

and technical reviews are accomplished. To this end, initial and revised pricing of all negotiated prime contracts (including subcontract pricing under them) and contract modifications will be subject to technical analyses to the degree the contracting officer deems necessary (see 801.602-70 for required legal reviews). Technical analyses of the proposals will be requested by the contracting officer from the appropriate technical personnel to address, as a minimum, the items set forth in FAR Subpart 15.805-4. Contracting officers shall not begin negotiation of or award any negotiated contracts or contract modifications before receipt, analysis and consideration of documented technical evaluations for every procurement action requiring such analysis under the conditions prescribed in FAR 15.805-4. The results of such analyses will be documented in the contract file and will also be made available to the auditor performing the preaward audit required by 815.805-5.

(b) When, in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for review and comment. When deemed advisable, the Deputy Assistant Secretary for Acquisition and Materiel Management (93) will request the General Counsel to accomplish a legal review. This review is in addition to the legal review specified in 801.602-70.

PART 816—TYPES OF CONTRACTS

Subpart 816.1—Selecting Contract Types

Sec.
816.102 Policies.

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

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

Subpart 816.1—Selecting Contract Types

816.102 Policies.

(a) Contracts which include an economic price adjustment provision other than those contracts awarded by the

National Cemetery System for monuments or those contracts that contain the clause for service contracts (FAR 22.1006(c)) require the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (90). The request for approval shall clearly set forth the need for the provision.

(b) Any contract involving direct obligation of appropriations and which extends beyond the appropriation of the year in which the contract period begins or which is for more than one fiscal year, is to contain provisions to the effect that:

(1) It is made for the period covered by the contract, subject to the availability of appropriations in the ensuing year(s), and

(2) No service is to be performed by the contractor after September 30 of each fiscal year unless and until specifically authorized by the contracting officer or representative.

(c) Architect-engineer contracts, construction contracts, or professional engineer contracts, financed by ‘no year appropriations’ are not subject to the requirements of paragraph (b) of this section.

[49 FR 12607, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 30045, July 18, 1989; 61 FR 20492, May 7, 1996]

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 primarily for the purpose of obtaining a place on the supplier’s production or delivery schedule for long lead time items. Such a letter typically indicates that products or services are being considered for procurement, but that the statement of intent is not to be construed as a commitment. Such letters of availability are sometimes solicited by prospective contractors, or they may be originated by Government personnel. A letter of availability is distinguished from a letter contract which is specifically authorized in FAR 16.603.

(b) *Policy.* (1) Unless specifically authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, letters of availability are not to be utilized for the following reasons:

(i) While such letters of availability may disclaim Government liability, they may induce 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 the Department, the Government may be bound by 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 which may not be recovered from the Government, but for which 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) It is recognized that potential contractors have a need to obtain procurement information at the earliest possible moment in order to make timely preparations. To this end, procurement personnel are expected to act as efficiently and expeditiously as possible on all procurement actions.

[49 FR 12607, Mar. 29, 1974, as amended at 54 FR 30044, July 18, 1989; 54 FR 40064, Sept. 29, 1989]

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—Multi-Year Contracting

Sec.

817.105 Policy.

817.105-1 Uses.

Subpart 817.2—Options

817.202 Use of options.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

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

SOURCE: 49 FR 12608, Mar. 29, 1984, unless otherwise noted.

Subpart 817.1—Multi-Year Contracting

817.105 Policy.

817.105-1 Uses.

(a) Pursuant to Title 38, United States Code, Chapter 1, Section 114 (as amended by Pub. L. 101-237), multiyear contracting not exceeding 5 years is authorized for obtaining supplies and services when the Secretary has made the following determinations:

(1) Appropriations are available for obligation for the total payments for the fiscal year the contract is entered into plus the estimated amount of any cancellation charges.

(2) The contract is in the best interest of the Government due to the effect it would have in:

- (i) Reducing cost;
- (ii) Achieving contract administration and other efficiencies;
- (iii) Increasing quality contract performance;
- (iv) Encouraging effective competition.

(3) During the contract period:

- (i) There is a continuing need for the supplies or services;
- (ii) There is little likelihood of substantial changes in need for the supplies and services in terms of quantity or rate of delivery; and
- (iii) The specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to a prospective contractor's ability to perform in accordance with the specifications and other contract terms are not excessive;

(5) The use of a multiyear contract will not inhibit competition from small business firms;

(6) In the case of a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, there is no substantial likelihood that increased competition will