at 852.236–86, Worker’s compensation, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**836.578 Contract changes—supplement.**

(a) The contracting officer shall insert the clause at 852.236–88, Contract changes—supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

(b) When negotiated changes exceed \$500,000, paragraph (a) of the clause at 852.236–88 will apply. Because paragraph (a) does not provide ceiling rates for indirect expenses, the contractor must supply cost breakdowns and other supporting data on its rates for indirect expenses as part of its price proposal. The contracting officer must negotiate the rates for indirect expenses with the contractor and may request an audit in accordance with FAR 15.404–2. When the negotiated change will be \$500,000 or less, paragraph (b) of the clause at 852.236–88 will apply.

(c) As provided in FAR 15.403–4, proposals exceeding the cost or pricing data threshold shall be accompanied by certificates of current cost or pricing data. The contracting officer, if authorized by the head of the contracting activity, may require the submission of cost or pricing data for proposals valued at less than the cost or pricing data threshold specified in FAR 15.403–4(a)(1) and may require that the data be certified in accordance with FAR 15.403–4(a)(2).

(d) It is emphasized that the indirect cost rates in paragraph (b) of the clause at 852.236–88, for changes costing \$500,000 or less, are ceiling rates only and the contracting officer must negotiate the indirect expense rates within the ceiling limitations. The clause is a result of an approved FAR deviation pursuant to subpart 801.4.

**836.579 Special notes.**

The contracting officer shall insert the clause at 852.236–91, Special notes, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**836.602–1 [Amended]**

21. Section 836.602–1, paragraph (c) is amended by removing “project, and” and adding, in its place, “project and their”.

22. Section 836.602–2 is amended by:  
A. In paragraph (a), removing “board will be chaired by the Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when” and adding, in its place, “board for the Office of Facilities Management will be chaired by the Director, A/E Evaluation and Program Support Service. The Project Director or Project Manager will be

designated to act as Chair when” removing “appropriate Area” and adding, in its place, “appropriate” and by adding a comma immediately after “board’s members.”

B. In paragraph (b), removing “activity and” and adding, in its place, “activity (HCA) (or the senior contracting officer at the facility if there is no HCA on site) and”.

C. Paragraph (c) is added.

The addition reads as follows:

**836.602–2 Evaluation boards.**

\* \* \* \* \*

(c) The evaluation board for National Cemetery Administration (NCA) contracts will be appointed by the Director, Office of Construction Management, and will consist of no less than three members, one of whom will serve as the board’s Chair, and one of whom will be an NCA senior level contracting officer.

**836.602–4 [Amended]**

23. Section 836.602–4 is amended by removing “Central Office contracts) and” and adding, in its place, “Central Office contracts), the Director, Office of Construction Management (for National Cemetery Administration contracts), and”.

24. Section 836.602–5 is revised to read as follows:

**836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.**

Either of the procedures provided in FAR 36.602–5 may be used to select firms for architect-engineer contracts not expected to exceed the simplified acquisition threshold.

25. Section 836.603 is added to read as follows:

**836.603 Collecting data on and appraising firms’ qualifications.**

The Chief Facilities Management Officer, Office of Facilities Management, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration acquisitions; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 254 and 255 and for maintaining a data file on architect-engineer qualifications.

26. Section 836.606 heading is added immediately preceding 836.606–70, to read as follows:

**836.606 Negotiations.**

**836.606–73 [Amended]**

27. Section 836.606–73, paragraph (a)(3)(iii) is amended by adding a “comma” immediately after “samples”.

**PART 846—QUALITY ASSURANCE**

28. The authority citation for part 846 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**846.302–70 [Amended]**

29. Section 846.302–70 is amended by removing “852.210–72(a)” and adding, in its place, “852.211–72(a)”, and by removing “852.210–72(b)” and adding, in its place, “852.211–72(b)”.

30. Section 846.312 is added to read as follows:

**846.312 Construction contracts.**

The contracting officer shall insert the clause at 852.236–74, Inspection of construction, in solicitations and contracts for construction that contain the FAR clause at 52.246–12, Inspection of Construction.

31. Subpart 846.7, consisting of sections 846.710, 846.710–70, and 846.710–71, is added to read as follows:

**Subpart 846.7—Warranties**

Sec.

846.710 Construction contracts.

846.710–70 Special warranties.

846.710–71 Warranty for construction—guarantee period services.

**Subpart 846.7—Warranties**

**846.710 Construction contracts.**

Contracting officers shall insert the FAR clause at 52.246–21, Warranty of Construction, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**846.710–70 Special warranties.**

The contracting officer shall insert the clause at 852.246–1, Special warranties, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty for Construction.

**846.710–71 Warranty for construction—guarantee period services.**

The contracting office shall insert the clause at 852.246–2, Warranty for construction—guarantee period services, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty for Construction, and also include guarantee period services.

**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

32. The authority citation for part 852 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**852.236–70 [Redesignated as 836.500]**

33. Section 852.236–70 is amended by:

A. Redesignating section 852.236–70 as section 836.500 and transferring newly designated section 836.500 to subpart 836.5.

B. In paragraph (a) of new section 836.500, removing “section” and adding, in its place, “subpart”.

C. Revising the new section heading. The revision reads as follows:

**836.500 Scope of subpart.**

34. Section 852.236–71 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. In paragraph (d) of the clause, removing the comma immediately after “work”.

D. Adding introductory text to the clause.

The revisions and addition read as follows:

**852.236–71 Specifications and drawings for construction.**

As prescribed in 836.521, insert the following clause:

**SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (JUL 2002)**

The clause entitled “Specifications and Drawings for Construction” in FAR 52.236–21 is supplemented as follows:

\* \* \* \* \*

35. Section 852.236–72 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

D. Revising paragraphs (b) and (d).

E. Revising the introductory Alternate I paragraph and paragraph (c) of Alternate I.

The revisions and addition read as follows:

**852.236–72 Performance of work by the contractor.**

As prescribed in 836.501, insert the following clause:

**PERFORMANCE OF WORK BY THE CONTRACTOR (JUL 2002)**

The clause entitled “Performance of Work by the Contractor” in FAR 52.236–1 is supplemented as follows:

\* \* \* \* \*

(b) The contractor shall submit, simultaneously with the schedule of costs

required by the Payments Under Fixed-Price Construction Contracts clause of the contract, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

\* \* \* \* \*

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at 52.236-1, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with the FAR clause at 52.236-1.

\* \* \* \* \*

(End of clause)

Alternate I (Jul 2002)

For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

\* \* \* \* \*

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by the contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his or her discretion, authorize a change in such activities of said work.

36. Section 852.236-74 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

The revisions and addition read as follows:

#### **852.236-74 Inspection of construction.**

As prescribed in 846.312, insert the following clause:

INSPECTION OF CONSTRUCTION (JUL 2002)

The clause entitled "Inspection of Construction" in FAR 52.246-12 is supplemented as follows:

\* \* \* \* \*

#### **852.236-75 (Redesignated as 852.246-2)**

37. Section 852.236-75 is redesignated as 852.246-2, and is revised to read as follows:

#### **852.246-2 Warranty for construction—guarantee period services.**

As prescribed in 846.710-71, insert the following clause:

#### **WARRANTY FOR CONSTRUCTION—GUARANTEE PERIOD SERVICES (JUL 2002)**

The clause entitled "Warranty of Construction" in FAR 52.246-21 is supplemented as follows:

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR Section 52.249-10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

38. In section 852.236-76, introductory text is added to read as follows:

#### **852.236-76 Correspondence.**

As prescribed in 836.570, insert the following clause:

\* \* \* \* \*

39. Section 852.236-77 is amended by:

A. Adding introductory text.

B. Revising the undesignated center heading clause and its date.

The addition and revision read as follows:

#### **852.236-77 Reference to "standards."**

As prescribed in 836.571, insert the following clause:

REFERENCE TO "STANDARDS" (JUL 2002)

40. In section 852.236-78, paragraph (c) is amended by removing "may by written direction make" and adding, in its place "may, by written direction, make"; and a section introductory text is added to read as follows:

#### **852.236-78 Government supervision.**

As prescribed in 836.572, insert the following clause:

\* \* \* \* \*

41. In section 852.236-79, section introductory text is added to read as follows:

#### **852.236-79 Daily report of workers and materials.**

As prescribed in 836.573, insert the following clause:

\* \* \* \* \*

42. Section 852.236-80 is amended by:

A. Revising the introductory text.

B. Adding a new paragraph immediately following the phrase "(End of clause)".

The revision and addition read as follows:

#### **852.236-80 Subcontracts and work coordination.**

As prescribed in 836.574, insert the following clause:

\* \* \* \* \*

(End of clause)

Alternate I (Jul 2002)

For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

\* \* \* \* \*

43. Section 852.236-81 is amended by:

A. Removing the section introductory text.

B. Removing the undesignated center clause heading.

C. Adding a paragraph "(b)" designation to the undesignated clause paragraph.

D. Removing the phrase "(End of clause)" at the end of the newly designated paragraph (b).

E. Transferring the newly designated paragraph (b) to section 852.236.80 immediately following the "Alternate I" paragraph.

F. Removing section 852.236-81 section heading.

44. In section 852.236-82, the introductory text and paragraphs (b)(2) and (b)(3) are revised; the "Supplement I (JAN 1988)" clause is removed and an Alternate I clause is inserted in its place to read as follows:

#### **852.236.82 Payments under fixed-price construction contracts (without NAS).**

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled "Network Analysis System (NAS)":

\* \* \* \* \*

(b) \* \* \*

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sum of the subbranches, as applied to each branch, shall equal the total cost of

such branch. The total cost of all branches shall equal the contract price.

\* \* \* \* \*

#### Alternate I (Jul 2002)

If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

45. Section 852.236-83 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Revising the clause introductory text.

D. Removing the "Supplement I (JAN 1988)" introductory text and inserting in its place an Alternate I paragraph, and revising paragraphs (6)(ii) and (iii). The revisions read as follows:

#### 852.236.83 Payments under fixed-price construction contracts (including NAS).

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled "Network Analysis System (NAS)":

\* \* \* \* \*

#### PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (JUL 2002)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232-5 is implemented as follows:

\* \* \* \* \*

(End of clause)

#### Alternate I (Jul 2002)

If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) \* \* \*

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

#### 852.236-84 [Amended]

46. In section 852.236-84, the introductory text is revised to read as follows:

#### 852.236-84 Schedule of work progress.

As prescribed in 836.575, insert the following clause:

\* \* \* \* \*

47. In section 852.236-85, introductory text is added to read as follows:

#### 852.236.85 Supplementary labor standards provisions.

As prescribed in 836.576, insert the following clause:

\* \* \* \* \*

48. Section 852.236-86 is revised to read as follows:

#### 852.236-86 Worker's compensation.

As prescribed in 836.577, insert the following clause:

#### WORKER'S COMPENSATION (JUL 2002)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of States to apply their worker's compensation laws to all lands and premises owned or held by the United States.

(End of clause)

49. Section 852.236-88 is amended by:

A. Revising the section heading and introductory text.

B. Removing paragraph (a) of the section.

C. Revising the first clause undesignated center heading.

D. Redesignating paragraphs (a) through (d) of the first clause as paragraphs (a)(1) through (a)(4), respectively.

E. Adding a new paragraph (a) introductory text to the first clause.

F. Removing from newly designated paragraph (a)(1) "to be submitted" and adding, in its place, "to be submitted as expeditiously as possible but".

G. Removing from newly designated paragraph (a)(2) "submit a proposal" and adding, in its place, "submit a proposal, which includes the information required by paragraph (a)(1)".

H. Removing from newly designated paragraph (a)(3) the comma immediately following the phrase "the contract", and the comma immediately following the phrase "calendar days".

I. Removing at end of the first clause the parenthetical "(End of clause)".

J. Removing paragraph (b) of the section.

K. Removing the second clause introductory text immediately following the second undesignated center clause heading.

L. Redesignating paragraphs (a) through (k) of the second clause as paragraphs (b)(1) through (b)(11), respectively.

M. Adding a new clause paragraph (b) introductory text.

N. Removing from newly designated paragraph (b)(1) "to be submitted" and adding, in its place, "to be submitted as expeditiously as possible but"; and removing "data are required under FAR 15.403 for proposals over \$100,000, the cost of pricing" and adding, in its place, "data or information other than cost or pricing data are required under FAR 15.403, the".

O. Removing from newly designated paragraph (b)(2) "submit a proposal for cost of changes in work within 30 calendar days." and adding, in its place, "submit with 30 calendar days a proposal, which includes the information required by paragraph (b)(1), for the cost of the changes in work."

P. Removing from newly designated paragraph (b)(3) the comma immediately following the phrase "the contract", and the comma immediately following the phrase "calendar days".

Q. Removing from newly designated paragraph (b)(9) "Workmen's" and adding, in its place, "Worker's".

R. Removing the second clause undesignated center heading.

The revisions and additions read as follows:

#### 852.236-88 Contract changes—supplement.

As prescribed in 836.578, insert the following clause:

CONTRACT CHANGES—SUPPLEMENT  
(JUL 2002)

\* \* \* \* \*

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over \$500,000:

\* \* \* \* \*

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing \$500,000 or less:

\* \* \* \* \*

**852.236–89 [Amended]**

50. Section 852.236–89 is revised to read as follows:

**852.236–89 Buy American Act.**

As prescribed in 825.1102, insert the following clause:

**BUY AMERICAN ACT (JUL 2002)**

(a) Reference is made to the clause entitled “Buy American Act—Balance of Payments Program—Construction Materials,” FAR 52.225–9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) It was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Cause)

**Alternate I (JUL 2002)**

As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled “Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements,” FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for Trade Agreements Act (TAA) designated country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer

identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than TAA designated country construction material.

**Alternate II (JUL 2002)**

As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled “Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements,” FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for Trade Agreements Act (TAA) designated country construction material and North American Free Trade Agreement (NAFTA) country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than TAA designated country construction material or NAFTA country construction material.

51. Section 852.236–91 is amended by:

A. Adding an introductory text to the section.

B. Revising the undesignated center clause heading and its date.

C. Revising paragraph (a) introductory text.

D. In paragraph (b), adding a comma immediately following the phrase “is permitted”.

The additions and revisions read as follows:

**852.236–91 Special notes.**

As prescribed in 836.579, insert the following clause:

**SPECIAL NOTES (JUL 2002)**

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

\* \* \* \* \*

52. Section 852.246–1 is added to read as follows:

**852.246–1 Special warranties.**

As prescribed in 846.710–70, insert the following clause:

**SPECIAL WARRANTIES (JUL 2002)**

The clause entitled “Warranty of Construction” in FAR 52.246–21 is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at 52.246–21, Warranty of Construction, unless otherwise provided for in such special warranties.

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**BILLING CODE 8320–01–P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Parts 573, 574, 576, 579**

[Docket No. NHTSA 2001–8677; Notice 4]

**RIN 2127–AI25**

**Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** This document is the assessment of the National Highway Traffic Safety Administration (NHTSA) of the applicability of the Unfunded Mandates Reform Act which was inadvertently omitted from the preamble of the final rule adopting the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and amending other associated agency regulations.

**DATES:** The effective date of the final rule remains August 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

**SUPPLEMENTARY INFORMATION:** In FR Doc. 02–17103, 67 FR 45822, July 10, 2002, the National Highway Traffic Safety Administration (NHTSA) inadvertently omitted its assessment of the applicability of the Unfunded Mandates Reform Act from Section X of the preamble, titled “Regulatory Analyses.” This document provides that assessment.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in \$109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

The final rule (67 FR 45822 at 45872–45883) is not estimated to result in expenditures by State, local or tribal governments of more than \$109 million