



# VA Acquisition Regulation Update

September 16, 2021

Number 2008-30

1. **Material Transmitted:** The attached pages contain revisions to the Department of Veterans Affairs Acquisition Regulation (VAAR) part 806, Competition Requirements, and 816, Types of Contracts.

2. **Summary of Changes:** This VAAR update changes agency titles for two key acquisition roles, the VA Advocate for Competition and the VA Ombudsman, to reflect the current title of Associate Executive Director for Procurement Policy, Systems and Oversight (AED/PPSO).

a. Text revisions are listed and summarized below:

VAAR Part/Subpart	Title	Change Summary
806.501	Requirement	Updated to reflect designation of the VA Advocate of Competition to the AED/PPSO.
816.505	Ordering	Updated to reflect designation of the VA task order and delivery order ombudsman to AED/PPSO.

### 3. Filing Instructions:

<b>Remove pages:</b>	<b>Insert Pages:</b>
806-1 thru 806-8	806-1 thru 806-8
816-1 thru 816-6	816-1 thru 816-6

**Effective date:** September 9, 2021.

**SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**

**PART 806—COMPETITION REQUIREMENTS**

**Subpart 806.1 – Full and Open Competition**

**Sec.**

806.102 Use of competitive procedures.

**Subpart 806.2 – Full and Open Competition after Exclusion of Sources**

806.203-70 VA set-asides for verified Veteran-owned small businesses using the VA rule of two.

**Subpart 806.3 – Other Than Full and Open Competition**

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

806.302-5-70 Noncompetitive procedures for verified small business concerns owned and controlled by Veterans.

806.302-7 Public interest.

806.304 [Reserved]

**Subpart 806.5 – Competition Advocates**

806.501 Requirement.

806.570 Planning requirements.

AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

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[Deviation per [Class Deviation—Veterans First Contracting Program \(VFCP 2016\)](#), dated July 25, 2016, adds new sections to VAAR part 806 for competitive awards made using the multiple award schedules program of the GSA, including the VA Federal Supply Schedule Program. When a set-aside is restricted to verified SDVOSBs or VOSBs according to the authorities of 819.7005 and 819.7006, such awards constitute full and open competition, after exclusion of sources pursuant to 38 U.S.C. 8127. Thus, this class deviation adds new sections 806.102, 806.203-70 and 806.302-5-70. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

**SUBPART 806.1 – FULL AND OPEN COMPETITION****806.102 Use of competitive procedures.**

(d)(3) Awards made using General Services Administration (GSA) or Department of Veterans Affairs (VA) Federal Supply Schedules (FSS) are considered competitive. When set-aside for competition restricted to verified service-disabled Veteran-owned small businesses (SDVOSBs) and Veteran-owned small businesses (VOSBs) according to [819.7005](#) and [819.7006](#), such awards constitute full and open competition after exclusion of sources pursuant to 38 U.S.C. 8127.

**SUBPART 806.2 – FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES****806.203-70 VA set-asides for verified Veteran-owned small businesses using the VA Rule of Two.**

(a) To fulfill the statutory requirements relating to Public Law 109-461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127 and 8128), contracting officers shall set aside solicitations for Veteran-owned small businesses (see [819.7005](#) and [819.7006](#)) whenever market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from verified SDVOSBs or VOSBs at fair and reasonable prices that offer best value to the Government (see [819.7005](#) and [7006](#)).

(b) This requirement applies to all contracts under this subpart, including orders under interagency acquisition vehicles such as FSS, Government-wide acquisition contracts (GWACs), and multi-agency contracts (MACs).

(c) No separate justification or determination and findings are required under this subpart to set aside contracts for SDVOSBs or VOSBs listed as verified in the VIP database.

(d) Contracting officers shall utilize the authority in paragraph (a) over other set-asides authorized in [FAR subpart 6.2](#) whenever market research supports the decision. A set-aside restricted to verified SDVOSBs or VOSBs satisfies competition

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as well as the fair opportunity requirements (see [FAR 16.505\(b\)\(2\)\(i\)\(F\)](#)).

(e) Subparts [819.5](#) and [819.70](#) prescribe policies and procedures that shall be followed with respect to verified SDVOSB and VOSB set-asides.

**SUBPART 806.3 – OTHER THAN FULL AND OPEN COMPETITION****806.302 Circumstances permitting other than full and open competition.****806.302-5 Authorized or required by statute.**

(a) Full and open competition need not be provided for when awarding:

(1) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 7409, but only when such contracts are with institutions affiliated with VA under 38 U.S.C. 7302. (38 U.S.C. 7409)

(2) Contracts for health-care resources negotiated under the authority of 38 U.S.C. 8153, but only when such contracts are with institutions affiliated with VA under 38 U.S.C. 7302, 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 with blood banks, organ banks, or research centers. The justification and approval requirements of [FAR 6.303](#) and 806.304 do not apply to such contracts or agreements. (38 U.S.C. 8153)

(3) Contracts for health-care resources, negotiated under the authority of 38 U.S.C. 8153, that are not acquired under the authority of paragraph (a)(2) of this section, but only when the procurement is conducted in accordance with Part 873. The justification and approval requirements of [FAR 6.303](#) and 806.304 shall apply to such contracts and agreements conducted on a sole-source basis. (38 U.S.C. 8153)

(b) Various sections of title 38 U.S.C. authorize the Secretary to enter into certain contracts and certain types of contracts without regard to any other provisions of law. When the contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 253(c)(5) and the following authorities:

(1) For contracts for orthopedic and prosthetic appliances and related services including research, cite 38 U.S.C. 8123. (38 U.S.C. 8123)

(2) For contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service, cite 38 U.S.C. 7802. (38 U.S.C. 7802)

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(3) For contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b), provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee, cite 38 U.S.C. 8109(f). (38 U.S.C. 8109)

(4) For contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources, cite 38 U.S.C. 8122(c). (38 U.S.C. 8122)

(5) For contracts or agreements with public or private agencies for services of translators, cite 38 U.S.C. 513. (38 U.S.C. 513)

(c) Except for an acquisition under paragraph (a)(2) of this section, the contracting officer must provide a justification under [FAR 6.303](#) and obtain an approval under 806.304 for each acquisition described in this section.

[Deviation per [Class Deviation—Veterans First Contracting Program \(VFCP 2016\)](#), dated July 25, 2016, adds new sections to VAAR part 806 for competitive awards made using the multiple award schedules program of the GSA, including the VA Federal Supply Schedule Program. When a set-aside is restricted to verified SDVOSBs or VOSBs according to the authorities of 819.7005 and 819.7006, such awards constitute full and open competition, after exclusion of sources pursuant to 38 U.S.C. 8127. Thus, this class deviation adds new sections 806.302-5-70. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

**806.302-5-70 Noncompetitive procedures for verified small business concerns owned and controlled by Veterans.**

(a) Full and open competition need not be provided for when awarding a sole source contract with a verified SDVOSB or a verified VOSB in accordance with [819.7007](#) or [819.7008](#) as authorized. Pursuant to FAR [6.302-5\(c\)\(2\)\(ii\)](#), the justification and approval requirements of [FAR 6.303](#) and [6.304](#) apply.

(b) Noncompetitive procedures for contracts below the Simplified Acquisition Threshold. When entering into a contract with a verified small business concern owned and controlled by Veterans for an amount less than the simplified acquisition threshold, a contracting officer may use procedures other than competitive procedures. (Cite: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)).

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(c) Sole source contracts above the Simplified Acquisition Threshold. (Cite: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a verified small business concern owned and controlled by Veterans using procedures other than competitive procedures if—

(1) Such concern is determined to be a responsible with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed \$5 million; and

(3) In the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

**806.302-7 Public interest.**

(a) When the contracting officer uses 41 U.S.C. 253(c)(7) to support a contract award using other than full and open competition, the contracting officer must prepare a Determination and Finding (D&F) under [FAR 1.7](#) and a justification under [FAR 6.303](#). The D&F must be signed by the Secretary.

(b) The contracting officer must submit the D&F and justification through the HCA to the Agency Competition Advocate for signature by the Secretary. The submission must include the date the contracting officer expects to award the contract.

(c) VA must notify Congress 30 days before the expected award date. The Agency Competition Advocate is responsible for preparing this notice. The contracting officer may not award the contract until notified by the Agency Competition Advocate.

[Deviation per [Class Deviation](#)—806.304, Approval of the Justification (VAIQ 7716829), dated August 8, 2016 deletes 806.304 and justifications shall be approved in accordance with the approving officials and thresholds specified in [FAR 6.304](#). This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

**806.304 [Reserved].****SUBPART 806.5 – COMPETITION ADVOCATES**

[Deviation per [Class Deviation](#) from VA Acquisition Regulation 806.501 and 816.505(b)(8) to Update the Official Title of the VA Advocate for Competition and the VA Ombudsman, dated September 9, 2021, to update the official agency title for two key acquisition roles, the VA Advocate for Competition and the VA Ombudsman. These roles are designated to the Associate Executive Director for



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Procurement Policy, Systems and Oversight. As a result, Class Deviation to 806.501, Requirements (VAIQ 7640739), dated December 3, 2015, is hereby rescinded.]

**806.501 Requirement.**

The Associate Executive Director, Office of Procurement, Policy, Systems and Oversight (AED, PPSO) is designated as the VA Advocate for Competition for the agency. The AED, PPSO may further delegate this authority to appoint an alternate advocate for competition and shall designate procuring activity agency advocates for competition, in accordance with [FAR 6.501](#). A complete list of VA procuring activity advocates for competition can be found at [Advocates for Competition and Task-Order and Delivery Order Ombudsmen – Office of Acquisition and Logistics \(OAL\)\(va.gov\)](#).

**806.570 Planning requirements.**

(a) Each Contracting Activity Competition Advocate must do the following:

- (1) Develop a Competition Plan.
- (2) Incorporate the Plan in the internal operating procedures of the facility or organization in which the contracting activity is located.
- (3) Obtain the endorsement and support of the facility or staff office director.
- (4) Ensure that the services and offices that the contracting activity supports understand the plan.

(b) At a minimum, the Competition Plan must include the following:

- (1) Approval requirements for other than full and open competition specified in [FAR 6.304](#).
- (2) A description of the synopsis requirements in [FAR subpart 5.2](#) to ensure that responsible staff fully understand the advance procurement planning that is required.
- (3) A description of how to integrate the Competition Plan into advance procurement planning.
- (4) A listing of obstacles to competition and a proposal for overcoming them.
- (5) A method for increasing cost competition for contracts and competition on other significant factors.

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**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

**PART 816—TYPES OF CONTRACTS**

**Subpart 816.1—[Reserved]**

**Subpart 816.2—Fixed-Price Contracts**

Sec.

816.203

Fixed-price contracts with economic price adjustment.

816.203-4

Contract clauses.

**Subpart 816.5—Indefinite-Delivery Contracts**

816.505

Ordering.

816.506-70

Requirements—supplement for mortuary services.

**Subpart 816.7—Agreements**

816.770

Consignment agreements.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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**SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING****PART 816—TYPES OF CONTRACTS****Subpart 816.1—[Reserved]****Subpart 816.2 – Fixed-Price Contracts***(Added 3/23/2018)***816.203 Fixed-price contracts with economic price adjustment.****816.203-4 Contract clauses.**

(e) The contracting officer shall, when contracting by negotiation, use the following clauses.

(1) The contracting officer shall insert the clause at [852.216-71](#), “Economic Price Adjustment of Contract Price(s) Based on a Price Index,” in solicitations and firm fixed price contracts, subject to [FAR 16.203-4\(d\)\(1\)](#) and when changes to a price index will be used to calculate corresponding changes to the total contract price or unit prices of the contract.

(i) Exceptions:

(A) Do not use this clause when changes to the price index will apply to only a component part of the contract price.

(B) Do not publish or include the footnotes in the solicitation, they are only included herein to provide guidance to contracting officers.

(2) The contracting officer shall insert the clause at [852.216-72](#), “Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index,” in solicitations and firm fixed price contracts, and subject to [FAR 16.203-4\(d\)\(1\)](#) when changes to an industry price index shall be used to calculate changes to only a portion of the contract price or the unit prices of the contract.

(i) Exceptions:

(A) The clause should not be used when a change in the index price will be applied directly and totally to the contract price or the unit prices, *i.e.*, when the Consumer Price Index is used to calculate changes and a 5% increase in the CPI would result in a 5% increase in the total contract price of the unit prices.

(B) Do not publish or include the footnotes in the solicitation, as they are only provided for guidance to the contracting officer.

(3) The contracting officer shall insert the clause at [852.216-73](#), “Economic Price Adjustment—State Nursing Home Care for Veterans,” in solicitations and firm fixed price contracts subject to [FAR 16.203-4\(d\)\(1\)](#) and the following circumstance: When changes to the Medicaid rate, as authorized by the State Medicaid Agency (SMA), shall be used to calculate corresponding changes in the total contract price or the per diem prices of the agreement or contract.

(4) The contracting officer shall insert the clause at [852.216-74](#), “Economic Price Adjustment—Medicaid Labor Rates,” in solicitations and firm fixed price contracts when the conditions specified in [FAR 16.203-4\(c\)\(1\)](#) apply. The clause is modifiable by increasing the 10-percent maximum limit on aggregate increases specified in paragraph (c)(4) of this section, upon the approval by the Head of the Contracting Activity (HCA) or designee.

(5) The contracting officer shall Insert the clause at [852.216-75](#), “Economic Price Adjustment—Fuel Surcharge,” in solicitations and firm fixed price contracts when contracting by negotiation is subject to changes in the cost of fuel increases. The clause is subject to the conditions at [FAR 16.203-4\(d\)\(1\)](#).

(f) The contracting officer shall follow procedures as prescribed in [FAR 16.203-4\(c\)](#) and 38 CFR 51.41(b)(1) for EPA fixed price contracts based on Medicaid rates. These procedures shall be used when contracting by negotiation between the VA and the State Veteran Home for making payments under contracts for nursing home care for Veterans.

### **Subpart 816.5—Indefinite-Delivery Contracts**

*(Added 10/4/2019)*

[Deviation per Class Deviation from VA Acquisition Regulation 806.501 and 816.505(b)(8) to Update the Official Title of the VA Advocate for Competition and the VA Ombudsman, dated September 9, 2021, to update the official agency title for two key acquisition roles, the VA Advocate for Competition and the VA Ombudsman. These roles are designated to the Associate Executive Director for Procurement Policy, Systems and Oversight. As a result, Class Deviation to 806.501, Requirements (VAIQ 7640739), dated December 3, 2015, is hereby rescinded.]

#### **816.505 Ordering.**

(b)(8) *Task-order and delivery-order ombudsman.* The task-order contract and delivery-order ombudsman for VA is the Associate Executive Director for Procurement Policy, Systems and Oversight. The VA Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions. If any

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corrective action is needed after reviewing complaints from contractors, the VA Ombudsman shall provide a written determination of such action to the contracting officer. Contracting officers shall be notified of any complaints submitted to the VA Ombudsman.

**816.506-70 Requirements—supplement for mortuary services.**

Insert the clause [852.216-76](#), Requirements—Supplement for Mortuary Services, in contracts for mortuary services containing [FAR clause 52.216-21](#), Requirements. The contracting officer shall insert activities authorized to place orders in paragraph (e) of the clause.

**Subpart 816.7—Agreements**

*(Added 3/23/2018)*

**816.770 Consignment agreements.**

Consignment agreements shall only be established under a contract and by a contracting officer. A consignment agreement is defined as a delivery method for a specified period of time in which the contractor provides an item/s for Government use and the contractor receives reimbursement only if and when the item is used by the Government. Consignment agreements are allowable and shall be considered in those instances when the requirement for an item is immediate and on-going and when it is impossible to predetermine the type or model of a particular item until the need is established, and it is determined to be in the best interest of the VA.

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