

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES
PART 816—TYPES OF CONTRACTS

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AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

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SUBPART 816.1 – SELECTING CONTRACT TYPES**816.102 Policies.**

(a) Contracting officers must obtain technical review of solicitations that include a clause that provides for economic price adjustment specified in FAR 16.203-4 or any locally developed clause (see FAR 16.203-4(d)(2) and 801.602-72(d)). The request for approval must include a clearly stated need for the clause.

(b) The contracting officer must obtain the approval of the Director, Acquisition Resources Service (049A5), VA Central Office, before issuing a solicitation or awarding a contract that includes time-and-material or labor-hour pricing provisions if the ceiling price or estimated value of the acquisition exceeds \$100,000. See 801.602-71 for technical review requirements. Excluded from this requirement are time-and-material or labor-hour solicitations or proposed contracts covering emergencies, such as repair of a broken water, sewer, or communication line, repair of storm damage, etc. (i.e., where FAR 6.302-2 applies).

(c) Except as provided in FAR 32.703-3, a contract that involves a direct obligation of appropriations and lasts for more than one year from the beginning of the contract period must provide that:

(1) The contract applies to the period stated in the contract, subject to availability of funds; and

(2) The contractor will not perform any service under the contract after September 30 of each fiscal year (or beyond the period of the basic contract or any authorized option if the contract crosses fiscal years as provided in FAR 32.703-3(b)) unless the contractor obtains specific authorization from the contracting officer.

(d) A/E contracts, construction contracts, or professional engineer contracts, financed by "no year" appropriations, are not subject to the requirements of paragraph (c) of this section.

SUBPART 816.5 – INDEFINITE-DELIVERY CONTRACTS**816.504 Indefinite-quantity contracts.**

(a) Except as provided in paragraphs (b), (c), and (d) of this section, when the contracting officer cannot determine definite quantities to be acquired under a solicitation and intends to issue a solicitation for estimated quantities, the contracting officer shall insert the clause at 852.216-70, Estimated quantities.

(b) The contracting officer shall insert the Alternate I clause at 852.216-70 in solicitations for bulk coal.

(c) The contracting officer shall insert the Alternate II clause at 852.216-70 in solicitations for estimated quantities of orthopedic, prosthetic, and optical supplies.

(d) The contracting officer shall insert the Alternate III clause at 852.216-70 in solicitations for monuments and headstones.

816.505 Ordering.

The task order contract and delivery order ombudsman for VA is the Associate Deputy Assistant Secretary for Acquisitions (see FAR 16.505(b)(5)). Contracting officers may obtain the name, telephone number, facsimile number, and e-mail address of the current Associate Deputy Assistant Secretary for Acquisitions by contacting: The Office of Acquisitions (049A), VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420.

SUBPART 816.70 – UNAUTHORIZED AGREEMENTS

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.

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