



# VA ACQUISITION MANUAL UPDATE

February 5, 2021

Number VAAM 2021-07

1. **Material Transmitted:** The attached pages revise the Department of Veterans Affairs Acquisition Manual (VAAM) parts M813 and M816 to change Simplified Acquisition Procedures (SAP) and approval thresholds for certain commercial items (FAR 13.500) due to an inflation adjustment of acquisition related thresholds; and part M814 to revise procedures for mistakes in bids.

2. **Summary of Changes:** This update to the VAAM provides changes to the VAAM parts as follows:

VAAM Part	Title	Change Summary
M813.101(d)	General.	The simplified procedures for certain commercial items ceiling (FAR 13.500) is increased from \$7 million to \$7.5 million. For acquisitions described at FAR 13.500(c), the ceiling is increased from \$13.5 million to \$15 million.
M813.303-5	Purchases under BPAs.	Allows HCAs to increase the ceiling for individual purchases under BPAs from \$7 million to \$7.5 million (and from \$13.5 million to \$15 million for acquisitions described in FAR 13.500(c)).

M814.407-3(g)	Other mistakes disclosed before award.	Removes the requirement for the contracting officer to refer the case to the Office of Acquisition Logistics, Risk Management and Compliance Service.
M814.407-4(d) and (f)	Mistakes after award.	Revisions to the procedures for mistakes after award.
M816.505(b)(2)(ii)(C) (1) through (4)	Ordering	Increases the approval thresholds for proposed task orders exceeding the simplified acquisition threshold to align with the adjusted for inflation ceilings.

### 3. Filing Instructions:

Remove pages:	Insert Pages:
M813-1 thru M813-8	M813-1 thru M813-8
M814-1 thru M814-10	M814-1 thru M814-10
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**Effective date:** Immediately.

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

**PART M813—SIMPLIFIED ACQUISITION PROCEDURES**

Sec.

M813.000	Scope of part.
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**SUBPART M813.1—PROCEDURES**

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M813.306	SF 44, Purchase Order—Invoice—Voucher.
M813.307-70	VA forms.
M813.307-71	VA Simplified Acquisition Summary template.

**Attachment**

[M813-A](#), Department of Veterans Affairs Simplified Acquisition Summary for Purchases over the Micro-Purchase Threshold—Template

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**PART M813—SIMPLIFIED ACQUISITION PROCEDURES**

**M813.000 Scope of part.**

This part prescribes VA policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (SAT)(see [FAR 2.101](#)).

**M813.001 Definitions.**

As used in this part—

*Prosthetics* is a broad term used to identify the total concept associated with replacing, supporting and/or complementing human anatomy impaired or destroyed as a result of trauma or disease. This term may be used to refer to orthotics, sensory aids, medical equipment, medical supplies, components, research, education and training, appliances, services, repairs, and any other related aspects of administering the total program.

*Prosthetic appliances* means all aids, devices, parts or accessories which patients require to replace, support, or substitute for impaired or missing anatomical parts of the body. The items include artificial limbs, terminal devices, stump socks, braces, hearing aids and batteries, cosmetic facial or body restorations, optical devices, manual or motorized wheelchairs, orthopedic shoes, and similar items.

**M813.003 Policy.**

**M813.003-70 Prosthetic appliances and sensory aids devices.**

(a) All contracting officers making prosthetic appliance and sensory aid purchases are required to execute contracts in accordance with all applicable statutes; procurement regulations such as the [FAR](#), [VAAR](#), [VAAM](#); and other applicable supplementary guidance and procedures developed and disseminated by their respective heads of the contracting activities (HCAs).

(b) In accordance with [FAR 1.602-1](#), only contracting officers have the authority to purchase prosthetic appliances and sensory aids within their respective warrant authority.

(c) Contracting officers shall—

(1) Comply with the clinician's prescription. The contracting officer does not have the authority to change or override a clinician's prescription, but should ensure that the prescription adequately supports the use of sole source authority under 38 U.S.C. 8123 when applicable;

(2) Use mandatory and priority sources provided in [FAR 8.002](#) and/or full and open competition procedures when the prosthetic appliance or sensory aid prescribed is generally available and interchangeable;

(3) Determine the best method to procure the prosthetic appliance or sensory aid device required by the prescription when required to use other than full and open competition, citing the FAR or VAAR appropriately. In the event 38 U.S.C. 8123 is cited, the contracting officer, prosthetic representative, and requesting clinician should discuss using this authority as appropriate; and

(4) Ensure the contract file is appropriately documented (see [FAR 4.803](#) Contents of contract files) and filed in Electronic Contracting Management System (eCMS).

### **SUBPART M813.1—PROCEDURES**

#### **M813.101 General.**

(c) Simplified Acquisition Procedures (SAP) are those procedures prescribed in [FAR part 13](#) for making purchases of supplies and services – the aggregate of which does not exceed the SAT, including purchases at or below the micro-purchase threshold. When using SAP, some procedures and guidance from [FAR part 12](#), Acquisition of Commercial Items, and/or [FAR part 15](#), Contracting by Negotiation, may apply in addition to [FAR part 13](#) procedures and guidance. Awards valued at or below the micro-purchase threshold should be structured (e.g., contract line items, delivery schedule, and invoice instructions) to minimize the generation of excessive invoices.

(d) SAP may also be used for acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$7.5 million (\$15 million for acquisitions as described in [FAR 13.500\(c\)](#)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items.

(e) VA's acquisition officials shall ensure that all procurement actions valued above the micro-purchase threshold are entered into eCMS.

### **SUBPART M813.3—SIMPLIFIED ACQUISITION METHODS**

#### **M813.301 Governmentwide commercial purchase card.**

The Governmentwide commercial purchase card program (also known as the [GSA SmartPay Program](#)) provides charge cards to agencies/departments throughout the U.S. Government. This program is intended to streamline the small purchase and the payment process, minimize paperwork, eliminate imprest fund transactions, and

generally simplify the administrative effort associated with procuring goods and services under the micro-purchase threshold.

(a) Only a contracting officer may use the Governmentwide commercial purchase card to make purchases or make payments in excess of the micro-purchase threshold. These purchases and payments shall not exceed the contracting officer's warrant authority.

(b) As required by [FAR 13.301\(b\)](#), VA's procedures for the use of the purchase card are contained in [Department of Veterans Affairs Financial Policy, Government Purchase Card for Micro-Purchases Volume XVI – Chapter 1B, Dated October 22, 2019](#).

**M813.302-2 Unpriced purchase orders.**

(b) It is VA's policy to discourage the use of unpriced purchase orders; therefore, they shall only be used when the conditions in [FAR 13.302-2\(b\)](#) exist.

**M813.303 Blanket purchase agreements (BPAs).**

**M813.303-1 General.**

(a) A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply. Other information pertaining to BPAs—

(1) BPAs are not contracts, they are agreements and the subsequent orders placed against them become contracts once there is acceptance from both parties;

(2) BPAs are established with no minimum amount required;

(3) BPAs contain the framework (clause and prices) for incorporation in future orders;

(4) BPAs may be used by ordering officers under specific limitations within their delegated authority;

(5) BPAs are appropriate when—

(i) Requirements exist for a wide variety of items within a broad class of goods, but the exact items, quantities, and delivery requirements are not known in advance;

(ii) There is a need to provide commercial sources of supply for one or more offices in a given area that do not have or need authority to purchase otherwise;

(iii) The awarding of numerous purchase orders can be avoided through the use of BPAs; or

(iv) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

(6) Contracting officers shall:

(i) Identify the Procurement Instrument Identifiers, as defined at [FAR 4.001](#) for all BPAs issued, in accordance with [FAR 4.1602\(a\)\(4\)](#); and

(ii) Report to the Federal Procurement Data System all BPAs exceeding the micro-purchase threshold in accordance with [FAR 4.606\(a\)\(ii\)\(C\)](#).

### **M813.303-5 Purchases under BPAs**

In accordance with [FAR 13.303-5\(b\)\(2\)](#), HCAs, within their respective contracting activities, may increase the limit for individual purchases under BPAs to \$7.5 million (\$15 million for acquisitions as described in [FAR 13.500\(c\)](#)). This higher threshold should only be used when acquisition planning supports the strategy, and it is documented in the contract file.

### **M813.303-6 Review procedures.**

(b) Contracting officers shall adhere to [FAR 13.303-6](#) and perform BPA reviews at least annually and update them if necessary. Contracting officers must also maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modify existing arrangements.

### **M813.305 Imprest funds and third party drafts.**

#### **M813.305-70 Imprest funds and third party drafts guidance.**

The Governmentwide commercial purchase card and/or convenience checks shall be used in lieu of imprest funds and third party drafts as the purchase card is the preferred method for making micro-purchases. Additionally, convenience checks shall only be used if a vendor does not accept the Governmentwide commercial purchase card or other electronic funds transfer means of payment. The purchase card contains internal control measures, which mitigate the risk for fraud, waste, and abuse and reduces the need for additional resources to manage multiple micro-purchase procedures.

#### **M813.306 SF 44, Purchase Order—Invoice—Voucher.**

The Governmentwide commercial purchase card and/or convenience checks shall be used in lieu of [SF 44](#), Purchase Order-Invoice-Voucher.

**M813.307-70 VA Forms.**

(a) Contracting officers may use [VA Form 10-7078, titled: Authorization and Invoice for Medical and Hospital Services](#), when ordering medical, dental, and ancillary services totaling up to \$10,000 per authorization when such services are not available under existing contracts.

(b) Contracting officers shall use [VA Form 10-2511, titled: Authority and Invoice for Travel by Ambulance or Other Hired Vehicle](#), when authorizing patient travel.

(c) Contracting officers shall use [VA Form 10-2421, titled: Prosthetic Authorization for Items or Services](#), for indicated services not in excess of the SAT.

**M813.307-71 VA Simplified Acquisition Summary template.**

Attachment [M813-A](#) is a fillable summary document that may be used for simplified acquisitions over the micro-purchase threshold. The use of this template is not mandatory.

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SUBCHAPTER C – CONTRACTING METHODS AND CONTRACT TYPES

PART M814—SEALED BIDDING

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M814.001-70 Definitions.

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M814.201-2 Part I—The Schedule.  
M814.202 General rules for solicitation of bids.  
M814.202-4 Bid samples.  
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**Subpart M814.3—Submission of Bids**

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**Subpart M814.4—Opening of Bids and Award of Contract**

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M814.404 Rejection of bids.  
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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 814—SEALED BIDDING

**M814.000 Scope of part.**

This part establishes procedures, and provides guidance and instructions when contracting for supplies, services, and construction by sealed bidding.

**M814.001-70 Definitions.**

“Line item,” as defined by [FAR 3.302](#), means an item of supply or service, specified in a solicitation, that the offeror must separately price.

**Subpart M814.2—Solicitation of Bids**

**M814.201 Preparation of invitations for bids.**

**M814.201-2 Part I—The Schedule.**

(a) When using Standard Form 33, Solicitation, Offer and Award, the contracting officer should include the following cautionary notice in the contract Schedule:

“Notice to Bidders—Use Item 13 of the [Standard Form 33](#), Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this invitation for bid[s] sets forth payment terms. Do not insert any statement in Item 13 that requires payment sooner than the time stipulated in the Prompt Payment clause. EXAMPLE: If you insert “NET 20” not offering a prompt payment discount in Item 13, the contracting officer will reject your bid as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.”

(b) When using other authorized forms (e.g., [Standard Form 1447](#), Solicitation/Contract; [Standard Form 1449](#), Solicitation/Contract/Order for Commercial Items), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

**M814.202 General rules for soliciting of bids.**

**M814.202-4 Bid samples.**

(a) *Policy.* The FAR limits use of bid samples to cases where the contracting officer cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics, but the

contracting officer may determine that there is a need to examine objective characteristics of bid samples to determine the responsiveness of a bid. The contracting officer should base the determination on past experience or other valid considerations. In the solicitation, separately list “Subjective Characteristics” and “Objective Characteristics.” The contracting officer shall explain the rationale to request bid samples in the file documentation.

**M814.202-5 Descriptive literature.**

When using brand name or equal purchase descriptions, the provision at [FAR 52.211-6\(b\)\(3\)](#), Brand Name of Equal (AUG 1999), satisfies the requirement for descriptive literature. Additional descriptive literature is unnecessary and should not be requested.

**M814.204 Records of invitations for bids and records of bids.**

(b) Maintenance of the contract file prescribed by FAR part 4 and VAAR part 804 and retention of canceled IFB files will fulfill the requirements set forth in [FAR 14.204\(b\)](#).

**M814.211-70 Release of acquisition information.**

(a) *Before award.* The contracting officer and all members of the acquisition team shall limit access to information concerning the Government cost estimate to—

(1) Government personnel whose official duties require knowledge of the estimate and who have signed a non-disclosure statement; and,

(2) Non-Government personnel with a need to know and who have signed a non-disclosure agreement (contracting officers may tailor the non-disclosure agreement for these purposes).

(b) No employee of VA may disclose information as to probable acceptance or rejection of any bid to any bidder or other person outside of VA, except as authorized by the FAR.

**M814.270 Alternative bid items—supply and services.**

(a) When an IFB for supplies or services contain alternative bid items the IFB shall contain a statement on the order of priority in which the contracting officer will award any alternative bid items, based on the relative importance of the item and the amount of funds available.

(b) A price schedule containing alternative bid items may be used when the both of

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the following apply:

(1) VA intends to make a single aggregate award for all items in the IFB within certain fiscal limitations, and

(2) The IFBs solicits prices on an item and alternate item basis.

(c) The following is an example of a price schedule that includes a base item, a SubCLIN 0001AA and alternate bid items SubCLINs 0002AA and 0002AB:

**Basis for award.** *Only one contract will be awarded as a result of this solicitation. A single award will be made on CLIN 0001 SubCLIN 0001AA, but in the event the bid exceeds funds made available for award, award will be made on Alternate bid Item CLIN 0002 SubCLIN 0002AA or 0002AB, in that order, if sufficient funds are available for award. Award of an award group will be made on an "All or None" basis.*

<b>0001</b>	<i>Custodial Services IAW PWS: _____ Dated: _____ consisting of 24 pages of ____ (Including cover)</i>	<b>Quantity</b>	<b>Unit of Issue</b>	<b>Unit Price</b>	<b>Extended Price</b>
0001AA:	<i>Award Group A Custodial Services Buildings 1, 2 and 3</i>	12	Mo.	\$ _____	\$ _____
<b>0002</b>	<i>Alternate Bid Items In order of priority.</i>				
0002AA:	<i>Award Group B Custodial Services Buildings 1 and 2</i>	12	Mo.	\$ _____	\$ _____
0002AB:	<i>Award Group C Custodial Services- Building 1</i>	12	Mo.	\$ _____	\$ _____

*(End of schedule)*

(d) Contracting officers shall not modify the resulting contract to include any alternative bid item that was not made part of the contract at the time of award.

**Subpart M814.3—Submission of Bids**

**M814.301-70 Determination—responsiveness of bids.**

Where a contracting officer cannot determine the timeliness of the submission of a bid, modification, or withdrawal, the contracting officer shall submit the matter to the HCA for a decision.

**M814.303 Modification or withdrawal of bids.**

(b) The receipt required by [FAR 14.303\(b\)](#) for withdrawal of a bid in person should read substantially the same as follows:

“I am a bona fide agent for or representative of (Bidder’s name and address). I am authorized to withdraw the bid on IFB No. scheduled for opening on (insert date), and acknowledge receipt of the unopened bid.

Print Name

Telephone No

Date

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Signature”

**M814.304 Submission, modification and withdrawal of bids.**

(a) All bids received by mail or delivered in person by the bidder (or by other means authorized by the IFB) shall be time and date stamped immediately upon receipt in the office of the addressee designated in the IFB.

**Subpart M814.4—Opening of Bids and Award of Contract**

**M814.402 Opening of bids.**

(a) The contracting officer shall serve as, or designate, a bid opening officer, and shall also designate a recorder.

(b) If a bid bond is required, the bid opening officer shall read aloud the bid bond form, the amount of bid security, and the name of the surety. The recorder shall record this information on the Abstract of Offers, [SF1409](#) or [OF1419](#) or supplemental sheet. The bid opening officer and bid recorder shall sign and date the Abstract of Offers and supplemental sheets.

(c) Preferred practices for conducting bid openings.

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- (1) To ensure that bid opening occurs at the exact time specified, the bid opening officer should verify and announce the time before opening the bids.
- (2) For the information of bidders present, the bid opening officer should provide an audible announcement approximately one minute prior to bid opening.
- (3) The bid opening officer should announce audibly the commencement of bid opening. In the announcement, the bid opening officer should identify the invitation(s) for bids scheduled for opening.
- (4) For construction contracts that provide for alternative bids or additive and deductive items, the bid opening officer should announce the amount of funds available for the award before the opening of bids.
- (5) The bid opening officer should open the bids in full view of the parties present.
- (6) When practicable, the bid opening officer should announce the following information for each bid: the bidder's name, item and unit price bid, and any other pertinent information, such as delivery and discount terms.
- (7) For bids submitted in multiple copies, one copy should remain in the bid opening room for public examination until the bid abstract is substituted. The contracting officer should use the original. For bids submitted in original only, see [FAR 14.402-1\(c\)](#). The contracting officer should retain all supplemental financial forms or other information submitted with each bid. The contracting officer shall not provide supplemental information for public examination.
- (8) The bid opening official shall forward any negotiable instrument submitted as a bid guarantee to the contracting officer for handling in accordance with part M828.101-70, Safekeeping and return of bid guarantee.
- (9) The contracting officer shall:
  - (i) Prepare a record of the opening for the contract file including the names of persons attending the bid opening and the firms or organizations they represent;
  - (ii) Verify the entries on all copies of a bid resolving any suspected mistake(s) following the procedures in [FAR 14.407](#).
  - (iii) Retain the envelopes in which bids and bid modifications are received until all awards are made. After award, the contracting officer should retain those with notations concerning abnormal receipt or opening for identification in the IFB file. The contracting officer may destroy the remainder.

**M814.403 Recording of bids.**

(a) The bid opening official shall prepare and sign a statement that any erasures, strikeovers, or changes in price were noted at the time of bid opening. The statement shall be included on, or attached to, the abstract or record of bids.

(b) In accordance with local procedures, the contracting officer shall make the abstract available for public inspection for at least 30 calendar days. The contracting officer should include late bids determined eligible for consideration on the bid abstract or, if necessary, in an amendment.

**M814.404 Rejection of bids.**

**M814.404-1 Cancellation of invitations after opening.**

(c) The authority to make the determinations in [FAR 14.404-1\(c\)](#), (e) and (f) is delegated to the HCA. For each IFB that the contracting officer cancels or for which he/she receives no bids, the contracting officer shall include in the file in eCMS:

(1) A copy of the IFB, pursuant to [FAR 14.404-1](#), together with a list showing to whom the invitation was sent, identified by the IFB number; and

(2) A statement to explain why no award was made.

**M814.404-2 Rejection of individual bids.**

(a)(1) When the contracting officer finds that a bid being considered for an award is incomplete, e.g., all pages of the IFB have not been returned by the bidder, the contracting officer shall obtain the advice of legal counsel. The contracting officer shall determine whether or not the bid as submitted is in such a form that acceptance would create a valid and binding contract. The resultant contract must require the contractor to perform in accordance with all of the terms and conditions of the invitation.

(2) When VA receives a single bid in response to an IFB with a bidding time of 30 or more calendar days, the contracting officer should not reject the bid simply because it specifies a bid acceptance time that is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate a bid is a compelling reason for rejection; however, the contracting officer shall first request that the bidder extend the acceptance date of the bid to allow for proper evaluation.

(3) In cases where VA receives more than one bid, the contracting officer shall reject as nonresponsive an individual bid that is not in compliance with the Government's bid acceptance time, since consideration of such an offer would unfairly disadvantage other bidders.

**M814.407 Mistakes in bids.**

**M814.407-3 Other mistakes disclosed before award.**

(e) The authority to make the determinations required by [FAR 14.407-3](#) under paragraphs (a), (b), (c) and (d) is delegated to the SPE and is further delegated, without power of redelegation, to the HCA.

**M814.407-4 Mistakes after award.**

(b) The approval authority to act on [FAR 14.407 -4\(b\)](#) is delegated to the HCA or designee. The designee shall be no lower than the Chief/Director of the contracting office.

(d) Each proposed determination shall be coordinated with the Office of General Counsel, through the HCA or designee, for legal coordination. The HCA or designee shall transmit the results of this coordination to the contracting officer, who will make the final determination on the alleged mistake in bid after award.

(f) The HCA or designee shall maintain the agency records of mistakes in bids after award, as required by [FAR 14.407-4](#).

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

**PART M816—TYPES OF CONTRACTS**

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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](#)

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**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.

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(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

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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.

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(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

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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

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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?

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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