

# VAAR Part 815 Contracting by Negotiation

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## **Part 815 Contracting by Negotiation**

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

### **Subpart 815.3 - Source Selection**

[Deviation per [Class Deviation](#)–815.303, Responsibilities (VAIQ 7759423), dated December 15, 2016, in order to delegate to the HCAs the authority to designate an individual other than the contracting officer as the Source Selection Authority (SSA) for a particular acquisition or group of acquisitions. This class deviation will remain in effect until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

#### **815.303 Responsibilities.**

The authority of the Secretary to appoint an individual other than the contracting officer to serve as the SSA (Source Selection Authority) for a particular acquisition or group of acquisitions is hereby delegated to the Head of the Contracting Activities (HCAs). If an individual requests someone other than the delegated contracting officer as the source selection authority for a particular acquisition or group of acquisitions, the requester shall prepare a request and justification and shall submit the request through channels to the appropriate HCA for approval.

#### **815.304 Evaluation factors and significant subfactors.**

(a) In an effort to assist SDVOSBs and VOSBs, contracting officers shall include evaluation factors providing additional consideration to such offerors in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) Additional consideration shall also be given to any offeror, regardless of size status, that proposes to subcontract with SDVOSBs or VOSBs.

#### **815.304-70 Evaluation factor commitments.**

(a) VA contracting officers shall:

(1) Include provisions in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(2) Use past performance in meeting SDVOSB subcontracting goals as a nonprice evaluation factor in selecting offers for award;

(3) 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; and

(4) Use participation in VA's Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

(b) If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, the contracting officer shall ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value.

#### **815.304-71 Solicitation provision and clause.**

(a) The contracting officer shall insert the provision at 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, in competitively negotiated solicitations 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 clause [852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors](#).

### **Subpart 815.4 - Contract Pricing**

#### **815.404 Proposal analysis.**

##### **815.404-1 Proposal analysis techniques.**

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into. Contracting officers must ensure that contracts undergo all applicable legal and technical reviews. (See [801.602-70](#).)

(b) Contracting officers determine the level of technical analyses necessary for initial and revised pricing of all negotiated prime contracts, including subcontract pricing under them, and contract modifications. Contracting officers must request technical analyses of the proposals from the appropriate technical personnel. The technical analyses must address, as a minimum, the items set forth in [FAR 15.404-1\(e\)\(2\)](#).

(c) The contracting officer must document the results of such analyses in the contract file and make the results available to the auditor performing the pre-award audit.

##### **815.404-2 Information to support proposal analysis.**

In evaluating start-up and other non-recurring costs, the contracting officer must determine the

extent to which these costs are included in the proposed price and the intent to absorb or recover the costs in any future noncompetitive procurement or other pricing action. The contracting officer must ensure, with the assistance of the Assistant Inspector General for Policy, Planning, and Resources, as required or considered necessary, that VA will not pay the costs twice. For example, the cost of equipment that the Government pays for through a setup or connection agreement must not be included in depreciation cost of a subsequently negotiated agreement.

## **Subpart 815.6 - Unsolicited Proposals**

### **815.604 Department points of contact.**

A VA employee who receives an unsolicited proposal or inquiries from a potential offeror of an unsolicited proposal must refer the proposal or inquiries to the following:

- (a) Facility level unsolicited proposals must be referred to the HCA for the field facility.
- (b) Proposals to the VA National Acquisition Center must be referred to the Executive Director and Chief Operating Officer, VA National Acquisition Center.
- (c) Proposals to VA Central Office must be referred to the Director, Acquisition Operations Service (049A3).

### **815.606 Department procedures.**

- (a) The VA contact point will do the following:
  - (1) Determine the nature of the potential proposal and which technical/professional disciplines within VA to consult to determine the need for the proposal and the likelihood that a formal proposal would earn favorable review.
  - (2) In consultation with such technical/ professional offices, the VA contact point will furnish the potential offeror the information specified in [FAR 15.604](#) and any other information that might be of assistance to the potential offeror.
  - (b) The contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.
  - (c) The contact point will review the unsolicited proposal and ensure that it is complete as prescribed in [FAR 15.605](#) . If required information is not submitted, the contact point will:
    - (1) Determine if [FAR 15.604](#) requires advance guidance;
    - (2) Determine whether a comprehensive evaluation prescribed by [FAR 15.606-2](#) is appropriate and, if so, request that the offeror provide the necessary information; and,
    - (3) Establish an estimated due date for completion of the review process.

### **815.606-1 Receipt and initial review.**

- (a) When the VA contact point determines a proposal warrants a comprehensive evaluation (i.e.,

the proposal complies with the requirements in [FAR 15.606-1\(a\)](#) and is related to VA's mission), the contact point must contact the offeror to ensure that all data that should be restricted in accordance with [FAR 15.609](#) has been identified.

(b) The contact point must maintain a log of all unsolicited proposals to be evaluated. The log must indicate the following:

(1) The date the proposal was received.

(2) The date that the unsolicited proposal was determined to warrant a comprehensive evaluation.

(3) A description of the proposal.

(4) The offices requested to evaluate the proposal and the date the offices are requested to return their evaluations.

(5) The date the reviewing offices finalize their respective evaluations.

(6) The final disposition of the proposal.

(c) The contact point must advise each office assigned responsibility for reviewing an unsolicited proposal of the need to evaluate the proposal against the criteria set forth in [FAR 15.607\(a\)\(1\) through \(4\)](#). If the reviewers determine that the proposal fails to meet any of the criteria, the contact point must be advised. The contact point must return the proposal to the offeror, citing the reasons therefore.

(d) The contact point must obtain approval of the DSPE (049A5) before the contact point, if warranted as a contracting officer, or an appropriate contracting officer begins negotiation on proposals. The contact point must provide the DSPE (049A5) all necessary documentation supporting the noncompetitive negotiation, including any justification and approval required by [FAR Subpart 6.3](#) and the results of any synopsis required by [FAR Subpart 5.2](#). The DSPE (049A5) will consult the appropriate VA Central Office program official(s) and return the final decision to the contact point.