**STRIKEOUT CHANGES**

**VAAR Case 2014-V001**

**Part 801—Department of Veterans Affairs Acquisition Regulation System**

Amend the section 801.106 table columns titled “48 CFR part or section where identified and described” and “Current OMB Control Number” to **remove the references to section 852.214-70 and the corresponding OMB Control Number 2900-0593**.

**=====================**

**Subpart 802.1 – Definitions**

[Deviation per [Class Deviation](https://www.va.gov/oal/docs/business/pps/deviationVCFP_20160725.pdf)–Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, revises VAAR 802.101 to add the definition for Public Law (Pub. L.) 109-461; replaces the definition for Service-disabled veteran-owned small business (SDVOSB); adds the definition for VA Rule of Two; replaces the definition for Vendor Information Pages (VIP); adds the definition for Veterans First Contracting Program; and replaces the definition for Veteran-owned small business (VOSB).  This deviation is effective until incorporated in the VAAR or the VA Acquisition Manual (VAAM) or is otherwise rescinded.]

~~[Deviation per~~ [~~Class Deviation~~](https://www.va.gov/oal/docs/business/pps/deviationVaar802101and8094_20170602.pdf)~~–from VA Acquisition Regulation (VAAR) Section 802.101, Definitions, and Subpart 809.4, Debarment, Suspension and Ineligibility dated June 2, 2017, rescinds Class Deviation from VA Acquisition Regulation (VAAR) VAAR 802.101, Definitions, and 809.400, Debarment, Suspension and Ineligibility, dated April 30, 2015; the deviation implements specific processes and criteria pursuant to 38 U.S.C. 8127(g), and updates VA’s policies and procedures for suspensions and debarments.  In VAAR 802.101 it adds two new revised definitions—S&D Committee; Suspending and Debarring Official (SDO); and, effectively removes three other outdated definitions—D&S Committee; Debarring official; and Suspending official.  This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]~~

**802.101  Definitions.**

A/E means architect/engineer.

Chief Acquisition Officer means the Assistant Secretary for Management.

COTR means Contracting Officer’s Technical Representative or Contracting Officer’s Representative.

DSPE means the Deputy Senior Procurement Executive, who is also the Associate Deputy Assistant Secretary for Acquisitions.  The DSPE must be career member of the Senior Executive Service.

FAR means the [Federal Acquisition Regulation](https://www.acquisition.gov/?q=browsefar) [External link to a government website](https://www.va.gov/oal/library/vaar/vaar802.asp#elg).

GAO means the Government Accountability Office.

HCA means the Head of the Contracting Activity, an individual appointed in writing by the DSPE under VA’s Appointment of HCAs Program (see [801.695](https://www.va.gov/oal/library/vaar/vaar801.asp#801695)).

OGC means the Office of the General Counsel.

Public Law (Pub. L.) 109-461 means the Veterans Benefits, Health Care and Information Technology Act of 2006, as amended and codified in 38 U.S.C. 8127 and 8128.

Resident Engineer has the same meaning as contracting officer’s technical representative or contacting officer’s representative (see [852.270-1](https://www.va.gov/oal/library/vaar/vaar852.asp#8522701)).

~~S&D Committee means a committee authorized by the SDO to assist the SDO with suspension and debarment related matters.~~

Service-disabled Veteran-owned small business (SDVOSB) has the same meaning as service-disabled Veteran-owned small business concern defined in [FAR 2.101](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202_1.html#wp1145508)" [External link to a government website](https://www.va.gov/oal/library/vaar/vaar802.asp#elg), except for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program.  These businesses must be listed as verified in the [VIP database](https://www.vip.vetbiz.gov/Public/Logon.aspx).  In addition, some of the SDVOSB businesses listed in the [VIP database](https://www.vip.vetbiz.gov/Public/Logon.aspx) may be owned and controlled by a surviving spouse.  See definition of surviving spouse in 802.101.

Small business concern has the same meaning as defined in FAR 2.101.

SPE means the Senior Procurement Executive who is also the Deputy Assistant Secretary for Acquisition and Materiel Management.  The SPE is responsible for the management direction of the VA acquisition system.  The SPE may further delegate authority to the DSPE.

Surviving spouse means an individual who has been listed in the Department of Veterans Affairs’ (VA) Veterans Benefits Administration (VBA) database of veterans and family members.  To be eligible for inclusion in the VetBiz.gov VIP database, the following conditions must apply:

(1) If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more service-disabled veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described below, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

(2) The period referred to above is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran’s death;

(iv) The date on which the business concern is no longer small under federal small business size standards.

(3) The veteran must have had a 100 percent service-connected disability rating or the veteran died as a direct result of a service-connected disability.

*Suspending and Debarring Official (SDO)* means the Senior Procurement Executive (SPE), or Deputy Senior Procurement Executive (DSPE) if further delegated in writing by the SPE.

*Suspension and Debarment Committee (S&D Committee)* means a committee authorized by the SDO to assist the SDO with suspension and debarment related matters.

VA means the Department of Veterans Affairs.

VAAR means the Department of Veterans Affairs Acquisition Regulation.

VA Rule of Two means the process in 38 U.S.C. 8127(d) whereby a contracting officer of the Department “shall award contracts on the basis of competition restricted to small business concerns owned and controlled by Veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.”  For purposes of this VA specific rule, a service-disabled Veteran-owned small business (SDVOSB) or a Veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), (f) and VAAR [819.7003](https://www.va.gov/oal/library/vaar/vaar819.asp#8917003) and be listed as verified in the [Vendor Information Pages (VIP) database](https://www.vip.vetbiz.gov/Public/Logon.aspx).

Vendor Information Pages (VIP) database means the Department of Veterans Affairs Office of Small and Disadvantaged Business Utilization (OSDBU) Vendor Information Pages (VIP) database at [https://www.vip.vetbiz.gov](https://www.vip.vetbiz.gov/Public/Logon.aspx).  This site›s database lists businesses that the VA Center for Verification and Evaluation (CVE) has determined eligible for the Veterans First Contracting Program.

Veteran-owned small business (VOSB) has the same meaning as Veteran-owned small business concern defined in [FAR 2.101](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202_1.html#wp1145508), except for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program.  These businesses must be listed as verified in the [VIP database](https://www.vip.vetbiz.gov/Public/Logon.aspx).  A business whose SDVOSB status derives from ownership and control by a surviving spouse shall also be considered a VOSB.

Veterans First Contracting Program means the program authorized by 38 U.S.C. 8127 and 8128 (Pub. L. 109-461, as amended), implemented under subpart [819.70](https://www.va.gov/oal/library/vaar/vaar819.asp#81970).  This program applies to all VA contracts (see [FAR 2.101](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202_1.html#wp1145508) [External link to a government website](https://www.va.gov/oal/library/vaar/vaar802.asp#elg)for the definition of contracts) including Blanket Purchase Agreements (BPAs) and orders against the Federal Supply Schedules (FSS), unless otherwise excluded by law.

VISN means Veterans Integrated Service Network, an integrated network of VA facilities that are focused on pooling and aligning resources to best meet local needs in the most cost-effective manner and provide greater access to care.

**SUBCHAPTER A—GENERAL**

**PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

[**Subpart 803.1—~~Safeguards~~**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.1)**[Reserved]**

**[Sec.]**

[~~803.101 Standards of conduct.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.1.1.1)[~~803.101-3 Department regulations.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.1.1.2)[~~803.104 Procurement integrity.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.1.1.3)[~~803.104-7 Violations or possible violations.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.1.1.4)

[**Subpart 803.2—Contractor Gratuities to Government Personnel**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.2)

[803.203 Reporting suspected violations of the Gratuities clause.](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.2.1.1)[803.204 Treatment of violations.](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.2.1.2)

[**Subpart 803.3—~~Reports of Suspected Antitrust Violations~~**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.3)**[Reserved]**

[~~803.303 Reporting suspected antitrust violations.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.3.1.1)

[**Subpart 803.4—~~Contingent Fees~~**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.4)**[Reserved]**

~~[803.405 Misrepresentations or violations of the Covenant Against](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48" \l "48:5.0.2.9.3.4.1.1)~~

~~[Contingent Fees.](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48" \l "48:5.0.2.9.3.4.1.1)~~

[**Subpart 803.5—Other Improper Business Practices**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.5)

[~~803.502 Subcontractor kickbacks.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.5.1.1)  
[803.570 Commercial advertising.](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.5.1.2)  
[803.570-1 Policy.](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.5.1.3)  
[803.570-2 Contract clause.](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.5.1.4)

[**Subpart 803.6—~~Contracts with Government Employees or Organizations Owned or Controlled by Them~~**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.6)**[Reserved]**

[~~803.602 Exceptions.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.6.1.1)

[**Subpart 803.7—~~Voiding and Rescinding Contracts~~**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.7)**[Reserved]**

[~~803.703 Authority.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.7.1.1)[~~803.705 Procedures.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.7.1.2)

[**Subpart 803.8—~~Limitation on the Payment of Funds to Influence Federal Transactions~~**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.8)**[Reserved]**

[~~803.804 Policy.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.8.1.1)[~~803.806 Processing suspected violations.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.8.1.2)

**Subpart 803.11 Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions**

803.1103 Procedures

[**Subpart 803.70—~~Contractor Responsibility to Avoid Improper Business Practices~~**](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.9)**[Reserved]**

[~~803.7000 Display of the VA Hotline poster.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.9.1.1)[~~803.7001 Contract clause.~~](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=bbd9c30fdf4802d3beb1df7a03a8ee5b&rgn=div5&view=text&node=48:5.0.2.9.3&idno=48#48:5.0.2.9.3.9.1.2)

**Authority:** ~~38 U.S.C. 501;~~ 40 U.S.C. 121(c); **[41 U.S.C. 1121(c)(3); 41 U.S.C. 1702;]** and 48 CFR 1.301–1.304.

**SUBCHAPTER A—GENERAL**

**PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**Subpart 803.1—~~Safeguards~~****[Reserved]**

**~~803.101 Standards of conduct.~~**

**~~803.101-3 Department regulations.~~**

~~(a) Part 0 of 38 Code of Federal Regulations (CFR) states the standards of conduct for all VA employees, including contracting officials.~~

~~(b) Subpart B of 38 CFR part 0 states the employee financial disclosure requirements.~~

**~~803.104 Procurement integrity.~~**

**~~803.104-7 Violations or possible violations.~~**

~~(a) Contracting officers must forward the information required by FAR 3.104-7(a)(1) to the HCA. In consultation with OGC, the HCA may make the determination and concurrence specified in FAR 3.104-7(a)(1).~~

~~(b) Upon receipt of information describing a violation or possible violation of subsections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act of 1974 (see FAR 3.104-3), the HCA will take action in accordance with FAR 3.104-7(b). The HCA must also report violations or possible violations to the VA Office of the Inspector General.~~

~~(c) The authority to make the determinations specified in FAR 3.104-7(b)(5) and 3.104-7(d)(2)(ii)(B) is delegated to the SPE and is further delegated to the DSPE.~~

~~(d) As provided in FAR 3.104-7(f), the HCA may authorize a contracting officer to award a contract after notifying the DSPE of the circumstances warranting such an award.~~

**Subpart 803.2—Contractor Gratuities to Government Personnel**

**803.203 Reporting suspected violations of the Gratuities clause.**

(a) Any VA employee must report a suspected violation of the Gratuities clause to the contracting officer or a higher level VA official.

(b) The report must identify the contractor and the personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation.

(c) The contracting officer or higher level official must supplement the file with appropriate information and promptly forward the report to the DSPE with copies to the VA Office of the Inspector General and the Assistant Secretary for Management.

**803.204 Treatment of violations.**

~~In providing the notice and hearing required by FAR 3.204, the SPE may make the determinations required by FAR 3.204. This authority is further delegated to the DSPE. The DSPE shall use~~~~the following procedures to determine whether or not a violation of the Gratuities clause has occurred:~~

~~(a) Upon receipt of an allegation or evidence of a violation of the Gratuities clause,~~ ~~the DSPE~~ ~~refer the matter to the~~ ~~Committee to conduct a fact-finding. Upon completion of the fact-finding, the D&S Committee shall present the facts and recommendations for further action to the DSPE.~~

(~~b) If the DSPE~~ ~~finds a basis for further action,~~ ~~the D&S Committee~~ ~~shall prepare a notice~~ ~~under FAR 3.204~~ ~~for signature of the DSPE~~ . ~~If suspension or debarment is also being considered, the D&S Committee shall also follow the procedures contained in 809.4. The signed notice will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the D&S Committee may send the notice to any partner, principal, officer, director, owner or co-owner, or joint venture.~~

~~(c) If VA does not receive a reply from the contractor within 45 calendar 30 workdays days of sending the notice, the~~ ~~D&S~~ ~~Committee will prepare a recommendation and refer the case to the DSPE~~~~for a decision on whether or not to take further action under FAR 3.204.~~

~~(d) If VA receives a reply from the contractor within 45 calendar 30 workdays of sending the notice, the D&S Committee must consider the information in the reply~~~~before the D&S Committee makes its recommendation to the DSPE .~~

~~(e) The D&S Committee, upon the request of the contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S~~~~Committee, in person or through a representative, to present information or argument. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D&S Committee shall prepare a report of the presentation for submission to the DSPE and must consider the information presented when making its recommendation to the DSPE.~~

~~(f)~~ ~~If the D&S Committee finds that the contractor's submission in opposition to further action under FAR 3.204 raises a genuine dispute over facts material to the action, then the D&S Committee shall submit to the DSPE~~**~~]~~** ~~the information establishing the dispute of material facts. If the DSPE agrees that there is a genuine dispute of material facts, the DSPE shall refer the dispute to a designee for resolution under 809.470. The DSPE may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.~~

~~(g) If there are no disputes over material facts or if all disputes over material facts have been resolved under 809.470, the DSPE will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D & S Committee by the contractor. The DSPE should consider any mitigating factors, such as those listed at FAR 9.406-1 and 809.406-1, prior to making a final decision.~~

**[(a)The SDO shall determine whether or not a violation of the Gratuities clause, 52.203-3** **has occurred and what action will be taken under FAR 3.204(c)**,**]**

**[(c) When the SDO determines that a violation has occurred and that debarment is being considered**, **he or she shall follow procedures at 809.406-3.]**

**Subpart 803.3—~~Reports of Suspected Antitrust Violations~~[Reserved]**

**~~803.303 Reporting suspected antitrust violations.~~**

~~(a) Any VA employee who suspects or has evidence of possible antitrust violations must report the suspected violations, in accordance with FAR 3.303, to the VA Office of the Inspector General and to the Assistant Secretary for Management for review and submission to OGC.~~

~~(b) Either the General Counsel or the Inspector General will determine whether to submit the case to the U.S. Attorney General.~~

**Subpart 803.4—~~Contingent Fees~~[Reserved]**

**~~803.405 Misrepresentations or violations of the Covenant Against Contingent~~**

**~~Fees.~~**

~~(a) A VA employee who suspects or has evidence of an attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or any other violation of the Covenant Against Contingent Fees must report the matter to the contracting officer or to the VA Office of Inspector General.~~

~~(b) In addition to the requirement in paragraph (a) of this section, a contracting officer must report a suspected or actual misrepresentation or violation to the DSPE.~~

~~(c) Before taking any administrative action under FAR 3.405, a contracting officer must consult with his or her Regional Counsel. A contracting officer in the Central Office must consult with OGC.~~

~~(d) Contracting officers shall route any referrals of suspected fraudulent or criminal matters to the Department of Justice under FAR 3.405(b)(4) through OGC or the VA Office of the Inspector General, with a copy to the Assistant Secretary for Management. The General Counsel or the Inspector General will determine whether to forward the referral to the Department of Justice.~~

**Subpart 803.5—Other Improper Business Practices**

**~~803.502 Subcontractor kickbacks.~~**

~~A VA employee who suspects a violation of the Anti-kickback Act must report the suspected violation to OGC for review.~~

**803.570 Commercial advertising.**

**803.570-1 Policy.**

~~It is VA policy that contractors will not advertise the award of contracts or refer to VA contracts in contractors' commercial advertising in such a manner as to state or imply that VA endorses a product, project, or commercial line of endeavor.~~ **[VA policy prohibits contractors from making references in its commercial advertising to VA contracts in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services.]** The intent of this policy is to preclude the appearance of bias toward any product or service.

**803.570-2 Contract clause.**

The contracting officer shall insert the clause at 852.203-70, Commercial advertising, in solicitations and contracts expected to equal or exceed the micro-purchase threshold.

**Subpart 803.6—~~Contracts with Government Employees or Organizations Owned or Controlled by Them~~[Reserved]**

**~~803.602 Exceptions.~~**

~~The authority to authorize an exception to the policy in FAR 3.601 is delegated to the SPE and is further delegated to the DSPE.~~

**Subpart 803.7—~~Voiding and Rescinding Contracts~~[Reserved]**

**~~803.703 Authority.~~**

~~The authority to make determinations under FAR Subpart 3.7, Voiding and Rescinding Contracts, is delegated to the SPE and is further delegated to the DSPE.~~

**~~803.705 Procedures.~~**

~~In making a determination to void or rescind a contract, the DSPE must follow the procedures of FAR 3.705 and the following:~~

~~(a) Upon receipt of an allegation or evidence of situations meeting the provisions of FAR 3.700, the DSPE shall refer the matter to the D&S Committee to conduct a finding of facts. Upon completion of the fact-finding, the D&S Committee shall present the facts and recommendations for further action to the DSPE.~~

~~(b) If the DSPE finds a basis for further action, the D&S Committee shall prepare a notice under FAR 3.705 for signature of the DSPE. If suspension or debarment is being considered, the D&S Committee shall also follow the procedures of 809.4. The signed notice will be sent to the last known address of the contractor, the contractor's counsel, or registered agent, by certified mail, return receipt requested. In the case of a business, the D&S Committee may send the notice to any partner, principal, officer, director, owner or co-owner, or joint venture.~~

~~(c) If VA does not receive a reply from the contractor within 30 calendar days of receipt of the notice by the addressee, the D&S Committee will prepare a recommendation and refer the case to the DSPE for a decision on whether or not to take further action under FAR 3.705.~~

~~(d) If VA receives a reply from the contractor within 30 calendar days of receipt of the notice, the D&S Committee must consider the information in the reply before the D&S Committee makes its recommendation to the DSPE.~~

~~(e) The D&S Committee, upon the request of the contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee, in person or through a representative, to present information or argument. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D&S Committee shall prepare a report of the presentation for submission to the DSPE.~~

~~(f) If the D&S Committee finds that the contractor's submission in opposition to further action under FAR 3.705 raises a genuine dispute over facts material to the action, then the D&S Committee shall submit to the DSPE the information establishing the dispute of material facts. If the DSPE agrees that there is a genuine dispute of material facts, the DSPE shall refer the dispute to a designee for resolution under 809.470. The DSPE may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.~~

~~(g) If there are no disputes over material facts or if all disputes over material facts have been resolved under 809.470, the DSPE will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D&S Committee by the contractor.~~

**Subpart 803.8—~~Limitations on the Payment of Funds to Influence Federal Transactions~~[Reserved]**

**~~803.804 Policy.~~**

~~A contracting officer must forward a copy of all contractor disclosures furnished under the clause at FAR 52.203-12, Limitations on Payments to Influence Certain Federal Transactions, to the Director, Acquisition Resources Service, for subsequent submission by the Secretary to Congress.~~

**~~803.806 Processing suspected violations.~~**

~~A VA employee must report suspected violations of 31 U.S.C. 1352, Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, to the Assistant Secretary for Management and the VA Office of the Inspector General.~~

**[Subpart 803.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions**

* 1. **Procedures.**

**(a) By use of the contract clause at 52.203-16, Preventing Personal Conflicts of Interest, the contracting officer shall require each contractor and subcontractor of any tier whose employees perform acquisition functions closely associated with inherently governmental functions to obtain from each covered employee a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract. See FAR 3.1103(a)(2)(iii).]**

**Subpart 803.70—~~Contractor Responsibility to Avoid Improper Business Practices~~**

**~~803.7000 Display of the VA Hotline poster.~~[Reserved]**

~~(a) Under the circumstances described in paragraph (b) of this section, a contractor must display prominently a VA Hotline poster prepared by the VA Office of Inspector General in a common work area within a business segment performing work under a VA contract.~~

~~(b) A contractor must comply with paragraph (a) of this section when all of the following apply:~~

~~(1) The contractor is awarded a VA contract for $5,000,000 or more.~~

~~(2) The contractor has not established an internal reporting mechanism and program, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.~~

**~~803.7001 Contract clause.~~**

~~The contracting officer shall insert the clause at 852.203-71, Display of Department of Veterans Affairs Hotline poster, in solicitations and contracts expected to equal or exceed the dollar thresholds established in 803.7000.~~

**Part 812—Acquisition of Commercial Items**

**812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \*

(b)

(13) 852.214-74, **[Marking of]** **[B]**~~b~~id **[S]**~~s~~amples.**]**

\* \* \* \* \*

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

**PART 814—USE OF SEALED BIDDING**

|  |  |
| --- | --- |
| **Subpart 814.1~~—Use of Sealed Bidding~~[Reserved]** | |
| Sec. |  |
| ~~814.104~~ | | ~~Types of contracts.~~ |
| ~~814.104-70~~ | ~~Fixed-price contracts with escalation.~~ |
| **Subpart 814.2—Solicitation of Bids** | |
| 814.201 | Preparation of invitations for bids. |
| **[814.201-2** | **Part I—The Schedule.]** |
| 814.201-6 | Solicitation provisions. |
| **[814.202** | **General rules for solicitation of bids.** |
| **814.202-4** | **Bid samples.]** |
| ~~814.203~~ | ~~Methods of soliciting bids~~. |
| ~~814.203-1~~ | ~~Transmittal to prospective bidders~~. |
| ~~814.204~~ | ~~Records of invitations for bids and records of bids.~~ |
| ~~814.208~~ | ~~Amendment of invitation for bids.~~ |

|  |  |
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| **Subpart 814.3—Submission of Bids** | |
| ~~814.301~~ | ~~Responsiveness of bids.~~ |
| ~~814.302~~ | ~~Bid submission~~. |
| 814.304 | Submission, modification, and withdrawal of bids. |
| **Subpart 814.4—~~Opening of Bids and Award of Contract~~[Reserved]** | |
| ~~814.401~~ | ~~Receipt and safeguarding of bids.~~ |
| ~~814.402~~ | ~~Opening of bids.~~ |
| ~~814.403~~ | ~~Recording of bids.~~ |
| ~~814.404~~ | ~~Rejection of bids~~. |
| ~~814.404-1~~ | ~~Cancellation of invitations after opening~~. |
| ~~814.404-2~~ | ~~Rejection of individual bids.~~ |
| ~~814.404-70~~ | ~~Questions involving the responsiveness of a bid.~~ |
| ~~814.407~~ | ~~Mistakes in bids.~~ |
| ~~814.407-3~~ | ~~Other mistakes disclosed before award.~~ |
| ~~814.407-4~~ | ~~Mistakes after award.~~ |
| ~~814.408~~ | ~~Award.~~ |
| ~~814.408-70~~ | ~~Award when only one bid is received.~~ |
| ~~814.408-71~~ | ~~Recommendation for award (construction).~~ |
| ~~814.409~~ | ~~Information to bidders.~~ |

**Authority:**  40 U.S.C. 121(c)**[; 41 U.S.C. 1121(c)(3); 41 U.S.C.1702;]** and 48 CFR 1.301-1.304.

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

**PART 814—USE OF SEALED BIDDING**

**Subpart 814.1—Use of Sealed Bidding**

**~~814.104 Types of contracts.~~**

**~~814.104-70 Fixed-price contracts with escalation.~~**

~~When fixed price contracts with escalation are authorized under 816.102(a), a contracting officer must comply with FAR 16.203-1 through 16.203-4.~~

**Subpart 814.2—Solicitation of Bids**

**814.201 Preparation of invitations for bids.**

~~(a) An invitation for bids for supplies, equipment, and services must be serially numbered at the time of issue. Numbers assigned locally must consist of the facility or VA National Acquisition Center division number, the serial number of the invitation, and the fiscal year in which the VA facility issues the invitation, e.g., 533-24-07 for the 24th invitation issued by VA facility 533 in Fiscal Year 2007. A series beginning with the number 1 must be started each fiscal year. Numbers assigned from a national register may be sequential, without regard to year, and use whatever numbering system assigned by the national system or VA’s Electronic Contract Management System (eCMS). VHA shall use eCMS for all solicitation numbering.~~

~~(1) An invitation for bid for supplies, equipment, and services that is numbered locally must be numbered in the series of the year in which it is issued, will be accepted, and will become a contract in the same fiscal year but, because of procurement lead time, will not be performed until the next fiscal year.~~

~~(2) An invitation for bid that is numbered locally must be numbered in the next fiscal year series if it is issued in one fiscal year but the contract will become effective and will be performed only in the next fiscal year.~~

~~(b) An invitation for a construction contract must bear the applicable invitation for bid number and the project number, if assigned.~~

~~(c) An invitation for bid containing a summary bid request must include the following statement:~~

~~“The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.”~~

~~(d) When a contracting officer determines that it will be to the Government’s~~

~~advantage to make an award by group or groups of items, the contracting officer must include a provision for the award by group or groups of items in the invitation for bids.~~ ~~This may apply when the items in the group or groups are readily available from sources to be solicited; and one of the following apply:~~

1. ~~It is desirable to award a minimum number of contracts.~~

~~(2) Furniture or fixtures are required for a single project and uniformity of design is desirable.~~

~~(3) The articles required will be assembled and used as a unit.~~

(~~e) A solicitation for a construction contract must contain a statement on~~

~~the order of priority in which VA will award any alternative bid items, based on the relative importance of the items, VA’s cost estimate, and the amount of funds available, when the following apply:~~

~~(1) VA intends to make a single aggregate award for all items in the solicitation within certain fiscal limitations~~**~~.~~**

~~(2) The solicitation asks for prices on an item and alternate item basis~~**~~.~~**

~~(f) A bid item schedule in a solicitation issued in compliance with paragraph~~

~~(e) of this section should be structured substantially as follows:~~

~~A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2 or Item No. 3, in that order, based on available funding. Offerors should quote a price on each item listed.~~

~~Item No. 1--Furnish all labor, material, equipment, etc., to paint Buildings~~

~~No. 1, 2, and 3: $ .~~

~~Alternate items in order of priority:~~

~~Item No. 2-- Furnish all labor, material, equipment, etc., to paint Building~~

~~Nos. 1 and 2: $ .~~

~~Item No. 3-- Furnish all labor, material, equipment, etc., to paint Building~~

~~No. 1: $ .~~

**[814.201-2 Part I—The Schedule.**

**(b) *Section B, Supplies or services and prices*.**

**(1) When the contracting officer determines that it will be to the Government’s advantage to make an award on the basis of a summary bid, the IFB shall include the following statement in Part I—The Schedule, Section B:**

**“The award will be made on either the bid price for individual items or the summary bid price for all items, whichever results in the lowest price to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.”**

**(2) When a contracting officer determines that it will be to the Government’s advantage to make an award by group or groups of items, the IFB shall include the following statement in Part I—The Schedule, Section B:**

**“Award shall be made on the basis of the bid price for each identified group of items. The individual price of each line item in the group does not have to be the lowest bid received for that item.”**

**This may apply when the items in the group or groups are readily available from sources to be solicited; and one of the following applies—**

1. **Furniture or fixtures are required for a single project and**

**uniformity of design is desirable.**

1. **The articles required will be assembled and used as a unit.]**

**814.201-6 − Solicitation provisions.**

(~~a) The contracting officer must place the provision 852.214-70~~**~~,~~** ~~“Caution to Bidders-Bid Envelopes,” as set forth in 852.214-70,in all invitations for bids where bid submissions are by other than electronic means.~~

**[(a)]**~~(b)~~ In an invitation for bid for supplies, equipment, or services (other than construction), the contracting officer ~~must~~ **[shall]** define the extent to which VA will authorize and consider alternate bids. VA will consider for acceptance an alternate specified on construction projects only as a part of the basic item.

(1) ~~When VA will consider an alternate item only if no bids or insufficient bids are received on an item desired, the contracting officer must include the provision set forth in 852.214-71, Restrictions on alternate item(s), in the invitation.~~ **[The contracting officer shall include the provision at 852.214-71, Restrictions on Alternate Items(s), in the invitation when VA will**

**consider an alternate item only where acceptable bids on a desired item are not received or the bids do not satisfy the total requirement. (For construction projects, VA will consider for acceptance an alternate specified only as a part of the basic item.)]**

(2) ~~When VA will consider an alternate item on an equal basis with the item specified,~~ ~~the~~**[The]** contracting officer ~~must~~ **[shall]** include the provision ~~set forth in~~ **[at]** 852.214-72, Alternate ~~item~~ **[Items]**, in the invitation~~.~~**[, when VA will consider an alternate item on an equal basis with the item specified. (For construction projects, VA will consider for acceptance an alternate specified only as a part of the basic item.)]**

(3) In addition to **[either of]** the provision**[s]** referenced in paragraph**[s] (**b)(1) or (2) of this **[sub]**section, the contracting officer ~~must~~ **[shall]** include the provision ~~set forth in~~ **[at]** 852.214-73, Alternate **[Packaging and Packing]** ~~packaging and packing~~, in the invitation when bids will be allowed **[based]** on different packaging, unit designation, etc.

**[(b)]**~~(c)~~ ~~When the contracting officer determines that samples are necessary to the proper awarding of a contract, the~~ **[The]** contracting officer ~~must~~ **[shall]** include the provision ~~set forth in~~ **[at]** 852.214-74, ~~Bid samples~~ **[Marking of Bid Samples]**, in the ~~solicitation~~**[invitation]**, along with the provision ~~in~~ **[at]** FAR 52.214-20, Bid **[S]**~~s~~amples, **[when the contracting officer determines that samples are necessary to the proper awarding of a contract.]**

**[814.202 General rules for solicitation of bids.**

**814.202-4 Bid samples.**

1. ***Policy*. When bid samples are required, the contracting officer shall include a notice in the contract Schedule that requires bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.**

**(g) *Handling bid samples*.**

**(1) Samples from successful bids shall be retained for the period of contract performance.**

**(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved. If there are no outstanding claims regarding the**

**contract, the contracting officer may authorize disposal of the samples at the end of the contract term in accordance with the bidder’s instructions.**

**(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of in accordance with the bidder’s instructions.]**

**~~814.203 − Methods of soliciting bids~~**~~.~~

**~~814.203-1 − Transmittal to prospective bidders.~~**

~~The contracting officer should include either a bid envelope or OF 17, Sealed Bid Label, with each invitation for bids furnished by mail or hand delivered to prospective bidders.~~

**~~814.204 Records of invitations for bids and records of bids.~~**

~~(a) The issuing office must establish and maintain a single register on a fiscal year basis for all solicitations. For each invitation to bid or request for proposal, the register must include the following:~~

~~(1) Bid or proposal number.~~

~~(2) Date of issue.~~

~~(3) Date of opening.~~

~~(4) Commodity or service involved.~~

~~(5) Disposition (i.e., contract number or purchase order number or, when applicable, no award).~~

~~(b) Maintenance of the contract file prescribed by Part 804 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FAR~~

~~14.204(b).~~

**~~814.208 − Amendment of invitation for bids.~~**

~~The contracting officer must send amendments to holders of drawings and specifications by certified mail, return receipt requested, or any other method that provides evidence of receipt.~~ ~~The contracting officer may send amendments by telegram, facsimile, or other method of rapid delivery that provides evidence of receipt, if time does not permit mailing.~~

**Subpart 814.3—Submission of Bids**

**~~814.301 Responsiveness of bids.~~**

~~Where a contracting officer cannot administratively determine, in accordance with FAR 14.301, the timeliness of the submission of a bid, modification, or withdrawal, the contracting officer must submit the matter through the DSPE to the Comptroller General for a decision. The submission must include copies of all pertinent papers.~~

**~~814.302 − Bid submission.~~**

~~A bid hand-carried by the bidder or his agent will be considered late unless delivered to the office designated in the invitation for bid no later than the time set for opening.~~

**814.304 − Submission, modification, and withdrawal of bids.**

~~(a) A notification to late bidders must specify the final date by which VA must receive evidence. This date must be within the time allowed by the apparent low bidder for acceptance of the low bidder’s bid~~.

~~(b) All bids received by mail or delivered in person by the bidder (or telegram where authorized) must be time and date stamped immediately upon receipt at the VA facility mail room and in the office of the addressee designated in the invitation.~~

**[(f) A notification to late bidders shall specify the final date by which VA must receive evidence of timeliness. This date shall be within** **five calendar days of the date an electronic notice is sent to the bidder, or within ten calendar days of receipt by the bidder of a notice sent by other than electronic means**.**]**

**Subpart 814.4—~~Opening of Bids and Award of Contract~~[Reserved]**

**~~814.401 Receipt and safeguarding of bids~~**~~.~~

~~The contracting officer is designated as the official to open bids for identification, as provided in FAR 14.401.~~

**~~814.402 Opening of bids.~~**

~~(a) The contracting officer must serve as, or designate, a bid opening officer, and must also designate a recorder~~.

~~(b) If a bid bond is required, the bid opening officer must read aloud the form and amount of bid security and the name of the surety. The recorder must this information~~**~~.~~**

**~~814.403 Recording of bids.~~**

~~(a) The recorder must transcribe the information required for bid evaluation on the appropriate Abstract of Offers form (SF 1409 or OF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-~~

2237b, Request for Dietetic Supplies, provided that any supplemental sheets or ~~forms are covered by one of the forms authorized for recording bid or price data.~~

~~(b) The bid opening officer must comply with the instructions in FAR 14.403 and certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeovers, or changes in price are noted at the time of bid~~ ~~opening, a statement to that effect must also be included on, or attached to, the abstract or record of bids.~~

**~~814.404 Rejection of bids.~~**

**~~814.404-1 Cancellation of invitations after opening.~~**

~~(a) For each invitation to bid that VA cancels or for which it receives no bid, the contracting officer must do the following:~~

~~(1) File a copy of the invitation for bids, as provided for in FAR~~

~~14.404-1, together with the abstract showing to whom such bids were sent, in a separate folder identified by the invitation number.~~

~~(2) Annotate the abstract to show why an award was not made.~~

~~(3) Retain the folders for the current and two succeeding fiscal years.~~

~~(b) The HCA may approve cancellation of invitations for bid after opening and may approve completion of the acquisition after cancellation, as provided in FAR 14.404-1(e). The contracting officer shall submit a Determination and Finding to the HCA for approval and signature.~~

**~~814.404-2 Rejection of individual bids.~~**

~~(a) When a contracting officer finds a bid that is being considered for an award is incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:~~

~~(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. The determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.~~

~~(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.~~

~~(b) When VA receives a single bid in response to a solicitation, the contracting officer must not reject the offer simply because it specifies a bid acceptance time that is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer is a compelling reason for rejection; however, the contracting officer must first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.~~

~~(c) In those cases where VA receives more than one bid, the contracting officer must reject as nonresponsive an individual bid that is not in compliance with the Government’s bid acceptance time, since consideration of such an offer would unfairly disadvantage other bidders.~~

**~~814.404-70 Questions involving the responsiveness of a bid.~~**

~~If a contracting officer cannot resolve a question involving the responsiveness of a bid, the contracting officer may submit the question to the Comptroller General through the DSPE.~~

**~~814.407 Mistakes in bids.~~**

**~~814.407-3 Other mistakes disclosed before award.~~**

~~(a)~~ ~~In accordance with FAR 14.407-3(e), the authority of the Secretary to make the administrative determinations set forth in FAR 14.407-3(a), (b), (c), and (d) is delegated to the SPE and is further delegated, without power of redelegation, to the DSPE.~~ ~~This delegation in no way impairs the delegations contained in Unpublished Decision of the Comptroller General B-122003 dated November 22, 1954.~~

~~(b) When a bidder alleges a mistake in his or her bid before award, after complying with the provisions of FAR 14.407-3, the contracting officer must submit the complete file to the DSPE for an administrative determination. Based upon the evidence submitted, the DSPE shall determine the action the contracting officer is to take. The contracting officer may make no award until the DSPE makes a determination.~~

**~~814.407-4 Mistakes after award.~~**

~~(a) When a contracting officer corrects a mistake in bid under FAR 14.407-~~

~~4(a), the contracting officer must forward a copy of the contract amendment or supplemental agreement and a copy of the contracting officer’s determination, to the DSPE.~~

~~(b) For mistakes in a bid alleged after award, the contracting officer’s proposed determination, prepared in accordance with FAR 14.407-4, must be forwarded to OGC through the DSPE, Acquisition Resources Service, for legal coordination. The DSPE shall transmit the results of this coordination to the contracting officer, who will make the final determination on the alleged mistake in bid after award.~~

~~(c) The DSPE, Acquisition Resources Service, must maintain the agency records of mistakes in bids after award required by FAR 14.407-4.~~

**~~814.408 Award.~~**

**~~814.408-70 Award when only one bid is received.~~**

~~(a) When VA receives only one bid in response to an invitation for bids, the contracting officer may consider and accept the bid if all of the following apply:~~

~~(1) The specifications used in the invitation were not restrictive.~~

~~(2) VA solicited adequate competition.~~

~~(3) The price is reasonable.~~

~~(4) The bid is otherwise in accordance with the invitation for bids.~~

~~(b) The contracting officer must make the determination in writing, and include it the contract file.~~

**~~814.408-71 Recommendation for award (construction).~~**

~~(a) For Central Office contracts, the Director, Office of Construction and Facilities Management, must analyze all bids received and submit a memorandum to the Secretary recommending award or other disposition of the project. A copy of each of the following must accompany the memorandum:~~

~~(1) The invitation.~~

~~(2) Each bid received.~~

~~(3) The abstract.~~

~~(4) Any other pertinent data.~~

~~(b) For facility-level contracts, the Chief, Engineering Service, must analyze all bids received and submit a memorandum recommending award or other disposition of the project to the contracting officer. The contracting officer alone must make the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor.~~

**~~814.409 Information to bidders.~~**

~~(a) Anemployee of VA may not disclose information as to probable acceptance or rejection of any offer to any bidder or other person outside of VA, except as authorized by the FAR.~~

~~(b) Except as provided in paragraphs (c) and (d) of this section, information about performance under a contract or an accepted bid is not public information and will be released to persons outside of VA only upon the authority of the immediate supervisor of the contracting officer.~~

~~(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information on performance under a contract to those having a legitimate interest, such as sureties, banks, other financial companies and Government departments and agencies.~~

~~(d) When litigation is involved, all information must be furnished through~~

~~OGC.~~

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

**PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

**Subpart 822.3 – Contract Work Hours and Safety Standards Act**

Sec.

822.304 Variations, tolerances, and exemptions.

822.305 Contract clause.

**Subpart 822.4—~~Labor Standards for Contracts Involving Construction~~[Reserved]**

~~822.406 Administration and enforcement.~~

~~822.406-11 Contract terminations.~~

**Authority:**  29 CFR 5.15(d);40 U.S.C. 121(c)**[; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702;]** and 48

CFR 1.301-1.304.

**PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

**Subpart 822.3—Contract Work Hours and Safety Standards Act**

**822.304 – Variations, tolerances, and exemptions.**

~~When issuing a contract for nursing home care, a contracting officer may exempt a contractor from certain requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) regarding the payment of overtime (see 29 CFR 5.15(d)(2) and 852.222-70).~~

**[For contracts providing nursing home care for veterans, the Secretary of Labor has allowed a variation to the requirements of the Contract Work Hours and Safety Standards (**[**40 U.S.C. 3701*et seq*.)**](file:///C:\Users\vacomccaij\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\257S1DZU\R822PIPT.10102013%5b1%5d%20VAAR%20822.docx) **regarding the payment of overtime (see 29** [**CFR 5.15(d)(2)**](file:///C:\Users\vacomccaij\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\257S1DZU\R822PIPT.10102013%5b1%5d%20VAAR%20822.docx)**. The variation provides that overtime may be calculated on a basis other than a 40 hour workweek (as an alternate work period) when—**

**(a) Due to operational necessity or convenience a work period of 14 consecutive days may be accepted in lieu of the workweek of 7 consecutive days for the purpose of computing overtime compensation, pursuant to an agreement or understanding arrived at between the contractor and the contractors’ employees before performance of the work; and**

**(b) If the contractor’s employees receive compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 11⁄2 times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.]**

**822.305 – Contract clause.**

~~The contracting officer shall insert the clause at 852.222-70, Contract Work Hours and Safety Standards Act— nursing home care contract supplement, in solicitations and contracts for nursing home care when the FAR clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, is included.~~

**[The contracting officer shall insert the clause at 852.222-70, Contract Work Hours and Safety Standards—Nursing Home Care for Veterans, in solicitations and contracts for nursing home care for veterans. The contractor shall flow down this clause and insert in all subcontracts, at any tier.]**

**~~Subpart 822.4—Labor Standards for Contracts Involving Construction~~**

**~~822.406 Administration and enforcement.~~**

**~~822.406-11 Contract terminations.~~**

~~(a) Contracting officers must submit any proposed termination of a contract based on violations of the labor standard provisions of the contract to OGC for review and comment prior to taking final action. The submittal must include a detailed explanation of the facts and circumstances involved. Contracting officers, except those in the Office of Construction and Facilities Management, shall forward the submittal to OGC through the DSPE. Contracting officers in the Office of Construction and Facilities Management shall forward the submittal to OGC through the Director, Office of Construction and Facilities Management.~~

~~(b) If the contract is to be terminated, the DSPE or the Director, Office of~~

~~Construction and Facilities Management, must submit the reports required by 29~~

~~CFR 5.7(d) over the signature of the SPE.~~

**Part 852—Solicitation Provisions and Contract Clauses**

**852.203-70 Commercial advertising.**

As prescribed in 803.570-2, insert the following clause:

**COMMERCIAL ADVERTISING (~~JAN 2008)~~ [(APR 2018)]**

~~The bidder or offeror agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Department of Veterans Affairs endorses a product, project or commercial line of endeavor~~

**[The Contractor shall not make reference in its commercial advertising to Department of Veterans Affairs contracts in a manner that states or implies the Department of Veterans Affairs approves or endorses the Contractor’s products or services or considers the Contractor’s products or services superior to other products or services.]**

(End of clause)

.**~~852.203-71 Display of Department of Veterans Affairs hotline poster.~~**

~~As prescribed in 803.7001, insert the following clause:~~

**~~DISPLAY OF DEPARTMENT OF VETERANS AFFAIRS HOTLINE POSTER (DEC 1992)~~**

~~(a) Except as provided in paragraph (c) below, the Contractor shall display prominently, in common work areas within business segments performing work under VA contracts, Department of Veterans Affairs Hotline posters prepared by the VA Office of Inspector General.~~

~~(b) Department of Veterans Affairs Hotline posters may be obtained from the VA Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043-4647.~~

~~(c) The Contractor need not comply with paragraph (a) above if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.~~

~~(End of clause)~~

**~~===========~~**

**852.214-70 ~~Caution to bidders – bid envelopes.~~** **[[Reserved]]**

~~As provided in 814.201-6(a),~~~~the following provision: will be included in all invitations for bid:~~

**~~CAUTION TO BIDDERS – BID ENVELOPES (JAN 2008)~~**

~~It is the responsibility of each bidder to take all necessary precautions including the use of proper mailing cover to insure that the bid price cannot be ascertained by anyone prior to bid opening, If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, use any suitable envelope, identified by the invitation number and bid opening time and date. If an Optional Form (OF) 17, Sealed Bid Label, is furnished with this invitation in lieu of a bid envelope, the bidder is advised to complete and affix the OF 17 to the lower left corner of the envelope used in submitting the bid.~~

~~(End of provision)~~

**852.214-71 Restrictions on alternate item(s).**

As prescribed in 814.201-6**[(a)]**~~(b)~~(1), insert the following provision:

**RESTRICTIONS ON ALTERNATE ITEM(S) (MAY 2018)**

Bids on [ ]\* will be considered only if acceptable bids on [ ]\*\* are not received or do not satisfy the total requirement.

(End of provision)

\**Contracting officer will insert an alternate item that is considered acceptable*.

\*\**Contracting officer will insert the required item and item number*.

**852.214-72 Alternate item(s).**

As prescribed in 814.201-6**[(a)]**~~(b)~~(2), insert the following provision:

**ALTERNATE ITEM(S) (MAY 2018)**

Bids on [ ]\* will be given equal consideration along with bids on [ ]\*\* and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of [ ].\*\*

(End of provision)

\**Contracting officer will insert an alternate item that is considered acceptable*.

\*\**Contracting officer will insert the required item and item number*.

**============**

**~~852.222-70 Contract Work-Hours and Safety Standards Act – nursing home care contract supplement.~~**

~~As prescribed in 822.305, for nursing home care requirements, insert the following clause:~~

**~~CONTRACT WORK HOURS AND SAFETY STANDARD ACT – NURSING HOME CARE~~**

**~~CONTRACT SUPPLEMENT (JAN 2008)~~**

~~The following exemption to FAR clause 52.222-4, Contract Work Hours and~~

~~Safety Standards Act—Overtime Compensation, applies to this contract:~~

~~A contractor and subcontractor under this contract will not be required to pay overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), provided:~~

~~(a) The contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor’s or subcontractor’s premises;~~

~~(b) There is an agreement or understanding between the contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;~~

~~(c) Employees receive overtime compensation at a rate no less than 1 1/2 times the employees’ regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and~~

~~(d) Pay is otherwise computed in accordance with the requirements of the~~

~~Fair Labor Standards Act of 1938, as amended.~~

~~(End of Clause)~~

**[852.222-70 Contract Work-Hours and Safety Standards–Nursing Home Care for**

**Veterans.**

**As prescribed in 822.305, insert the following clause:**

**CONTRACT WORK HOURS AND SAFETY STANDARDS—NURSING HOME CARE FOR VETERANS (MAY 2018)**

**(a) No Contractor and subcontractor under this contract shall prohibit the payment of overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of Contract Work Hours and Safety Standards (the statute) (40 U.S.C. 3701,*et seq*.), provided—**

**(1) The Contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor’s or subcontractor’s premises;**

**(2) There is an agreement or understanding between the Contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;**

**(3) Employees receive overtime compensation at a rate no less than 1 1/2 times the employees’ regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and**

**(4) Pay is otherwise computed in accordance with the requirements of** [**the Fair Labor Standards Act of 1938, as amended**](file:///C:\Users\vacomccaij\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\257S1DZU\R822PIPT.10102013%5b1%5d%20VAAR%20822.docx)**.**

**b) *Subcontracts*. The Contractor shall insert the text of this clause, including this paragraph (b), in subcontracts that at any subcontract tier. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (b) of this clause.**

**(End of clause)]**