

**PART 807—ACQUISITION  
PLANNING**

**Subpart 807.3—Contractor Versus  
Government Performance**

Sec.

- 807.300 Scope of subpart.
- 807.304 Procedures.
- 807.304-73 Bid opening/receipt of proposals.
- 807.304-75 Bid acceptance.
- 807.304-76 Contract effective date.
- 807.304-77 Right of first refusal.

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

SOURCE: 53 FR 43210, Oct. 26, 1988, unless otherwise noted.

**Subpart 807.3—Contractor Versus  
Government Performance**

**807.300 Scope of subpart.**

This subpart prescribes basic procedures and principles to be followed in performing the contracting aspect of the OMB Circular A-76 cost comparison process.

**807.304 Procedures.**

**807.304-73 Bid opening/receipt of proposals.**

The date established for bid opening or receipt of proposals will normally be 90 days after sending the request for publication to the Commerce Business Daily (CBD) (65 days after issuing the solicitation).

**807.304-75 Bid acceptance.**

Bid acceptance shall be 90 days from bid opening/receipt of proposals in order to accommodate the time necessary to evaluate bids/offers, finalize the cost comparison and process any appeals. Contracting officers will insert "90 days" in FAR clause 52.214-15.

**807.304-76 Contract effective date.**

(a) A transition from in-house performance to contract requires a period of time from contract award to beginning of contract performance (contract effective date). This time is necessary to allow for personnel adjustments, e.g., right of first refusal process, and to allow a reasonable period for the contractor to make necessary resource reallocations. The contract effective date should be carefully considered in

conjunction with the A-76 Task Group and must be specified in the solicitation.

(b) Although outplacement planning to minimize the effect of any necessary reduction in force should be initiated in advance of bid opening/receipt of proposals as prescribed by Office of Personnel and Labor Relations, there are also employee and labor organization reduction-in-force notice requirements which must be satisfied.

(c) When bargaining unit employees will be affected, facility officials also should review and comply with any employee or labor organization notice requirements in applicable negotiated agreements.

**807.304-77 Right of first refusal.**

(a) In addition to the Right of First Refusal clause specified in FAR 52.207-3, the contracting officer will include the clause "Report of Employment Under Commercial Activities" in 852.207-70. This clause is primarily intended to verify that the contractor is meeting its obligation to provide adversely affected Federal workers the first opportunity for employment openings, for which they qualify, created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. In order to implement the clause, the contracting officer (or Contracting Officer's Technical Representative (COTR)) must first obtain a list from the servicing personnel office of Federal employees, including their Social Security numbers, who will be adversely affected as a result of the anticipated contract. The list should be requested as soon as a preliminary determination is made to contract out a function subject to A-76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

**PART 808—REQUIRED SOURCES OF  
SUPPLIES AND SERVICES**

Sec.

- 808.001 Priorities for use of Government supply sources.

## 808.001

### Subpart 808.4—Ordering From Federal Supply Schedules

808.401 General.  
808.404-1 Mandatory use.  
808.404-3 Requests for waivers.

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

SOURCE: 49 FR 12593, Mar. 29, 1984, unless otherwise noted.

#### 808.001 Priorities for use of Government supply sources.

(a) Procurement will be effected from the following sources in the descending order of priority as indicated herein:

- (1) VA excess.
- (2) Other government agencies excess.
- (3) Federal Prison Industries.
- (4) Procurement list of products available from the Committee for Purchase From People Who Are Blind or Severely Disabled.
- (5) GSA stock and other Government agency inventory.
- (6) VA decentralized contracts.
- (7) Mandatory Federal Supply Schedule contracts.
- (8) Optional use Federal Supply Schedule contracts.
- (9) Commercial concerns, educational, or nonprofit institutions, as applicable.

(b) *Public exigency.* A source lower in priority may be utilized in a public exigency as defined in FAR 6.302-2 and in Federal Property Management Regulation 41 CFR 101-25.101-5. Justification for each deviation must be included in the procurement file.

(c) *Eligible Beneficiaries.* When it is determined that a therapeutic benefit to eligible beneficiaries will result from personal selection of shoes, clothing and incidentals, acquisition from the Veterans Canteen Service or commercial sources is authorized. When dress shoes similar to Federal Prison Industries, Inc., Style No. 86-A are purchased from commercial sources, FPI clearance No. 1206 will be cited on the purchase document.

[49 FR 12593, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987; 54 FR 40063, Sept. 29, 1989; 61 FR 20492, May 7, 1996; 63 FR 69219, Dec. 16, 1998]

## 48 CFR Ch. 8 (10-1-99 Edition)

### Subpart 808.4—Ordering From Federal Supply Schedules

#### 808.401 General.

The Executive Director and Chief Operating Officer, VA National Acquisition Center, advertises, negotiates, awards the contracts, and is responsible for contract administration for FSS (Federal Supply Schedule) Groups 65 and 89. The Executive Director and Chief Operating Officer issues the Federal Supply Schedules containing the necessary information for placing delivery orders with the contractors for the above FSS Groups.

[49 FR 12593, Mar. 29, 1984, as amended at 63 FR 69219, Dec. 16, 1998]

#### 808.404-1 Mandatory use.

(a) The contracting officer shall submit a request to the Executive Director and Chief Operating Officer, VA National Acquisition Center, to negotiate a separate contract when requirements will exceed the maximum order limitation cited in the contract.

(b) Lower prices for identical items.  
(1) When an ordering agency finds an item which is identical to one listed on FSS Group 65 or 89, but available at a lower delivered price from a lower priority source, the ordering office may purchase the item. A copy of the purchase order shall be sent to the Executive Director and Chief Operating Officer, VA National Acquisition Center, at the time the order is issued.

(2) An identical item is defined as: (i) nondrug item—same manufacturer and model number, or (ii) drug item—have the same National Drug Code (NDC) number.

[49 FR 12593, Mar. 29, 1984, as amended at 51 FR 19350, May 29, 1986; 54 FR 40063, Sept. 29, 1989; 63 FR 69219, Dec. 16, 1998]

#### 808.404-3 Requests for waivers.

When an ordering office determines that an item available from FSS Group 65 or 89 will not meet its specific needs, it should submit a request for waiver to the Executive Director and Chief Operating Officer, VA National Acquisition Center. The request shall contain

## Department of Veterans Affairs

809.106-1

the information set forth in FAR 8.404-3(a)(1) through (4).

[51 FR 19350, May 29, 1986, as amended at 63 FR 69219, Dec. 16, 1998]

### PART 809—CONTRACTOR QUALIFICATIONS

#### Subpart 809.1—Responsible Prospective Contractors

Sec.

809.104-2 Special standards.

809.106-1 Conditions for preaward surveys.

#### Subpart 809.2—Qualified Products

809.206 Acquiring qualified products.

809.270 Qualified products for convenience/labor saving foods.

#### Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

809.403 Definitions.

809.404 Consolidated list of debarred, suspended, and ineligible contractors.

809.405 Effect of listing.

809.406 Debarment.

809.406-1 General.

809.406-3 Procedures.

809.406-4 Period of debarment.

809.407 Suspension.

809.407-1 General.

809.407-3 Procedures.

#### Subpart 809.5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.

809.505 General rules.

809.508-2 Contract clause.

#### Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

AUTHORITY: 38 U.S.C. 210, 40 U.S.C. 486(c) and 42 U.S.C. 2453(c).

SOURCE: 49 FR 12594, Mar. 29, 1984, unless otherwise noted.

#### Subpart 809.1—Responsible Prospective Contractors

##### 809.104-2 Special standards.

Standards applicable to subsistence will be established based on preaward surveys prescribed by 809.106-1.

##### 809.106-1 Conditions for preaward surveys.

(a) Preaward on-site evaluation will be made for contracts covering the products and services of bakeries, dairies, ice cream plants and laundry and dry cleaning activities. A committee under the direction of the contracting officer and composed of representatives of the medical service and/or using service chiefs or designees appointed by the facility director will inspect and evaluate the plant, personnel, equipment and processes of the prospective contractor. Prior to any inspection, the contracting officer will inquire whether the plant has been recently inspected and approved by another Department of Veterans Affairs facility or Federal agency. Approved inspection reports of another Department of Veterans Affairs facility will be accepted by Department of Veterans Affairs facilities and approved inspection reports of other Federal agencies may be accepted as satisfactory evidence that the facilities of the bidder meet the requirements of the Invitation for Bid, provided inspection was made not more than 6 months prior to the proposed contract period.

(b) Preaward on-site evaluation of dairy plants will not be made by the Department of Veterans Affairs when acceptable bids are received from suppliers of those dairy products designated as No. 1 in the Federal Specifications. Suppliers must have received, prior to opening of bids, a pasteurized milk rating of 90 percent or more for the type of product being supplied, on the basis of the U.S. Public Health Service milk ordinance and code. Such rating must be current (not over 2 years old), and will have been determined by certified State milk sanitation rating officer in the State of origin or by the Public Health Service and will continue at 90 percent or more during the period of the contract. Firms not so rated may only offer dairy products designated as No. 2 in the Federal Specifications. Award to such firms may be made only after completion of a preaward on-site evaluation conducted in accordance with paragraph (a) of this section.

(c) Prior to any open market purchase of fresh bakery products (such as