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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 806, 812, 837, 852, and 873

RIN 2900-AI71

VA Acquisition Regulation: Simplified Acquisition Procedures for Health-Care Resources

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR) to establish simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space pursuant to statute. The Veterans' Health Care Eligibility Reform Act of 1996 authorized VA to prescribe simplified procedures for the procurement of health-care resources. This rule prescribes those procedures.

EFFECTIVE DATE: February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis Foley, (202) 273-9225, Office of the General Counsel, Professional Staff Group V; or Don Kaliher, (202) 273-8819, Acquisition Resources Service, Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: On June 7, 2001, we published in the **Federal Register** (66 FR 30659) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation (VAAR), pursuant to 38 U.S.C. 8151-8153, to establish simplified procedures for the competitive acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

Comments were solicited concerning the proposal for 60 days, ending August 6, 2001. We did not receive any comments.

The information presented in the proposed rule document still provides a basis for this final rule. In addition, the proposed rule requested Paperwork Reduction Act (PRA) comments concerning the collection of information regarding clauses for use in both commercial and non-commercial item

and service solicitations and contracts. No comments were received by VA or the Office of Management and Budget (OMB).

Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for a non-substantive change to reflect, at 48 CFR 801.301-70(c), the PRA clearance numbers assigned by OMB to clauses 852.207-70 and 852.237-7.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

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

Regulatory Flexibility Analysis

This rule may have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. An Initial Regulatory Flexibility Analysis was published in the **Federal Register** on June 7, 2001, (66 FR 30672) as part of the proposed rule. No comments were received. As required by the RFA (5 U.S.C. 601 *et. seq.*), the following Final Regulatory Flexibility Analysis is set forth.

a. A succinct statement of the need for and the objectives of the rule.

Response: The rule amends the VAAR to implement the provisions of 38 U.S.C. 8151-8153, which authorize the Secretary of Veterans Affairs, in consultation with the Administrator of Federal Procurement Policy, to prescribe simplified procedures for the procurement of health-care resources. We believe the simplified procedures will allow VA to become more efficient in procuring health-care resources.

The objective of the rule is to allow VA to become more efficient in procuring health-care resources and thereby strengthen the medical programs of the Department and improve the quality of health care provided to veterans.

b. A summary of the significant issues raised by public comments in response to the initial regulatory flexibility

analysis, a summary of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Response: No public comments were received and no changes were made to the proposed rule.

c. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

Response: The small entities that could be affected by the rule are any small entities that provide commercial services or the use of medical equipment or space to the health-care industry.

We do not have precise figures on the number of small entities that could potentially be affected by the rule. Any small entity that provides, or wishes to provide, commercial services or the use of medical equipment or space to VA health-care facilities could potentially be affected.

However, the rule will not apply to the majority of VA acquisitions. The rule applies only to competitive acquisitions of commercial services or the use of medical equipment or space conducted by the Veterans Health Administration (VHA) and which specifically reference the authority of 38 U.S.C. 8153. The rule does not apply to acquisitions of supplies or equipment made on behalf of VHA or to acquisitions made on behalf of the Veterans Benefits Administration (VBA) or the National Cemetery Administration (NCA). Except for section 873.108(b), the rule does not apply to VHA sole source acquisitions from affiliated institutions or entities associated with affiliated institutions. The authority for VHA to contract on a sole source basis with an institution affiliated with VA or with a medical practice group or other approved entity associated with an affiliate, addressed in the rule at 873.108(b), is authorized by law and is not dependent upon this rulemaking. The rule does not apply to acquisitions of services for which other specific authorities apply, such as acquisitions of nursing home care services, which are acquired under the authority of 38 U.S.C. 1720, or to acquisitions of non-commercial services, such as construction.

We have no relevant data regarding commercial service acquisitions below \$25,000. However, we expect little application of the rule to acquisitions below \$25,000. Existing FAR provisions for such acquisitions are already very simple and the provisions of the rule likely would not provide a significant benefit to the Government to warrant