

# VAAR Part 816 - Types of Contracts

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## **Part 816 - Types of Contracts**

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121; 41 U.S.C. 1702;

and 48 CFR 1.301-1.304.

### **Subpart 816.1 - [Reserved]**

Subpart 816.2--Fixed-Price Contracts(3/23/2018)

#### **816.203 Fixed-price contracts with economic price adjustment.**

##### **816.203-4 Contract clauses.**

(e) The contracting officer shall, when contracting by negotiation, use the following clauses.

(1) The contracting officer shall insert the clause at 852.216-71, ``Economic Price Adjustment of Contract Price(s) Based on a Price

Index," in solicitations and firm fixed price contracts, subject to FAR 16.203-4(d)(1) and when changes to a price index will be used to calculate corresponding changes to the total contract price or unit prices of the contract.

(i) Exceptions:

(A) Do not use this clause when changes to the price index will apply to only a component part of the contract price.

(B) Do not publish or include the footnotes in the solicitation, they are only included herein to provide guidance to contracting

officers.

(2) The contracting officer shall insert the clause at 852.216-72, "Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index," in solicitations and firm fixed price contracts, and subject to FAR 16.203-4(d)(1) when changes to an industry price index shall be used to calculate changes to only a portion of the contract price or the unit prices of the contract.

(i) Exceptions:

(A) The clause should not be used when a change in the index price will be applied directly and totally to the contract price or the unit prices, i.e., when the Consumer Price Index is used to calculate changes and a 5% increase in the CPI would result in a 5% increase in the total contract price of the unit prices.

(B) Do not publish or include the footnotes in the solicitation, as they are only provided for guidance to the contracting officer.

(3) The contracting officer shall insert the clause at 852.216-73, "Economic Price Adjustment-- State Nursing Home Care for Veterans," in solicitations and firm fixed price contracts subject to FAR 16.203-4(d)(1) and the following circumstance: When changes to the Medicaid rate, as authorized by the State Medicaid Agency (SMA), shall be used to calculate corresponding changes in the total contract price or the per diem prices of the agreement or contract.

(4) The contracting officer shall insert the clause at 852.216-74, "Economic Price Adjustment-- Medicaid Labor Rates," in solicitations and firm fixed price contracts when the conditions specified in FAR 16.203-4(c)(1) apply. The clause is modifiable by increasing the 10-percent maximum limit on aggregate increases specified in paragraph (c)(4) of this section, upon the approval by the Head of the Contracting Activity (HCA) or designee.

(5) The contracting officer shall insert the clause at 852.216-75, "Economic Price Adjustment-- Fuel Surcharge," in solicitations and firm fixed price contracts when contracting by negotiation is subject

to changes in the cost of fuel increases. The clause is subject to the conditions at FAR 16.203-4(d)(1).

(f) The contracting officer shall follow procedures as prescribed in FAR 16.203-4(c) and 38 CFR 51.41(b)(1) for EPA fixed price contracts based on Medicaid rates. These procedures shall be used when contracting by negotiation between the VA and the State Veteran Home

for making payments under contracts for nursing home care for Veterans.

### **Subpart 816.5 - Indefinite-Delivery Contracts (Revised 3/23/2018)**

[Deviation per [Class Deviation](#)-816.504, Indefinite-quantity contracts (VAIQ 7287642), dated October 11, 2012, to comply with the FAR requirement that the contract clauses prescribed in VAAR 816.504 supplement the FAR to satisfy the specific needs of the VA. Particularly, this deviation is to suspend clause 852.216-70, Estimated quantities. This class deviation will remain in effect until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

#### **816.505 Ordering**

(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.

## **Subpart 816.7 Agreements**

### **816.70 Reserved**

#### **816.770 Consignment Agreements.**

Consignment Agreements shall only be established under a contract and by a contracting officer. A consignment agreement is defined as a delivery method for a specified period of time in which the contractor provides an item/s for Government use and the contractor receives reimbursement only if and when the item is used by the Government. Consignment agreements are allowable and shall be considered in those instances when the requirement for an item is immediate and on-going and when it is impossible to predetermine the type or model of a particular item until the need is established, and it is determined to be in the best interest of the VA.

#### **816.7001 Letters of Availability.**

(a) Description. A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier that primarily seeks to reserve a place on the supplier's production or delivery schedule for long lead-time items. A letter of availability usually indicates products or services being considered for procurement. A supplier should not construe a letter of availability as a commitment. Prospective contractors sometimes solicit letters of availability or the letters may originate from Government personnel. A letter of availability differs from a letter contract, which is specifically authorized in [FAR 16.603](#).

(b) Policy. (1) For the following reasons, contracting officers may not use letters of availability unless the DSPE specifically authorizes them to do so:

(i) Letters of availability often cause potential contractors to initiate costly preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of availability is an authorized contracting officer of VA, the Government may be bound by the action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of availability lacks procurement authority, the prospective contractor may incur substantial expenditures that may not be recovered from the Government. In this instance, the prospective contractor may seek to hold the unauthorized author personally liable.

(iii) The issuance of a letter of availability may violate the "Anti-Deficiency Act" (31 U.S.C. 1341).

(2) Contractors need access to procurement information as soon as possible to make timely preparations. Therefore, procurement personnel should act as efficiently and expeditiously as possible on all procurement actions.