PART 815—CONTRACTING BY NEGOTIATION

Authority: 38 U.S.C. 8127 and 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.

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Parent topic: SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Subpart 815.3—Source Selection

815.304-70 Evaluation factor commitments.

Contracting officers shall—

(a) Include the clause at 852.215-70, Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors, in negotiated solicitations and contracts giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(b) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in making award determination; and

(c) 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.

815.304-71 Solicitation provision and clause.

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

815.370 Only one offer.

815.370-1 Policy.

It is VA policy, if only one offer is received in response to a competitive solicitation, to—

(a) Take action to promote competition (see 815.370-2); and

(b) Ensure that the price is fair and reasonable (see 815.370-3) and comply with the statutory requirement for certified cost or pricing data (see FAR 15.403-4).

815.370-2 Promote competition.

Except as provided in 815.370-4, if only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer should—

(a) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see FAR 6.502(b) and 11.002); and

(b) Consider re-soliciting, allowing an additional period of at least 30 days for receipt of proposals.

815.370-3 Fair and reasonable price.

(a) If there was “reasonable expectation that two or more offerors, competing independently, would submit priced offers” but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see FAR 15.403-1(c)(1)(ii)).

(b) Except as provided in 815.370-4(a), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with 815.370-4(a)(3)), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see FAR 15.403-1(c) and 15.403-4). In these circumstances, no further cost or pricing data is

required; or

(2)

(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at FAR 15.403-4. For acquisitions that exceed the cost or pricing data threshold, if no exception at FAR 15.403-1(b) applies, the cost or pricing data shall be certified; and

(ii) Enter into negotiations with the offeror as necessary to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

815.370-4 Exceptions.

(a) The requirements at 815.370-2 do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of emergency, humanitarian or peacekeeping operations, or to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; or to support response to an emergency or major disaster;

(3) Small business set-asides under FAR subpart 19.5, set-asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the VA Small Business Program (see VAAR subpart 819.70), or the Women-Owned Small Business Program (see FAR 19.1505(d));

(4) Acquisitions of basic or applied research or development, as specified in FAR 35.016(a), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see FAR 36.601-2).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to ensure adequate time for competition is allotted or that the price is fair and reasonable.

815.370-5 Solicitation provision.

Use the provision at 852.215-72, Notice of Intent to Re-solicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items that will be solicited for fewer than 30 days, unless an exception at 815.370-4 applies.

Subparts 815.4—815.6 [Reserved]