PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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

Source: 87 FR 63002, Nov. 17, 2022, unless otherwise noted.

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Parent topic: SUBCHAPTER B—ACQUISITION PLANNING

808.000 Scope of part.

This part deals with prioritizing sources of supplies and services for use by the Government based on unique VA statutory programs, as well as requirements when using the General Services Administration (GSA) Federal Supply Schedules program including the GSA delegated VA Federal

Supply Schedule program.

808.001 General.

808.001-70 Definitions.

As used in this part—

Veterans Affairs (VA) Federal Supply Schedule (FSS) or "VA FSS" means FSS contracts awarded by the VA National Acquisition Center, under authority delegated by the General Services Administration (GSA) per FAR 8.402(a). VA FSS contracts include medical, dental, pharmacy and veterinary equipment and supplies in Federal Supply Classification (FSC) Group 65, instruments and laboratory equipment in FSC Group 66 and health care services in FSC Group 621.

808.002 Priorities for use of mandatory Government sources.

(a) *Priorities.* Contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources listed in paragraphs (a)

(1) and (2) of this section in descending order of priority:

(1) *Supplies.*

(i) VA inventories including the VA supply stock program (41 CFR 101-26.704) and VA excess.

(ii) Excess from other agencies (see FAR subpart 8.1).

(iii) Federal Prison Industries, Inc. (see 808.603). Prior to considering award of a contract to Federal Prison Industries, Inc., contracting officers shall apply the VA Rule of Two (see 802.101) to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127-28, by using the preferences and priorities in subpart 819.70. If an award is not made to a VIP-listed and verified service-disabled veteran-owned small business (SDVOSB)/veteran-owned small business (VOSB) as provided in subpart 819.70, FPI remains a mandatory source in accordance with FAR 8.002.

(iv) Supplies that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7). Supplies that are on the Procurement List but which do not meet the definition of a covered product in paragraph (a)(1)(iv)

(A) of this section are only required to be procured from a mandatory source in accordance with FAR 8.002 if an award is not made to a VIP-listed and verified SDVOSB/VOSB after following the procedures set forth in subpart 819.70.

(A) Definition. As used in this paragraph (a)(1)(iv), *covered product* means a product that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see FAR 8.703) and was included on the Procurement List on or before December 22, 2006; or

(2) Meets the following criteria—

(*i*) Is a replacement for a product under this paragraph (a)(1)(iv);

(*ii*) Is essentially the same and meeting the same requirement as the product being replaced; and

(*iii*) The contracting officer determines the product meets the quality standards and delivery schedule requirements of VA.

(B) Policy. Except as provided in paragraphs (a)(1)(iv)(C) and (D) of this section, contracting officers shall procure covered products that are on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7. Contracting officers shall not procure products that are on the Procurement List, but which do not meet the definition of a covered product using the procedures set forth in FAR subpart 8.7, unless award cannot be made to a VIP-listed and verified SDVOSB/VOSB pursuant to the procedures set forth in subpart 819.70.

(C) Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart 819.70. If a contract for a covered product awarded under the authority of 38 U.S.C. 8127(d)

(*1*) to a VIP-listed SDVOSB or VOSB was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with 819.7006 and 819.7007.

(D) Termination or expiration of excepted contracts. When a contract previously awarded as set forth in paragraph (a)(1)(iv)(C) of this section is terminated or expires, contracting officers shall procure such covered product through the AbilityOne Program as a priority mandatory Government source (see paragraph (a)(1)(iv)(B) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(1) Two or more SDVOSBs/VOSBs will submit offers; and

(2) Award can be made at a fair and reasonable price that offers best value to the United States.

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points.

(2) *Services.* Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7). For services that are on the Procurement List, but which do not meet the definition of a covered service in paragraph (a)(2)

(i) of this section are only required to be procured from a mandatory source in accordance with FAR 8.002 if an award is not made to a VIP-listed and verified SDVOSB/VOSB after following the procedures set forth in subpart 819.70.

(i) *Definition.* As used in this paragraph (a)(2)—

Covered service means a service that—

(*1*) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see FAR 8.703) and was included on the Procurement List on or before December 22, 2006; or

(*2*) Meets the following criteria—

(*i*) Is a replacement for a service under this paragraph (a)(2);

(*ii*) Is essentially the same and meeting the same requirement as the service being replaced; and

(*iii*) The contracting officer determines the service meets the quality standards and delivery schedule requirements of VA.

(ii) *Policy.* Except as provided in paragraphs (a)(2)(iii) and (iv) of this section, contracting officers shall procure covered services that are on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7. Contracting officers shall not procure services that are on the Procurement List, but which do not meet the definition of a covered service using the procedures set forth in FAR subpart 8.7, unless award cannot be made to a VIP-listed and verified SDVOSB/VOSB pursuant to the procedures set forth in subpart 819.70.

(iii) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart 819.70.* If a contract for a covered service awarded under the authority of 38 U.S.C. 8127(d)(1) to a VIP-listed SDVOSB or VOSB was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with 819.7006 and 819.7007.

(iv) *Termination or expiration of certain excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(2)(iii) of this section is terminated or expires, contracting officers shall procure such covered service through the AbilityOne Program as a priority mandatory Government source (see paragraph (a)(2)(ii) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(A) Two or more SDVOSBs/VOSBs will submit offers; and

(B) Award can be made at a fair and reasonable price that offers best value to the United States.

(b) *Unusual and compelling urgency.* The contracting officer may use a source other than those listed in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see FAR 6.302-2, 8.405-6, and 13.106-1 and part 806 for justification requirements).

808.004 Use of other sources.

808.004-70 Use of other priority sources.

(a) *Veterans contracting priority.* In order to fulfill the requirements of 38 U.S.C. 8127-8128 (see subpart 819.70), contracting officers shall award contracts (see FAR 2.101 for the definition of contracts), as well as Blanket Purchase Agreements (BPAs), and orders against VA and GSA Federal Supply Schedules (FSS), providing priority in the awarding of such contracts to VIP-listed SDVOSBs first, then VOSBs.

(b) *Strategic sourcing priorities and application of the VA Rule of Two.* To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (*e.g.,* prime-vendor, national contracts, VA FSS). If these strategic sourcing contracts were subject to the VA Rule of Two (see 802.101), they may be determined mandatory by the head of the contracting activity. Contracting officers shall consider these priority contract vehicles before using other existing contract vehicles.

Subpart 808.4—Federal Supply Schedules

808.402 General.

(a) GSA has delegated authority to the VA to procure medical equipment, supplies, services and pharmaceuticals under the VA Federal Supply Schedule (FSS) program. The VA FSS program includes medical supplies in Federal Supply Classification (FSC) Groups 65 and 66 and services in FSC 621 for Professional and Allied Healthcare Staffing Services and Medical Laboratory Testing and Analysis Services.

808.404 Use of Federal Supply Schedules.

808.404-70 Use of Federal Supply Schedules—the Veterans First Contracting Program.

(a) The Veterans First Contracting Program, implemented in subpart 819.70 pursuant to 38 U.S.C. 8127-8128, applies to BPAs, and orders under FAR subpart 8.4 and has precedence over other small business programs.

(b) Contracting officers, when establishing a BPA or placing an order against the FSS, shall ensure that priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70. Specifically, the contracting officer will consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. These priorities will be followed by preferences for other small businesses in accordance with 819.7005.

(c) If unable to satisfy requirements for supplies and services from the mandatory sources in 808.002 and 808.004-70, contracting officers may consider commercial sources in the open market (see FAR 8.004(b)) if an open market acquisition is most appropriate (see FAR 8.004) and a VA Rule of Two (see 802.101) determination is made (see subpart 819.70).

(d) When the servicing agency will award contracts under an interagency agreement on behalf of the VA, the contracting officer shall ensure the interagency acquisition complies with FAR subpart 17.5 and subpart 817.5 and includes terms requiring compliance with the VA Rule of Two (see 817.501).

808.405 Ordering procedures for Federal Supply Schedules.

808.405-70 Set-aside procedures for VA and GSA Federal Supply Schedules.

To satisfy VA legislative requirements, contracting officers shall use the supplemental ordering procedures of this section when establishing a BPA or placing an order for supplies or services under this subpart as follows:

(a) *When market research supports set-asides.* Pursuant to 38 U.S.C. 8127, contracting activities shall set-aside BPAs and orders for VIP-listed SDVOSBs or VOSBs when, based on research, the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by Veterans or owned and controlled by Veterans with service-connected disabilities will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States. When the VA Rule of Two (see 802.101) is met:

(1) The set-aside requirements as provided in 819.7006 and 819.7007 are mandatory.

(2) The requirements in FAR 8.405-1, 8.405-2, and 8.405-3 apply, except only quotes received from verified (*i.e.,* VIP-listed) and eligible SDVOSBs or VOSBs will be considered.

(3) The eligibility requirements of 819.7003, 819.7006, and 819.7007 apply, including the requirement for offerors to be VIP-listed at the time they submit offers/quotes as well as at the time awards are made.

(4) The contracting officer shall notify potential offerors of the unique VA verification requirements by including in the solicitation the applicable set-aside clause prescribed at 819.7011.

(b) *When market research does not support set-asides.* Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside in either FSS or the open market, the contracting activity shall give priority in the award of orders placed under this part to VIP-listed SDVOSBs/VOSBs through the use of evaluation preferences giving priority to SDVOSBs first, then to a lesser extent VOSBs, and finally to any firm that proposes to use SDVOSBs/VOSBs as subcontractors. Contracting officers must use the clause prescribed in 808.405-570(b).

(c) *SDVOSB/VOSB eligibility requirements.* The SDVOSB and VOSB eligibility requirements in 819.7003 apply, including current SDVOSB and VOSB VIP-listed status at the time of submission of offer/quote and at time of award. The offeror must also represent that it meets the small business size standard for the assigned North American Industry Classification System (NAICS) code as well as other small business requirements (including completing the certification found in 852.219-75 or 852.219-76.

808.405-570 Small business set-asides and preferences—Veterans First Contracting Program clauses.

(a) When setting aside an order pursuant to 808.405-70(a), the applicable clause prescribed in 819.7011 for SDVOSB/VOSB set-asides shall be used.

(b) When an SDVOSB/VOSB set-aside is not feasible, the ordering activity shall use the clause at 852.208-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, for task orders, delivery orders, or BPAs using evaluation factors other than price alone.

(c) The ordering activity shall insert the clause at 852.208-71, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders or BPAs, in request for quotes and resulting orders that include clause 852.208-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

808.470 Ordering Officers.

In accordance with 801.601, when authorized, ordering officers may place orders for supplies and services against agreements or task or delivery orders established by a contracting officer against Federal Supply Schedules within the ordering limits identified in the contract or agreement or the specific ordering guide when funding is available. Ordering officers shall only place orders against the order or agreement if it is awarded to a single awardee. The contracting officer that awarded the Blanket Purchase Agreements (BPA) or order will provide the contractor a list of authorized ordering officers. Any modifications to the agreement or order must be performed by a contracting officer.

Subpart 808.6—Acquisition From Federal Prison Industries, Inc.

808.603 Purchase priorities.

A waiver from Federal Prison Industries is not needed when comparable supplies and services are procured in accordance with subpart 819.70.

Subpart 808.8 [Reserved]