

use of this authority for such low dollar value acquisitions.

In Fiscal Year (FY) 1998, VHA reported approximately 6,000 individual service transactions valued in excess of \$25,000 to the Federal Procurement Data System. This 6,000 figure excludes classification codes C, architect/engineer; E, purchase of structures; Q402, nursing home; Y, construction; and Z, maintenance of real property, all of which we believe are not covered by the rule. Of those 6,000 transactions, approximately 3,000 were awarded to small businesses and approximately 900 were awarded to non-profit businesses. Similar figures were reported for FY 1999. Of the total acquisition dollars associated with these 6,000 annual awards, we estimate that in FY 1998, approximately 42 percent, and in FY 1999, approximately 44 percent, were awarded to small businesses.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement, and the type of professional skills necessary for preparation of the report or record.

Response: The reporting or recordkeeping requirements of the clauses at section 852.207-70, Report of employment under commercial activities, and section 852.237-7, Indemnification and Medical Liability Insurance, were discussed in the Paperwork Reduction Act (PRA) portion of the proposed rule, published in the **Federal Register** on June 7, 2001 (66 FR 30671). The clause at section 852.207-70 requires the contractor, on contracts where current VA employees are displaced, to report on employment openings and on efforts to hire displaced VA employees. The clause at section 852.237-7 requires contractors, on contracts for nonpersonal health-care services, to provide evidence of liability insurance. The final rule imposes no new reporting or recordkeeping requirements not already required by the VAAR. Currently, the VAAR requires that these clauses be included in all applicable solicitations and contracts, *i.e.*, contracts where VA employees might be displaced (852.207-70) or contracts for nonpersonal health-care services (852.237-7). The rule provides clarification that these clauses would continue to be required in all applicable service contracts, including commercial service contracts issued under the authority of 38 U.S.C. 8153. Small entities currently holding contracts where VA employees might be displaced or contracts for nonpersonal

health-care services are required to provide employment reports or evidence of liability insurance, as applicable. Under the rule, there is no change to those requirements and no new added requirements. There are no additional small entities affected by the rule that would not already be affected by the current regulations. No professional skills are necessary to comply with these reporting and recordkeeping requirements.

e. A description of the steps the agency has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and the reasons for rejecting each of the other significant alternatives.

Response: We believe that, with two exceptions (1. and 2. below), the provisions of the rule, where those provisions differ from the FAR, are small business/large business neutral, *i.e.*, they would have neither a positive nor a negative impact on small business or large business. The two exceptions concern the authority to waive FAR small business set-aside requirements and the provisions concerning the transmission of solicitation notices to the Governmentwide point of entry (GPE).

1. The rule at section 873.107 contains a provision allowing the head of the contracting activity (HCA) to waive the requirement to set aside an acquisition for small business. The HCA must determine that the waiver is in the best interest of the Government. The availability of this authority may result in acquisitions where small businesses have to compete against large businesses rather than compete only against other small businesses.

The alternatives to this waiver authority that were considered in order to limit the impact of the rule on small businesses included having no waiver authority, limiting the application of that authority to specific types of acquisitions, such as acquisitions for medical services, or limiting the authority to acquisitions in excess of a certain dollar threshold. For the reasons stated below, we determined to place no limits, other than those contained in the rule, on the application of this waiver authority.

As noted above, the rule would only apply to a limited number of acquisitions. We believe the waiver authority would be used in very few of those limited number of acquisitions, primarily in acquisitions where it is critical to broaden the pool of sources

considered in order to obtain the highest quality patient care services at reasonable prices. In such cases, it would not be in VA's best interest to exclude non-profit teaching hospitals and universities and other similar high quality large businesses from the competition. Small businesses could still compete and would have an equal opportunity to be considered for award. The availability of this authority, while most critical to direct patient care service acquisitions, could be a necessary element of other commercial service acquisitions that are critical to the optimum functioning of the medical centers.

In some limited circumstances, the waiver authority of section 873.107 may have a beneficial impact on small entities. VA has authority to contract on a sole source basis with medical schools, hospitals, and clinics affiliated with VA. Medical schools, hospitals, and clinics are almost exclusively large or nonprofit businesses. Under the FAR, if a VA medical center wishes to seek competition for services currently being acquired from its affiliate, the affiliate would be excluded from bidding on that competition if there were two or more small businesses capable of providing the services. It is in VA's best interest to obtain state-of-the-art medical services from the highest qualified sources at reasonable prices. Without the waiver authority, VA medical centers would most likely continue to award sole source contracts to their affiliates rather than seek competition, since, under a competitive solicitation, those affiliates might be excluded as potential sources for those services due to the current FAR requirement to set acquisitions aside for small business. While VA medical centers might be willing to consider other sources, they generally are unwilling to exclude their affiliates as potential sources. However, under the waiver procedures of the rule, VA medical centers would no longer be required to set an acquisition aside for small business and exclude their affiliates from consideration. Accordingly, VA medical centers may be more likely to issue competitive solicitations for highly technical medical services rather than acquire such services on a sole source basis from their affiliates. Rather than reducing small business access to VA acquisitions of medical services, the waiver process could result in increased access to such acquisitions by small businesses. In this regard, VA intends to monitor, through the Federal Procurement Data System, the use of the procedures provided in this rule and the