

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

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify legal or administrative requirements that necessitate the collection of information.

As a result of VAAR final rule RIN 2900-AQ20, posted to Federal Register (84 FR 46448) on September 4, 2019, this Paperwork Reduction Act (PRA) submission requests revision to the following in order to confirm to the FAR numbering system for agency regulations;

- Renumber VAAR clause 852.237-7 to 852.237-70, Indemnification and Medical Liability Insurance and to revise the clause text to specify notice requirements of adequate insurance prior to commencement of work by the prime contractor or any subcontractor.
- No change for VAAR clause 852.228-71, Indemnification and Insurance.
- No change for VAAR clause 852.207-70, Report of Employment Under Commercial Activities.

These revisions do not change the information collection burden hours.

This revised information collection applies to 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. Indicate how, by whom, and for what purposes the information is to be used; indicate actual use the agency has made of the information received from current collection.

a. VAAR clause 852.237-70 (formerly 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. It also requires the contractor to notify the contracting officer within 5 days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract, and to provide to the contracting officer evidence of such insurance for any subcontractor at least five days before commencement of work by that subcontractor. 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. The clause number is changed to 852.237-70 to conform to the FAR guidance for numbering of clauses.

b. VAAR clause 852.228-71, 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 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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Collection efforts generally do not involve the use of automation. Offerors are required to provide specific information, unique to the particular solicitation.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

There is no significant impact on small businesses.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently as well as any technical or legal obstacles to reducing burden.

For clauses 852.237-70 (formerly 852.237-7) and 852.228-71, 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 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. Explain any special circumstances that would cause an information collection to be conducted more often than quarterly or require respondents to prepare written responses to a collection of information in fewer than 30 days after receipt of it; submit more than an original and two copies of any document; retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years; in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study and require the use of a statistical data classification that has not been reviewed and approved by OMB.

The information is not submitted on the basis of a recurring time period.

For clause 852.237-70 (formerly 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.

For clause 852.228-71, 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.

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.

8. a. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the sponsor's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the sponsor in responses to these comments. Specifically address

comments received on cost and hour burden.

Proposed rule included the modification on this OMB Control Number was published in the Federal Register (83 FR 45374) on September 7, 2018. VA didn't receive any PRA related comments.

b. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure or reporting format, and on the data elements to be recorded, disclosed or reported. Explain any circumstances which preclude consultation every three years with representatives of those from whom information is to be obtained.

There were not efforts to consult with persons outside the agency beyond the Proposed Rule Federal Register publication.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts will be provided.

10. Describe any assurance of privacy to the extent provided by law to respondents and the basis for the assurance in statute, regulation, or agency policy.

No assurances of privacy/confidentiality will be provided to respondents.

11. Provide additional justification for any questions of a sensitive nature (Information that, with a reasonable degree of medical certainty, is likely to have a serious adverse effect on an individual's mental or physical health if revealed to him or her), such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private; include specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

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

12. Estimate of the hour burden of the collection of information:

a. The number of respondents, frequency of responses, annual hour burden, and explanation for each form is reported as follows:

For Clause 852.237-7, Indemnification and Medical Liability Insurance:

No. of respondents	x No. of responses	x No. of minutes		Number of Burden Hours
1500	1 per each contract awarded	30	÷by 60	750

For clause 852.228-71, Indemnification and Insurance:

No. of respondents	x No. of responses	x No. of minutes	÷by 60	Number of Burden Hours
500	1 per each contract awarded	30		

For clause 852.207-70, Report of Employment Under Commercial Activities:

No. of respondents	x No. of responses	x No. of minutes	÷by 60	Number of Burden Hours
10	3 reports per contract awarded	30 per report		

Regarding number of respondents: The Veterans Health Administration (VHA), the largest by far organization in VA, is precluded by 38 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. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB 83-1.

The following is the combined data for all three clauses:

- (1) Estimated number of respondents: 2,010 (1,500 + 500 + 10).
- (2) Estimated frequency of responses: For clauses 852.237-70 (formerly 852.237-7) and 852.228-71, one response for each contract to be awarded. For clause 852.207-70, 3 responses per contract awarded. Weighted average: 1.01. Total Responses: 2,030.
- (3) Estimated average burden per collection: 30 minutes.
- (4) Estimated total annual reporting burden: 1,015 hours (750 + 250 + 15).

c. Provide estimates of annual cost to respondents for the hour burdens for collections of information. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

For clause 852.237-70, Indemnification and Medical Liability Insurance:

Estimated annualized cost: \$ 21,442.50 (750 hours at \$28.59 per hour. This is based on the Bureau of Labor Statistics May 2018 Occupational Employment and Wages code 43-4199, Information and Record Clerks (<https://www.bls.gov/oes/current/oes434199.htm>) 90% Percentile Hourly Wage of \$28.59.

For clause 852.228-71, Indemnification and Insurance:

Estimated annualized cost: \$ 7,147.50 (250 hours at \$28.59 per hour. This is based on the Bureau of Labor Statistics May 2018 Occupational Employment and Wages code 43-4199, Information and Record Clerks (<https://www.bls.gov/oes/current/oes434199.htm>) 90% Percentile Hourly Wage of \$28.59.

For clause 852.207-70, Report of Employment Under Commercial Activities:

Estimated annualized cost: \$ 428.85 (15 hours at \$28.59 per hour. This is based on the Bureau of Labor Statistics May 2018 Occupational Employment and Wages code 43-4199, Information and Record Clerks (<https://www.bls.gov/oes/current/oes434199.htm>) 90% Percentile Hourly Wage of \$28.59.

Estimated annualized cost for all three clauses: \$29,018.85 (1,015 hours at \$28.59 per hour, based on our belief that the majority of the labor effort would be clerical).

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

N/A

14. Provide estimates of annual cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operation expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

For clause 852.237-70 (formerly 52.237-7), Indemnification and Medical Liability Insurance, Estimated annualized cost to the Government: \$29,859 (750 hours at \$ 39.81 per hour). It is estimated that the review and statement will be prepared by a Journeyman Contract Specialist equivalent to a GS-11. Based on OPM 2019 General Schedule (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/19Tables/html/GS.aspx>) of a GS-11, step 5 salary, plus 36.25% per OMB Memo M-08-13 dated March 11, 2008, the hourly rate is ($\$29.22 \times 136.25\% = \39.81). The information is evaluated upon receipt. If acceptable, no further action is required.

For clause 852.228-71, Indemnification and Insurance, Estimated annualized cost to the Government: \$9,953 (250 hours at \$ 39.81 per hour). It is estimated that the review and statement will be prepared by a Journeyman Contract Specialist equivalent to a GS-11. Based on OPM 2019 General Schedule (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/19Tables/html/GS.aspx>) a GS-11, step 5 salary, plus 36.25% per OMB Memo M-08-13 dated March 11, 2008, the hourly rate is ($\$29.22 \times 136.25\% = \39.81). The information is evaluated upon receipt. If acceptable, no further action is required.

For clause 852.207-70, Report of Employment Under Commercial Activities, Estimated annualized cost to the Government: \$597 (15 hours at \$ 39.81 per hour). It is estimated that the review and statement will be prepared by a Journeyman Contract Specialist equivalent to a

GS-11. Based on OPM 2019 General Schedule (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/19Tables/html/GS.aspx>) a GS-11, step 5 salary, plus 36.25% per OMB Memo M-08-13 dated March 11, 2008, the hourly rate is ($\$29.22 \times 136.25\% = \39.81). The information is evaluated upon receipt. If acceptable, no further action is required.

Total estimated Government cost: \$40,409.

15. Explain the reason for any burden hour changes since the last submission.

There is no burden hour change.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The results will not be published.

17. If seeking approval to omit the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

VA will display the expiration date for OMB approval of the information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-I.

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

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods will not be employed.