

Department of Veterans Affairs

817.204

817.204 Contracts.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

Subpart 817.5—Interagency Acquisitions Under the Economy Act

817.502 General.

AUTHORITY: 38 U.S.C. 8127.

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

Subpart 817.1—Multi-year Contracting

817.105 Policy.

817.105-1 Uses.

(a) Under 38 U.S.C. 114, VA contracting officers may enter into multi-year contracts for supplies and services not to exceed 5 years (unless otherwise authorized by statute), provided the Secretary or designee makes the following determinations:

(1) Appropriations are available for obligation to pay for the total payments for the fiscal year in which the contract is awarded plus the estimated amount of any cancellation charges.

(2) The contract serves the best interest of the Government by:

- (i) Reducing cost;
- (ii) Achieving contract administration and other efficiencies;
- (iii) Increasing quality contract performance; and
- (iv) Encouraging effective competition.

(3) That, during the contract period:

- (i) Demand for the supplies or services will continue;
- (ii) Substantial changes in demand for supplies and services in terms of quantity or rate of delivery are unlikely; and
- (iii) Specifications for the supplies or services will remain reasonably stable.

(4) The risk of the contractor's inability to perform under the terms and conditions of the contract is low.

(5) A multi-year contract will not inhibit competition from small businesses.

(6) For a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date,

that there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the term of the contract.

(b) The Secretary has delegated authority to make the determinations specified in 817.105-1(a) as follows:

(1) HCAs may make the above determinations and approve contracts that do not require legal/technical reviews under 801.602-70 and that do not contain a first year cancellation ceiling exceeding 20 percent of the contract value over the full multi-year term.

(2) Authority to make the above determinations and to approve all other proposed multi-year contracts is delegated to the SPE and is further delegated to the DSPE. For approval purposes, the HCA will justify and document the use of a multi-year contract against each of the criteria specified in paragraphs (a)(1) through (a)(6) of this section and forward to the DSPE for approval. The justification must explain the cancellation ceiling and the method used to calculate that ceiling. The justification also must explain the advantages of multi-year contracts over other alternative methods, e.g., option year contracts.

(c) The contracting officer must develop the cancellation ceilings in accordance with FAR 17.106-1. (38 U.S.C. 114)

Subpart 817.2—Options

817.202 Use of options.

All solicitations developed under Office of Management and Budget Circular A-76 (Revised) cost comparisons will provide for four one-year renewal options as prescribed in FAR Subpart 17.2. The contracting officer must forward requests to use less or more than the prescribed contract period for Circular A-76 (Revised) cost comparisons to the DSPE for approval.

817.204 Contracts.

(a) The contracting officer must obtain the approval of the DSPE before awarding a contract that includes options exceeding the 5-year limitation

817.402

specified in FAR 17.204(e). This requirement does not apply to contracts to be awarded by or on behalf of the VA Office of the Inspector General. The request for approval must include the following:

(1) Supporting documentation, rationale, and justifications for the use of options (see FAR 17.205) and for exceeding the 5-year limitation.

(2) Documentation that the contracting officer has considered and addressed the limitations specified in FAR 17.202(b) and (c).

(b) Solicitations that require technical review in accordance with 801.602-71 through 801.602-73 shall be submitted for review concurrently as provided therein.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

(a) Except as provided in paragraph (b) of this section, the Government shall not initiate or execute leader company contracts.

(b) The DSPE may designate a contracting officer to enter into a leader company contract for the benefit of VA and the Government. The DSPE must

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

designate a contracting officer by name for a specific contract. The named contracting officer will submit the proposed contract, with a determination and finding, for legal review in accordance with 801.602-75.

Subpart 817.5—Interagency Acquisitions Under the Economy Act

817.502 General.

(a) After December 31, 2008, any contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods and services, shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, as implemented by the VA Acquisition Regulation, in acquiring such goods or services.

(b) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 *et seq.*).

[74 FR 64631, Dec. 8, 2009]