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[FR Doc. 03-1457 Filed 1-23-03; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 806, 812, 837, 852, and 873

RIN 2900-A171

VA Acquisition Regulation: Simplified Acquisition Procedures for Health-Care Resources

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR) to establish simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space pursuant to statute. The Veterans' Health Care Eligibility Reform Act of 1996 authorized VA to prescribe simplified procedures for the procurement of health-care resources. This rule prescribes those procedures.

EFFECTIVE DATE: February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis Foley, (202) 273-9225, Office of the General Counsel, Professional Staff Group V; or Don Kaliher, (202) 273-8819, Acquisition Resources Service, Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: On June 7, 2001, we published in the **Federal Register** (66 FR 30659) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation (VAAR), pursuant to 38 U.S.C. 8151-8153, to establish simplified procedures for the competitive acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

Comments were solicited concerning the proposal for 60 days, ending August 6, 2001. We did not receive any comments.

The information presented in the proposed rule document still provides a basis for this final rule. In addition, the proposed rule requested Paperwork Reduction Act (PRA) comments concerning the collection of information regarding clauses for use in both commercial and non-commercial item

and service solicitations and contracts. No comments were received by VA or the Office of Management and Budget (OMB).

Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for a non-substantive change to reflect, at 48 CFR 801.301-70(c), the PRA clearance numbers assigned by OMB to clauses 852.207-70 and 852.237-7.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Analysis

This rule may have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. An Initial Regulatory Flexibility Analysis was published in the **Federal Register** on June 7, 2001, (66 FR 30672) as part of the proposed rule. No comments were received. As required by the RFA (5 U.S.C. 601 *et. seq.*), the following Final Regulatory Flexibility Analysis is set forth.

a. A succinct statement of the need for and the objectives of the rule.

Response: The rule amends the VAAR to implement the provisions of 38 U.S.C. 8151-8153, which authorize the Secretary of Veterans Affairs, in consultation with the Administrator of Federal Procurement Policy, to prescribe simplified procedures for the procurement of health-care resources. We believe the simplified procedures will allow VA to become more efficient in procuring health-care resources.

The objective of the rule is to allow VA to become more efficient in procuring health-care resources and thereby strengthen the medical programs of the Department and improve the quality of health care provided to veterans.

b. A summary of the significant issues raised by public comments in response to the initial regulatory flexibility

analysis, a summary of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Response: No public comments were received and no changes were made to the proposed rule.

c. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

Response: The small entities that could be affected by the rule are any small entities that provide commercial services or the use of medical equipment or space to the health-care industry.

We do not have precise figures on the number of small entities that could potentially be affected by the rule. Any small entity that provides, or wishes to provide, commercial services or the use of medical equipment or space to VA health-care facilities could potentially be affected.

However, the rule will not apply to the majority of VA acquisitions. The rule applies only to competitive acquisitions of commercial services or the use of medical equipment or space conducted by the Veterans Health Administration (VHA) and which specifically reference the authority of 38 U.S.C. 8153. The rule does not apply to acquisitions of supplies or equipment made on behalf of VHA or to acquisitions made on behalf of the Veterans Benefits Administration (VBA) or the National Cemetery Administration (NCA). Except for section 873.108(b), the rule does not apply to VHA sole source acquisitions from affiliated institutions or entities associated with affiliated institutions. The authority for VHA to contract on a sole source basis with an institution affiliated with VA or with a medical practice group or other approved entity associated with an affiliate, addressed in the rule at 873.108(b), is authorized by law and is not dependent upon this rulemaking. The rule does not apply to acquisitions of services for which other specific authorities apply, such as acquisitions of nursing home care services, which are acquired under the authority of 38 U.S.C. 1720, or to acquisitions of non-commercial services, such as construction.

We have no relevant data regarding commercial service acquisitions below \$25,000. However, we expect little application of the rule to acquisitions below \$25,000. Existing FAR provisions for such acquisitions are already very simple and the provisions of the rule likely would not provide a significant benefit to the Government to warrant

use of this authority for such low dollar value acquisitions.

In Fiscal Year (FY) 1998, VHA reported approximately 6,000 individual service transactions valued in excess of \$25,000 to the Federal Procurement Data System. This 6,000 figure excludes classification codes C, architect/engineer; E, purchase of structures; Q402, nursing home; Y, construction; and Z, maintenance of real property, all of which we believe are not covered by the rule. Of those 6,000 transactions, approximately 3,000 were awarded to small businesses and approximately 900 were awarded to non-profit businesses. Similar figures were reported for FY 1999. Of the total acquisition dollars associated with these 6,000 annual awards, we estimate that in FY 1998, approximately 42 percent, and in FY 1999, approximately 44 percent, were awarded to small businesses.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement, and the type of professional skills necessary for preparation of the report or record.

Response: The reporting or recordkeeping requirements of the clauses at section 852.207-70, Report of employment under commercial activities, and section 852.237-7, Indemnification and Medical Liability Insurance, were discussed in the Paperwork Reduction Act (PRA) portion of the proposed rule, published in the **Federal Register** on June 7, 2001 (66 FR 30671). The clause at section 852.207-70 requires the contractor, on contracts where current VA employees are displaced, to report on employment openings and on efforts to hire displaced VA employees. The clause at section 852.237-7 requires contractors, on contracts for nonpersonal health-care services, to provide evidence of liability insurance. The final rule imposes no new reporting or recordkeeping requirements not already required by the VAAR. Currently, the VAAR requires that these clauses be included in all applicable solicitations and contracts, *i.e.*, contracts where VA employees might be displaced (852.207-70) or contracts for nonpersonal health-care services (852.237-7). The rule provides clarification that these clauses would continue to be required in all applicable service contracts, including commercial service contracts issued under the authority of 38 U.S.C. 8153. Small entities currently holding contracts where VA employees might be displaced or contracts for nonpersonal

health-care services are required to provide employment reports or evidence of liability insurance, as applicable. Under the rule, there is no change to those requirements and no new added requirements. There are no additional small entities affected by the rule that would not already be affected by the current regulations. No professional skills are necessary to comply with these reporting and recordkeeping requirements.

e. A description of the steps the agency has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and the reasons for rejecting each of the other significant alternatives.

Response: We believe that, with two exceptions (1. and 2. below), the provisions of the rule, where those provisions differ from the FAR, are small business/large business neutral, *i.e.*, they would have neither a positive nor a negative impact on small business or large business. The two exceptions concern the authority to waive FAR small business set-aside requirements and the provisions concerning the transmission of solicitation notices to the Governmentwide point of entry (GPE).

1. The rule at section 873.107 contains a provision allowing the head of the contracting activity (HCA) to waive the requirement to set aside an acquisition for small business. The HCA must determine that the waiver is in the best interest of the Government. The availability of this authority may result in acquisitions where small businesses have to compete against large businesses rather than compete only against other small businesses.

The alternatives to this waiver authority that were considered in order to limit the impact of the rule on small businesses included having no waiver authority, limiting the application of that authority to specific types of acquisitions, such as acquisitions for medical services, or limiting the authority to acquisitions in excess of a certain dollar threshold. For the reasons stated below, we determined to place no limits, other than those contained in the rule, on the application of this waiver authority.

As noted above, the rule would only apply to a limited number of acquisitions. We believe the waiver authority would be used in very few of those limited number of acquisitions, primarily in acquisitions where it is critical to broaden the pool of sources

considered in order to obtain the highest quality patient care services at reasonable prices. In such cases, it would not be in VA's best interest to exclude non-profit teaching hospitals and universities and other similar high quality large businesses from the competition. Small businesses could still compete and would have an equal opportunity to be considered for award. The availability of this authority, while most critical to direct patient care service acquisitions, could be a necessary element of other commercial service acquisitions that are critical to the optimum functioning of the medical centers.

In some limited circumstances, the waiver authority of section 873.107 may have a beneficial impact on small entities. VA has authority to contract on a sole source basis with medical schools, hospitals, and clinics affiliated with VA. Medical schools, hospitals, and clinics are almost exclusively large or nonprofit businesses. Under the FAR, if a VA medical center wishes to seek competition for services currently being acquired from its affiliate, the affiliate would be excluded from bidding on that competition if there were two or more small businesses capable of providing the services. It is in VA's best interest to obtain state-of-the-art medical services from the highest qualified sources at reasonable prices. Without the waiver authority, VA medical centers would most likely continue to award sole source contracts to their affiliates rather than seek competition, since, under a competitive solicitation, those affiliates might be excluded as potential sources for those services due to the current FAR requirement to set acquisitions aside for small business. While VA medical centers might be willing to consider other sources, they generally are unwilling to exclude their affiliates as potential sources. However, under the waiver procedures of the rule, VA medical centers would no longer be required to set an acquisition aside for small business and exclude their affiliates from consideration. Accordingly, VA medical centers may be more likely to issue competitive solicitations for highly technical medical services rather than acquire such services on a sole source basis from their affiliates. Rather than reducing small business access to VA acquisitions of medical services, the waiver process could result in increased access to such acquisitions by small businesses. In this regard, VA intends to monitor, through the Federal Procurement Data System, the use of the procedures provided in this rule and the

impact on VA's socioeconomic programs.

2. The FAR requires that all proposed acquisitions, including sole source acquisitions, exceeding \$25,000, with certain exceptions, be transmitted to the GPE. The rule differs from the FAR in several ways. First, it provides, at section 873.108(a), that acquisitions exceeding the simplified acquisition threshold (SAT) (currently \$100,000) would not have to be announced in the GPE. Rather, the rule requires that contracting officers publicly announce such proposed acquisitions utilizing a medium designed to obtain competition to the maximum extent practicable. The rule lists a number of examples for where the announcements may be announced, including the GPE. The intent of the rule is to maximize the dissemination of information regarding such proposed acquisitions, not to limit dissemination. Most acquisitions for services are of interest only to the local community. In many cases, it is impossible for a firm located some distance from a VA medical center to provide coronary bypass operations, X-ray or oncology services, or other services necessary to operate the medical center, on a timely basis. We believe that both small and large local service providers of health-care resources (e.g., hospitals and clinics) are more likely to be made aware of acquisition opportunities if the acquisitions are announced in mediums that are seen and read by the local service community or if they are contacted directly. Accordingly, we believe this provision of the rule will tend to increase competition rather than decrease competition and will provide small businesses with increased opportunities.

Second, the rule at section 873.108(b) provides that sole source acquisitions from institutions affiliated with VA and from medical practice groups and other entities associated with an affiliated institution are exempt from the requirement for synopsis in the GPE. 38 U.S.C. 8153 specifically authorizes VA to acquire health-care resources on a sole source basis from institutions affiliated with VA and from medical practice groups and other entities associated with an affiliated institution. Exempting such acquisitions from synopsis in the GPE is consistent with statute, which imposes no requirement for VA to solicit and consider any other offers. Thus, this provision of the rule will have no impact on competition, since competition is not required under any circumstances.

Section 873.108(b) also exempts from publication sole source acquisitions of

hospital care, medical services, and other health-care services from any source, whether or not the source is affiliated with VA. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved. Acquisitions for hospital care, medical services, or other health-care services would usually be conducted on a sole source basis only if there was an emergency need for such services. Otherwise, the acquisitions would likely be conducted competitively, if not acquired from an affiliate. The FAR provides an exemption from synopsis in the GPE under conditions of unusual or compelling urgency and where the Government would be seriously injured by any delay due to the publication requirement. We expect that most of the sole source acquisitions of hospital care, medical services, and other health-care services covered by this provision will be conducted under conditions of unusual or compelling urgency. Such acquisitions would include emergency hospital care for a veteran in an area not served by a nearby VA medical center. Even under the FAR, this type of acquisition is exempt from synopsis in the GPE by virtue of its being an urgent and compelling acquisition. This provision of the rule will simplify the acquisition process by freeing the contracting officer from having to make individual determinations regarding publication for each sole source acquisition of hospital care, medical services, and other health-care services. Since we expect most such acquisitions to already be exempt under the FAR, we believe this provision will have little, if any, impact on competition or on awards to small businesses.

Third, the rule at section 873.108(c) exempts acquisitions below the SAT from the requirement for public announcement, including synopsis in the GPE. However, the rule at section 873.104 requires the contracting officer to seek competition to the maximum extent practicable and to permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation. In addition, for acquisitions below the SAT, section 873.111 states that contracting officers should solicit a sufficient number of sources to promote competition to the maximum extent practicable. Section 873.107 requires that acquisitions be set aside for small business. These provisions tend to mitigate any negative impact that section 873.108(c) may have on small businesses.

The alternatives to the above provisions regarding public

announcements in the GPE that were considered were to eliminate these provisions and follow the provisions of the FAR or to limit the exemptions to specific categories of acquisitions, such as acquisitions for medical services. The objectives of the rule are to allow VA to become more efficient in procuring health-care resources. The intent of this rule is to provide procurement processes that are simpler and less time consuming than those of the FAR. As discussed above, we believe that the flexibility to select the public medium that best captures the awareness of interested sources will enable the Department to maximize the effective distribution of information on VA solicitations and more efficiently take advantage of competition without decreasing competition. For this reason, the provisions regarding publicizing contract actions have been retained without change.

List of Subjects

48 CFR Parts 801 and 852

Government Procurement, Reporting and recordkeeping requirements.

48 CFR Parts 806, 812, 837, and 873

Government Procurement.

Approved: October 11, 2002.

Anthony J. Principi,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR chapter 8 is amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 801 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.301-70 [Amended]

2. The chart in section 801.301-70, paragraph (c) is amended by adding two OMB information collection approval numbers to read as follows:

801.301-70 Paperwork Reduction Act requirements.

48 CFR part or section where identified and described	Current OMB control No.
* * * *	* * * *
852.207-70	2900-0590
* * * *	* * * *
852.237-7	2900-0590
* * * *	* * * *

801.602-70 [Amended]

3. In 801.602-70, paragraphs (a)(4)(vi) and (a)(4)(vii) are revised to read as follows:

801.602-70 Legal/technical review requirements to be met prior to contract execution.

- (a) * * *
- (4) * * *

(vi) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of scarce medical specialist services acquired under the authority of 38 U.S.C. 7409.

(vii) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of health-care resources acquired under the authority of 38 U.S.C. 8151-8153.

* * * * *

801.602-71 [Amended]

4. In 801.602-71, paragraph (b)(2) is revised to read as follows:

801.602-71 Processing contracts for legal/technical review.

* * * * *

- (b) * * *

(2) Proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), will be forwarded to Central Office in accordance with Veterans Health Administration directives and VA Manual M-1, Part 1, Chapter 34, for review and submission to the Office of the General Counsel (025).

* * * * *

801.602-72 [Amended]

5. In 801.602-72, paragraph (b) is revised to read as follows:

801.602-72 Documents to be submitted for legal review.

* * * * *

(b) For proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), the documents referred to in VA Manual M-1, Part 1, Chapter 34.

* * * * *

PART 806—COMPETITION REQUIREMENTS

6. The authority citation for part 806 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

7. Section 806.302-5 is amended by:

- a. Revising paragraph (b).
- b. Redesignating paragraph (c) as paragraph (d).
- c. Adding a new paragraph (c).

The revision and addition read as follows:

806.302-5 Authorized or required by statute.

* * * * *

(b) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services, the use of medical equipment or space, or research, negotiated under the authority of 38 U.S.C. 8151-8153, are approved for other than full and open competition only when such contracts or agreements are with institutions affiliated with the Department of Veterans Affairs, pursuant to 38 U.S.C. 7302, with medical practice groups or other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and VAAR 806.304 do not apply to such contracts or agreements.

(c) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services or the use of medical equipment or space, negotiated under the authority of 38 U.S.C. 8151-8153, and not acquired under the authority of paragraph (b) of this section, may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring resources, provided the procurement is conducted in accordance with the simplified procedures contained in (VAAR) 48 CFR part 873. The justification and approval requirements of FAR 6.303 and 806.304 shall apply to such contracts or agreements conducted on a sole source basis.

* * * * *

PART 812—ACQUISITION OF COMMERCIAL ITEMS

8. The authority citation for part 812 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

9. In 812.301, paragraph (c) is revised and paragraph (g) is added to read as follows:

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(c) The provisions and clauses in the following VAAR sections must be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

- (1) 852.207-70, Report of employment under commercial activities.
- (2) 852.211-71, Guarantee clause.
- (3) 852.211-72, Inspection.
- (4) 852.211-73, Frozen processed foods.
- (5) 852.211-74, Telecommunications equipment.
- (6) 852.211-75, Technical industry standards.
- (7) 852.214-70, Caution to bidders-bid envelopes.
- (8) 852.216-70, Estimated quantities for requirements contracts.
- (9) 852.229-70, Purchases from patient's funds.
- (10) 852.229-71, Purchases for patients using Government funds and/or personal funds of patients.
- (11) 852.233-70, Protest content.
- (12) 852.237-7, Indemnification and Medical Liability Insurance.
- (13) 852.237-70, Contractor responsibilities.
- (14) 852.237-71, Indemnification and insurance (vehicle and aircraft service contracts).
- (15) 852.252-1, Provisions or clauses requiring completion by the offeror or prospective contractor.
- (16) 852.270-1, Representatives of contracting officers.
- (17) 852.270-2, Bread and bakery products.
- (18) 852.270-3, Purchase of shellfish.

* * * * *

(g) When soliciting for commercial services or the use of medical equipment or space under the authority of part 873 and 38 U.S.C. 8151-8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:

- (1) 852.273-70, Late offers.
- (2) 852.273-71, Alternative negotiation techniques.
- (3) 852.273-72, Alternative evaluation.
- (4) 852.273-73, Evaluation—health-care resources.
- (5) 852.273-74, Award without exchanges.

PART 837—SERVICE CONTRACTING

10. The authority citation for part 837 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

11. Section 837.403 is amended by revising the first sentence of the paragraph to read as follows:

837.403 Contract clause.

The contracting officer shall insert the clause at 852.237-7, Indemnification and Medical Liability Insurance, in lieu of FAR Clause 52.237-7, in solicitations and contracts for nonpersonal health-care services, including solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151-8153 and (VAAR) 48 CFR part 873. * * *

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

13. In section 852.207-70, the introductory text is revised to read as follows:

852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-77 and 873.110, the following clause must be included in A-76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151-8153 which may result in the conversion, from in-house to contract performance, of work currently being performed by VA employees:

* * * * *

14. Section 852.273-70 is added to read as follows:

852.273-70 Late offers.

As prescribed in 873.110(a), insert the following provision:

Late Offers (Jan 2003)

This provision replaces paragraph (f) of FAR provision 52.212-1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

15. Section 852.273-71 is added to read as follows:

852.273-71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

Alternative Negotiation Techniques (Jan 2003)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

16. Section 852.273-72 is added to read as follows:

852.273-72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

Alternative Evaluation (Jan 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by—[Contracting officer insert description of how the information may be viewed electronically or otherwise]—. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

17. Section 852.273-73 is added to read as follows:

852.273-73 Evaluation—health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212-2, the contracting officer may insert a provision substantially as follows:

Evaluation—Health-Care Resources (January 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers:

—[Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]—

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

18. Section 852.273-74 is added to read as follows:

852.273-74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

Award Without Exchanges (Jan 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

19. Part 873 is added to read as follows:

PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

Sec.

873.101 Policy.

873.102 Definitions.

873.103 Priority sources.

873.104 Competition requirements.

873.105 Acquisition planning.

873.106 Presolicitation exchanges with industry.

873.107 Socioeconomic programs.

873.108 Publicizing contract actions.

873.109 General requirements for acquisition of health-care resources.

- 873.110 Solicitation provisions.
- 873.111 Acquisition strategies for health-care resources.
- 873.112 Evaluation information.
- 873.113 Exchanges with offerors.
- 873.114 Best value pool.
- 873.115 Proposal revisions.
- 873.116 Source selection decision.
- 873.117 Award to successful offeror.
- 873.118 Debriefings.

Authority: 38 U.S.C. 8151–8153.

873.101 Policy.

The simplified acquisition procedures set forth in this Department of Veterans Affairs Acquisition Regulation (VAAR) part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of VAAR. However, when a policy or procedure in FAR or another part of VAAR differs from the procedures contained in this part, this part shall take precedence. These procedures contain more flexibility than provided in FAR or elsewhere in VAAR.

873.102 Definitions.

Commercial service means a service, except construction exceeding \$2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

Health-care providers includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

Health-care resource includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.)), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space.

873.103 Priority sources.

Without regard to FAR 8.001(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) and FAR subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

873.104 Competition requirements.

(a) Without regard to FAR part 6, if the health-care resource required is a commercial service, the use of medical

equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis.

(b) Acquisition of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6, is not required.

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6.

873.105 Acquisition planning.

(a) Acquisition planning is an indispensable component of the total acquisition process.

(b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of

staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service.

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108.

(d) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes shall be prepared to summarize decisions, actions, and conclusions and included in the contract file, along with a copy of the briefing materials.

873.106 Presolicitation exchanges with industry.

(a) This section shall be used in lieu of FAR part 10, except as provided in paragraph (b)(3) of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer.

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

- (2) Public hearings;
- (3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;
- (4) One-on-one meetings with potential offerors;
- (5) Presolicitation notices;
- (6) Draft Requests for proposals (RFPs);
- (7) Requests for information (RFIs);
- (8) Presolicitation or preproposal conferences;
- (9) Site visits;
- (10) Electronic notices (e.g., Internet); and
- (11) Use of the Procurement Marketing and Access Network (PRO-NET).

873.107 Socioeconomic programs.

(a) *Implementation.* This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research, the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR 13.003(b)(1), 19.502-2, and 19.502-3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government.

(b) *Rejecting Small Business Administration (SBA) recommendations.* (1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless a determination is made in writing by the contracting

officer that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding \$5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding \$5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the Procurement Executive, whose decisions shall be final.

(c) *Contracting with the Small Business Administration (the 8(a) Program).* The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) *Certificates of Competency and determinations of responsibility.* The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

873.108 Publicizing contract actions.

(a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting

officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government.

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)).

(c) For acquisitions below the SAT, a public announcement is optional.

(d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and part 873.

873.109 General requirements for acquisition of health-care resources.

(a) *Source selection authority.* Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this part 873.

(b) *Statement of work/Specifications.* Statements of work or specifications must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition.

(c) *Documentation.* Without regard to FAR 13.106–3(b), 13.501(b), or 15.406–3, the contract file must include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212–1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs).

(e) *Cancellation of procurements.* Without regard to FAR 14.404–1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government.

873.110 Solicitation provisions.

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273–70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold.

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273–71, Alternative negotiation techniques, when either of the

alternative negotiation techniques described in 873.111(e)(1) will be used.

(c) The contracting officer shall insert the provision at 852.273–72, Alternative evaluation, in lieu of the provision at 52.212–2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used.

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273–73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212–2.

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273–74, Award without exchanges, in the RFQ or RFP.

(f) The contracting officer shall insert the clauses at FAR 52.207–3, Right of First Refusal of Employment, and at 852.207–70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151–8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees.

873.111 Acquisition strategies for health-care resources.

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions.

(a) *Request for quotations.* (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made.

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be

utilized without regard to the dollar thresholds contained therein.

(b) *Sealed bidding.* FAR part 14 provides procedures for sealed bidding.

(c) *Negotiated acquisitions.* The procedures of FAR parts 12, 13, and 15 shall be used for negotiated acquisitions, except as modified in this part.

(d) *Multiphase acquisition technique.*

(1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition.

(e) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104).

873.112 Evaluation information.

(a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government.

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions

exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition.

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate.

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein.

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873.

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal.

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal.

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors.

(e) *Improper exchanges.* Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and

other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts 3 and 24.

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary.

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror.

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time.

873.115 Proposal revisions.

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal.

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions.

(c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government.

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance.

(c) The source selection decision must be documented in accordance with FAR 15.308.

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be

bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract.

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award.

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

873.118 Debriefings.

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506.

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