PART 817—SPECIAL CONTRACTING METHODS

Authority: 38 U.S.C. 8127-8128; 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

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Subparts 817.1—817.4 [Reserved]

Subpart 817.5—Interagency Acquisitions

817.501 General.

(d) Agreements pursuant to FAR subpart 17.5, including construction, shall include a requirement, that, when acquiring goods and services on behalf of the Department of Veterans Affairs, the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart 819.70.

Subpart 817.70—Undefinitized Contract Actions

Source: 84 FR 29393, June 24, 2019, unless otherwise noted.

817.7000 Scope.

This subpart prescribes policies and procedures for use of undefinitized contract actions.

817.7001 Definitions.

As used in this subpart—

(a) *Contract action* includes:

(1) Contracts and contract modifications for supplies or services.

(2) Task orders and delivery orders.

(3) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, *e.g.,* engineering change proposals and value engineering change proposals.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Definitization proposal* means a proposal containing sufficient data for the VA to do complete and meaningful analyses and audits of the—

(1) Data in the proposal; and

(2) Any other data that the contracting officer has determined VA needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts and orders under basic ordering agreements for which the final price has not been agreed upon before performance has begun.

817.7002 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart:

(1) Purchases at or below the simplified acquisition threshold.

(2) Congressionally mandated long-lead procurement contracts.

(b) However, the contracting officer shall apply the policy and procedures to the contract actions in paragraph (a) to the maximum extent practicable.

817.7003 Policy.

Undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable.

817.7004 Limitations.

817.7004-1 Authorization.

The contracting officer shall obtain approval one level above the contracting officer before—

(a) *Entering into a UCA.* The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on the VA resulting from delays in beginning performance.

(b) *Including requirements for non-urgent items and equipment in a UCA.* The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the Government.

(c) *Modifying the scope of a UCA when performance has already begun.* The request should show that the modification is consistent with good business practices and in the best interests of the Government.

817.7004-2 Price ceiling.

UCAs shall include a not-to-exceed price.

817.7004-3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a definitization proposal); or

(2) The date on which the amount of funds paid to the contractor under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a definitization proposal in accordance with the definitization schedule is a

material element of the contract. If the contractor does not submit a timely definitization proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

817.7004-4 Final price negotiation—profit.

Before the final price of a UCA is negotiated, contracting officers shall ensure the profit agreed to and documented in the contract negotiation memorandum reflects consideration of any risks incurred in performance of the work under the UCA.

817.7005 Contract clause.

(a) Use the clause at 852.217-70, Contract Action Definitization, in—

(1) All UCAs;

(2) Solicitations associated with UCAs;

(3) Orders against basic ordering agreements;

(4) Indefinite delivery task orders; and

(5) Any other type of contract providing for the use of UCAs.

(b) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(c) If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403-1, 15.403-2, or 15.403-3 for not requiring submission of certified cost or pricing data, the words “and certified cost or pricing data” may be deleted from paragraph (a) of the clause.