

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

**PART M816—TYPES OF CONTRACTS**

**Subpart M816.1—Selecting Contract Types**

Sec.  
M816.102 Policies.

**Subpart M816.2—Fixed-Price Contracts**

M816.203 Fixed-price contracts with economic price adjustment.  
M816-203-2 Application.  
M816-203-3 Limitations.  
M816.203-70 Adjustments based on price indexes of labor or material.

**Subpart M816.4—Incentive Contracts**

M816.401 General.

**Subpart M816.5—Indefinite-Delivery Contracts**

M816.504-70 Indefinite-quantity contracts.  
M816.505 Ordering.  
M816.505-70 Maximum order amounts.

**Subpart M816.7—Agreements**

M816.703 Basic ordering agreements.  
M816.770 Consignment agreements.

**ATTACHMENTS:**

M816-A, Sample Evaluation Checklist  
M816-B, Examples of Non-Biological Implantable Devices

**APPENDIX:**

[M816-A, VA Indefinite-Delivery Indefinite-Quantity \(IDIQ\) Guide](#)

This page is intentionally left blank

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

**PART M816—TYPES OF CONTRACTS**

**Subpart M816.1—Selecting Contract Types**

**M816.102 Policies.**

(e) The contracting officer shall obtain the approval of the cognizant Head of the Contracting Activity (HCA) or designee before issuing a solicitation that includes time- and materials or labor-hour pricing provisions if the ceiling price or estimated value of the acquisition exceeds \$1,000,000.

(f) Excluded from this requirement are solicitations for Architecture/Engineering (A/E) contracts, construction contracts, or professional engineering contracts, and proposed contracts covering emergencies, such as repair of a broken water, sewer, or communication line, repair storm damage, etc. (e.g., where [FAR 6.302](#) applies).

**Subpart M816.2—Fixed-Price Contracts**

**M816.203 Fixed-price contracts with economic price adjustment.**

**M816.203-2 Application.**

(c) The contracting officer shall, when contracting by negotiation, use the Federal Acquisition Regulation clauses as prescribed in [FAR 16.203-4 \(a\)\(2\)](#), (for standard supplies), [FAR 16.203-4 \(b\)\(2\)](#) (for semi-standard supplies) and [FAR 16.203-4 \(c\)\(2\)](#) (for actual cost of labor or material). If the Economic Price Adjustments (EPA) clauses in the FAR do not satisfy the conditions stated above and are inappropriate for those prescribed circumstances, the Contracting Officer shall use one of the VA prescribed clauses at [VAAR 852.216-71](#) through [852.216-75](#).

(d) EPA clauses can be complex and difficult to draft and administer. The contracting officer shall be thoroughly familiar with the market, the costs associated with that market, the cost or price index as the basis for price adjustments, and the relationship between that cost index and the cost components of the contract. For guidance on evaluating sealed bids containing EPA clauses see [FAR 14.408-4](#).

(e) Options may be included in a solicitation, provided the contracting officer fully considers the provisions of [FAR 17.202\(b\) and \(c\)](#) and complies with the requirements of [FAR 17.205](#).

(f) The use of options where EPA clauses are utilized should not become routine or a standard operating procedure. Careful consideration is required when utilizing EPA clauses in conjunction with contracts with option years.

(g) Prior to including options in a solicitation where usage of EPA clauses may be required, contracting officers should first consider soliciting a one year contract without an EPA clause.

**M816.203-3 Limitations.**

(a) The HCA or designee, (whom shall be at least one level above the contracting officer), shall review and approve any EPA ceiling adjustment exceeding ten (10) percent. This approval could cover several contracts over a period not to exceed two years and require a review of the adjustment ceiling, when the following conditions are met:

(1) A supplier requests that the ceiling be raised.

(2) Analysis of current market conditions reveals that most supplies of similar supplies or services are affected. If the price ceiling is raised, the contracting officer must modify the contract to reflect the revised ceiling.

**M816.203-70 Adjustments based on price indexes of labor or material.**

(a) Additional guidance on the clause EPA of Contract Prices Based on a Price Index (VAAR 852.216-71):

(1) There are a number of Consumer Price Indexes (CPIs) prepared by the Department of Labor, as well as, other broad base indexes. When acquiring supplies and services the contracting officer should select the appropriate EPA index.

(2) When acquiring consumer supplies, the most appropriate index might be the Consumer Price Index for All Urban Consumers (CPI-U) 1982-84=100, Not Seasonally Adjusted (see [Bureau of Labor Statistics](#)). When acquiring general consumer services, the most appropriate index might be the CPI-U for the specific geographical location where the services are provided.

(b) Additional guidance on the clause Proportional EPA of Contract Price Based on a Price Index (VAAR 852.216-72):

(1) Proportional EPA clauses cover a broad range of potential price change categories. Their use may benefit a contractor who experiences a price increase in one component part of the contract.

(2) When the commodity does not account for 100% of the cost of performing the contracted service or producing the supplies changes in the price of that commodity, the result should be a proportional change to the total contract price or unit price.

(3) The method used to calculate price changes in this index clause differs from the method used in the CPI clause, identified in [VAAM816.203-70\(a\)](#).

(c) Additional guidance on Economic Price Adjustment—Fuel Surcharge (VAAR 852.216-75):

The fuel cost index, for the purpose of price adjustment under this clause, Economic Price Adjustment—Fuel Surcharge, (VAAR 852.216-75), shall be the “Weekly Retail On-Highway Diesel Prices Index,” which is published by the U.S. Department of Energy: U.S. Energy Information Administration.

### **Subpart M816.4—Incentive Contracts**

#### **M816.401 General.**

(h) Solicitations that include monetary incentives, regardless of dollar value, shall be issued only after the HCA or designee approves a written Determination & Findings (D&F). Approval authority of the D&F must be no lower than one level below the HCA.

(i) Contracts with incentives require periodic evaluations of the contractor’s performance throughout the life of the contract.

(j) Open and on-going communications with the contractor are essential to the successful use of contract incentives.

(k) Benefits of utilizing incentive contracts include:

(1) Allows the VA to assess performance and appropriately recognize the contractor’s accomplishments.

(2) During the evaluation process, the VA has the flexibility to consider both the contractor’s performance levels and the conditions under which these levels are achieved.

(l) Contracting officers should consider the following interrelated factors when recommending an incentive arrangement, i.e., cost, performance, delivery to facilitate the development of an incentive strategy:

(1) Estimated dollar value of the requirement;

(2) Complexity and criticality of the acquisition;

(3) Benefits expected to result from incentivized performance; and,

(4) Contracts and task or delivery orders containing an incentive requires additional administrative and management effort. Consider the availability of VA resources before employing this method.

(m) The contracting officer shall draft a D&F identifying the factors considered in arriving at a decision to use an incentive arrangement. The HCA or designee, no lower than one level below the HCA, shall sign the D&F. The contracting officer's documentation of the factors considered in the decision to use a monetary incentive and the proposed evaluation plan shall accompany the request for the D&F signed by the HCA, per [FAR 16.401\(d\)](#).

(n) If the contracting officer determines that an incentive type of contract is appropriate, an Incentive Review Board (IRB) should be appointed and an evaluation plan must be developed, as part of the acquisition planning process. The IRB means the team of individuals identified who have been designated to assist the Fee-Determining Official in making incentive fee determinations.

(1) The evaluation plan shall include the following:

- (i) Organizational structure of the requiring activity;
- (ii) Roles and responsibilities of the evaluation team/IRB;
- (iii) Roles and responsibilities of the Fee-Determining Official (FDO);
- (iv) Roles and responsibilities of the contracting officer;
- (v) Evaluation periods and respective incentive or fee allocations for each period;
- (vi) Evaluation criteria and performance criteria;
- (vii) Categories of performance being evaluated (e.g., technical, quality, cost, delivery) and their associated weights, if any;
- (viii) Evaluation process; and,
- (ix) Procedures for amending or changing the plan.

(2) The FDO shall be at least one level above the contracting officer and shall approve the evaluation plan, prior to the issuance of the solicitation.

(3) The desired or required results are realized when incentives are structured properly. The incentives should not result in tradeoffs of quality or other benefits (i.e., expedited delivery at the expense of quality).

(4) The evaluation plan, prior to the payment of an incentive, requires the contractor to provide a minimum level of satisfactory performance on the contract.

(5) The contractor shall provide self-evaluations at the end of each

---

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION MANUAL

---

evaluation period, and other pertinent information as requested by the contracting officer in accordance with the evaluation plan.

(o) At the end of each performance evaluation period, the contracting officer's representative or the performance monitor shall prepare a written assessment of the contractor's performance (see Sample Evaluation Checklist: Attachment M816-A).

(1) The IRB shall review the assessments and submit a written evaluation and recommendation to the FDO. The FDO shall make the final decision on whether an incentive is to be authorized and, if so, the amount.

(2) The contracting office shall ensure the decision is documented in the contract file.

(3) VA's written assessment shall support the evaluation of the contractor's performance.

### Subpart M816.5—Indefinite-Delivery Contracts

#### **M816.504-70 Indefinite-quantity contracts.**

The VA Indefinite-Delivery Indefinite-Quantity (IDIQ) Guide is provided as [Appendix M816-A](#) for use by the acquisition workforce.

#### **M816.505 Ordering.**

(b) *Orders under multiple-award contracts.*

(2) *Exceptions to the fair opportunity process.*

(ii)(B) *Orders exceeding the simplified acquisition threshold.* In accordance with FAR 16.505(b)(2)(ii), a written justification shall be required to waive or limit competition for task orders under MATOCs. Approval of the justification shall be obtained prior to release of a request for proposal. The written justification must address the content requirements at FAR 16.505(b)(2)(ii)(B).

(C) *Approvals.* (1) For a proposed task orders exceeding the simplified acquisition threshold, but not exceeding \$750,000, the justification shall be approved by a contracting officer one level above the contracting officer. The contracting officer shall ensure that the justification is accurate and complete to the best of their knowledge and belief.

(2) For a proposed task order over \$750,000 but not exceeding \$15,000,000, the justification shall be approved by the advocate for competition of the activity placing the order.

(3) For a proposed task order over \$15,000,000 but not exceeding \$75,000,000, the HCA shall approve the justification.

(4) For a proposed task order over \$75,000,000, the justification shall be approved by the SPE.

(b)(8) *Task-order and delivery-order ombudsman.* The task-order contract and delivery-order ombudsman for VA is the Associate Deputy Assistant Secretary (ADAS) for Procurement Policy, Systems and Oversight. The VA Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions. If any corrective action is needed after reviewing complaints from contractors, the VA Ombudsman shall provide a written determination of such action to the contracting officer. Contracting officers shall be notified of any complaints submitted to the VA Ombudsman.

**M816.505-70 Maximum order amounts.**

(a) For IDIQ construction contracts, the maximum order amount is \$50,000,000.

(b) For IDIQ facilities maintenance, repair, and construction contracts, the maximum order amount is \$500,000.

**Subpart M816.7—Agreements**

**M816.703 Basic ordering agreements.**

(a) Individual orders issued under a basic ordering agreement (BOA) are closed out individually, following the completion of the contractor's performance (see [FAR 4.804-1](#)).

(b) The office issuing the agreement shall furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities in the Federal Procurement Data System. The ordering activity shall receive this data in sufficient time to prepare its report for the action. The report shall be prepared within three (3) working days from the issuance of the order.

**M816.770 Consignment agreements.**

(a) Consignment agreements shall only be established under a contract and by a contracting officer. A consignment agreement is a delivery method for a specified period of time in which the contractor provides items for Government use and the contractor receives reimbursement only if and when the item is used by the Government. Unused items are returned to the contractor at the end of the effective period of the agreement without reimbursement or other expenses to the Government.

(b) Delivery of items by consignment may be considered in those instances where the requirement for an item will be immediate and it is not possible to predetermine which of several types or models are required. Having each type or model on hand (through a consignment) will assure instant availability to the user. See Attachment M816-B for examples of non-biological implantable devices appropriate for usage of consignment agreements.

---

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION MANUAL

---

(c) A consignment agreement will only be used when it is determined to be in the best interest of the Government by the HCA and the determination shall be made a part of the official contract file.

(d) The contracting officer shall obtain technical and legal review on items with an anticipated expenditure of \$250,000 or more per year (except for a consignment agreement established under, and provided for in, a Federal Supply Schedule contract).

(e) The contracting officer or the contracting officer's representative shall establish and maintain an accountability file showing all transactions and the total value of property on consignment at all times. As a minimum, the accountability file must reflect the following:

- (1) Date of receipt of property.
- (2) Ownership of property.
- (3) Description of property.
- (4) Quantity.
- (5) Value of property.
- (6) Agreement number.
- (7) Record of orders placed for property used during agreement period and receiving official.
- (8) Acknowledgment of receipt of unused property returned to owner.

(f) Contracting officers should consider the following when soliciting offers:

(1) Specifying the effective period of time for the consignment and that the Government reserves the right to cancel the consignment at anytime.

(2) Requiring offerors to provide pricing on items that will be sold to the Government.

(3) Specifying that the Government assumes no liability for assigned consignment items, but that the Government will be obligated only to the extent of authorized orders against the agreement.

(4) Food and Drug Administration (FDA) and other Regulatory Agencies Recall. At the time of the award of the agreement, the contractor(s) will not have any outstanding actions from the FDA or other regulatory agencies or unresolved FDA warning letters on the manufacturing processes or quality control issues involving the products covered by this solicitation. The Government will require proof from the contractor that any FDA issues

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION MANUAL

---

have been resolved. A letter to the contractor from the regulatory agency will meet this requirement.

(5) Technology refresh:

(A) All implants, instruments, and accessories offered shall be state-of-the-art technology. "State-of-the-art" is defined as the most recently designed components which are announced for marketing purposes, available, maintained and supported in accordance with requirements specified in the solicitation. Components and products with a manufacturer's planned obsolescence within the first year of the agreement are not acceptable.

(B) If upgrades of instruments, implants, or supplies become available after establishment of an agreement, the contractor will offer them as substitutes to the initial items.

(C) The contractor will provide to the contracting officer the following information:

(i) List of specific initial items which shall be updated.

(ii) Product literature for the new items and a detailed description of the differences between the initial items and the new items, and a specific analysis of the comparative advantages/disadvantages of the items involved.

(D) Agreement will be modified to acknowledge any updated items and pricing.

(g) *Inventory*. Contractor agrees to furnish and maintain an inventory of the consignment items in accordance with the terms and conditions of the agreement. Items, as well as all required instruments and all related supplies, will be placed at the Government's location at no expense to the Government. Minimum inventory levels proposed by the contractor will be reviewed and accepted by the Government prior to placement. The Government will make the final determination on inventory levels. A complete listing of models and/or part numbers will be provided to the Government with a copy to the contracting officer, or designee upon delivery of the initial inventory.

(h) *Initial inventory*. Initial consignment inventory shall be placed in the medical center within (insert number) calendar days after award of the agreement. Consignment inventory will be placed in a location designated by the Government. The Government will provide adequate space/shelving for implants, instruments, and supplies.

(i) Instrumentation Sets:

(1) To accommodate surgery scheduling, additional sets (loaner sets) may be needed and will be made available upon mutual agreement between the Government and contractor. Contractors shall be contacted at a minimum (insert number of days) prior to the anticipated date of surgery for elective cases and (insert number of hours) for urgent cases. Contractors are responsible for retrieving the loaner sets after surgery where they

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION MANUAL

---

will be cleaned but not sterilized. Instrumentation includes any accessories necessary to accomplish the implant (does not include non-implantable consumable items which are available from multiple suppliers).

(2) If an instrument from the set becomes lost or damaged due to Government negligence, the Government will then be responsible for the damaged or lost instrument.

(j) *Liability*. The Government assumes no liability for any items assigned to the Government on a consignment basis until such time as a requirement for the item exists and an order is placed against the contract/consignment agreement. An exception to contractor liability is loss or damage of any consignment item due to Government negligence.

(k) *Replacement items*. After each procedure, the Government will provide a list of items used and the contractor will provide replacements within (insert number of hours). Replacements will be shipped FOB Destination within consignee's premises. Contractor shall ship products directly to (insert appropriate address) at no additional charge. Contractor shall provide maintenance (examine sets to see if they need to be refurbish and/or sharpened) and redundancy so that there is a fail safe mechanism (back-up set) if primary set is faulty. The contractor shall re-sterilize and/or replace, at no charge, any items that are handled but not implanted.

(l) *Inventory Maintenance*. Contractor's personnel will periodically (no less than once per quarter) conduct a physical inventory of the consignment inventory with a copy of the inventory furnished to the contracting officer. Contractor will maintain, remove, or replace inventory as necessary.

(m) *Expiring Inventory*. Inventory having less than 90 days sterility/expiration date shall be removed and replaced by the contractor in coordination with the Government. A list of all products will be provided to the contracting officer. These services will be completed at no cost to the Government.

(n) *Defective Items*. Defective and worn out instruments will be replaced by the contractor at no charge to the Government, unless the Government has misused or lost the implant or instrument.

**Attachment M816-A**

**Sample Evaluation Checklist**

(a) The VA shall administer the incentive provisions of the contract in accordance with the FAR/VAAR.

(b) In addition, the VA shall specify the criteria (developed and tailored) used in the evaluation plan to evaluate the contractor's performance for each acquisition.

(c) This sample evaluation checklist provides some examples of areas that can assist in evaluating the contractor's performance.

(d) The overall objective is to document the evaluation of the contractor's performance against the evaluation plan.

1. The contractor shall satisfy a clear condition for payment, to protect the VA from paying incentives not earned by the contractor.

2. Ongoing communication with contractor personnel about performance is of considerable importance in the incentive environment, but should not lead to the direction of efforts in a manner that compromises the contractor's responsibilities under the contract.

(e) Appraisal, assessment, and measurement are characteristics of the evaluation process. A further explanation of these questions may be necessary depending on the nature and the complexity of the requirement.

1. Did the contractor perform this task with an unusual degree of competence?

2. Were the tasks or specific objectives clearly defined in declarative and unambiguous terms (i.e., reasonably certain and determinable)?

3. What was the impact of the early or late completion of this effort?

4. What was the current workload in relation to the contractor's performance of this particular event?

5. Was the contractor resourceful in their attempts to complete the task through in-house resources and capabilities?

6. Did factors beyond the contractor's control hinder or limit performance?

7. What significant relationships exist between this effort and others?

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION MANUAL

---

8. Did the contractor receive an adequate description of the facilities and a clear understanding of their relationship to the event?
  
9. How important was the time frame involved?
  
10. Did the contractor perform the effort on its own initiative or as a result of a specific technical direction?
  
11. Has the program office clearly distinguished the contractor's performance in terms of ingenuity, creativity, and motivation?
  
12. Has the program office clearly expressed the impact of the event?
  
13. Has the program office clearly assessed the contractor's performance in regard to all tasks and specific objectives?
  
14. Did the contractor have a minimum of a satisfactory performance rating on all of the other tasks under the contract, not directly related to the incentive fee?

Attachment M816-B

**Examples of Non-Biological Implantable Devices**

Examples of non-biological implantable devices include, but are not limited to:

1. Anchors Pins;
2. Any instrument set (including loaners) that may contain any potential non- biological implantable device(s);
3. Bolts;
4. Breast implants;
5. Cranial implants;
6. Heart valves;
7. Internal pacemakers or Implantable Cardiac Defibrillator (ICD);
8. Joints (such as knees, hips, and shoulders);
9. Marlex mesh;
10. Mersilene mesh;
11. Nails;
12. Nuts;
13. Penile implants;
14. Plates;
15. Rods;
16. Screws;
17. Stents;
18. Vascular grafts; and
19. Washers