

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

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**SUBPART 836.2 - SPECIAL ASPECTS OF CONTRACTING FOR  
CONSTRUCTION**

**836.202 Specifications.**

(a) The procedures described in Part 811 shall be applicable to construction specifications.

(b) The use of "brand name or equal" or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer during the design stage. The contracting officer shall inform prospective architect-engineers of this requirement during the negotiation phase, prior to award of a contract for design.

(c) If it is determined that only one product will meet the Government's minimum needs and the VA will not allow the submission of "equal" products, the bidders must be placed upon notice that the "brand name or equal" provisions of the "Material and Workmanship" clause found at FAR 52.236-5, and any other provision which may authorize the submission of an "equal" product, will not apply. In order to properly alert bidders to this requirement, the contracting officer shall include the clause found at 852.236-90, "Restriction on Submission and Use of Equal Products," in the solicitation.

**836.203 Government estimate of construction costs.**

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

**836.204 Disclosure of the magnitude of construction projects.**

In lieu of the estimated price ranges described in FAR 36.204, the magnitude of VA projects should be identified in advance notices and solicitations in terms of one of the following price ranges:

- (a) Less than \$25,000;
- (b) Between \$25,000 and \$100,000;
- (c) Between \$100,000 and \$250,000;

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- (d) Between \$250,000 and \$500,000;
- (e) Between \$500,000 and \$1,000,000;
- (f) Between \$1,000,000 and \$2,000,000;
- (g) Between \$2,000,000 and \$5,000,000;
- (h) Between \$5,000,000 and \$10,000,000;
- (i) Between \$10,000,000 and \$20,000,000;
- (j) Between \$20,000,000 and \$50,000,000;
- (k) Between \$50,000,000 and \$100,000,000;
- (l) More than \$100,000,000.

(This section has been promulgated as a deviation to the FAR as provided in FAR subpart 1.4.) (Jan. 21, 1988)

**836.206 Liquidated damages.**

Liquidated damage provisions may be included in construction contracts when the criteria of 811.502 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in 852.211-78 will be included in addition to the clause set forth in FAR 52.211-12.

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

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

**836.213-4 Notice of award.**

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

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**836.213-70 Notice to proceed.**

(a) Construction contractors will be given a written "Notice to Proceed" with the work. A letter notice to proceed will normally be sent only after performance and payment bonds and the completed contract forms, where applicable, have been returned by the contractor and are accepted by the contracting officer. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the award letter may include the "Notice to Proceed" with the reservation that payments are contingent upon receipt and approval of the required bonds.

(b) If the contract provides for liquidated damages, the notice to proceed will be sent by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The notice to proceed will advise the contractor that the work will be completed within \_\_\_\_\_ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office or on the proof of delivery provided by the delivery service.

(c) If the contract does not provide for liquidated damages, certified mail is not required. Notices to proceed for these contracts will establish a date for completion taking into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, a copy will be furnished to the resident engineer or the Chief, Engineering Service. A copy of the notice to proceed will be filed with copy A of the contract. When certified mail or other method of delivery is used, the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service will be attached to the copy of the notice to proceed. Copies of the notice to proceed will be filed with copies C and D of the contract after the date of receipt has been established and indicated thereon.

**:::836.270 Progress payment estimates.**

(a) Progress payment estimates funded from local medical care appropriations shall be in accordance with paragraph (a) of this section or as locally prescribed and agreed upon by cognizant facility Service Chief, i.e., Acquisition and Materiel Management, Fiscal and Engineering.

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(b) *Preparation of voucher.* Progress payment estimates for work completed during the month will be prepared in an original and three copies by the Resident Engineer (or Chief, Engineering Service) at the end of each calendar month unless otherwise provided. Each estimate will be consecutively numbered and will include certification for administrative approval.

(c) *Administrative approval of the field facility contracts.* The contracting officer will sign the original of the progress payment estimate and forward it with a signed copy of the contract progress report on the last workday of the month to the Fiscal activity for accounting and payment. The date the estimate was forwarded to the Fiscal Officer will be entered on the reverse side of VA Form 08-6125, Contract Change Orders.

(d) *Progress reports.* For delegated construction (CASCA) projects, the progress report will be prepared using VA Form 08-6001a, Contract Progress Report. For nonrecurring M&R and all other facility level construction contracts, the VA Form 08-6001a or an equivalent will be used.:::

**:::836.271 Final settlement and payment.**

(a) *Final settlement memorandum.* Except as indicated in paragraph (c) of this section, a final settlement memorandum will be prepared for the approval of the contracting officer. This memorandum will include computations of price changes, time and completion, statement of account, and a recommendation for settlement with the contractor. The final payment voucher, and any letters to the contractor explaining withheld amounts shown in the statement of account will accompany the final settlement memorandum. In preparing the statement of account and final payment voucher, fiscal records will be checked to verify correctness of changes, prior payments, and other fiscal matters.

(b) *Final payment voucher.* The final payment voucher is prepared in the same manner as progress payment estimates except that:

(1) In addition to being consecutively numbered, it will also be labeled "Final Payment," e.g., "Eighth and Final Payment."

(2) After signature and return by the contractor, it is administratively approved by the contracting officer and forwarded with the original of the final settlement memorandum (including a

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release of claims in accordance with FAR 52.232-5(f)(3)) to the Fiscal Officer for payment.

(c) *Contracts not exceeding \$10,000.* The final settlement memorandum may be prepared in narrative format indicating the work has been completed and payment is due. The memorandum will include deficiencies or omissions (punch list) and any amount to be withheld. Payment may be made on an invoice submitted by the contractor.

(d) *Notice to surety.* After the final payment voucher has been forwarded to the Fiscal activity, the contracting officer will inform the surety company on the bonds by letter, of the date the contract work was completed and of the total contract price.:::

**:::836.272 Construction procurement scheduling.**

Solicitations for those nonrecurring maintenance projects approved and funded by Central Office in response to field facilities' annual submissions will be developed on a planned basis as early in the fiscal year as practicable considering all engineering factors, and with due regard to the provisions of FAR 14.202-1, regarding bidding time.:::

**:::SUBPART 836.3 - SPECIAL ASPECTS OF SEALED BIDDING IN CONSTRUCTION CONTRACTING:::**

**:::836.370 Offer acceptance procedure.**

(a) The letter of acceptance is required only for contracts in excess of \$10,000. It will be dated and mailed the same date as the date of the contract.

(b) The original of the letter of acceptance will be forwarded to the contractor. Copies of the letter will be filed with copies A and C of the contract (see 804.202-70) and one copy, or the notice of award, will be posted for public information. If SF 1442 is used, the original is forwarded to the fiscal activity and a copy is furnished the contractor.

(c) When acceptance is made, the original of SF 1419, Abstract of Offers-- Construction, is filed with the original contract (copy A) in the contracting activity; one copy is filed with each copy of the contract maintained by the Fiscal activity and the resident engineer or the Chief, Engineering Service.:::

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**SUBPART 836.5 - CONTRACT CLAUSES**

**836.500 Scope of subpart.**

(a) The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.

(b) Additional clauses and provisions not inconsistent with those in FAR Subparts 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in subpart 801.4.

(c) Clauses and provisions inconsistent with those contained in FAR Subparts 36.5 and 52.2 and this subpart, but considered essential to the procurement of Department of Veterans Affairs requirements, shall not be used unless the deviation procedure set forth in subpart 801.4 has been complied with.

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

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

**836.513 Accident prevention.**

The contracting officer shall insert the clause at 852.236-87, Accident Prevention, in all solicitations that contain the clause at FAR 52.235-13, Accident Prevention, or its Alternate.

**836.521 Specifications and drawings for construction.**

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

**836.570 Correspondence.**

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

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**836.571 Reference to “standards.”**

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

**836.572 Government supervision.**

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

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

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

**836.574 Subcontractors and work coordination.**

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

**836.575 Schedule of work progress.**

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

**836.576 Supplementary labor standards provisions.**

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

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**836.577 Worker's compensation.**

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

**836.578 Changes – supplement.**

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

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

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

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

**836.579 Special notes.**

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

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**SUBPART 836.6 - ARCHITECT-ENGINEER SERVICES**

**836.602 Selection of forms for architect-engineer contracts.**

**836.602-1 Selection criteria.**

In addition to the evaluation criteria set forth in FAR 36.602-1, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

- (a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.
- (b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.
- (c) Specific experience and qualifications of personnel proposed for assignment to the project and their record of working together as a team.

**836.602-2 Evaluation boards.**

Central Office architect-engineer contractors will be selected by the board appointed by the Chief Facilities Management Officer, Office of Facilities Management. Field facility architect-engineer contractors will be selected by the board appointed by the facility director.

- (a) The evaluation board for the Office of Facilities Management will be chaired by the Director, A/E Evaluation and Program Support Service. The Project Director or Project Manager will be designated to act as Chair when necessary. The board's members, as appointed by the Chief Facilities Management Officer, Office of Facilities Management, will include the appropriate Project Manager and as many qualified professional architects or engineers from the Office of Facilities Management technical services as may be considered appropriate for the particular project. Additional members from the Office of Facilities Management or from other VA administrations and staff offices will be designated for projects when appropriate.

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(b) The evaluation board for a VA field facility will consist of no less than two members, one of whom will be the head of the contracting activity (HCA) (or the senior contracting officer at a facility if there is no HCA on site) and the other the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairperson of the board will be the senior engineer.

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

**836.602-4 Selection authority.**

The Chief Facilities Management Officer, Office of Facilities Management, (for Central Office contracts), the Director, Office of Construction Management (for National Cemetery Administration contracts), and the facility director (for field facility contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the evaluation boards.

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

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

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

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

**836.606 Negotiations.**

**836.606-70 General.**

To assure that the fee limitation is not violated, the contracting officer will maintain suitable records to be able to isolate the amount in the total fee to which the 6 percent limitation applies.

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**836.606-71 Architect-engineer's proposal.**

The use of VA Form 08-6298, Architect-Engineer Fee Proposal, is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be \$50,000 or over. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type.

**836.606-72 Contract price.**

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Chief Facilities Management Officer, Office of Facilities Management, or the facility director. Recommendation for award of the contract at the negotiated fee, will be submitted with a copy of the negotiation memorandum prepared in accordance with FAR 15.406-3 and, whenever a field pricing report has been received, to the Chief Facilities Management Officer, Office of Facilities Management, or the facility director, as appropriate.

**836.606-73 Application of 6-percent architect-engineer fee limitation.**

(a) The 6-percent fee limitation does not apply to the following architect or engineer services:

- (1) Investigative services including but not limited to:
  - (i) Determination of program requirements including schematic or preliminary plans and estimates.
  - (ii) Determination of feasibility of proposed project.
  - (iii) Preparation of measured drawings of existing facility.
  - (iv) Subsurface investigation.
  - (v) Structural, electrical, and mechanical investigation of existing facility.
  - (vi) Surveys: Topographic, boundary, utilities, etc.

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(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the service are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples, and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, Application for Health Care Facility Project, and VA Form 10-6238, EMIS Construction Program-Estimate Worksheet, will be used and the proposed technical services shown where necessary and applicable.