

Date: February 8, 2018

From: Deputy Senior Procurement Executive

Subj: VA Procurement Policy Memorandum (PPM) 2018-04, Guidance and Procedures regarding use of Tiered Evaluations (Cascading) for use in solicitations set-aside in accordance with the VA Rule of Two (VAIQ #7819747)

To: Heads of Contracting Activities

1. **Purpose:** This PPM provides guidance, standardized procedures, and required solicitation provisions when employing tiered evaluations for single or multiple-award solicitations.

2. **Background:** The goal of this policy is to minimize delays in the re-solicitation process that are incurred subsequent to application of the VA Rule of Two at either the Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) priority tiers within a single synopsis solicitation. VA's contracting officers have requested guidance and procedures for use of tiered evaluations when applying the VA Rule of Two. The below process constitutes the use of a set-aside and must be identified as such within the solicitation. Market research, which shall be conducted and documented in advance of issuing the solicitation, will inform which of the three following types of tiered evaluations is being used: (1) tiered evaluations limited to SDVOSBs or VOSBs; (2) tiered evaluations including small business concerns; and (3) tiered evaluations including large business concerns. The order of priority for awarding contracts to small business concerns is established in 38 U.S.C. § 8127(i).

3. **Applicability:** This PPM applies to all competitive procurements using tiered evaluations. The use of tiered evaluations is not mandatory.

4. **Effective Date:** This PPM is effective immediately.

5. **Action Required:** Effective immediately, in accordance with applicable Veterans Affairs Acquisition Regulation (VAAR) provisions, when utilizing tiered evaluations, Heads of the Contracting Activities (HCAs), VA Contracting Officers (COs), and other VA acquisition professionals shall adhere to the policy and procedures as follows:

(a) **Tiered evaluations limited to SDVOSBs or VOSBs.** When limited to SDVOSB or VOSB concerns, the Contracting Officer shall conduct the following steps:

(1) In advance of issuing the solicitation, ensure documented market research, as required in current policy and regulation, supports the tiered evaluation.

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- (2) Synopsise the procurement in accordance with Federal Acquisition Regulation (FAR) Subpart 5.2 as a tiered evaluation for SDVOSB concerns or, in the alternative, for VOSB concerns. The Federal Business Opportunities Notice will include the words "TIERED EVALUATIONS" in the subject line.
- (3) Evaluate the offers, if any, submitted by SDVOSB concerns. If no offers were submitted by SDVOSB concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, withdraw the SDVOSB set-aside, document the basis for not making an award within this tier as prescribed in subsection (f) below, and proceed to the set-aside for VOSB concerns.
- (4) Evaluate the offers, if any, submitted by VOSB concerns. If no offers were submitted by VOSB concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, withdraw the VOSB set-aside, cancel the solicitation, document that cancellation in a memorandum for the record, and resolicit as either a small business set-aside or an unrestricted procurement.

(b) **Tiered evaluations for small business concerns.** In accordance with 38 U.S.C. § 8127(i), when including other small business categories, the Contracting Officer shall:

- (1) In advance of issuing the solicitation, ensure documented market research, as required in current policy and regulations, supports the tiered evaluation.
- (2) Synopsise the procurement in accordance with FAR Subpart 5.2 as a tiered evaluation. The Federal Business Opportunities Notice will include the words "TIERED EVALUATIONS" in the subject line.
- (3) Evaluate the offers, if any, submitted by SDVOSB concerns. If no offers were submitted by SDVOSB concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, withdraw the SDVOSB set-aside, document the basis for not making an award within this tier as prescribed in subsection (f) below, and proceed to the set-aside for VOSB concerns.
- (4) Evaluate the offers, if any, submitted by VOSB concerns. If no offers were submitted by VOSB concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, withdraw the VOSB set-aside, document the basis for not making an award within this tier prescribed in subsection (f) below, and proceed to the set-aside for other small business concerns set forth in each subsequent tier.
- (5) Evaluate the offers, if any, submitted by other small business concerns. If no offers were submitted by other small business concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, cancel the solicitation, document in a memorandum for record the basis for cancelation, and resolicit as an unrestricted procurement.

(c) **Tiered evaluations including large business concerns (which shall only be used upon issuance of a deviation from the FAR).** When including a large business tier, the Contracting Officer shall:

- (1) In advance of issuing the solicitation, ensure documented market research, as required in current policy and regulation, supports the tiered evaluation.
- (2) Synopsise the procurement in accordance with FAR Subpart 5.2 as a tiered evaluation. The Federal Business Opportunities Notice will include the words "TIERED EVALUATIONS" in the subject line.
- (3) Evaluate the offers, if any, submitted by SDVOSB concerns. If no offers were submitted by SDVOSB concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, withdraw the SDVOSB set-aside, document the basis for not making an award within this tier as prescribed in subsection (f) below, and proceed to the set-aside for VOSB concerns.
- (4) Evaluate the offers, if any, submitted by VOSB concerns. If no offers were submitted by VOSB concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, withdraw the VOSB set-aside, document the basis for not making an award within this tier as prescribed in subsection (f) below, and proceed to the set-aside for other small business concerns.
- (5) Evaluate the offers, if any, submitted by other small business concerns. If no offers were submitted by other small business concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, withdraw the set-aside for other small businesses, document the basis for not making an award as a set-aside as prescribed in subsection (f) below, and proceed to the large business tier.
- (6) Evaluate the offers, if any, submitted by large business concerns. If no offers were submitted by large business concerns, or if none of the offers would result in award at a fair and reasonable price that offers best value to the United States, cancel the solicitation, document that cancellation in a memorandum for the record, and conduct additional market research to inform a follow-on acquisition strategy.

(d) **Solicitation Notices.** A solicitation issued using Tiered Evaluations shall include the attached Solicitation Notice, as well as all required provisions/clauses for each tier of prioritized awards, including appropriate limitations on subcontracting clauses.

(e) **Evaluation at Lower Tiers Prohibited.** For multiple-award solicitations, proposals at a lower tier shall not be evaluated or considered for award unless award cannot be made at a higher (or preceding) tier. If a solicitation permits awards consisting of fewer than all CLINs, evaluation of a specific CLIN (or subset of CLINs) cannot be conducted at a lower tier unless award of that same CLIN (or subset of CLINs) cannot be made at a higher tier.

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- (f) **Award Procedures.** Even if only one proposal is received and evaluated in a tier, the Contracting Officer should make award to that offeror if the proposal meets the requirements of the solicitation and the proposed price is fair and reasonable in accordance with FAR § 19.502-2, VAAR § 819.7005, VAAR § 819.7006(c). However, if a Contracting Officer determines that award within a tier is not possible for any reason, including but not limited to lack of responsiveness to the solicitation, responsibility matters, exclusion due to suspension or debarment or unreasonable pricing, the Contracting Officer shall fully document the basis for that conclusion in the contract file, follow any required procedures, indicate that the set-aside at that tier is being withdrawn, and then consider offers received at the next set-aside tier.

In the multiple-award context, if the Contracting Officer cannot make the requisite number of contract awards because the remaining proposals are not awardable, the Contracting Officer shall document the basis for not making additional contract awards, and thereafter issue a new solicitation consistent with new or supplemental market research.

- (g) **Approving Officials.** Tiered Evaluations for supplies/products/services, including commercial items, will be approved by a contracting official at least one level above the contracting officer who prepares and issues the solicitation. When using Tiered Evaluations, the approving official will validate that supporting market research has been thoroughly documented in advance of issuing the solicitation, and ensure that both market research and an independent government estimate of the total cost associated with the procurement is date-stamped and filed in the Department's electronic Contract Management System (eCMS) or any follow-on replacement contract management system before the solicitation is issued.

6. Questions or Concerns: Please direct questions regarding this PPM to the Office of Acquisition and Logistics (003A), Procurement Policy and Warrant Management Service (003A2A), via email at VA.Procurement.Policy@va.gov or (202) 632-5288.

/s/

Thomas A. Burgess

Attachment: Solicitation Notice

ATTACHMENT

SOLICITATION NOTICE OF TIERED EVALUATIONS

This procurement is set-aside based on an order of priority as established in 38 U.S.C. 8127.

Choose one of the below Tiered Evaluation Notices (*note: before including in solicitation, delete this text and whichever two paragraphs do not apply*):

TIERED EVALUATIONS LIMITED TO SDVOSB or VOSB: This solicitation is being issued as a tiered evaluation for SDVOSB concerns, or in the alternative, as a tiered evaluation for VOSB concerns. If award cannot be made, the solicitation will be cancelled and the requirement resolicited.

TIERED EVALUATIONS INCLUDING SMALL BUSINESS CONCERNS: This solicitation is being issued as a tiered evaluation for SDVOSB concerns, or in the alternative, a tiered evaluation for VOSB concerns, or in the alternative, a set-aside for other small business concerns with HUBZone small business concerns and 8(a) participants having priority. If award cannot be made, the solicitation will be cancelled and the requirement resolicited.

TIERED EVALUATIONS INCLUDING LARGE BUSINESS CONCERNS: This solicitation is being issued as tiered evaluation with the following tiers: (1) SDVOSB concerns, (2) VOSB concerns, (3) small business concerns with HUBZone small business concerns and 8(a) participants having priority; and (4) large business concerns. If award cannot be made, the solicitation will be cancelled and the requirement resolicited.

END