

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

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AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 813.1—Procedures

813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

(a) Contracting officers may use other than competitive procedures to enter into a contract with a SDVOSB or VOSB when the amount exceeds the micro-purchase threshold up to \$5 million.

(b) Requirements exceeding \$25,000 must be synopsized in accordance with FAR Part 5.

[74 FR 64630, Dec. 8, 2009]

813.106-3 Award and documentation.

The contracting officer may record a quotation on an Abstract of Offers (SF 1409 or 1419), the purchase request if space permits, or other supplemental sheet or form, such as VA Form 10-2237b, Request for Dietetic Supplies.

813.106-70 Oral purchase orders.

When advantageous to VA, the contracting officer may use an oral purchase order for transactions not in ex-

cess of \$3,000. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against Federal Supply Schedule contracts. The contracting officer must assign a purchase order number to the transaction. A copy of any electronically generated purchase order may be used as a property voucher and receiving report to document receipt.

Subpart 813.2—Actions at or Below the Micro-Purchase Threshold

813.202 Purchase guidelines.

Open market micro-purchases shall be equitably distributed among all qualified SDVOSBs or VOSBs, respectively, to the maximum extent practicable.

[74 FR 64630, Dec. 8, 2009]

Subpart 813.3—Simplified Acquisition Methods

813.302 Purchase orders.

813.302-5 Clauses.

When using the VA Form 90-2138 or 90-2138-ADP for maintenance contracts involving services performed on Government property that have the potential for property damage and liability claims, the contracting officer shall insert in the purchase order the Contractor's Responsibilities clause found at 852.237-70. Applicable maintenance contracts include, but are not limited to, window washing, pest control, and elevator maintenance.

813.307 Forms.

(a) The following forms provide a purchase or delivery order, vendor's invoice, and receiving report:

(1) VA Form 90-2138, Order for Supplies or Services.

(2) VA Form 90-2139, Order for Supplies or Services (Continuation).

(3) VA Form 90-2138-ADP, Purchase Order for Supplies or Services.

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(4) VA Form 2139-ADP, Order for Supplies and Services (Continuation).

(b) The contracting officer may use the forms specified in paragraphs (a)(1) through (a)(4) of this section instead of OF 347, Order for Supplies or Services, OF 348, Order for Supplies or Services Schedule—Continuation, and SF 1449, Solicitation/Contract/Order for Commercial Items.

(c) The contracting officer or other properly delegated official (see 801.670-3) may use the following order forms when ordering the indicated medical, dental, and ancillary services totaling up to \$10,000 per authorization when such services are not available under existing contracts:

(1) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10-7079, Request for Out-patient Medical Services.

(3) VA Form 10-2570d, Dental Record Authorization and Invoice for Out-patient Service.

(d) In authorizing patient travel as set forth in VA manual MP-1, Part II, Chapter 3, the contracting officer or other properly delegated official (see 801.670-3) may use VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, as provided by that manual.

(e) The contracting officer must use SF 182, Request, Authorization, Agreement, and Certification of Training, for procurement of training.

(f) The contracting officer must use VA Form 10-2421, Prosthetics Authorization for Items or Services, for indicated services not in excess of \$300.

PART 814—SEALED BIDDING

Subpart 814.1 [Reserved]

Subpart 814.2—Solicitation of Bids

Sec.

814.201 Preparation of invitations for bids.

814.201-2 Part I—The Schedule.

814.201-6 Solicitation provisions.

814.202 General rules for solicitation of bids.

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Subpart 814.3—Submission of Bids

814.304 Submission, modification, and withdrawal of bids.

Subpart 814.4 [Reserved]

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 814.1 [Reserved]

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids

814.201-2 Part I—The Schedule.

(b) *Section B, Supplies or services and prices.*

(1) When the contracting officer determines that it will be to the Government's advantage to make an award on the basis of a summary bid, the IFB shall include the following statement in Part I—The Schedule, Section B:

The award will be made on either the bid price for individual items or the summary bid price summary for all items, whichever results in the lowest price to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.

(2) When a contracting officer determines that it will be to the Government's advantage to make an award by group or groups of items, the IFB shall include the following statement in Part I—The Schedule, Section B:

Award shall be made on the basis of the bid price for each identified group of items. The individual price of each line item in the group does not have to be the lowest bid received for that item. This may apply when the items in the group or groups are readily available from sources to be solicited; and one of the following applies:

(i) Furniture or fixtures are required for a single project and uniformity of design is desirable.

(ii) The articles required will be assembled and used as a unit.

[83 FR 16208, Apr. 16, 2018]

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814.201-6 Solicitation provisions.

(a) In an invitation for bid for supplies, equipment, or services (other than construction), the contracting officer shall define the extent to which VA will authorize and consider alternate bids.

(1) The contracting officer shall include the provision at 852.214-71, Restrictions on Alternate Item(s), in the invitation when VA will consider an alternate item only where acceptable bids on a desired item are not received or the bids do not satisfy the total requirement. (For construction projects, VA will consider for acceptance an alternate specified only as a part of the basic item.)

(2) The contracting officer shall include the provision at 852.214-72, Alternate Item(s), in the invitation, when VA will consider an alternate item on an equal basis with the item specified. (For construction projects, VA will consider for acceptance an alternate specified only as a part of the basic item.)

(3) In addition to either of the provisions referenced in paragraphs (a)(1) or (2) of this section, the contracting officer shall include the provision at 852.214-73, Alternate Packaging and Packing, in the invitation when bids will be allowed based on different packaging, unit designation, etc.

(b) The contracting officer shall include the provision at 852.214-74, Marking of Bid Samples, in the invitation, along with the provision at FAR 52.214-20, Bid Samples, when the contracting officer determines that samples are necessary to the proper awarding of a contract.

[83 FR 16209, Apr. 16, 2018]

814.202 General rules for solicitation of bids.

814.202-4 Bid samples.

(a) *Policy.* When bid samples are required, the contracting officer shall include a notice in the contract Schedule that requires bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(g) *Handling bid samples.*

(1) Samples from successful bids shall be retained for the period of contract performance.

(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved. If there are no outstanding claims regarding the contract, the contracting officer may authorize disposal of the samples at the end of the contract term in accordance with the bidder's instructions.

(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of in accordance with the bidder's instructions.

[83 FR 16209, Apr. 16, 2018]

Subpart 814.3—Submission of Bids

814.304 Submission, modification, and withdrawal of bids.

(f) A notification to late bidders shall specify the final date by which VA must receive evidence of timeliness. This date shall be within five calendar days of the date an electronic notice is sent to the bidder, or within ten calendar days of receipt by the bidder of a notice sent by other than electronic means.

[83 FR 16209, Apr. 16, 2018]

Subpart 814.4 [Reserved]

PART 815—CONTRACTING BY NEGOTIATION

Subpart 815.3—Source Selection

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815.606-1 Receipt and initial review.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 815.3—Source Selection

815.303 Responsibilities.

The authority of the Secretary to appoint an individual other than the contracting officer to serve as the source selection authority for a particular acquisition or group of acquisitions is delegated to the SPE and is further delegated to the DSPE. If an HCA wishes to designate an individual other than the delegated contracting officer as the source selection authority for a particular acquisition or group of acquisitions, the HCA shall prepare a request and justification and shall submit the request through channels to the DSPE for approval.

EFFECTIVE DATE NOTE: At 84 FR 46452, Sept. 4, 2019, 815.303 was removed, effective Oct. 4, 2019.

815.304 Evaluation factors and significant subfactors.

(a) In an effort to assist SDVOSBs and VOSBs, contracting officers shall include evaluation factors providing additional consideration to such offerors in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) Additional consideration shall also be given to any offeror, regardless of size status, that proposes to subcontract with SDVOSBs or VOSBs.

[74 FR 64631, Dec. 8, 2009]

EFFECTIVE DATE NOTE: At 84 FR 46452, Sept. 4, 2019, 815.304 was removed, effective Oct. 4, 2019.

815.304-70 Evaluation factor commitments.

(a) VA contracting officers shall:

(1) Include provisions in negotiated solicitations giving preference to offers received from VOSBs and additional

preference to offers received from SDVOSBs;

(2) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in selecting offers for award;

(3) Use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders; and

(4) Use participation in VA's Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

(b) If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, the contracting officer shall ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value.

[74 FR 64631, Dec. 8, 2009]

EFFECTIVE DATE NOTE: At 84 FR 46452, Sept. 4, 2019, 815.304-70 was revised, effective Oct. 4, 2019. For the convenience of the user, the revised text is set forth as follows:

815.304-70 Evaluation factor commitments.

Contracting officers shall—

(a) Include the clause at 852.215-70, Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors, in negotiated solicitations and contracts giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(b) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in making award determination; and

(c) Use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

815.304-71 Solicitation provision and clause.

(a) The contracting officer shall insert the provision at 852.215-70, Service-Disabled Veteran-Owned and Veteran-

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Owned Small Business Evaluation Factors, in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at 852.215-71, Evaluation Factor Commitments, in solicitations and contracts that include VAAR clause 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

[74 FR 64631, Dec. 8, 2009]

EFFECTIVE DATE NOTE: At 84 FR 46452, Sept. 4, 2019, 815.304-71, effective Oct. 4, 2019. For the convenience of the user, the revised text is set forth as follows:

815.304-71 Solicitation provision and clause.

(a) The contracting officer shall insert the clause at 852.215-70, Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors, in competitively negotiated solicitations and contracts that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at 852.215-71, Evaluation Factor Commitments, in solicitations and contracts that include VAAR clause 852.215-70, Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors.

815.370 Only one offer.

EFFECTIVE DATE NOTE: At 84 FR 46452, Sept. 4, 2019, 815.370 was added, effective Oct. 4, 2019.

815.370-1 Policy.

It is VA policy, if only one offer is received in response to a competitive solicitation, to—

(a) Take action to promote competition (see 815.370-2); and

(b) Ensure that the price is fair and reasonable (see 815.370-3) and comply with the statutory requirement for certified cost or pricing data (see FAR 15.403-4).

[84 FR 46452, Sept. 4, 2019]

EFFECTIVE DATE NOTE: At 84 FR 46452, Sept. 4, 2019, 815.370-1 was added, effective Oct. 4, 2019.

815.370-2 Promote competition.

Except as provided in 815.370-4, if only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days

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for receipt of proposals, the contracting officer should—

(a) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see FAR 6.502(b) and 11.002); and

(b) Consider re-soliciting, allowing an additional period of at least 30 days for receipt of proposals.

[84 FR 46452, Sept. 4, 2019]

EFFECTIVE DATE NOTE: At 84 FR 46452, Sept. 4, 2019, 815.370-2 was added, effective Oct. 4, 2019.

815.370-3 Fair and reasonable price.

(a) If there was “reasonable expectation that two or more offerors, competing independently, would submit priced offers” but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see FAR 15.403-1(c)(1)(ii)).

(b) Except as provided in 815.370-4(a), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with 815.370-4(a)(3)), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see FAR 15.403-1(c) and 15.403-4). In these circumstances, no further cost or pricing data is required; or

(2)(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at FAR 15.403-4. For acquisitions that exceed the cost or pricing data threshold, if no exception at FAR 15.403-1(b) applies, the cost or pricing data shall be certified; and

(ii) Enter into negotiations with the offeror as necessary to establish a fair and reasonable price. The negotiated

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price should not exceed the offered price.

[84 FR 46452, Sept. 4, 2019]

EFFECTIVE DATE NOTE: At 84 FR 46452, Sept. 4, 2019, 815.370-3 was added, effective Oct. 4, 2019.

815.370-4 Exceptions.

(a) The requirements at 815.370-2 do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of emergency, humanitarian or peacekeeping operations, or to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; or to support response to an emergency or major disaster;

(3) Small business set-asides under FAR subpart 19.5, set-asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the VA Small Business Program (see VAAR subpart 819.70), or the Women-Owned Small Business Program (see FAR 19.1505(d));

(4) Acquisitions of basic or applied research or development, as specified in FAR 35.016(a), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see FAR 36.601-2).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to ensure adequate time for competition is allotted or that the price is fair and reasonable.

[84 FR 46452, Sept. 4, 2019]

EFFECTIVE DATE NOTE: At 84 FR 46453, Sept. 4, 2019, 815.370-4 was added, effective Oct. 4, 2019.

815.370-5 Solicitation provision.

Use the provision at 852.215-72, Notice of Intent to Re-solicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items that will be solicited for fewer than 30 days, unless an exception at 815.370-4 applies.

[84 FR 46453, Sept. 4, 2019]

EFFECTIVE DATE NOTE: At 84 FR 46453, Sept. 4, 2019, 815.370-5 was added, effective Oct. 4, 2019.

Subpart 815.4—Contract Pricing

EFFECTIVE DATE NOTE: At 84 FR 46453, Sept. 4, 2019, subpart 815.4 was removed, effective Oct. 4, 2019.

815.404 Proposal analysis.

815.404-1 Proposal analysis techniques.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into. Contracting officers must ensure that contracts undergo all applicable legal and technical reviews. (See 801.602-70.)

(b) Contracting officers determine the level of technical analyses necessary for initial and revised pricing of all negotiated prime contracts, including subcontract pricing under them, and contract modifications. Contracting officers must request technical analyses of the proposals from the appropriate technical personnel. The technical analyses must address, as a minimum, the items set forth in FAR 15.404-1(e)(2).

(c) The contracting officer must document the results of such analyses in the contract file and make the results available to the auditor performing the pre-award audit.

815.404-2 Information to support proposal analysis.

In evaluating start-up and other non-recurring costs, the contracting officer must determine the extent to which these costs are included in the proposed price and the intent to absorb or recover the costs in any future non-competitive procurement or other pricing action. The contracting officer must ensure, with the assistance of the Assistant Inspector General for Policy, Planning, and Resources, as required or considered necessary, that VA will not pay the costs twice. For example, the cost of equipment that the Government pays for through a setup or connection agreement must not be included in depreciation cost of a subsequently negotiated agreement.

Subpart 815.6—Unsolicited Proposals

EFFECTIVE DATE NOTE: At 84 FR 46453, Sept. 4, 2019, subpart 815.6 was removed, effective Oct. 4, 2019.

815.604 Department points of contact.

A VA employee who receives an unsolicited proposal or inquiries from a potential offeror of an unsolicited proposal must refer the proposal or inquiries to the following:

(a) Facility level unsolicited proposals must be referred to the HCA for the field facility.

(b) Proposals to the VA National Acquisition Center must be referred to the Executive Director and Chief Operating Officer, VA National Acquisition Center.

(c) Proposals to VA Central Office must be referred to the Director, Acquisition Operations Service (049A3).

815.606 Department procedures.

(a) The VA contact point will do the following:

(1) Determine the nature of the potential proposal and which technical/professional disciplines within VA to consult to determine the need for the proposal and the likelihood that a formal proposal would earn favorable review.

(2) In consultation with such technical/professional offices, the VA contact point will furnish the potential offeror the information specified in FAR 15.604 and any other information that might be of assistance to the potential offeror.

(b) The contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

(c) The contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.605. If required information is not submitted, the contact point will:

(1) Determine if FAR 15.604 requires advance guidance;

(2) Determine whether a comprehensive evaluation prescribed by FAR 15.606–2 is appropriate and, if so, request that the offeror provide the necessary information; and,

(3) Establish an estimated due date for completion of the review process.

815.606–1 Receipt and initial review.

(a) When the VA contact point determines a proposal warrants a comprehensive evaluation (i.e., the proposal complies with the requirements in FAR 15.606–1(a) and is related to VA's mission), the contact point must contact the offeror to ensure that all data that should be restricted in accordance with FAR 15.609 has been identified.

(b) The contact point must maintain a log of all unsolicited proposals to be evaluated. The log must indicate the following:

(1) The date the proposal was received.

(2) The date that the unsolicited proposal was determined to warrant a comprehensive evaluation.

(3) A description of the proposal.

(4) The offices requested to evaluate the proposal and the date the offices are requested to return their evaluations.

(5) The date the reviewing offices finalize their respective evaluations.

(6) The final disposition of the proposal.

(c) The contact point must advise each office assigned responsibility for reviewing an unsolicited proposal of the need to evaluate the proposal against the criteria set forth in FAR 15.607(a)(1) through (4). If the reviewers determine that the proposal fails to meet any of the criteria, the contact point must be advised. The contact point must return the proposal to the offeror, citing the reasons therefore.

(d) The contact point must obtain approval of the DSPE (049A5) before the contact point, if warranted as a contracting officer, or an appropriate contracting officer begins negotiation on proposals. The contact point must provide the DSPE (049A5) all necessary documentation supporting the non-competitive negotiation, including any justification and approval required by FAR Subpart 6.3 and the results of any synopsis required by FAR Subpart 5.2. The DSPE (049A5) will consult the appropriate VA Central Office program official(s) and return the final decision to the contact point.

PART 816—TYPES OF CONTRACTS

Subpart 816.1 [Reserved]

Subpart 816.2—Fixed-Price Contracts

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816.203 Fixed-price contracts with economic price adjustment.
816.203-4 Contract clauses.

Subpart 816.5—Indefinite-Delivery Contracts

816.505 Ordering.
816.506-70 Requirements—supplement for mortuary services.

Subpart 816.7—Agreements

816.770 Consignment agreements.

Subpart 816.70 [Reserved]

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 816.1 [Reserved]

Subpart 816.2—Fixed-Price Contracts

SOURCE: 83 FR 7403, Feb. 21, 2018, unless otherwise noted.

816.203 Fixed-price contracts with economic price adjustment.

816.203-4 Contract clauses.

(e) The contracting officer shall, when contracting by negotiation, use the following clauses.

(1) The contracting officer shall insert the clause at 852.216-71, “Economic Price Adjustment of Contract Price(s) Based on a Price Index,” in solicitations and firm fixed price contracts, subject to FAR 16.203-4(d)(1) and when changes to a price index will be used to calculate corresponding changes to the total contract price or unit prices of the contract.

(i) Exceptions:

(A) Do not use this clause when changes to the price index will apply to only a component part of the contract price.

(B) Do not publish or include the footnotes in the solicitation, they are

only included herein to provide guidance to contracting officers.

(2) The contracting officer shall insert the clause at 852.216-72, “Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index,” in solicitations and firm fixed price contracts, and subject to FAR 16.203-4(d)(1) when changes to an industry price index shall be used to calculate changes to only a portion of the contract price or the unit prices of the contract.

(i) Exceptions:

(A) The clause should not be used when a change in the index price will be applied directly and totally to the contract price or the unit prices, *i.e.*, when the Consumer Price Index is used to calculate changes and a 5% increase in the CPI would result in a 5% increase in the total contract price of the unit prices.

(B) Do not publish or include the footnotes in the solicitation, as they are only provided for guidance to the contracting officer.

(3) The contracting officer shall insert the clause at 852.216-73, “Economic Price Adjustment—State Nursing Home Care for Veterans,” in solicitations and firm fixed price contracts subject to FAR 16.203-4(d)(1) and the following circumstance: When changes to the Medicaid rate, as authorized by the State Medicaid Agency (SMA), shall be used to calculate corresponding changes in the total contract price or the per diem prices of the agreement or contract.

(4) The contracting officer shall insert the clause at 852.216-74, “Economic Price Adjustment—Medicaid Labor Rates,” in solicitations and firm fixed price contracts when the conditions specified in FAR 16.203-4(c)(1) apply. The clause is modifiable by increasing the 10-percent maximum limit on aggregate increases specified in paragraph (c)(4) of this section, upon the approval by the Head of the Contracting Activity (HCA) or designee.

(5) The contracting officer shall insert the clause at 852.216-75, “Economic Price Adjustment—Fuel Surcharge,” in solicitations and firm fixed price contracts when contracting by negotiation is subject to changes in the cost of fuel

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increases. The clause is subject to the conditions at FAR 16.203-4(d)(1).

(f) The contracting officer shall follow procedures as prescribed in FAR 16.203-4(c) and 38 CFR 51.41(b)(1) for EPA fixed price contracts based on Medicaid rates. These procedures shall be used when contracting by negotiation between the VA and the State Veteran Home for making payments under contracts for nursing home care for Veterans.

Subpart 816.5—Indefinite-Delivery Contracts

816.505 Ordering.

(b)(8) Task-order and delivery-order ombudsman. The task-order contract and delivery-order ombudsman for VA is the Associate Deputy Assistant Secretary (ADAS) for Procurement Policy, Systems and Oversight. The VA Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions. If any corrective action is needed after reviewing complaints from contractors, the VA Ombudsman shall provide a written determination of such action to the contracting officer. Contracting officers shall be notified of any complaints submitted to the VA Ombudsman.

[83 FR 7404, Feb. 21, 2018]

816.506-70 Requirements—supplement for mortuary services.

Insert the clause 852.216-76, Requirements—Supplement for Mortuary Services, in contracts for mortuary services containing FAR clause 52.216-21, Requirements. The contracting officer shall insert activities authorized to place orders in paragraph (e) of the clause.

[84 FR 46453, Sept. 4, 2019]

EFFECTIVE DATE NOTE: At 84 FR 46453, Sept. 4, 2019, 815.506-70 was added, effective Oct. 4, 2019.

Subpart 816.7—Agreements

SOURCE: 83 FR 7404, Feb. 21, 2018, unless otherwise noted.

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816.770 Consignment agreements.

Consignment agreements shall only be established under a contract and by a contracting officer. A consignment agreement is defined as a delivery method for a specified period of time in which the contractor provides an item/s for Government use and the contractor receives reimbursement only if and when the item is used by the Government. Consignment agreements are allowable and shall be considered in those instances when the requirement for an item is immediate and on-going and when it is impossible to predetermine the type or model of a particular item until the need is established, and it is determined to be in the best interest of the VA.

Subpart 816.70 [Reserved]

PART 817—SPECIAL CONTRACTING METHODS

Subparts 817.1—817.4 [Reserved]

Subpart 817.5—Interagency Acquisitions

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Subpart 817.70—Undefinized Contract Actions

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817.7003 Policy.
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817.7005 Contract clause.

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

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subparts 817.1—817.4 [Reserved]

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.

[84 FR 29393, July 24, 2019]

Subpart 817.70—Undefinitized Contract Actions

SOURCE: 84 FR 29393, June 24, 2019, unless otherwise noted.

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

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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 docu-

mented 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.