

Supporting Statement for Department of Veterans Affairs (VA)
Acquisition Regulation (VAAR) Clauses 852.237-7,
Indemnification and Medical Liability Insurance,
852.228-71 (formerly 852.237-71), Indemnification and Insurance, and
852.207-70, Report of Employment Under Commercial Activities
Approved OMB Control No. 2900-0590

A. Justification

1. This Paperwork Reduction Act (PRA) submission requests the extension of Office of Management and Budget (OMB) approval No. 2900-0590 for Department of Veterans Affairs Acquisition Regulation (VAAR) clauses 852.237-7, Indemnification and Medical Liability Insurance, 852.228-71 (formerly 852.237-71), Indemnification and Insurance, and 852.207-70, Report of Employment Under Commercial Activities. This PRA submission seeks OMB approval for collections of information for both commercial and non-commercial item and service solicitations and contracts using these clauses. These clauses are used in both commercial and non-commercial item and service solicitations and contracts.

2.

a. VAAR clause 852.237-7, Indemnification and Medical Liability Insurance, is used in lieu of Federal Acquisition Regulation (FAR) clause 52.237-7, Indemnification and Medical Liability Insurance, in solicitations and contracts for the acquisition of non-personal health care services. It requires the apparent successful bidder/offeror, upon the request of the contracting officer, prior to contract award, to furnish evidence of insurability of the offeror and/or all health-care providers who will perform under the contract. In addition, the clause requires the contractor, prior to commencement of services under the contract, to provide Certificates of Insurance or insurance policies evidencing that the firm possesses the types and amounts of insurance required by the solicitation. The information is required in order to protect VA by ensuring that the firm to which award may be made and the individuals who may provide health care services under the contract are insurable and that, following award, the contractor and its employees will continue to possess the types and amounts of insurance required by the solicitation. It helps ensure that VA will not be held liable for any negligent acts of the contractor or its employees and ensures that VA and VA beneficiaries will be protected by adequate insurance coverage.

b. VAAR clause 852.228-71 (formerly 852.237-71), Indemnification and Insurance, is used in solicitations for vehicle or aircraft services. It requires the apparent successful bidder/offeror, prior to contract award, to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. This evidence is in the form of a certificate from the firm's insurance company. The information is

2.

2900-0590

required to protect VA by ensuring that the firm to which award will be made possesses the types and amounts of insurance required by the solicitation. It helps ensure that VA will not be held liable for any negligent acts of the contractor and ensures that VA beneficiaries and the public are protected by adequate insurance coverage.

c. VAAR clause 852.207-70, Report of Employment Under Commercial Activities, is used in solicitations for commercial items and services where the work is currently being performed by VA employees and where those employees might be displaced as a result of an award to a commercial firm. The clause requires contractors awarded such contracts to provide, within 5 days of contract award, a list of employment openings, including salaries and benefits, and blank job application forms. The clause also requires the contractor, prior to the contract start date, to report: the names of adversely affected Federal employees offered employment openings; the date the offer was made; a description of the position; the date of acceptance and the effective date of employment; the date of rejection if an employee rejected an offer; the salary and benefits contained in any rejected offer; and the names of employees who applied for but were not offered employment and the reasons for withholding offers to those employees. In addition, the clause requires the contractor, during the first 90 days of contract performance, to report the names of all persons hired or terminated under the contract. The information will be used by the contracting officer to monitor and ensure compliance by the contractor with the requirements of FAR clause 52.207-3, Right of First Refusal of Employment.

3. Collection efforts do not involve the use of automation. The information required is specific and unique to each solicitation.

4. There are no duplicated efforts. The information is required either prior to award of each new contract or following award. Only up-to-date information on current insurance coverage is acceptable.

5. There is no significant impact on small businesses.

6. For clauses 852.237-7 and 852.228-71 (formerly 852.237-71), failure to collect the information would have a negative impact on VA's ability to ensure that VA will not be held liable for any negligent acts of the contractor or its employees and that VA beneficiaries and the public are protected by adequate insurance coverage. For clause 852.207-70, failure to collect the data could have a negative impact on VA employees who are displaced as the result of award of a contract to a commercial firm. Failure to collect the information would

3.

2900-0590

make it difficult, if not impossible, for VA to enforce the requirements of FAR clause 52.207-3, Right of First Refusal of Employment.

7.

a. Depending on the clause, the information is needed prior to the award of each solicitation or contract, as circumstances warrant, or following contract award, rather than quarterly. For clauses 852.237-7 and 852.228-71 (formerly 852.237-71), insurance coverage can change from day to day. The insurance certificate must state that the contractor's insurance will not be cancelled without prior notification to VA. The information is only required once for each contract award and may cover a multi-year period unless the insurance changes. For clause 852.207-70, the information is only required once, following contract award.

b.(1) For clause 852.237-7, the information is submitted prior to each contract award, if requested by the contracting officer, or after award and prior to commencement of services. The time for response may vary, but the sooner the offeror can submit the data, the sooner the offeror can be awarded a contract or commence providing services. It is in the best interest of the offeror to expedite submission of the data.

(2) For clause 852.228-71 (formerly 852.237-71), the information is submitted prior to each contract award. The time for response may vary, but the sooner the offeror can submit the data, the sooner the offeror can be awarded a contract. It is in the best interest of the offeror to expedite submission of the data.

(3) For clause 852.207-70, the information is submitted within 5 days following award of the contract, prior to commencement of work, or 90 days after commencement of work, depending on the type of data required.

- c. Only one original is required.
- d. There are no records retention requirements.
- e. This is not a statistical survey.
- f. This does not require the use of statistical data classification.
- g. This does not include a pledge of confidentiality.
- h. This does not require the submission of proprietary information.

4.

2900-0590

8. Notice regarding use of these clauses will be published in the Federal Register on December 6, 2007, Volume 72, Number 234, pages 68962-68963. There were no comments received.

9. No payments or gifts will be provided.

10. No assurances of confidentiality will be provided to respondents.

11. The request for information does not include any questions of a sensitive nature.

12.

The following data is for clause 852.237-7, Indemnification and Medical Liability Insurance:

a. Estimated number of respondents: 1,500.

b. Estimated frequency of responses: One response for each contract to be awarded.

c. Estimated average burden per collection: 30 minutes.

d. Estimated total annual reporting burden: 750 hours.

e. Estimated annualized cost: \$15,000 (750 hours at \$20 per hour, based on our belief that the majority of the labor effort would be clerical).

The following data is for clause 852.228-71 (formerly 852.237-71), Indemnification and Insurance:

a. Estimated number of respondents: 500.

b. Estimated frequency of responses: One response for each contract to be awarded.

c. Estimated average burden per collection: 30 minutes.

d. Estimated total annual reporting burden: 250 hours.

e. Estimated annualized cost: \$5,000 (250 hours at \$20 per hour, based on our belief that the majority of the labor effort would be clerical).

5.

2900-0590

The following data is for clause 852.207-70, Report of Employment Under Commercial Activities:

a. Estimated number of respondents: 10. This is a significant reduction from the prior request. In fact, VA issued no A-76 solicitations in FY 2004, where this clause would normally be used. The Veterans Health Administration (VHA), the largest by far organization in VA, is precluded by 38 United States Code (U.S.C.) 8110(a)(5) from spending any funds not specifically appropriated for such purpose to conduct an A-76 study. Since no funds have been appropriated for such studies, no A-76 studies have been conducted by VHA. This clause can be used in solicitations for health-care resources under 38 U.S.C. 8153 when an existing VA employee might be displaced by such an acquisition, but we believe there are few such uses of this clause. Few, if any, A-76 studies are expected to be conducted for the Veterans Benefits or the National Cemetery Administrations. Therefore, only the minimum 10 respondents are included in this request for approval.

b. Estimated frequency of responses: 3 reports per contract awarded.

c. Estimated average burden per collection: 30 minutes per report.

d. Estimated total annual reporting burden: 15 hours (10 contracts times 3 reports per contract times .5 hours per report).

e. Estimated annualized cost: \$300 (15 hours at \$20 per hour, based on our belief that the majority of the labor effort would be clerical).

The following is the combined data for all three clauses:

a. Estimated number of respondents: 2,010 (1,500 + 500 + 10).

b. Estimated frequency of responses: For clauses 852.237-7 and 852.228-71 (formerly 852.237-71), one response for each contract to be awarded. For clause 852.207-70, 3 responses per contract awarded. Weighted average: 1.01.

c. Estimated average burden per collection: 30 minutes.

d. Estimated total annual reporting burden: 1,015 hours (750 + 250 + 15).

e. Estimated annualized cost: \$20,300 (1,015 hours at \$20 per hour, based on our belief that the majority of the labor effort would be clerical).

6.

2900-0590

13.

- a. There are no capital costs or operating or maintenance costs.
- b. Costs are not expected to vary widely.
- c. There are no equipment costs.

14. Estimated annualized cost to the Government: For clause 852.237-7, Indemnification and Medical Liability Insurance, \$26,250 (750 hours at \$35 per hour, salary rate, including benefits, based on the average GS-11 grade for VA contracting officers). For clause 852.228-71 (formerly 852.237-71), Indemnification and Insurance, \$8,750 (250 hours at \$35 per hour). For clause 852.207-70, Report of Employment Under Commercial Activities, \$525 (15 hours at \$35 per hour). The information for each clause is evaluated upon receipt. If acceptable, no further action is required. Total estimated Government cost: \$35,525.

15. There are no program changes. However, the estimated number of responses for clause 852.207-70 has been significantly reduced, as explained in paragraph 12.a. for that clause, above.

16. The results will not be published.

17. This request seeks approval to not display the expiration date for OMB approval. This is an on-going requirement. VA has a continuing need for this information in order to ensure that VA will not be held liable for any negligent acts of the contractor and that VA beneficiaries and the public are protected by adequate insurance coverage. VA expects to continue use of this provision indefinitely and an expiration date would only tend to confuse the public. The number will be published in 48 Code of Federal Regulations, Chapter 8, of the VAAR.

18. This submission does not contain any exceptions to the certification statements.

B. Collection of Information Employing Statistical Methods: Statistical methods will not be employed.