

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 815—CONTRACTING BY NEGOTIATION

(Revised 10/4/2019)

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Subpart 815.4—[Reserved.]

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AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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[Deviation per [Class Deviation](#) to VAAR 815.101-370 and 819.7010, Tiered Set-Aside Evaluation, dated July 28, 2023, to move the coverage at 819.7010, Tiered set-aside Evaluation, to 815.101-370, Tiered set-aside evaluation. This deviation expires when incorporated into the VAAR or is otherwise rescinded.

SUBPART 815.1 – Source Selection Processes and Techniques (DEVIATION)

815.101 Best value continuum. (DEVIATION)

815.101-3 Tiered evaluation of small business offers.(DEVIATION)

815.101-370 Tiered set-aside evaluation. (DEVIATION)

(a) Pursuant to the authority of 38 U.S.C. 8127 and under limited circumstances as set forth in this section, contracting officers may consider using a tiered set-aside evaluation approach to minimize delays in the re-solicitation process.

(b) Tiered evaluation of offers is a procedure that may be used in competitive acquisitions when the VA Rule of Two determination indicates a set-aside is required in accordance with VAAR 802.101. Tiered evaluations can minimize delays associated with cancelation and resolicitation in the event that offers received by SDVOSB and VOSB are not acceptable. The contracting officer—

(1) Solicits and receives offers from targeted tiers of small business groups, with SDVOSB as the first tier and VOSB as the second tier;

(2) Establishes a tiered order of priority for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

(c) Market research, which shall be conducted and documented in advance of issuing the solicitation, will inform which of the following types of tiers will be included in the solicitation—

(1) Tiered evaluations limited to certified SDVOSBs and VOSBs;

(2) Tiered evaluations including all other small business concerns; or

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(3) Tiered evaluations including other than small business concerns.

(d) The tiered order of priority shall be consistent with [VAAR 819.7005](#). Consideration shall be given to HUBZone, 8(a), and women-owned small business concerns before evaluating offers from other small business concerns in accordance with [VAAR 819.7005\(b\)\(4\)](#).]

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815.304-70 Evaluation factor commitments.

Contracting officers shall—

(a) Include the clause at [852.215-70](#), Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors, in negotiated solicitations and contracts giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(b) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in making an award determination; and

(c) Use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

815.304-71 Solicitation provision and clause.

(a) The contracting officer shall insert the clause at [852.215-70](#), Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors, in competitively negotiated solicitations and contracts that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at [852.215-71](#), Evaluation Factor Commitments, in solicitations and contracts that include VAAR provision [852.215-70](#), Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors.

815.370 Only one offer.

815.370-1 Policy.

It is VA policy, if only one offer is received in response to a competitive solicitation, to—

(a) Take action to promote competition (see [815.370-2](#)); and

(b) Ensure that the price is fair and reasonable (see [815.370-3](#)) and comply with

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the statutory requirement for certified cost or pricing data (see [FAR 15.403-4](#)).

815.370-2 Promote competition.

Except as provided in [815.370-4](#), if only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer should—

(a) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see [FAR 6.502\(b\)](#) and [11.002](#)); and

(b) Consider re-soliciting, allowing an additional period of at least 30 days for receipt of proposals.

815.370-3 Fair and reasonable price.

(a) If there was “reasonable expectation that two or more offerors, competing independently, would submit priced offers” but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see [FAR 15.403-1\(c\)\(1\)\(ii\)](#)).

(b) Except as provided in section [815.370-4\(a\)](#), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with [815.370-4\(a\)\(3\)](#)), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see [FAR 15.403-1\(c\)](#) and [15.403-4](#)). In these circumstances, no further cost or pricing data is required; or

(2)(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at [FAR 15.403-4](#). For acquisitions that exceed the cost or pricing data threshold, if no exception at [FAR 15.403-1\(b\)](#) applies, the cost or pricing data shall be certified; and

(ii) Enter into negotiations with the offeror as necessary to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

815.370-4 Exceptions.

(a) The requirements at sections [815.370-2](#) do not apply to—

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(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of emergency operations, or to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; or to support response to an emergency or major disaster;

(3) Small business set-asides under [FAR subpart 19.5](#), set asides offered and accepted into the 8(a) Program under [FAR subpart 19.8](#), or set-asides under the HUBZone Program (see [FAR 19.1305\(c\)](#)), the VA Small Business Program (see VAAR 819), or the Women-Owned Small Business Program (see [FAR 19.1505\(d\)](#));

(4) Acquisitions of basic or applied research or development, as specified in [FAR 35.016\(a\)](#), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see [FAR 36.601-2](#)).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to ensure adequate time for competition is allotted or that the price is fair and reasonable.

815.370-5 Solicitation provision.

Use the provision at [852.215-72](#), Notice of Intent to Re-solicit, in competitive solicitations, including solicitations using [FAR part 12](#) procedures for the acquisition of commercial items that will be solicited for fewer than 30 days, unless an exception at [815.370-4](#) applies.

Subpart 815.4—[Reserved.]

Subpart 815.6—[Reserved.]