

VAAC 97-2 August 22, 1997

PART 807—ACQUISITION PLANNING

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:::SUBPART 807.1 - ACQUISITION PLANS:::

:::807.102 Policy.

In order to implement the Acquisition Planning requirements of FAR Subpart 7.1, each VA contracting activity will take the following actions:

(a) Advance Procurement Planning (APP) will be established at each contracting activity in VA. APP will apply to all procurement actions in excess of \$100,000 and all actions, regardless of dollar value, for automated data processing hardware and software (except for acquisitions for eligible veterans pursuant to Chapter 31, Title 38 United States Code), consulting services, and maintenance and repair of facilities (i.e., any procurement of services or supplies for the intended purposes of improving, repairing or otherwise altering real property). One copy of each plan will be forwarded to the Office of Small and Disadvantaged Business Utilization (00SB) within 10 working days after the plan has been approved. One copy of any revision to the APP must also be forwarded after approval.

(b) Tentative APP for such procurements will be initiated as soon as these requirements are identified during the facility's or department's budget formulation. All affected offices will cooperate with the head of the contracting activity (802.100) in the development of tentative APP which will be made final as soon as that facility's or department's budget has been approved and the APP has been approved by the respective administration head, facility Director, Assistant Secretary, Deputy Assistant Secretary or other key VACO official. APP will be established for each fiscal year and will be designated by fiscal quarter.

(c) The final APP for the procurements cited above will be in conformance with the facility's or administration's quarterly obligation plan. The head of the contracting activity should maintain a close liaison with fund control approving officials and the Fiscal/Budget Officer to ensure that revisions to the APP are within the spending limits set forth in the monthly obligation plan. Any revisions to the APP must be approved by the head of the affected facility, administration head, Assistant Secretary, Deputy Assistant Secretary, or other key VACO official.

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(d) Advance planning for maintenance and repair (M&R) of facilities will include all scheduled M&R, minor miscellaneous, delegated minor projects, and all other identifiable procurement requirements to be awarded and administered by the local procuring activity. All other requirements in this category which cannot be identified as individual procurements, but for which funds have been budgeted, will be planned on a quarterly dollar value basis. The expenditure plan should be consistent with the activity's obligation plan and should reflect the need for an even and orderly flow of procurements.:::

:::807.103 Department head responsibilities.

Each "head of the contracting activity" (802.100) is designated as the "acquisition planner" and is responsible for acquisition planning as prescribed in FAR Subpart 7.1, as implemented and supplemented by this subpart.:::

:::807.105 Contents of written acquisition plans.

(a) Written plans, as prescribed in FAR 7.105, will be followed for each acquisition anticipated to cost in excess of \$1,000,000.

(b) The format for an APP (807.102(a)) will, at a minimum, contain the following:

- (1) The date by which an approved procurement package must be received from the requesting office.
- (2) The tentative date for issuing a solicitation.
- (3) The type of award anticipated, i.e., competitive or noncompetitive.
- (4) The tentative date of award.:::

:::807.170 Cutoff dates and lead times.

(a) Cutoff dates and optimum lead times for receipt of all procurement requests will be established using the following criteria:

- (1) Cutoff dates are applicable to year-end procurement requests but should be used in conjunction with all procurement requests, regardless of time frame, if needed to maintain the integrity of the APP process.

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(2) Cutoff dates will be no later than the time needed to prepare solicitations, synopses of the proposed acquisition, obtain and evaluate bids or proposals, audit, and negotiate and award contracts in an orderly manner and will allow the use of competitive procurement procedures to the greatest extent possible. Cutoff dates shall be established to ensure that approved procurement requests are received by the contracting activity not less than the number of days shown below in advance of the tentative award date.

(i) All contracts in excess of \$10,000 but less than \$100,000--70 days.

(ii) All negotiated contracts (including Small Business Administration 8(a) set-asides) in excess of \$500,000--90 days.

(iii) All formally advertised contracts in excess of \$100,000--90 days.

(iv) All negotiated contracts in excess of \$100,000 but less than \$500,000--70 days.

(b) Cutoff dates presently existing elsewhere in VAAR, MP-2, or other administrative issues are not affected by this directive and will remain in effect, e.g., requisitions to Central Office (for controlled items), MP-2, Subchapter E, Subpart 108-25.51.

(c) Each contracting activity shall develop criteria for the establishment of optimum lead times to be applied to all procurement actions. Lead times may vary by contract type and shall reflect the ability of the contract office to complete procurement actions in an orderly manner.:::

:::807.171 Contract action log.

A contract action log for all procurement categories identified in 807.102(a) will be established. The log will record the date of receipt of the procurement request; the date the solicitation was issued; the date of award; and the type of award (competitive or noncompetitive). Contracting activities are encouraged to consolidate documentation for both the contract action log and the applicable APP into a single accountable record. The contract action log will be applicable to the following:

(a) All individual procurement actions for which an APP has been initiated.

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(b) All procurements for the maintenance and repair facilities in the fourth quarter which do not have individual advance procurement plans and which exceed the planned quarterly expenditure for these requirements.

(c) All procurements not having an approved APP in the categories of consultant services, ADP, and those in excess of \$100,000.:::

807.172 Fourth quarter and unplanned procurements.

(a) Review procedures for the last quarter spending will be established. Procurement requests in the categories cited in 807.102(a) received during the fourth quarter, which are not identified in the facility's and Department's APP, will be considered unplanned and subject to a special review performed in the manner described below. This special review will also be applicable to all procurements for the maintenance and repair of facilities for which there are no individually approved plans and which will exceed the planned quarterly expenditure level established for the fourth quarter.

(b) The acquisition planner will review the request to determine the availability of funding, adequacy of justification, compliance with established approval procedures for the items to be procured, and determine that sufficient time remains to execute an orderly award. If any of these conditions are deficient, the head of the contracting activity will forward the request to the facility director or administration head with a recommendation that the procurement be postponed until such time as the deficiencies can be corrected.

(c) The facility director or administration head may uphold the head of the contracting activity's findings and recommendations, or rebut the recommendation to postpone the procurement with a certification that it would be in the best interest of the Government to follow through with the procurement, provided that the acquisition can be conducted in accordance with law, FAR and VAAR.

(d) APP shall be initiated for any previously unidentified procurement which is requested during the current fiscal year and for which APP would otherwise be applicable, except where an emergency situation or a short lead would preclude the benefit of advance planning. However, no procurement requirement identified for the first time in the fourth quarter shall be exempt from the review requirements.

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(e) Procurements may not be split to avoid established review procedures. When several requests for the same or similar items are received in the fourth quarter which have a dollar value below the thresholds required for higher level management review, need for the requested items should be reevaluated at the facility Director or administration head level to ensure that unnecessary year-end spending is not taking place.:::

::807.173 Funding.

(a) Synopsizing and issuing solicitations for acquisitions, if funds are not locally available, is strictly prohibited except for:

(1) Goods or services which will be obligated for and delivered in the following fiscal year (see FAR 32.705-1(a)).

(2) Architect/engineer (A/E) and construction requirements for:

(i) Nonrecurring maintenance (NRM) projects (either Central Office approved projects (COAP) or Regional Director approved projects (RDAP)); or

(ii) Minor or minor miscellaneous projects if funds have been "committed" by Central Office.

(3) Other no-year funded A/E or construction projects.

(b) Funds for A/E and construction requirements are "committed" to the local facility by Central Office if the contracting officer has reasonable assurance that funds will be made available at the time of contract award. "Committed" funds would include authorizations such as NRM projects reflecting COAP or RDAP rank on the NRM status report or data base, an Office of Facilities (08) authorization letter for minor or minor miscellaneous projects, or any other Central Office administration project approval. These authorizations must be provided to the contracting officer prior to issuance of either a synopsis in the *Commerce Business Daily (CBD)* or issuance of a solicitation.

(c) For NRM projects where funds are not locally available, meeting the criteria in paragraph (a)(2)(i) of this section, include a statement in the CBD that award will be subject to availability of funds. A similar statement shall be included in solicitations, as well as FAR clause 52.232-18, "Availability of Funds." (Class deviation from FAR 32.705-1(a) authorized pursuant to FAR 1.404.)

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(d) Contract award shall not be made nor funds obligated unless a Transfer of Disbursing Authority (TDA) has been received by the local facility. Cancellation of bids because of nonavailability of funds will be kept to the absolute minimum.

(e) In addition to the local availability of funds, there are other programmatic requirements that must be satisfied before synopsising and issuing solicitations for the types of contracts listed in paragraph (a)(2) of this section. Contact the Office of Project Management (087), Office of Facilities, for guidance under the following conditions:

- (1) The project scope has changed from that which is currently approved.
- (2) The latest working drawing design estimate exceeds the current approved funding amount.
- (3) Correspondence from VA Central Office, Office of Facilities, specifically requires review and approval of contract documents and/or cost estimate.

Refer to Subpart 801.6 for required legal and technical reviews.:::

SUBPART 807.3 - CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

807.300 Scope of subpart.

This subpart prescribes basic procedures and principles to be followed in performing the contracting aspect of the OMB Circular A-76 cost comparison process. :::Since the A-76 process requires a multidisciplinary effort, other VA organizational elements responsible for programs, such as personnel and fiscal, will be referred to in this subpart. However, specific procedures to be followed in those program areas will be separately issued by those offices.:::

|:::807.302 General:::

| :::Contracting officers should carefully consider whether various bonds and/or insurance should be required when developing the solicitation for A-76 competition. Many factors should be reviewed by the contracting officer, including the FAR, VAAR, OMB Circular, State and local requirements, industry standards, amount of VA property to be provided, location of the service and

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whether the activity is to be performed as Government-Owned Contractor-Operated (GOCO) or Contractor-Owned Contractor-Operated (COCO). The requirement for bonds and/or insurance may be protested as unduly restrictive of competition and as offering an unfair advantage to the Government in the cost comparison. It is therefore essential that VA requires bonds and insurance only when necessary and that a justification of their use and dollar amount be included in the contract file. The following guidance is therefore provided:

- (a) Performance bonds and payment bonds for other than construction contracts will generally not be required. Performance bonds may be required when it is determined that they are necessary to protect the Government's interests in service acquisition. Pursuant to FAR 28.103-2, a performance bond may be warranted if substantial VA property is to be provided to the contractor and/or the contractual service is essential to the mission of VA medical facilities.
- (b) Bid bonds should only be considered when a performance bond or a performance and payment bond is required, as indicated in FAR 28.101-1. The bid bond is intended to safeguard VA from a contractor withdrawing a bid during the 90-calendar-day acceptance period.
- (c) Security (fidelity) bonds may be required for warehouse, ADP and other service type contracts to protect the Government from financial loss when VA is not adequately protected by an insurance or performance bond. Such bonds protect the Government from losses occurring due to contractor employee theft. This type of bond may be a State or local government requirement.
- (d) Insurance may be required in solicitations when the contractor will be working on a Government installation, or in other instances as specified in FAR 28.306. For cases in which insurance has been deemed necessary (see FAR 28.306 for circumstances which should be considered), contracting officers will require at least the minimum amounts of insurance as specified in FAR 28.307-2.:::

:::807.303 Determining availability of private commercial sources.

- (a) Pursuant to OMB Circular A-76, a determination that no commercial sources exist must be verified by synthesizing the potential requirement in the CBD three times over a 90-day period (see FAR 5.205(e)). |

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(b) The synopsis process for determining commercial sources will not be restrictive, i.e., responses will not be solicited from only small business and/or Labor Surplus Area concerns. The "sources sought" synopsis is an attempt to determine the universe of potential sources.

(c) The contracting officer shall not rely solely upon CBD notices to determine potential sources. In addition to the efforts identified in FAR 7.303(b), the contracting officer will check solicitation mailing lists, other business directories and the Small Business Administration Procurement Automated Source System.

(d) Once sufficient sources are identified, it is unnecessary to further synopsise in the CBD for sources. Instead, the contracting officer should immediately inform the facility's A-76 Management Team and proceed with the development of the solicitation. Contracting officers will synopsise the cost comparison solicitation once bid opening/receipt for proposal dates are established in conjunction with the A-76 Management Team (i.e., synopsis for sources does not take the place of synopsis of the actual cost comparison solicitation).

(e) Prior to the sources sought synopsis, the facility director, administration head, Assistant Secretary, Deputy Assistant Secretary, other key VA Central Office official, or authorized designee must determine whether COCO and/or GOCO methods of contract performance will be considered (see 807.304-70 for criteria on use). It is essential that the decision regarding whether one or the other or both options will be considered in the cost comparison is made prior to synopsis of the requirement in the CBD. The synopsis must clearly indicate the contract performance method(s) which will be used and require that any firm responding to the synopsis indicate the method(s) for which they are interested.:::

:::807.303-70 Determining responsibility and intent.

A determination that sources are not available must be well documented. At a minimum, it will include verification of the synopsis specified in 807.303(a), the results thereof, and efforts made to otherwise identify sources. The facility A-76 Task Group will notify and provide requisite support information to the cognizant VA Central Office administration head, Assistant Secretary, Deputy Assistant Secretary, or other key VA Central Office officials.:::

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807.304 Procedures.

::807.304-70 Determining whether or not to consider COCO and/or GOCO contract options.

Generally, a COCO operation, if it will provide adequate services and is contractually feasible, is the preferred contract option. COCO contracts eliminate the Government's risks and costs inherent in capital ownership. However, such benefits of COCO performance must be weighed against the potential benefits of GOCO performance, such as ease of quality assurance evaluation, effective utilization of existing facilities, and ease of converting to Government performance if the need arises. As specified in Part I, Chapter 3, paragraph A1, of the Supplement to OMB Circular A-76, an informal cost-benefit analysis will be performed to determine the most beneficial mode of performance. Some basic guidelines to be considered in deciding upon COCO/GOCO alternatives are as follows:

(a) *Expansions, upgrades, remodeling.* Projects meeting OMB's definition of an expansion (see Pt. 1, Ch. 1, par. C2 of the Supplement to OMB Circular No. A-76) must be cost compared prior to investing significant capital resources. A-76 solicitations for expansions will be based on a COCO only method of contract performance. If the commercial bid/offer is accepted, the need for capital investment is eliminated. If the Government in-house estimate is lower, the capital investment is made and a GOCO A-76 solicitation will be scheduled following activation of the capital investment.

(b) *Capital investment in existing Government activity.* If a substantial capital investment already exists in the activity under study and has significant useful life, a GOCO option may be considered in addition to COCO. Existing laundry facilities will be solicited under both GOCO and COCO except when studied as an expansion pursuant to paragraph (a) of this section.:::

::807.304-71 Ensuring continuity of contract performance.

(a) It is essential that VA minimize risks of performance of essential Department functions by contract. A very important aspect is the development of the contractual specifications. Part of the contractual requirements may also include certain qualification standards such as minimum experience and/or education (generally based upon

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experience/education of principals in the company), availability, and/or ownership of specified equipment. Such essential qualifications requirements must be based upon industry standards and are not to replace determinations of responsibility (see 807.304-74).

(b) Thorough prebid/prenegotiation conferences are very important to the understanding by the bidders of the needs of the Government. Such a conference is also important in uncovering any potential specification and Statement of Work ambiguities and thereby eliminating errors that may impede contact performance if contract award is made.

(c) For more complex A-76 solicitations requiring technical expertise, competitive negotiations may be appropriate to provide for discussions with the offerors and in order to allow a technical assessment of the offers. Careful consideration of the criteria specified in FAR 6.4 is essential.:::

807.304-73 Bid opening/receipt of proposals.

The date established for bid opening or receipt of proposals will normally be 90 days after sending the request for publication to the Commerce Business Daily (CBD) (65 days after issuing the solicitation). :::This time frame should accommodate development of the in-house bid and the required independent review. Close coordination with the A-76 Management Team is essential. The contracting officer will advise the A-76 Management Team of the need for timely submission of the in-house estimate by the time and date set for receipt of bids or proposals. If the Management Team advises the contracting officer of anticipated delays in submitting the in-house estimate, the contracting officer shall extend the bid opening date. Amendments reflecting the extension of the bid opening date shall be sent, before the time set for bid opening, to each firm which has been identified as an interested firm.:::

:::807.304-74 Determination of responsibility.

(a) Determining a prospective contractor's qualifications and responsibility to perform a contract is the inherent responsibility of the contracting officer for all acquisitions. The process, as specified in FAR 9.1 and VAAR 809.1, takes on even greater significance when consideration is given to converting an important in-house function to contract. Each contracting officer will carefully evaluate a prospective contractor's responsibility against the standards identified in FAR 9.104-1 and document the results of that assessment.

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(b) Pursuant to the Small Business Administration (SBA) Act Certificate of Competency (COC) Program, as implemented in FAR 19.6, SBA must be provided the opportunity to certify the competency of small business concerns initially determined by the contracting officer to be nonresponsible. Documentation regarding the responsibility assessment by the contracting officer is essential in providing the SBA Regional Office information necessary to the COC determination.

(c) If the contracting officer remains unconvinced of the responsibility of a prospective A-76 contractor after an SBA Regional Office has issued a COC, full use of the appeal process specified in FAR 19.602-3 shall be utilized.:::

807.304-75 Bid acceptance.

Bid acceptance shall be 90 days from bid opening/receipt of proposals in order to accommodate the time necessary to evaluate bids/offers, finalize the cost comparison and process any appeals. Contracting officers will insert "90 days" in FAR clause 52.214-15.

807.304-76 Contract effective date.

(a) A transition from in-house performance to contract requires a period of time from contract award to beginning of contract performance (contract effective date). This time is necessary to allow for personnel adjustments, e.g., right of first refusal process, and to allow a reasonable period for the contractor to make necessary resource reallocations. The contract effective date should be carefully considered in conjunction with the A-76 Task Group and must be specified in the solicitation.

(b) Although outplacement planning to minimize the effect of any necessary reduction in force should be initiated in advance of bid opening/receipt of proposals as prescribed by the Office of Personnel and Labor Relations, there are also employee and labor organization reduction-in-force notice requirements which must be satisfied.

(c) When bargaining unit employees will be affected, facility officials also should review and comply with any employee or labor organization notice requirements in applicable negotiated agreements.

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807.304-77 Right of first refusal.

(a) In addition to the Right of First Refusal clause specified in FAR 52.207-3, the contracting officer will include the clause "Report of Employment Under Commercial Activities" in 852.207-70. This clause is primarily intended to verify that the contractor is meeting its obligation to provide adversely affected Federal workers the first opportunity for employment openings, for which they qualify, created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. In order to implement the clause, the contracting officer (or Contracting Officer's Technical Representative (COTR)) must first obtain a list from the servicing personnel office of Federal employees, including their Social Security numbers, who will be adversely affected as a result of the anticipated contract. The list should be requested as soon as a preliminary determination is made to contract out a function subject to A-76. (Contracting officers may designate a COTR :::(preferably someone from Personnel Service)::: to coordinate the information and reporting requirements.)

:::SUBPART 807.70 - CONSOLIDATED PROCUREMENT:::

:::807.7001 Policy.

(a) The geographic distribution of the VA medical centers provides VA contracting offices a unique opportunity to gain price and administrative cost advantage by consolidating procurements.

(b) It is the policy of VA to establish formal Consolidated Procurement Plans in each Consolidated Procurement Area. Each plan, and decisions made regarding consolidation, will consider the following potential savings:

(1) Unit price savings and projection of annual Consolidated Procurement Area savings;

(2) Administrative cost savings such as cost reduction associated with decreased number of area purchase actions, decreased total area stock levels, and reduction in transportation costs;

(3) Public reporting burden reduction. The Office of Management and Budget has determined that there are quantifiable costs

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associated with each response to an IFB, RFP or RFQ. Consequently, there is a measurable reporting burden reduction to be associated with the consolidation of procurement actions.:::

:::807.7001(a) Definition.

A Consolidated Procurement Area, as used in this subpart, may be defined as an area where a cluster of individual medical centers have formed a buying group to standardize and consolidate their requirements for goods and services. A Veterans Health Administration Region could also be considered a Consolidated Procurement Area if one or more medical centers or clusters within the region have been charged with identifying, standardizing, and consolidating procurements for the entire region.:::

:::807.7002 Consolidated procurement plans.

(a) Each Consolidated Procurement Area will establish a plan by which savings may be achieved through consolidating procurements. This plan shall include the following components:

(1) A single official designated by the Regional Director should be responsible for coordinating area-wide plans. In each Consolidated Procurement Area, this official should normally be a Chief, Acquisition and Material Management Service, or some other individual with sufficient expertise in the identification of common requirements.

(2) The plan should specify milestones and appropriate documentation for the following activities:

(i) Identifying requirements, both posted and unposted (supplies and services), common to two or more medical facilities. The methodology for the identification phase shall be defined by the Consolidated Procurement Area. However, it is suggested that procurements be categorized in a manner which will result in a systematic review of all applicable requirements, i.e., stock classifications and medical and administrative service usage.

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(ii) Scheduling of each category of requirements identified in accordance with paragraph (a)(2)(i) of this section for an in-depth review by both Acquisition and Material Management officials and using services. Review schedules should reflect a priority for items likely to result in cost savings.

(iii) Reviewing of individual items which will determine whether the highest unit price paid by a district facility could be reduced through volume buying. Reductions in administrative overhead likely to result from consolidating procurements may also be included in this calculation.

(iv) Standardizing the usage of certain items. Standardization should be given full consideration when scheduling reviews of common requirements. The official designated in accordance with paragraph (a)(1) of this section may request copies of all internal studies concerning standardization performed by individual facilities within the Consolidated Procurement Area, or nationwide. This information should be disseminated for use by those concerned with consolidating requirements within the Consolidated Procurement Area.

(b) Once a requirement has been identified as having potential cost savings, a single contracting activity shall be assigned responsibility for developing a solicitation and for executing the contract. Normally, such contracts will specify that delivery will be made directly to each participating facility and that payment will also be made by each facility directly to the contractor.

(c) Chiefs, Acquisition and Materiel Management Service, designated by the Regional Director, will be responsible for monitoring accomplishments and compliance with plans. In each Consolidated Procurement Area, planning for consolidated procurements should be updated annually.

(d) Acquisition and Materiel Management Officers are authorized to apply for membership in a group purchasing organization in their respective Consolidated Procurement Area. Consolidated Procurement Areas may take advantage of lower prices when items can be procured more economically than if procured from the open market. Appropriate review should ensure that items are not on FSS or depot stocked.

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(1) The use of such organizations would be similar to using basic ordering agreements. Contracting officers must comply with the FAR when placing orders under basic ordering agreements. These requirements would include obtaining competition in accordance with FAR Part 6; ensuring that use of the basic ordering agreement is not prejudicial to other offerors; using appropriate forms; incorporating by reference the provisions of the basic ordering agreement, which already includes the terms, conditions, and clauses required by FAR; and complying with *Commerce Business Daily* synopsis requirements. Also, contracting officers must comply with small purchase procedures to ensure that small purchases made by the group are only made from small business concerns.

(2) The membership in the group must be nonbinding.

(3) All proposed agreements will be reviewed and concurred in by the Office of Acquisition and Materiel Management and General Counsel, as required by VAAR 801.602-70(a)(6). These agreements are considered unique, novel, and unusual at this time.:::

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