

Subpart 852.1—Instructions for Using Provisions and Clauses

852.101 Using Part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Provision and clause numbering are as prescribed in FAR 52.101 (e.g., supplementary Architect-Engineer and Construction clauses are numbered 852.236-70, 852.236-71, etc.).

[50 FR 794, Jan. 7, 1985]

852.102 Incorporating provisions and clauses by reference.

(a) As authorized by FAR 52.102(c), any 48 CFR chapter 8 (VAAR) provision or clause may be incorporated in a quotation, solicitation, or contract by reference, provided the contracting officer complies with the requirements stated in FAR 52.102(c)(1), (c)(2), and (c)(3). To ensure compliance with FAR 52.102(c)(1) and (c)(2), the contracting officer shall insert the provision found at 852.252-1, Provisions or clauses requiring completion by the offeror or prospective contractor, in full text in a quotation, solicitation, or contract if the quotation, solicitation, or contract incorporates by reference a FAR or 48 CFR chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer.

(b) For any FAR or 48 CFR chapter 8 (VAAR) provision or clause that requires completion by the contracting officer, the contracting officer shall, as a minimum, insert in the quotation, solicitation, or contract the title of the provision or clause and the full text of the paragraph that requires completion. The balance of the provision or clause may be incorporated by reference.

(c) If one or more FAR or 48 CFR chapter 8 (VAAR) provisions, or portions thereof, are incorporated in a quotation or solicitation by reference, the contracting officer shall insert in the quotation or solicitation the provision found at FAR 52.252-1, Solicitation Provisions Incorporated by Reference.

(d) If one or more FAR or 48 CFR chapter 8 (VAAR) clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by

reference, the contracting officer shall insert in the quotation, solicitation, or contract the clause found at FAR 52.252-2, Clauses Incorporated by Reference.

(e) If one or more FAR provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: <http://www.arnet.gov/far/>.

(f) If one or more 48 CFR chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: <http://www.va.gov/oa&mm/vaar/>.

[64 FR 69935, Dec. 15, 1999]

Subpart 852.2—Texts of Provisions and Clauses

852.203-71 Display of VA hotline poster.

As prescribed in 803.7002, insert the following clause:

DISPLAY OF VA HOTLINE POSTER

(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, VA Hotline posters prepared by the VA Office of Inspector General.

(b) VA 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)

[57 FR 58718, Dec. 11, 1992, as amended at 63 FR 69223, Dec. 16, 1998]

852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-77 and 873.110, the following clause must be included

in A-76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151-8153 which may result in the conversion, from in-house to contract performance, of work currently being performed by VA employees:

REPORT OF EMPLOYMENT UNDER COMMERCIAL ACTIVITIES (OCT 1988)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.* (1) An "adversely affected Federal employee" is:

(i) Any permanent Federal employee who is assigned to the government commercial activity, or

(ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.

(2) "Employment openings" are position vacancies created by this contract which the contractor is unable to fill with personnel in the contractor's employee at the time of the contract award, including positions within a 50 mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) The "contract start date" is the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal employees identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal employees on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than five working days after contract award the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits,

(ii) Sufficient job application forms for adversely affected Federal employees.

(2) By contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening,

(ii) The date the offer was made,

(iii) A brief description of the position,

(iv) The date of acceptance of the offer and the effective date of employment,

(v) The date of rejection of the offer, if applicable for salary and benefits contained in the rejected offer, and

(vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within five working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 working days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(3) For a period up to 90 days after contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal employees reflecting employees recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualification determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relation to other statutes, regulations and employment policies.* The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

(h) *Penalty for Noncompliance.* Failure of the contractor to comply with any provision of this clause may be grounds for termination for default.

(End of clause)

[53 FR 43211, Oct. 26, 1988; 53 FR 46872, Nov. 21, 1988, as amended at 68 FR 3469, Jan. 24, 2003]