

## 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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## Department of Veterans Affairs

814.201

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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.