26.3), the Defense Logistics Agency (see 41 CFR 101–26.6), the Department of Veterans Affairs (see 41 CFR 101–26.704), and military inventory control points.

(2) *Services that are on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, known as AbilityOne (FAR subpart 8.7).* Prior to considering award of a contract under the AbilityOne program, contracting officers shall apply the VA Rule of Two to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127–28, by using the preferences and priorities in subpart 819.70. If an award is not made to a VIP-listed and verified SDVOSB/VOSB as provided in subpart 819.70, AbilityOne remains a mandatory source in accordance with FAR 8.002. All new VA requirements must be approved by the Chief Acquisition Officer, via the Senior Procurement Executive, before contacting the Committee to request addition of new items to the Procurement List.

(b) *Unusual and compelling urgency.* The contracting officer may use a source other than those listed in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see FAR 6.302–2, 8.405–6 and 13.106–1 for justification requirements).

* * * * *

■ 3. Revise § 808.603 to read as follows:

§ 808.603 Purchasing priorities.

A waiver from FPI is not needed when comparable supplies and services are procured in accordance with subpart 819.70.

[FR Doc. 2019–13217 Filed 6–21–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 817 and 852

RIN 2900–AQ19

VA Acquisition Regulation: Special Contracting Methods

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, VA will publish them in the **Federal Register**. In particular, this rulemaking revises VAAR coverage concerning Special Contracting Methods as well as an affected part covering Solicitation Provisions and Contract Clauses.

DATES: This rule is effective on July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 27, 2018, VA published a proposed rule in the **Federal Register** (83 FR 66662) which announced VA's intent to amend regulations for VAAR Case RIN 2900–AQ19—VA Acquisition Regulation: Special Contracting Methods. VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The comment period for the proposed rule ended on February 25, 2019 and VA received one comment. VA makes no changes to this final rule as a result of the one comment received. However, this rule adopts as a final rule, the proposed rule that published in the **Federal Register** on December 27, 2018, along with two technical non-substantive changes to the proposed rule and minor formatting and/or grammatical edits. The two technical non-substantive changes to the proposed rule are described below.

In particular, this final rule revises part 817, Special Contracting Methods. This final rule removes subpart 817.1, Multi-year Contracting, in its entirety since it deals with internal procedures about the uses of multi-year contracting and internal approvals to be obtained. This final rule also removes subpart 817.2 in its entirety by removing 817.202, Use of options, and 817.204, Contracts. 817.202 consisted of internal procedures to develop solicitations and cost comparisons under Office of Management and Budget Circular A–76. Since there is currently a moratorium on public-private competitions this will not be moved to the VAAM. 817.204, Contracts, contained internal procedures and approvals to be obtained for contracts with option periods greater than five years, and this coverage was moved to the VAAM.

This rule removes subpart 817.4, Leader Company Contracting, and 817.402, Limitations, since they included internal procedures and approval requirements for leader company contracts. The coverage was moved to the VAAM.

This final rule revises the title of subpart 817.5 to read ''Interagency Acquisitions,'' and adds 817.501, General, which requires that any governmental entity that acquires goods and services on behalf of the Department of Veterans Affairs shall comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart 819.70.

This regulatory action removes 817.502, General, which is replaced with updated policy in 817.501. The coverage was moved to comport with the numbering in the FAR.

This rule adds subpart 817.70, Undefinitized Contract Actions, to provide policy and procedures for the use of undefinitized contract actions (UCAs) as UCAs are a high-risk method of procurement. This final rule adds 817.7000, Scope, which describes the material being introduced in this subpart, and 817.7001, Definitions, to provide definitions of four terms used in the subpart: contract action, definitization, definitization proposal, and undefinitized contract action.

This final rule also adds 817.7002, Exceptions, which exempts simplified acquisitions and congressionally mandated long-lead procurement contracts from this policy but requires the contracting officer to apply the policy and procedures to the maximum extent practicable.

817.7003, Policy, was added to clearly convey that undefinitized contract actions should be limited to situations where it is not possible to negotiate a definitive contract action in time to meet the government's requirements, and where the interests of the government demand that the contractor be given a commitment so that contract performance can begin immediately.

This final rule adds 817.7004, Limitations, with no text, and the following sections: 817.7004–1, Authorization, which provides guidance as to when the contracting officer must obtain approval to use an undefinitized contract action; and 817.7004–2, Price ceiling, which requires all undefinitized

contract actions to include not-to-exceed price ceilings.

This regulatory action also adds 817.7004–3, Definitization schedule, which sets parameters for establishing definitization schedules and requires submission of a definitization proposal in accordance with the definitization schedule as a material element of the contract, where non-compliance may result in suspension or reduction of progress payments under FAR 32.503–6 or other appropriate action.

This rule adds 817.7004–4, Final price negotiation—profit, which provides guidance on negotiating profit that reflects the contractor's reduced cost risk prior to definitization.

This final rule also adds 817.7005, Contract clause, which prescribes new clause 852.217–70, Contract Action Definitization, for all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite-delivery contracts, or any other type of contract providing for the use of UCAs.

In subpart 852.2, Text of Provisions and Clauses, we propose to add clause 852.217–70, Contract Action Definitization, to provide specific procedures required to definitize UCAs.

Technical Non-Substantive Changes to the Proposed Rule

This rule makes two non-substantive changes to the proposed rule to provide clarity, eliminate confusion, and to ensure compliance with statute and VA's authority.

1. Under section 817.501, General, VA is making a revision to the language to provide clarity regarding the applicability of the Veterans First Contracting Program to interagency acquisitions. VA has simplified the section to use plain language to make clear that when an entity acquires goods and services on behalf of VA, a notice will be included in the agreement stating the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart 819.70. This language was already included in the proposed rule but the rephrase provides clarity and does not otherwise significantly change the meaning and intent of the section.

2. Under section 817.7004–4, Limitations on obligations, which was proposed as added language in the proposed rule, VA is removing the section in its entirety. The proposed language potentially created a conflict with 817.7004–3(a)(2) and is unnecessary. Accordingly, with the removal of 817.7004–4, Limitations on obligations, the remaining proposed section at 817.7004–5, Final price negotiation—profit, is renumbered 817.7004–4.

VA provided a 60-day comment period for the public to respond to the proposed rule. As stated previously, VA received one comment. The single comment consisted of one word: ''Good.'' VA appreciates the comment which doesn't warrant any substantive changes to be made to the final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal Governments or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

This final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The overall impact of the rule is of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating processes or procedures. VA estimates no cost impact to individual businesses will result from these rule updates. On this basis, the final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review defines ''significant regulatory action'' to mean any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal Governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not be a significant regulatory action under E.O. 12866 because it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 13771.

List of Subjects

48 CFR Part 817

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department

of Veterans Affairs, approved this document on April 17, 2019, for publication.

Dated: June 12, 2019.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA revises 48 CFR parts 817 and 852 as follows:

PART 817—SPECIAL CONTRACTING METHODS

■ 1. The authority citation for part 817 is revised to read as follows:

Authority: 38 U.S.C. 8127–8128; 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 817.1—[Removed and Reserved]

■ 2. Subpart 817.1, consisting of sections 817.105 and 817.105–1, is removed and reserved.

Subpart 817.2—[Removed and Reserved]

■ 3. Subpart 817.2, consisting of sections 817.202 and 817.204, is removed and reserved.

Subpart 817.4—[Removed and Reserved]

■ 4. Subpart 817.4, consisting of section 817.402, is removed and reserved.

■ 5. Subpart 817.5 is revised to read as follows:

Subpart 817.5—Interagency Acquisitions

817.501 General.

(d) Agreements pursuant to FAR subpart 17.5, including construction, shall include a requirement, that, when acquiring goods and services on behalf of the Department of Veterans Affairs, the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart 819.70.

■ 6. Subpart 817.70 is added to read as follows:

Subpart 817.70—Undefinitized Contract Actions

Sec.

817.7000 Scope.
817.7001 Definitions.
817.7002 Exceptions.
817.7003 Policy.
817.7004 Limitations.
817.7004–1 Authorization.
817.7004–2 Price ceiling.
817.7004–3 Definitization schedule.
817.7004–4 Final price negotiation—profit.
817.7005 Contract clause.

817.7000 Scope.

This subpart prescribes policies and procedures for use of undefinitized contract actions.

817.7001 Definitions.

As used in this subpart—

(a) *Contract action* includes:

(1) Contracts and contract modifications for supplies or services.

(2) Task orders and delivery orders.

(3) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, *e.g.,* engineering change proposals and value engineering change proposals.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Definitization proposal* means a proposal containing sufficient data for the VA to do complete and meaningful analyses and audits of the—

(1) Data in the proposal; and

(2) Any other data that the contracting officer has determined VA needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts and orders under basic ordering agreements for which the final price has not been agreed upon before performance has begun.

817.7002 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart:

(1) Purchases at or below the simplified acquisition threshold.

(2) Congressionally mandated long-lead procurement contracts.

(b) However, the contracting officer shall apply the policy and procedures to the contract actions in paragraph (a) to the maximum extent practicable.

817.7003 Policy.

Undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable.

817.7004 Limitations.

817.7004–1 Authorization.

The contracting officer shall obtain approval one level above the contracting officer before—

(a) *Entering into a UCA.* The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on the VA resulting from delays in beginning performance.

(b) *Including requirements for non-urgent items and equipment in a UCA.* The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the Government.

(c) *Modifying the scope of a UCA when performance has already begun.* The request should show that the modification is consistent with good business practices and in the best interests of the Government.

817.7004–2 Price ceiling.

UCAs shall include a not-to-exceed price.

817.7004–3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a definitization proposal); or

(2) The date on which the amount of funds paid to the contractor under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a definitization proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely definitization proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503–6, or take other appropriate action.

817.7004–4 Final price negotiation—profit.

Before the final price of a UCA is negotiated, contracting officers shall ensure the profit agreed to and documented in the contract negotiation memorandum reflects consideration of any risks incurred in performance of the work under the UCA.

817.7005 Contract clause.

(a) Use the clause at 852.217–70, Contract Action Definitization, in—

(1) All UCAs;

(2) Solicitations associated with UCAs;

(3) Orders against basic ordering agreements;

(4) Indefinite delivery task orders; and

(5) Any other type of contract providing for the use of UCAs.

(b) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(c) If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403–1, 15.403–2, or 15.403–3 for not requiring submission of certified cost or pricing data, the words ''and certified cost or pricing data'' may be deleted from paragraph (a) of the clause.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

■ 8. Section 852.217–70 is added to read as follows:

852.217–70 Contract Action Definitization.

As prescribed in 817.7005(a), insert the following clause:

Contract Action Definitization (Jul 2019)

(a) A [*Insert specific type of contract action*] is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract action that will include all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action, all clauses required by law on the date of execution of the definitive contract action, and any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____ [*Insert type of proposal, e.g., fixed-price, or cost-and-fee*] proposal with cost or pricing data, as appropriate, supporting it.

(b) The schedule for definitizing this contract action is as follows [*Insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy plans, subcontracting plans, and cost or pricing data*].

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of a Contracting Officer one level above, determine a reasonable price or fee in accordance with FAR subpart 15.4 and FAR part 31, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to FAR 52.216–24, Limitation of Government Liability.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract action resulting from this undefinitized contract action will include a negotiated _____ [*Insert ''cost/price ceiling'' or ''firm-fixed-price''*] in no event to exceed _____ [*Insert the not-to-exceed amount*].

(End of clause)

[FR Doc. 2019–12759 Filed 6–21–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 181015948–9482–02]

RIN 0648–BI54

Pacific Island Fisheries; Annual Catch Limit and Accountability Measures; Main Hawaiian Islands Deep 7 Bottomfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes an annual catch limit (ACL) of 492,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for each of the three fishing years 2018–19, 2019–20, and 2020–21. If NMFS projects that the fishery will reach the ACL in any given fishing year, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of that fishing year as an accountability measure (AM). This rule also makes housekeeping changes to the Federal bottomfish fishing regulations. This rule supports the long-term sustainability of Deep 7 bottomfish.

DATES: The final rule is effective July 24, 2019. The final rule is applicable in fishing years 2018–2019, 2019–2020 and 2020–2021.

ADDRESSES: Copies of the Fishery Ecosystem Plan for the Hawaiian Archipelago are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org.*

Copies of the environmental assessment (EA) and Finding of No Significant Impact for this action are available from *https://www.regulations.gov/docket?D=NOAA-NMFS-2018-0121,* or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIRO Sustainable Fisheries, 808–725–5185.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Deep 7 bottomfish fishery in Federal waters around Hawaii under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP), as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Hyporthodus quernus*). The regulations at title 50, Code of Federal Regulations, part 665 (50 CFR 665.4) require NMFS to specify an ACL for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council.

The Council recommended NMFS implement the ACL and AMs for MHI Deep 7 bottomfish in fishing years 2018–19, 2019–20, and 2020–21. The Council based its recommendations on a NMFS 2018 benchmark bottomfish stock assessment, in consideration of the risk of overfishing, past fishery performance, the acceptable biological catch recommendation from its Scientific and Statistical Committee, and input from the public.

The 2018 stock assessment estimated the overfishing limit for the MHI Deep 7 bottomfish stock complex to be 558,000 lb, assuming three years of identical catch in fishing years 2018–19, 2019–20, and 2020–21. This overfishing limit is 206,000 lb more than the estimated overfishing limit described in the 2011 stock assessment, as updated