

# Part 806 - Competition Requirements

## Subpart 806.1—Full and Open Competition

### Sec.

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

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## **Subpart 806.1 - Full and Open Competition**

[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 VA verified SDVOSBs or VOSBs according to the authorities of VAAR [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adds new section 806.102.∇ This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

### **Subpart 806.102 - Full and Open Competition**

(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**

[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 VA 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 subsection 806.203-70. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

### **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 [819.7006](#)).

(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 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)

(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 subsection 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)).

(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 source 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. Justifications shall be approved in accordance with the approving officials and thresholds specified in [FAR 6.304](#).]

#### **806.304 [Reserved]**

### **Subpart 806.5 - Competition Advocates**

[Deviation per [Class Deviation](#)-806.501, Requirements (VAIQ 7640739), dated December 3, 2015, clarifies language in reference to providing the Deputy Senior Procurement Executive the ability to further delegate the Advocate for Competition authority.]

#### **806.501 Requirement.**

The Deputy Senior Procurement Executive (DSPE) is designated as the Agency Advocate for Competition. The DSPE may further delegate this authority to other VA procurement officials.

#### **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.