

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES
PART 814—SEALED BIDDING**

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SUBPART 814.1 – USE OF SEALED BIDDING**814.104 Types of contracts.****814.104-70 Fixed-price contracts with escalation.**

When fixed price contracts with escalation are authorized under 816.102(a), a contracting officer must comply with FAR 16.203-1 through 16.203-4.

SUBPART 814.2 – SOLICITATION OF BIDS**814.201 Preparation of invitations for bids.**

(a) An invitation for bids for supplies, equipment, and services must be serially numbered at the time of issue. Numbers assigned locally must consist of the facility or VA National Acquisition Center division number, the serial number of the invitation, and the fiscal year in which the VA facility issues the invitation, e.g., 533-24-07 for the 24th invitation issued by VA facility 533 in Fiscal Year 2007. A series beginning with the number 1 must be started each fiscal year. Numbers assigned from a national register may be sequential, without regard to year, and use whatever numbering system assigned by the national system or VA's Electronic Contract Management System (eCMS). VHA shall use eCMS for all solicitation numbering.

(1) An invitation for bid for supplies, equipment, and services that is numbered locally must be numbered in the series of the year in which it is issued, will be accepted, and will become a contract in the same fiscal year but, because of procurement lead time, will not be performed until the next fiscal year.

(2) An invitation for bid that is numbered locally must be numbered in the next fiscal year series if it is issued in one fiscal year but the contract will become effective and will be performed only in the next fiscal year.

(b) An invitation for a construction contract must bear the applicable invitation for bid number and the project number, if assigned.

(c) An invitation for bid containing a summary bid request must include the following statement:

“The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.”

(d) When a contracting officer determines that it will be to the Government's advantage to make an award by group or groups of items, the contracting officer must include a provision for the award by group or groups of items in the invitation for bids. This may apply when the items in the group or groups are readily available from sources to be solicited; and one of the following apply:

(1) It is desirable to award a minimum number of contracts.

(2) Furniture or fixtures are required for a single project and uniformity of design is desirable.

(3) The articles required will be assembled and used as a unit.

(e) A solicitation for a construction contract must contain a statement on the order of priority in which VA will award any alternative bid items, based on the relative importance of the items, VA's cost estimate, and the amount of funds available, when the following apply:

(1) VA intends to make a single aggregate award for all items in the solicitation within certain fiscal limitations.

(2) The solicitation asks for prices on an item and alternate item basis.

(f) A bid item schedule in a solicitation issued in compliance with paragraph (e) of this section should be structured substantially as follows:

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2 or Item No. 3, in that order, based on available funding. Offerors should quote a price on each item listed.

Item No. 1--Furnish all labor, material, equipment, etc., to paint Buildings No. 1, 2, and 3: \$_____.

Alternate items in order of priority:

Item No. 2-- Furnish all labor, material, equipment, etc., to paint Building Nos. 1 and 2: \$_____.

Item No. 3-- Furnish all labor, material, equipment, etc., to paint Building No. 1: \$_____.

814.201-6 Solicitation provisions.

(a) The contracting officer must place the provision entitled “Caution to Bidders-Bid Envelopes,” as set forth in 852.214-70, in all invitations for bids where bid submissions are by other than electronic means.

(b) In an invitation for bid for supplies, equipment, or services (other than construction), the contracting officer must define the extent to which VA will authorize and consider alternate bids. VA will consider for acceptance an alternate specified on construction projects only as a part of the basic item.

(1) When VA will consider an alternate item only if no bids or insufficient bids are received on an item desired, the contracting officer must include the provision set forth in 852.214-71, Restrictions on alternate item(s), in the invitation.

(2) When VA will consider an alternate item on an equal basis with the item specified, the contracting officer must include the provision set forth in 852.214-72, Alternate items, in the invitation.

(3) In addition to the provision referenced in paragraph (b)(1) or (2) of this section, the contracting officer must include the provision set forth in 852.214-73, Alternate packaging and packing, in the invitation when bids will be allowed on different packaging, unit designation, etc.

(c) When the contracting officer determines that samples are necessary to the proper awarding of a contract, the contracting officer must include the provision set forth in 852.214-74, Bid samples, in the solicitation, along with the provision in FAR 52.214-20, Bid samples.

814.203 Methods of soliciting bids.**814.203-1 Transmittal to prospective bidders.**

The contracting officer should include either a bid envelope or OF 17, Sealed Bid Label, with each invitation for bids furnished by mail or hand delivered to prospective bidders.

814.204 Records of invitations for bids and records of bids.

(a) The issuing office must establish and maintain a single register on a fiscal year basis for all solicitations. For each invitation to bid or request for proposal, the register must include the following:

(1) Bid or proposal number.

- (2) Date of issue.
- (3) Date of opening.
- (4) Commodity or service involved.
- (5) Disposition (i.e., contract number or purchase order number or, when applicable, no award).

(b) Maintenance of the contract file prescribed by Part 804 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FAR 14.204(b).

814.208 Amendment of invitation for bids.

The contracting officer must send amendments to holders of drawings and specifications by certified mail, return receipt requested, or any other method that provides evidence of receipt. The contracting officer may send amendments by telegram, facsimile, or other method of rapid delivery that provides evidence of receipt, if time does not permit mailing.

SUBPART 814.3 – SUBMISSION OF BIDS

814.301 Responsiveness of bids.

Where a contracting officer cannot administratively determine, in accordance with FAR 14.301, the timeliness of the submission of a bid, modification, or withdrawal, the contracting officer must submit the matter through the DSPE to the Comptroller General for a decision. The submission must include copies of all pertinent papers.

814.302 Bid submission.

A bid hand-carried by the bidder or his agent will be considered late unless delivered to the addressee designated in the bid invitation before the time set for opening.

814.304 Submission, modification, and withdrawal of bids.

(a) A notification to late bidders must specify the final date by which VA must receive evidence. This date must be within the time allowed by the apparent low bidder for acceptance of the low bidder's bid.

(b) All bids received by mail or delivered in person by the bidder (or telegram where authorized) must be time and date stamped immediately upon receipt at the VA facility mail room and in the office of the addressee designated in the invitation.

SUBPART 814.4 – OPENING OF BIDS AND AWARD OF CONTRACT

814.401 Receipt and safeguarding of bids.

The contracting officer is designated as the official to open bids for identification, as provided in FAR 14.401.

814.402 Opening of bids.

(a) The contracting officer must serve as, or designate, a bid opening officer, and must also designate a recorder.

(b) If a bid bond is required, the bid opening officer must read aloud the form and amount of bid security and the name of the surety. The recorder must record this information.

814.403 Recording of bids.

(a) The recorder must transcribe the information required for bid evaluation on the appropriate Abstract of Offers form (SF 1409 or OF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-2237b, Request for Dietetic Supplies, provided that any supplemental sheets or forms are covered by one of the forms authorized for recording bid or price data.

(b) The bid opening officer must comply with the instructions in FAR 14.403 and certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeouts, or changes in price are noted at the time of bid opening, a statement to that effect must also be included on, or attached to, the abstract or record of bids.

814.404 Rejection of bids.

814.404-1 Cancellation of invitations after opening.

(a) For each invitation to bid that VA cancels or for which it receives no bid, the contracting officer must do the following:

- (1) File a copy of the invitation for bids, as provided for in FAR 14.404-1, together with the abstract showing to whom such bids were sent, in a separate folder identified by the invitation number.

- (2) Annotate the abstract to show why an award was not made.
- (3) Retain the folders for the current and two succeeding fiscal years.

(b) The HCA may approve cancellation of invitations for bid after opening and may approve completion of the acquisition after cancellation, as provided in FAR 14.404-1(e). The contracting officer must submit a Determination and Finding to the HCA for approval and signature.

814.404-2 Rejection of individual bids.

(a) When a contracting officer finds a bid that is being considered for an award is incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:

- (1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. The determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.

- (2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When VA receives a single bid in response to a solicitation, the contracting officer must not reject the offer simply because it specifies a bid acceptance time that is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer is a compelling reason for rejection; however, the contracting officer must first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

(c) In those cases where VA receives more than one bid, the contracting officer must reject as nonresponsive an individual bid that is not in compliance with the Government's bid acceptance time, since consideration of such an offer would unfairly disadvantage other bidders.

814.404-70 Questions involving the responsiveness of a bid.

If a contracting officer cannot resolve a question involving the responsiveness of a bid, the contracting officer may submit the question to the Comptroller General through the DSPE.

814.407 Mistakes in bids.**814.407-3 Other mistakes disclosed before award.**

(a) In accordance with FAR 14.407-3(e), the authority of the Secretary to make the administrative determinations set forth in FAR 14.407-3(a), (b), (c), and (d) is delegated to the SPE and is further delegated, without power of redelegation, to the DSPE. This delegation in no way impairs the delegations contained in Unpublished Decision of the Comptroller General B-122003 dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid before award, after complying with the provisions of FAR 14.407-3, the contracting officer must submit the complete file to the DSPE for an administrative determination. Based upon the evidence submitted, the DSPE shall determine the action the contracting officer is to take. The contracting officer may make no award until the DSPE makes a determination.

814.407-4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid under FAR 14.407-4(a), the contracting officer must forward a copy of the contract amendment or supplemental agreement and a copy of the contracting officer's determination, to the DSPE.

(b) For mistakes in a bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.407-4, must be forwarded to OGC through the DSPE, Acquisition Resources Service, for legal coordination. The DSPE shall transmit the results of this coordination to the contracting officer, who will make the final determination on the alleged mistake in bid after award.

(c) The DSPE, Acquisition Resources Service, must maintain the agency records of mistakes in bids after award required by FAR 14.407-4.

814.408 Award.**814.408-70 Award when only one bid is received.**

(a) When VA receives only one bid in response to an invitation for bids, the contracting officer may consider and accept the bid if all of the following apply:

- (1) The specifications used in the invitation were not restrictive.

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- (2) VA solicited adequate competition.
- (3) The price is reasonable.
- (4) The bid is otherwise in accordance with the invitation for bids.

(b) The contracting officer must make the determination in writing, and include it the contract file.

814.408-71 Recommendation for award (construction).

(a) For Central Office contracts, the Director, Office of Construction and Facilities Management, must analyze all bids received and submit a memorandum to the Secretary recommending award or other disposition of the project. A copy of each of the following must accompany the memorandum:

- (1) The invitation.
- (2) Each bid received.
- (3) The abstract.
- (4) Any other pertinent data.

(b) For facility-level contracts, the Chief, Engineering Service, must analyze all bids received and submit a memorandum recommending award or other disposition of the project to the contracting officer. The contracting officer alone must make the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor.

814.409 Information to bidders.

(a) An employee of VA may not disclose information as to probable acceptance or rejection of any offer to any bidder or other person outside of VA, except as authorized by the FAR.

(b) Except as provided in paragraphs (c) and (d) of this section, information about performance under a contract or an accepted bid is not public information and will be released to persons outside of VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information on performance under a contract to those having a legitimate interest, such as sureties, banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information must be furnished through OGC.

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