PART 806—COMPETITION REQUIREMENTS

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 U.S.C. 3304; and 48 CFR 1.301 through 1.304.

Source: 86 FR 54115, Sept. 29, 2021, unless otherwise noted.

806.004-70 Definition.

Subpart 806.1—Full and Open Competition

806.102 Use of competitive procedures.

Subpart 806.2—Full and Open Competition After Exclusion of Sources

806.203 Set-asides for small business concerns.

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806.302-5 Authorized or required by statute.

806.302-570 Noncompetitive procedures for verified Veteran-owned small businesses.

806.302-571 Authorized or required by statute—VA unique authorities.

Subpart 806.5—Advocates for Competition

806.501 Requirement.

Parent topic: SUBCHAPTER B—ACQUISITION PLANNING

806.004-70 Definition.

As used in this part—

Health-care resources has the same definition as that provided in 873.102.

Subpart 806.1—Full and Open Competition

806.102 Use of competitive procedures.

(d)(3) Awards made using General Services Administration (GSA) or Department of Veterans Affairs (VA) Federal Supply Schedules (FSS) are considered competitive when awarded in accordance with the procedures specified in FAR part 8 and this part.

Subpart 806.2—Full and Open Competition After Exclusion of Sources

806.203 Set-asides for small business concerns.

(c) Subparts 819.5 and 819.70 prescribe the policies and procedures that shall be followed with respect to set-asides for small business and Veteran-owned small business concerns.

806.270 Set-asides for verified Veteran-owned small businesses.

(a) To fulfill the statutory requirements relating to Public Law 109-461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127-8128), contracting officers shall set aside solicitations in accordance with subpart 819.70 and the VA Rule of Two for Vendor Information Pages (VIP) verified service-disabled Veteran-owned small businesses (SDVOSBs) first, then Veteran-owned small businesses (VOSBs) (see 819.7005 and 819.7006). (38 U.S.C. 8127-8128)

(b) The requirement in this section to set aside procurements for VIP verified SDVOSBs and VOSBs applies to all types of contracts, including orders placed under GSA's Federal Supply Schedules (FSS) and indefinite-delivery contracts. (38 U.S.C. 8127-8128)

Subpart 806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

806.302-570 Noncompetitive procedures for verified Veteran-owned small businesses.

(a) *Sole source awards made to a verified SDVOSB or VOSB.* Full and open competition need not be provided for when awarding a sole source contract under paragraph (b) or (c) of this section, to a verified SDVOSB or VOSB in accordance with 819.7007 or 819.7008, respectively, as authorized. Contracts awarded using the authority in this paragraph (a) shall be supported by the applicable justification and approval requirements of FAR 6.302-5(c)(2)(ii), 6.303, and 6.304.

(b) *Sole source awards below the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)). A contracting officer may award a contract under the authority in this paragraph (b) to a VIP verified SDVOSB first, then VOSB if no SDVOSBs can fulfill the need, for an amount less than the simplified acquisition threshold, using procedures other than full and open competition. (38 U.S.C. 8127)

(c) *Sole source awards above the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a VIP verified SDVOSB first, then VOSB if no SDVOSB can satisfy the need, using procedures other than full and

open competition when—

(1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed $5 million; and

(3) Contract award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127)

806.302-571 Authorized or required by statute—VA unique authorities.

(a) *Authority.*

(1) *Citation:* 41 U.S.C. 3304(a)(5). Contracting officers shall also cite the specific authorities in paragraph (b) of this section for the statutes related to the products and services procured.

(2) Full and open competition need not be provided for when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source.

(b) *Application.* The following products and services are authorized to be acquired from a specified source:

(1) *Prosthetic appliances and services.* Contracting activities may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as determined to be proper, without regard to any other provision of law. (38 U.S.C. 8123)

(2) *Commercial health-care resources, the use of medical equipment or space, or research, and acquired from an institution affiliated with the Department of Veterans Affairs.* Contracting activities may procure health care resources, including resources from medical practice groups and other approved entities associated with affiliated institutions, blood banks, organ banks, or research centers from an institution affiliated with VA in accordance with 38 U.S.C. 7302. Acquisition of resources from medical practice groups and other entities shall be approved when determined by the contracting activity to be legally associated with affiliated institutions in accordance with 38 U.S.C. 7302. The justification and approval requirements of FAR 6.303 and paragraph (c) of this section do not apply. (38 U.S.C. 8153(a)(3)(A))

(3) *Commercial health-care resources, the use of medical equipment or space, and is not to be acquired from an entity described in paragraph (b)(2) of this section.* Contracting activities may procure health care resources from a non-affiliated institution in accordance with the simplified procedures prescribed in part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(B))

(4) *Commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution described in paragraph (b)(2) of this section and to be conducted on a sole source basis.* The authority in this paragraph (b)(4) applies if not acquired from an affiliated institution in accordance with part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(C)-(D))

(c) *Written justifications and approvals.* Contracts awarded using an authority in this section, with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304.

(d) *Citation of specific authorities.* When a contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 3304(a)(5) and the following authorities that apply, in the written justifications and approvals as required by FAR 6.303 and 6.304:

(1) *Contracts for scarce medical specialist services.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7409.) Contracting officers may enter into contracts with:

(i) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing;

(ii) Clinics; and

(iii) Any other group or individual capable of furnishing such scarce medical specialist services at VA facilities, to include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel. (38 U.S.C. 7409)

(2) *Contracts or agreements to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service.* (*Citation:* 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7802(f).) Contracts or agreements may be entered into without regard to 41 U.S.C. 6101(b) through (d).

(3) *Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b).* (*Citation:* 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8109(f).) Contracts or leases may be entered into provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee.

(4) *Contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt educational, medical, or community institutions.* (*Citation:* 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8122(c).) Contracts may be entered into when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources.

(5) *Contracts or agreements with private or public agencies or persons for translator services.* (*Citation:* 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 513.)

Subpart 806.5—Advocates for Competition

806.501 Requirement.

The Associate Executive Director, Office of Procurement Policy, Systems and Oversight (AED, PPSO) is designated as the VA Advocate for Competition for the agency. The AED, PPSO may further delegate the authority in this section to appoint an alternate agency advocate for competition and shall designate procuring activity advocates for competition in accordance with FAR 6.501. A complete list of VA procuring activity advocates for competition can be found at *https://www.va.gov/oal/business/pps/competition-advocates.asp*.