

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 813.5—Purchase Orders

Sec.

813.505-2 Agency forms in lieu of Optional Forms 347 and 348.

813.506-70 Oral purchase orders.

813.507 Clauses.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 813.5—Purchase Orders

813.505-2 Agency forms in lieu of Optional Forms 347 and 348.

(a) VA Form 90-2138, Order for Supplies or Services, and VA Form 90-2139, Order for Supplies or Services (Continuation), provide in one interleaved set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of and in the same manner as Optional Form 347, Order for Supplies or Services and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(b) The following order forms are for use when ordering the indicated medical, dental and ancillary services 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 Services.

(c) In authorizing patient travel as set forth in VA Manual MP-1, Part II, Chapter 3, VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as provided by that manual.

(d) Standard Form 182, Request, Authorization, Agreement, and Certification of Training, will be utilized for the procurement of training in the manner prescribed in 870.104.

(e) VA Form 10-2421, Prosthetics Authorization and Invoice, will be used as prescribed in 801.670-15 for indicated services not in excess of \$300.

[49 FR 12599, Mar. 29, 1984]

813.506-70 Oral purchase orders.

Oral purchase orders, when considered advantageous to the Department of Veterans Affairs, may be used for transactions not in excess of \$2,500. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against FSS Contracts. The transaction will be assigned a purchase order number and receipt documentation will be obtained on the copies of the purchase request utilized as a property voucher and receiving report. Documentation as to competition will be in accordance with FAR 13.106c.

[52 FR 28560, July 31, 1987]

813.507 Clauses.

When using VA Form 90-2138 for maintenance contracts involving services performed on Government property and which have the potential for property damage and liability claims, the Contractor's Responsibilities clause found in 852.237-70 will be attached. Applicable maintenance contracts include but are not limited to window washing, pest control and elevator maintenance.

[49 FR 12599, Mar. 29, 1984]

PART 814—SEALED BIDDING

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AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12599, Mar. 29, 1984, unless otherwise noted.

Subpart 814.1—Use of Sealed Bidding

814.103 Policy.

814.103-1 General.

Contracts in excess of the small purchase limitation or in excess of \$1,000 for contracts made for repairs to property acquired by the Department of Veterans Affairs under chapter 37, title 38, United States Code, will be made by sealed bidding when all of the elements

necessary for sealed bidding as prescribed in FAR 6.401(a) are present.

[51 FR 23068, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989]

814.104 Types of contracts.

814.104-70 Fixed-price contracts with escalation.

When contracts of this nature are authorized pursuant to 816.102(b), contracting officers will be guided by the provisions of FAR 16.203.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.

(a) Invitations for bids for supplies, equipment and services will be serially numbered at the time of issue. The number will consist of the station or marketing division number, the serial number of the invitation, and the fiscal year in which issued, e.g., 101-24-84. A series beginning with the number 1 will be started each fiscal year. Invitations for bids for supplies, equipment and services which are issued, accepted and become contracts in the same fiscal year but, because of procurement lead-time, will not be performed until the ensuing fiscal year will be numbered in the series of the year in which they are issued. However, invitations issued in one fiscal year that will result in a contract that will become effective and performed only in the ensuing fiscal year will be numbered in the ensuing fiscal year series.

(b) Invitations for construction contracts will bear the applicable IFB number and project number, if assigned.

(c) In order to preclude adverse criticism of the Department of Veterans Affairs by prospective bidders relative to the disclosure of bid prices prior to bid opening, the provision entitled "Caution to Bidders Bid-Envelopes," as set forth in 852.214-70, will be prominently placed in all invitations for bids.

(d) To realize the greatest possible price advantage for the Government, items that may be processed by a contractor to effect a reduction in cost factors such as production, inspection and delivery, may be listed for award

on both individual item and summary item bases. Items will be listed individually and, in addition, a summary price will be solicited for those items the contracting officer determines to be of a related character and normally handled by a majority of prospective bidders.

(1) When different products are to be combined for a summary price, the quantity, unit and unit price columns opposite the summary item will be crossed out, e.g.:

(Item No.) Summary bid for furnishing items _____ to _____ inclusive on an all or none basis:

Quantity	Unit	Unit Price	Summary
XX	XX	XX	\$ XX

(Bidder will enter summary amount.)

(2) When a single unit price is solicited for a single product for delivery to various destinations, or for multiple deliveries, the total quantity required will be listed opposite the summary item, e.g.:

(Item No.) Summary bid for furnishing items _____ to _____ inclusive on all or none basis:

Quantity	Unit	Unit Price	Summary
XX	XX	XX	\$ XX

(Bidder will enter unit price and summary amount.)

(3) Invitations containing a summary bid request will contain the following statement:

The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost 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.

(e) Bid invitations for supplies, equipment, or services (other than construction) must define the extent to which alternate bids will be authorized and considered. Alternates specified on construction projects will be considered for acceptance only as a part of the basic item.

(1) When an alternate item will be considered only if no bids or insufficient bids are received on the item de-

sired, the clause set forth in 852.214-71(a) will be included in the invitation.

(2) When an alternate item will be considered on an equal basis with the item specified, the clause set forth in 852.214-71(b) will be included in the invitation.

(3) In addition to the clauses referenced in paragraph (e) (1) or (2) of this section, the clause set forth in 852.214-71(c) will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

(f) When a contracting officer determines that it will be advantageous to the Government to make the award by group or groups of items, a provision for such award will be included in the invitation for bids.

(1) This may apply when:

(i) The items in the group or groups are readily available from the sources to be solicited; and

(ii) It is desirable to make a minimum number of contracts; or

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

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

(2) Solicitations for supplies and services, other than construction, will contain the provision set forth in FAR 52.214-22.

(3) Solicitations for construction contracts which solicit prices on an item and alternate item basis (when it is intended that a single aggregate award will be made for all items in the solicitation within certain fiscal limitations) will contain a statement as to the order of priority in which the alternate items will be awarded. This priority will be based on the relative importance of an item, the Department of Veterans Affairs' estimate, and the amount of funds available. Such schedules will be substantially as follows:

Item No. 1—Furnish all labor, material, equipment, etc., to paint buildings No. 1, 2, and 3, \$ _____.

Alternate items in order of priority. Furnish all labor, material, equipment, etc., to paint:

Item No. 2—Building No. 1 only \$ _____.

Item No. 3—Building No. 2 only \$ _____.

A single award will be made on Item No. 1, but in the event the offer exceeds

the funds available, a single award will be made on Item No. 2, or a combination of Item Nos. 2 and 3. Offerors should quote a price on each item listed.

[49 FR 12599, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 30044, July 18, 1989]

814.202 General rules for solicitation of bids.

814.202-4 Bid samples.

When it has been determined that samples are necessary to the proper awarding of a contract, the provision set forth in 852.214-73 will be added to the provision in FAR 52.214-20.

[49 FR 12599, Mar. 29, 1984, as amended at 52 FR 49017, Dec. 29, 1987]

814.203 Methods of soliciting bids.

814.203-1 Mailing or delivery to prospective bidders.

The contracting officer will include either a bid envelope, or Optional Form 17, Sealed Bid Label, with each invitation for bids furnished to prospective bidders.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987; 58 FR 48974, Sept. 21, 1993]

814.204 Records of invitations for bids and records of bids.

(a) A single register will be established and maintained by the issuing office on a fiscal year basis for all solicitations by invitations for bid or requests for proposal number, date of issue, date of opening, commodity or service involved and disposition, i.e., contract number or purchase order number or, when applicable, no award.

(b) Maintenance of the contract file prescribed by part 804 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FAR 14.204.

814.205 Solicitation mailing lists.

814.205-1 Establishment of lists.

From the solicitations mailing list applications received, each contracting activity will compile and keep current a Solicitations Mailing List file. The

lists will be maintained according to the commodity classification or group of items normally listed on the same invitation for bids.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987]

814.205-2 Removal of names from solicitation mailing lists.

Except as provided for in FAR 14.205-2, no Department of Veterans Affairs contracting officer, or other employee, shall remove from the solicitation mailing list the name of any prospective solicitation.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987]

814.205-5 Release of solicitation mailing lists.

When invitations for bids for supply and service contracts have been issued, contracting officers may furnish, upon request of an individual or institution having a bona fide interest in such information, a list of the prospective bidders to whom invitations for bids were submitted. The provisions of FAR 14.205-5 will be observed with respect to invitations for bids for construction contracts.

814.208 Amendment of invitation for bids (construction).

Amendments will be sent to holders of drawings and specifications by certified mail, return receipt requested. (Amendments may be made by telegram, if time does not permit mailing.)

Subpart 814.3—Submission of Bids

814.301 Responsiveness of bids.

Where the timeliness of the submission of a bid, modification or withdrawal cannot be administratively determined in accordance with FAR 14.301, the matter will be submitted by the contracting officer directly to the Comptroller General for decision. The submission will include copies of all pertinent papers. A copy of each submission will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management.

814.302 Bid submission.

A bid hand-carried by the bidder or his agent will be considered late unless delivered to the addressee designated in the bid invitation prior to the time set for opening.

[49 FR 12599, Mar. 29, 1985, as amended at 50 FR 791, Jan. 7, 1985]

814.304 Late bids, late modifications of bids, or late withdrawal of bids.**814.304-2 Notification to late bidders.**

The notification to late bidders will specify the final date by which the evidence must be received to be considered. This date must be within the time allowed by the apparent low bidder for acceptance of his bid.

814.304-4 Records.

All bids received by mail (or telegram where authorized) will be time and date stamped immediately upon receipt at VA installation mail room and in the office of the addressee designated in the invitation. This will firmly establish the time of receipt of bids, or when bids are received in the office of the addressee subsequent to the time of opening, and it will establish whether or not the delay was due to mishandling on the part of VA.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 814.4—Opening of Bids and Award of Contract

814.402 Opening of bids.

(a) The contracting officer shall serve as, or designate, a bid opening officer, and shall also designate a recorder.

(b) The form and amount of bid security and name of surety will be read aloud and recorded.

[49 FR 12599, Mar. 29, 1985, as amended at 50 FR 792, Jan. 7, 1985]

814.403 Recording of bids.

The information required for bid evaluation shall be recorded on the appropriate Abstract of Offers form (SF 1409 or SF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-

2237b, Request for Dietetic Supplies, providing that such supplemental sheets or forms are covered by one of the forms authorized above for recording bid or price data. In addition to those instructions set forth in FAR 14.403, the bid opening officer shall certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeovers, or changes in price are noted at the time of opening, a statement to that effect will also be included on, or attached to, the abstract or record of bids.

[49 FR 12599, Mar. 29, 1985, as amended at 61 FR 11586, Mar. 21, 1996]

814.404 Rejection of bids.**814.404-1 Cancellation of invitations after opening.**

(a) A copy of each invitation for bids which is canceled as provided for in FAR 14.404-1, together with the abstract showing to whom such bids were sent, will be filed in a separate folder identified by the invitation number. Invitations for bids which result in no bids being received will be handled in like manner. In each instance the abstract will be annotated to show why an award was not made. These folders will be retained for the current and two succeeding fiscal years.

(b) The authority to approve cancellation of invitations for bid after opening and the authority to approve the acquisition after cancellation as provided in FAR 14.404-1(e) is delegated to the head of the contracting activity. The contracting officer will submit a D&F prepared as prescribed in Subpart 801.7 to the head of the contracting activity for signature.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28560, July 31, 1987]

814.404-2 Rejection of individual bids.

(a) When a bid that is being considered for an award is found to be incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:

(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and

binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. Such a determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.

(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When a single bid is received in response to a solicitation, the offer shall not be rejected simply because it specifies a bid acceptance time which is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer shall be considered a compelling reason for rejection; however, the contracting officer will first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

NOTE: In those cases where more than one bid is received, an individual bid which is not in compliance with the Government's bid acceptance time shall be rejected as non-responsive since consideration of such an offer would unfairly disadvantage other bidders.

814.404-70 Questions involving the responsiveness of a bid.

Questions involving the responsiveness of a bid which cannot be resolved by the contracting officer may be submitted to the Comptroller General through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate. Pertinent documentation must accompany the submission.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996]

814.406 Mistakes in bids.

814.406-3 Other mistakes disclosed before award.

(a) In accordance with the provisions of the FAR 14.406-3(e), the authority of the Secretary to make the administra-

tive determinations set forth in FAR 14.406-3 (a), (b), (c), and (d) is hereby delegated, without power of redelegation to the Deputy Assistant Secretary for Acquisition and Materiel Management. This delegation in no way impairs the delegations contained in Comptroller General decision B-122003, dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid prior to award, after complying with the provisions of FAR 14.406-3, the contracting officer will submit the complete file to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division for an administrative determination. Based upon the evidence submitted, the Deputy Assistant Secretary for Acquisition and Materiel Management will determine the action to be taken by the contracting officer. Prior to its release to the contracting officer, this determination will be submitted to the General Counsel (025) for approval. Pending receipt of the determination, no award shall be made.

(c) Based on the evidence, when the Deputy Assistant Secretary for Acquisition and Materiel Management believes that the case should be submitted to the Comptroller General for decision, he/she will prepare the submission and forward it to the Comptroller General through the General Counsel (025). The decision of the Comptroller General will be furnished to the contracting officer by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division. A copy of each such decision will be furnished to the General Counsel (025).

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 61 FR 11586, Mar. 21, 1996]

814.406-4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid pursuant to FAR 14.406-4(a), a copy of the contract amendment or supplemental agreement together with a copy of the contracting officer's determination will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division.

814.407

(b) For mistakes in bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.406-4, will be forwarded to the General Counsel (025) through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division for legal coordination. The results of this coordination will be transmitted to the contracting officer by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division. The final determination on the alleged mistake in bid after award will be made by the contracting officer.

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division will maintain the agency records of mistakes in bids after award required by FAR 14.406-4.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989, as amended at 61 FR 11586, Mar. 21, 1996]

814.407 Award.

814.407-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (a) the specifications used in the invitation were not restrictive, (b) adequate competition was solicited, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such determination will be made in writing, and included on or attached to the abstract of bids.

814.407-71 Recommendation for award (construction).

(a) For Central Office contracts, the Chief Facilities Management Officer, Office of Facilities Management, after analyzing all bids received, will submit a memorandum to the Secretary (00) recommending award or other disposition of the project. A copy of each of the following will accompany the memorandum:

- (1) The invitation.
- (2) Each bid received.
- (3) The abstract.
- (4) Any other pertinent data.

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(b) On facility level contracts, the Chief, Engineering Service, will analyze all bids received and submit to the contracting officer a memorandum recommending award or other disposition of the project. However, the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor shall be made by the contracting officer alone.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996]

814.408 Information to bidders.

(a) Prior to award, no information as to probable acceptance or rejection of any offer shall be given to any bidder or other person outside the Department of Veterans Affairs.

(b) Except as provided in paragraphs (c) and (d) of this section, information as to performance under contract or an accepted bid is not public information and will be released to persons outside VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information as to performance under a contract to those having a legitimate interest, such as banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information will be furnished through the General Counsel (025).

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30045, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

PART 815—CONTRACTING BY NEGOTIATION

Subpart 815.5—Unsolicited Proposals

Sec.

815.504 Advance guidance.

815.506 Department procedures.

815.506-1 Receipt and initial review.

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

Subpart 815.8—Price Negotiation

815.804-70 Preproduction and start-up and other nonrecurring costs.

Department of Veterans Affairs

815.506-1

815.805-4 Technical analysis.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12604, Mar. 29, 1984, unless otherwise noted.

Subpart 815.5—Unsolicited Proposals

SOURCE: 51 FR 6005, Feb. 19, 1986, unless otherwise noted.

815.504 Advance guidance.

(a) Any inquiries from a potential offeror of an unsolicited proposal shall be referred to the appropriate VA contact point designated in 815.506(a). The contact point will determine the nature of the potential proposal and determine what technical/professional disciplines need be consulted to determine the VA need for such a proposal and the likelihood that a formal proposal would be favorably reviewed. In consultation with such technical/professional offices, the VA contact point will inform the potential proposer of any additional information required to provide advance guidance as well as the information specified in FAR 15.504.

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

815.506 Department procedures.

(a) The Chief, Acquisition and Materiel Management Service, servicing the field facility and the Director, VA Marketing Center, Hines, Illinois are designated as the VA contact points for unsolicited proposals submitted at the facility level. The Deputy Assistant Secretary for Acquisition and Materiel Management is designated as the VA contact point for all unsolicited proposals received at VA Central Office.

(b) Each unsolicited proposal received by the Department of Veterans Affairs will be submitted to the appropriate contact point.

(c) The VA contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.505. If required information is not submitted, the VA contact point will:

(1) Determine if advance guidance as specified in FAR 15.504 is necessary (2) request that the offeror provide the necessary information if it is determined that the formal evaluation prescribed in FAR 15.506-2 is appropriate; and (3) establish an estimated due date for completion of the review process.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989; 54 FR 42508, Oct. 17, 1989]

815.506-1 Receipt and initial review.

(a) When VA contact point determines that a comprehensive evaluation is to be undertaken (i.e., the proposal complies with the requirements in FAR 15.506-1(a) and is related to the mission of VA), the offeror will be contacted to ensure that all data that should be restricted in accordance with FAR 15.509 has been identified.

(b) The VA contact point will maintain a log of all unsolicited proposals which will be evaluated. The log will indicate:

(1) The date the proposal was received;

(2) The date that the unsolicited proposal has been determined to warrant a comprehensive evaluation;

(3) A description of the proposal;

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

(5) The date the reviewing offices finalize their respective evaluation; and

(6) The final disposition of the proposal.

(c) Each office which is assigned responsibility for reviewing an unsolicited proposal will be advised of the need to evaluate the proposal against the criteria set forth in FAR 15.507(a) (1) through (3), i.e., is the proposal available to the Government without restriction from another source, does it closely resemble a pending competitive acquisition, is the proposal lacking in demonstrated innovation or uniqueness? If the reviewers conclude in the affirmative as to any one of these questions, the VA contact point shall be advised and return the proposal to the proposer.

(d) With regard to an unsolicited proposal being processed at a field facility, if the reviewing offices conclude that

the unsolicited proposal should be accepted and provide the justification and certification required by FAR 15.507, the VA contact point will obtain the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (93) prior to proceeding with negotiation. In order to obtain the approval, the VA contact point will submit all necessary documentation supporting the noncompetitive negotiation including any justification and approval required by FAR Subpart 6.3 and results of any synopsis required by FAR Subpart 5.2. The Deputy Assistant Secretary for Acquisition and Materiel Management will coordinate the proposal with the cognizant VA Central Office program official(s) and furnish the VA contact point with the final decision.

(e) All copies of the unsolicited proposal will be controlled by the contact point by numbering each copy. If a reviewing office requires additional copies, the reviewing office will obtain approval of the VA contact point prior to duplication, numbering the copies as specified by the contact point. All copies will be returned to the VA contact point once review is completed.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

The Head of the Contracting Activity (as defined in 802.1) is delegated authority to permit correction of mistakes in proposals before award consistent with FAR 15.607.

[54 FR 45736, Oct. 31, 1989]

Subpart 815.8—Price Negotiation

815.804–70 Preproduction and start-up and other nonrecurring costs.

In evaluating start-up and other nonrecurring costs, the extent to which these costs are included in the proposed price and the intent to absorb or recover any such costs in any future noncompetitive procurement or other pricing action will be determined. The contracting officer will ascertain, with the assistance of the Assistant Inspec-

tor General for Policy, Planning and Resources (53), as required or considered necessary, that payment of such costs is not duplicated. For example, cost of equipment paid for by the Government through a setup or connection agreement will not be included in depreciation costs of a subsequently negotiated agreement.

[49 FR 12604, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 40063, Sept. 29, 1989]

815.805–4 Technical analysis.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into and ensuring that all legal and technical reviews are accomplished. To this end, initial and revised pricing of all negotiated prime contracts (including subcontract pricing under them) and contract modifications will be subject to technical analyses to the degree the contracting officer deems necessary (see 801.602–70 for required legal reviews). Technical analyses of the proposals will be requested by the contracting officer from the appropriate technical personnel to address, as a minimum, the items set forth in FAR Subpart 15.805–4. Contracting officers shall not begin negotiation of or award any negotiated contracts or contract modifications before receipt, analysis and consideration of documented technical evaluations for every procurement action requiring such analysis under the conditions prescribed in FAR 15.805–4. The results of such analyses will be documented in the contract file and will also be made available to the auditor performing the preaward audit required by 815.805–5.

(b) When, in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for review and comment. When deemed advisable, the Deputy Assistant Secretary for Acquisition and Materiel Management (93) will request the General Counsel to accomplish a legal review. This review is in addition to the legal review specified in 801.602–70.

PART 816—TYPES OF CONTRACTS

Subpart 816.70—Unauthorized Agreements

Subpart 816.1—Selecting Contract Types

816.7001 Letters of availability.

Sec.

816.102 Policies.

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

Subpart 816.1—Selecting Contract Types

816.102 Policies.

(a) Contracts which include an economic price adjustment provision other than those contracts awarded by the National Cemetery System for monuments or those contracts that contain the clause for service contracts (FAR 22.1006(c)) require the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (90). The request for approval shall clearly set forth the need for the provision.

(b) Any contract involving direct obligation of appropriations and which extends beyond the appropriation of the year in which the contract period begins or which is for more than one fiscal year, is to contain provisions to the effect that:

(1) It is made for the period covered by the contract, subject to the availability of appropriations in the ensuing year(s), and

(2) No service is to be performed by the contractor after September 30 of each fiscal year unless and until specifically authorized by the contracting officer or representative.

(c) Architect-engineer contracts, construction contracts, or professional engineer contracts, financed by "no year appropriations" are not subject to the requirements of paragraph (b) of this section.

[49 FR 12607, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 30045, July 18, 1989; 61 FR 20492, May 7, 1996]

(a) *Description.* A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier primarily for the purpose of obtaining a place on the supplier's production or delivery schedule for long lead time items. Such a letter typically indicates that products or services are being considered for procurement, but that the statement of intent is not to be construed as a commitment. Such letters of availability are sometimes solicited by prospective contractors, or they may be originated by Government personnel. A letter of availability is distinguished from a letter contract which is specifically authorized in FAR 16.603.

(b) *Policy.* (1) Unless specifically authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, letters of availability are not to be utilized for the following reasons:

(i) While such letters of availability may disclaim Government liability, they may induce potential contractors to initiate costly preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of availability is an authorized contracting officer of the Department, the Government may be bound by action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of availability lacks procurement authority, the prospective contractor may incur substantial expenditures which may not be recovered from the Government, but for which the prospective contractor may seek to hold the unauthorized author personally liable.

(iii) The issuance of a letter of availability may violate the "Anti-Deficiency Act" (31 U.S.C. 1341).

(2) It is recognized that potential contractors have a need to obtain procurement information at the earliest possible moment in order to make timely preparations. To this end, procurement personnel are expected to act as efficiently and expeditiously as possible on all procurement actions.

[49 FR 12607, Mar. 29, 1974, as amended at 54 FR 30044, July 18, 1989; 54 FR 40064, Sept. 29, 1989]

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—Multi-Year Contracting

Sec.
817.102 Policy.
817.102-1 Uses.

Subpart 817.2—Options

817.202 Use of options.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12608, Mar. 29, 1984, unless otherwise noted.

Subpart 817.1—Multi-Year Contracting

817.102 Policy.

817.102-1 Uses.

(a) Pursuant to Title 38, United States Code, Chapter 1, Section 114 (as amended by Pub. L. 101-237), multiyear contracting not exceeding 5 years is authorized for obtaining supplies and services when the Secretary has made the following determinations:

(1) Appropriations are available for obligation for the total payments for the fiscal year the contract is entered into plus the estimated amount of any cancellation charges.

(2) The contract is in the best interest of the Government due to the effect it would have in:

- (i) Reducing cost;
- (ii) Achieving contract administration and other efficiencies;
- (iii) Increasing quality contract performance;

(iv) Encouraging effective competition.

(3) During the contract period:

(i) There is a continuing need for the supplies or services;

(ii) There is little likelihood of substantial changes in need for the supplies and services in terms of quantity or rate of delivery; and

(iii) The specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to a prospective contractor's ability to perform in accordance with the specifications and other contract terms are not excessive;

(5) The use of a multiyear contract will not inhibit competition from small business firms;

(6) In the case of a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, there is no substantial likelihood that increased competition will occur during the term of the contract that would make the contract prices higher than would be reasonable.

(b) The authority of the Secretary to enter into multiyear contracts and to make the determinations specified in 817.102-1(a) of this section is delegated as follows:

(1) *Heads of contracting activities.* For contracts not requiring legal/technical reviews pursuant to 801.602-70 (for purposes of determining applicability of the thresholds, the total dollar amount of the contract over its full multiyear term will be used), and which do not contain a first year cancellation ceiling which exceeds 20 percent of the total dollar amount of the contract over the full multi-year term.

(2) *Assistant Secretary for Acquisition and Materiel Management.* will approve all proposed uses of multiyear contracts not authorized for approval by heads of contracting activities. For approval purposes, the head of the contracting activity will justify and document the use of a multiyear contract against each of the criteria specified in 817.102-1 (a)(1) through (a)(6) of this section. The justification will additionally delineate the cancellation ceiling and the method used for calculating that ceiling and will specify the advantages of multiyear contracts over other

alternative methods, e.g., option year contracts.

(c) Cancellation ceilings will be carefully developed in accordance with FAR 17.103-1 and VAAR 817.103-1.

[54 FR 980, Jan. 11, 1989, as amended at 57 FR 44129, Sept. 24, 1992]

Subpart 817.2—Options

817.202 Use of options.

All solicitations developed pursuant to Office of Management and Budget Circular A-76 (Revised) cost comparisons will provide for one year renewal options as prescribed in FAR Subpart 17.2. Requests to use less or more than the prescribed contract period for Circular A-76 (Revised) cost comparisons will be forwarded to the Deputy Assistant Secretary for Acquisition and Material Management (90).

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 980, Jan. 11, 1989; 57 FR 44129, Sept. 24, 1992]

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

(a) Except as provided in 817.402(b), no leader company contracts shall be initiated or consummated.

(b) The Deputy Assistant Secretary for Acquisition and Materiel Management (90) may designate a contracting officer to enter into a leader company contract when considered beneficial to the Department and the Government. When a contracting officer is designated the authority to enter into a leader company contract, the designation will be by name for a specific contract. The proposed contract with a termination and finding will be submitted for legal review in accordance with 801.602-71.

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 980, Jan. 11, 1989; 54 FR 40064, Sept. 29, 1989]