

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Sec.
842.000 Scope of part.
842.070 Definitions.

Subpart 842.1—Contract Audit Services

842.101 Contract audit responsibilities.
842.102 Assignment of contract audit services.

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

Subpart 842.8—Disallowance of Costs

842.801 Notice of intent to disallow costs.
842.801-70 Audit assistance prior to disallowing costs.
842.803 Disallowing costs after incurrence.

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

842.000 Scope of part.

This part applies to all contracts, whether awarded through sealed bidding or negotiation.

842.070 Definitions.

Contract administration is the coordination of actions required for the performance of a contract. This includes the contracting officer's guidance and supervision necessary to assure that the contractor fulfills all contractual obligations.

Subpart 842.1—Contract Audit Services

842.101 Contract audit responsibilities.

(a) Contracting officers may use the support services of other agencies to the extent feasible. Examples of such services include: pre-award surveys; quality assurance and technical inspection of contract items; and review of

contractors' procurement systems. Contracting officers obtaining support services from any other Government department or agency must do so on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding between the parties to the agreement. The agreement should clearly state the following:

(1) The accord reached between the two parties involved, especially the obligations assumed and the rights granted each party.

(2) The resources that both the supplying and receiving parties will provide.

(3) The funding and reimbursement arrangements.

(4) Clauses permitting revisions, modifications, or cancellation of the agreement.

842.102 Assignment of contract audit services.

(a) When required, contracting officers shall request the assistance of the VA Office of the Inspector General (OIG), Office of Contract Review, to provide pre- and post-award audit, review, and advisory services associated with the award or modification of:

(1) Federal Supply Schedule and other contracts awarded by the VA National Acquisition Center;

(2) Scarce medical specialist or sharing contracts awarded under the authority of 38 U.S.C. 7409 or 8153, and;

(3) Claims involving such contracts.

(b) Contracting officers may request the assistance of either the VA OIG Office of Contract Review or the Defense Contract Audit Agency (DCAA) to provide pre- and post-award audit, review, and advisory services associated with other types of contracts or claims.

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

(a) Except when the quick-closeout procedures described in FAR 42.708 are used, contracting officers must request audits on proposed final indirect cost rates and billing rates for use in cost

reimbursement, fixed-price incentive, and fixed-price redeterminable contracts as prescribed in FAR Subpart 42.7.

(b) When the quick closeout procedures are used, the contracting officers must perform a review and validation of the contractor's data for accuracy and reasonableness of the proposed rates for negotiating the settlement of indirect costs for a specific contract.

Subpart 842.8—Disallowance of Costs

842.801 Notice of intent to disallow costs.

842.801-70 Audit assistance prior to disallowing costs.

If a contracting officer determines that costs should be disallowed during the performance of a cost reimbursement, fixed-price incentive, or fixed-price redetermination contract exceeding the thresholds specified in FAR 15.403-4, the contracting officer must request audit assistance. The VA OIG shall conduct audits of contracts for health care resources and contracting officers shall request such audits directly from that office. For all other types of contracts, the contracting officer must obtain an audit control number from Acquisition Resources Service and send a formal request to conduct the audit directly to the nearest Defense Contract Audit Agency (DCAA) office, referencing the audit control number and the project number (if any).

842.803 Disallowing costs after incurrence.

Contracting officers may approve or disapprove contractors' vouchers for payment and process them to the servicing fiscal office. Such approval or disapproval must be within the limitations of the contracting officer's warrant and the contract for which the voucher is submitted must be within the contracting officer's delegation of contracting authority.

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

Before execution of novation and change-of-name agreements, contracting officers must submit all supporting agreements and documentation to the OGC for review as to legal sufficiency.

PART 844—SUBCONTRACTING POLICIES AND PROCEDURES [RESERVED]

PART 846—QUALITY ASSURANCE

Subpart 846.3—Contract Clauses

Sec.

- 846.302 Fixed-price supply contracts.
- 846.302-70 Guarantee clause.
- 846.302-71 Inspection.
- 846.302-72 Frozen processed foods.
- 846.302-73 Noncompliance with packaging, packing and/or marking requirements.
- 846.312 Construction contracts.

Subpart 846.4—Government Contract Quality Assurance

- 846.408 Single-agency assignments of Government contract quality assurance.
- 846.408-70 Inspection of subsistence.
- 846.408-71 Waiver of USDA inspection and specifications.
- 846.470 Use of commercial organizations for inspections and grading services.
- 846.471 Determination authority.
- 846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.
- 846.472-1 Repairs of \$1,000 or less.
- 846.472-2 Repairs in excess of \$1,000.

Subpart 846.7—Warranties

- 846.710 Contract clauses.
- 846.710-70 Special warranties.
- 846.710-71 Warranty for construction—guarantee period services.

AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 846.3—Contract Clauses

846.302 Fixed-price supply contracts.

846.302–70 Guarantee clause.

(a) The contracting officer shall insert the clause at 852.246–70, Guarantee, in solicitations for the acquisition of equipment.

(b) If it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence of the clause at 852.248–70 will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to guarantee components for the life of the equipment (e.g., crystals in transmitters and receivers in radio communications systems) or to require that highly technical equipment be returned to the factory (at the contractor's or the Government's expense) for replacement of defective materials or parts, then the clause will be revised to be compatible with such policy.

846.302–71 Inspection.

The contracting officer shall include a "Rejected Goods" contract clause in solicitations and contracts as follows:

(a) Except as provided in paragraph (b) of this section, insert the clause at 852.246–71, Inspection, in solicitations and contracts for the acquisition of supplies or equipment.

(b) In solicitations and contracts for packing house and dairy products, bread and bakery products, and for fresh and frozen fruits and vegetables, insert the Alternate I clause at 852.246–71, Inspection.

846.302–72 Frozen processed foods.

The contracting officer shall insert the clause at 852.246–72, Frozen processed foods, in solicitations and contracts for frozen processed foods.

846.302–73 Noncompliance with packaging, packing and/or marking requirements.

The contracting officer shall insert the clause at 852.246–73, Noncompliance with packaging, packing, and/or marking requirements, in non-commercial item solicitations and contracts for supplies or equipment where there are special packaging, packing and/or

marking requirements. The clause may be used in commercial item acquisitions if a waiver is approved in accordance with FAR 12.302(c) and 812.302.

846.312 Construction contracts.

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

Subpart 846.4—Government Contract Quality Assurance

846.408 Single-agency assignments of Government contract quality assurance.

846.408–70 Inspection of subsistence.

(a) Before issuing a solicitation for subsistence, the contracting officer must determine whether:

(1) Representatives of the U.S. Department of Agriculture (USDA) or the Department of Commerce will inspect for specification compliance before shipment; or

(2) Personnel of the purchasing activity will inspect for specification compliance at the time of delivery.

(b) The contracting officer must indicate the time and place of inspection in the solicitation.

(c) Because the requirement for USDA or Department of Commerce inspections and certifications result in additional contractor costs that may be ultimately reflected in bid prices, the contracting officer, in consultation with the Chief, Nutrition and Food Service, must evaluate the need for such inspections. The evaluation must include the following:

(1) The quality assurance already provided by other mandatory inspection systems.

(2) The proposed suppliers' own quality control system.

(3) Experience with the proposed suppliers.

(4) The pre-qualifying of the suppliers' quality assurance systems and subsequently waiving inspections and certifications for future solicitations.

(5) The cost of the inspections.

(d) When the contracting officer indicates that either the USDA or the Department of Commerce will conduct the inspection, the contracting officer must also provide in the solicitation that the contractor is responsible for all of the following:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspectors a certificate indicating that the product complies with specifications.

(3) Assuring that the certificate, or copy, accompanies the shipment or is furnished to the receiving installation before shipment, or notifying the installation when the certificate is not immediately available.

(4) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer.

(5) Furnishing samples for inspection at the contractor's expense.

(6) Indicating the address where inspection will occur.

(e) The contracting officer must furnish a copy of the purchase document to the inspecting activity.

846.408-71 Waiver of USDA inspection and specifications.

(a) When the amount of an item to be purchased will not exceed 500 pounds per delivery, the contracting officer may purchase the following without reference to the specifications in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL, and the USDA inspection requirements:

- (1) Butter.
- (2) Cheese (except cottage cheese).
- (3) Sausage.
- (4) Meat food products*.
- (5) Bacon, smoked.
- (6) Bacon, Canadian style.

(b) When the items listed in paragraph (a) of this section are procured together with items that are not ex-

empt, the contracting officer must include the following in the solicitation:

Items * * * are not required to be in accordance with the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL, and the special USDA inspection is not required. VA will inspect for quality and condition upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(c) As appropriate, the contracting officer must include the following statements in each invitation for bid, request for proposal, quotation, or purchase order:

(1) Butter. This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) Sausage and meat food products.*

(i) This product must be a high commercial product and must have been prepared in a federally inspected plant and bear the USDA establishment number stamp evidencing that it is sound, healthful, wholesome, and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act that requires the listing of all ingredients in the order of their predominance.

(3) Bacon, smoked; and bacon, Canadian style. This product must be a high commercial product and must have been prepared in a federally inspected plant and bear the USDA establishment number stamp evidencing that it is sound, healthful, wholesome, and fit for human consumption.

(d) When using a "brand name or equal" purchase description, the contracting officer must list every brand name item that is known to be acceptable and available in the area.

846.470 Use of commercial organizations for inspections and grading services.

The contracting officer may use a commercial organization for inspection and grading services when the contracting officer determines that all of the following conditions exist:

(a) The results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques.

*"Meat food products" means processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, coldcuts. Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.

846.471

(b) VA is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.

(c) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(d) The services may be performed without direct Government supervision.

846.471 Determination authority.

The following officials must make the determinations required in 846.470:

(a) The Director, Office of Construction and Facilities Management, for those items and services for which purchase authority has been assigned to the Office of Construction and Facilities Management.

(b) The Director, Veterans Canteen Service, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from VA supply sources).

(c) The DSPE for all other supplies, equipment, and services.

846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.

As provided in 846.472-1 and 846.472-2, management brokers or qualified fee or staff inspectors must conduct a final inspection of all repair programs upon completion. In addition, the broker or inspector must conduct intermediate or progress inspections on extensive or technical jobs as specified in the contract.

846.472-1 Repairs of \$1,000 or less.

(a) Generally, the management broker must make any required inspections for repairs of \$1,000 or less. A qualified fee or staff inspector must make any required inspection for repairs of \$1,000 or less if the contracting officer:

(1) Has not assigned the property to a management broker; or,

(2) Has determined that the nature of the repairs requires supervision by a technician.

(b) There is no form prescribed for inspection of repairs of \$1,000 or less, but

48 CFR Ch. 8 (10-1-16 Edition)

the inspector may use VA Form 26-1839, Compliance Inspection Report. Regardless of the form in which the report is submitted, the inspector must identify the contractor, property, and the repair program and provide sufficient detail to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

846.472-2 Repairs in excess of \$1,000.

(a) A qualified fee or staff inspector must make the final inspection and any intermediate or progress inspections on repairs exceeding \$1,000.

(b) The inspector must make the report of inspection on VA Form 26-1839, Compliance Inspection Report. The inspector must identify the property, contractor, and repair program and provide sufficient detailed information to enable the contracting officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the terms of the contract. The inspector must itemize any deficiencies and explain the deficiencies in detail.

Subpart 846.7—Warranties

846.710 Contract clauses.

The contracting officer shall insert the clause at FAR 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 852.246-74, Special warranties, in solicitations and contracts for construction that include the FAR clause at 52.246-21, Warranty of Construction.

846.710-71 Warranty for construction—guarantee period services.

The contracting officer shall insert the clause at 852.246-75, Warranty of construction—guarantee period services, in solicitations and contracts for construction that include the FAR clause at 52.246-21, Warranty of Construction, and that also include guarantee period services.

PART 847—TRANSPORTATION

Subpart 847.3—Transportation in Supply Contracts

Sec.

847.303 Standard delivery terms and contract clauses.

847.303-1 F.o.b. origin.

847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305-70 Potential destinations known but quantities unknown.

847.306 Transportation factors in the evaluation of offers.

847.306-70 Transportation payment and audit.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 847.3—Transportation in Supply Contracts

847.303 Standard delivery terms and contract clauses.

847.303-1 F.o.b. origin.

Shipments falling within this category must be shipped on a bill of lading, except as provided in 41 CFR 102-118.40. Contracting officers must comply with 41 CFR Parts 102-117 and 102-118. Contact the Traffic Manager for assistance in determining when to issue the applicable bill of lading (VA Commercial Bill of Lading for domestic use or Government Bill of Lading for international shipments and domestic offshore shipments) and for all freight estimates.

847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

(a) The delivery terms will be stated as “f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice,” under any of the following circumstances:

(1) When it is determined that an f.o.b. origin purchase or delivery order will have transportation charges that do not exceed \$250 and the occasional exception does not exceed that amount by more than \$50.

(2) Single parcel shipments via express, courier, small package, or similar carriers, regardless of shipping cost, if the shipped parcel weighs 70 pounds or less and does not exceed 108 inches in length and girth combined.

(3) Multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed \$250 per shipment.

(b) Orders issued on VA Form & 90-2138, Orders for Supplies or Services, must identify shipping instructions on the reverse side of the form. When VA Form 90-2138 is not used, the vendor must do the following:

(1) Consistent with the terms of the contract, pack, mark, and prepare shipment in conformance with carrier requirements to protect the personal property and assure the lowest applicable transportation charge. Follow package specifications found in the National Motor Freight Classification 100 Series.

(2) Add transportation charges as a separate item on the invoice. The invoice must include the following certification: “The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government’s request.”

(3) Not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Not prepay transportation charges on the order if such charges are expected to exceed \$250. Ship collect and annotate the commercial bill of lading, “To be converted to VA Commercial Bill of Lading.” Contact the VA Traffic Manager for routing instructions and freight estimate.

(c) Each contracting officer is responsible for:

(1) Obtaining the most accurate estimate possible of transportation charges.

(2) Using the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

847.305

(d) When, in accordance with FAR Subpart 28.3 and FAR 47.102, a shipment must be insured or the value declared, the contracting officer will specifically instruct the vendor to do so on the order when a written order is used. If the order is oral, the vendor must annotate all copies of the purchase request to show that the insurance/declared value was specifically requested.

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305-70 Potential destinations known but quantities unknown.

When the VA National Acquisition Center contracts with multiple bidders to provide items directly to VA field installations on an f.o.b. origin basis, the evaluation of bids must follow specific procedures. To place each bid on an equal basis, even though specific quantities required by each facility cannot be predetermined, the contracting officer must use an anticipated demand factor in proportion to the number of hospital beds or patient workload. The clause prescribed in 852.247-70 must be used in these instances.

847.306 Transportation factors in the evaluation of offers.

847.306-70 Transportation payment and audit.

Transportation payments are audited by the Traffic Manager to ensure that payment and payment mechanisms for agency transportation are uniform and appropriate in accordance with 41 CFR part 102-118.

PART 849—TERMINATION OF CONTRACTS

Subpart 849.1—General Principles

Sec.

- 849.101 Authorities and responsibilities.
- 849.106 Fraud or other criminal conduct.
- 849.111 Review of proposed settlements.
- 849.111-70 Required review.
- 849.111-71 Submission of information.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

48 CFR Ch. 8 (10-1-16 Edition)

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 849.1—General Principles

849.101 Authorities and responsibilities.

(a) While legal review and concurrence of the General Counsel is required prior to a default termination, in some cases where a quick response is necessary, this review can be expedited by express mailing or faxing the default letter and related documents which are required to make an evaluation directly to General Counsel (025). The default termination letter should contain, at a minimum, the following:

(1) The proposed termination (FAR 49.102);

(2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;

(3) A statement that the factors set forth in FAR 49.402-3(f) have been fully considered; and

(4) Final decision language and appeal rights.

(b) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

849.106 Fraud or other criminal conduct.

(a) If the contracting officer suspects fraud or other criminal conduct related to the settlement of a terminated contract, the contracting officer must do the following:

(1) Immediately discontinue all negotiations.

(2) Submit all of the pertinent facts necessary to support the suspicions to either of the following:

(i) The DSPE.

(ii) The Director, Office of Construction and Facilities Management, in the case of contracting officers from the Office of Construction and Facilities Management.

(3) Follow procedures as provided in 809.406-3 and 809.407-3.

(b) The DSPE or the Director, Office of Construction and Facilities Management, must review the submission and fully develop the facts.

(c) If the evidence indicates fraud or other criminal conduct, the DSPE or the Director, Office of Construction and Facilities Management, must forward the submission with recommendations through channels (to include OGC, if appropriate), to the Office of the Inspector General (OIG) for referral to the Department of Justice.

(d) The DSPE or the Director, Office of Construction and Facilities Management, will advise the contracting officer as to any further action to be taken. Pending receipt of this advice, no VA employee may discuss the matter with the contractor.

(e) VA will not initiate a collection, recovery or other settlement action while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through OIG.

(f) If the contractor makes an inquiry, the contracting officer will advise only that the proposal has been forwarded to higher authority.

849.111 Review of proposed settlements.

849.111-70 Required review.

(a) FAR 49.111 requires each agency to establish procedures, when necessary, for the administrative review of proposed termination settlements. Contracting officers shall submit proposed termination settlements or determinations of amounts due the contractor under a terminated contract that involve the expenditure of \$100,000 or more of Government funds to the Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, as appropriate, for technical and legal review (see 801.602-72(i)). Contracting officers shall not execute the settlement agreement or determination prior to receipt of the technical and legal review. The legal review of contracts awarded by or on behalf of the VA OIG will be conducted

by the Counselor to the Inspector General.

(b) If the contracting officer declines to implement one or more of the recommendations or comments contained in the review memorandum, the contracting officer shall submit a written response to the Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, as appropriate, explaining why the recommendations or comments were not followed. For contracts awarded by or on behalf of the VA OIG, the response shall be submitted to the Counselor to the Inspector General.

849.111-71 Submission of information.

(a) The contracting officer shall submit to the appropriate Acquisition Program Management Division or Acquisition Assistance Team office a copy of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal.

(2) The audit report.

(3) The property disposed report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the procurement analyst in the review. The procurement analyst may, at his or her discretion, require the submission of additional information.

(b) The Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, will obtain the concurrence or comments of OGC prior to forwarding the review to the contracting officer, except that the concurrence or comments will be obtained from the Counselor to the Inspector General for contracts awarded by or on behalf of the VA Office of Inspector General.