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DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Parts 831, 833, 852 and 871

RIN 2900-AQ02

Revise and Streamline VA Acquisition Regulation – Parts 831 and 833

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove any procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, we will publish them in the Federal Register. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR parts 831 – Contract Cost Principles and Procedures and 833 – Protests, Disputes, and Appeals, as well as affected parts 852 – Solicitation Provisions and Contract Clauses, and 871 – Loan Guaranty and Vocational Rehabilitation and Employment Programs.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER] to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AQ02 – Revise and Streamline VA Acquisition Regulation—Parts 831 and 833).” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 382-2787. This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act, which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

The VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authorities that are removed from the VAAR will be included in the VA Acquisition Manual (VAAM) as internal agency guidance. The VAAM is being created in parallel with these revisions to the VAAR and

is not subject to the rulemaking process as they are internal VA procedures and guidance. The VAAM will not be finalized until corresponding VAAR parts are finalized and therefore the VAAM is not yet available on line.

We propose to revise the authority citations under Parts 831, 833, and 871 to include a reference to 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein. For parts 831 and 871, we also propose to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency. 38 U.S.C. 501 is a more general authority for the Secretary to utilize to prescribe all rules and regulations. The title 41 authority is more appropriate to cite when publishing the VAAR. Any other proposed changes to authorities are shown under the individual parts below.

VAAR Part 831—Contract Cost Principles and Procedures

In addition to the changes in authority cited earlier in this preamble, we propose to revise the authority citations under Part 831 to add 38 U.S.C. chapter 31, which is the basic statute for providing training and rehabilitation for veterans with service-connected disabilities.

In subpart 831.70, we propose to revise the title of this subpart to more accurately reflect the subject matter and because it duplicated the title for part 831. We propose to revise the title for subpart 831.70 from “Contract Cost Principles and Procedures,” to “Contract Cost Principles and Procedures for Veterans Services under 38 U.S.C. Chapter 31.”

In section 831.7000, Scope of subpart, we propose to revise the section to clarify that the cost principles apply to the negotiation of prices under fixed-price contracts as well as to costs under cost reimbursement contracts, and to contracts with educational institutions as well as those with commercial and non-profit organizations.

We propose to add a new section 831.7000-1 titled “Definitions,” to provide definitions for four terms used in the part.

In section 831.7001, we propose to revise the title from “Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements” to read “Allowable costs and negotiated prices under vocational rehabilitation and education contracts” to more accurately describe the subject matter of the section.

In section 831.7001-1, Tuition, we propose to amend the text to simplify the limitations on tuition and enrollment fees that may be paid under the chapter 31 program, and to standardize throughout the part the term “Veteran student” for the beneficiary of the chapter 31 programs.

In section 831.7001-2, Special services or courses, we propose minor revisions to clarify terms for services or courses that are supplementary to those customarily provided to similarly circumstanced non-Veteran students.

In section 831.7001-3, Books, supplies, and equipment required to be personally owned, we propose to amend the text to clarify the limitations on fees that may be paid for these and other miscellaneous items under the chapter 31 program, and to further reorganize the section by combining limits that apply to several items or categories. We propose to move and combine certain paragraphs where appropriate, to fall under more applicable category headings, to streamline the language under revised paragraphs (a) through (e), and to remove paragraphs (f) through (k).

In section 831.7001-4, Medical services and hospital care, we propose to revise the text to make minor edits to clarify some terms.

In section 831.7001-6, Consumable instructional supplies, we propose to revise the number of the section to 831.7001-5, and to make two other minor edits.

In section 831.7001-7, Reimbursement for other supplies and services, we propose to revise the number of the section to 831.7001-6, and to make one other minor edit.

VAAR Part 833—Protests, Disputes, and Appeals

We propose to amend the authority citation for part 833 to add the reference to the positive law codification of Title 41, United States Code, pertaining to the general authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement subject to the authority conferred in 41 U.S.C. 1121(c)(3). We also propose to add the Title 41, chapter 71 authority pertaining to contract disputes, to include alternate means of dispute resolution.

We propose to delete the existing language in section 833.102, General, since it contains guidance that is internal operational procedures of the VA and will be in the VA Acquisition Manual (VAAM).

We propose to delete outdated information in section 833.103, Protests to VA, and renumber the section 833.103-70 in accordance with FAR drafting guidelines to reflect information that appropriately supplements the FAR. We propose to add new language in paragraph (a) that: 1) would update information for where an interested party may protest to the contracting officer; or, 2) as an alternative, may request independent review above the level of the contracting officer to the Executive Director, Office of Acquisition and Logistics (ED/OAL), supported by the Office of Risk Management and Compliance Service (RMCS); or 3) where in the VA interested parties may appeal a contracting officer's decision on a protest. This new unified approach would streamline VA protest management by combining responsibilities previously shared between the Office of Construction and Facilities Management (CFM) and the former Deputy Assistant Secretary for Acquisition and Materiel Management. Some of the duties formerly assigned to this old entity would be subsumed by a new organizational entity—the ED/OAL and one of its subordinate activities, RMCS, which handles protests on behalf of the ED. A new email address EDProtests@va.gov was secured by RMCS to be used exclusively for purposes of electronic submission of protest related documents by offerors/bidders.

In the renumbered section 833.103-70, Protests to VA, we also propose to add new language in a newly designated paragraph (b) that would revise slightly the language, but would retain the current types of protests that may be dismissed by VA

without consideration of the merits, or may be forwarded to another agency for appropriate action. This proposed revision would renumber the paragraphs using standard numbering and format, and would make other minor edits including the following:

Paragraph (4)(i), we propose to renumber the paragraph to (b)(1) and to update the current positive law codified reference to the Contract Disputes statute, 41 U.S.C. chapter 71.

Paragraphs (4)(ii) through (viii) are proposed to be renumbered (b)(2) through (8), respectively.

In paragraph (b)(2), we propose to add language that states that pursuant to Pub. L. 114-328, the Small Business Administration (SBA) will also hear cases related to size, status, and ownership and control challenges under the VA Veterans First Contracting Program.

The newly renumbered proposed paragraph (b)(6), Contracts for materials, supplies, articles, and equipment exceeding \$15,000, would provide that challenges of the legal status of a firm as a regular dealer or manufacturer be determined solely by the procuring agency, the SBA (if a small business is involved), and the Secretary of Labor.

In the newly renumbered proposed paragraph (b)(7), Subcontractor protests, the language would be revised to clarify that VA will not consider subcontractor protests except where VA determines it is in the interest of the Government. The phrase “except where VA determines it is in the interest of the Government” would be added to further clarify the sentence in lieu of the phrase “by or for the Government.”

We propose to renumber the existing paragraph (b), which would encourage the use of Alternative Dispute Resolution (ADR) at any stage, to paragraph (c).

We propose to renumber paragraph (f), which details the new agency appellate review process for contracting officer's protest decision to be performed solely by the Executive Director, Office of Acquisition and Logistics, to paragraph (d).

We propose to delete section 833.104, Protests to GAO, since it contains procedural guidance that is internal to VA and will be in the VA Acquisition Manual (VAAM) and the FAR provides adequate notice to potential offerors.

We propose to renumber section 833.106, Solicitation provisions, as 833.106-70 to comport with FAR drafting guidelines and to reflect it supplements the FAR. The section would provide that the contracting officer shall insert the provision at 852.233-70, Protest content/alternative dispute resolution and the provision at 852.233-71, Alternate protest procedure, in solicitations expected to exceed the simplified acquisition threshold. The updated provision would include a new centralized alternate review and appeal process rather than the previous bifurcated CFM/OAL approach. It also would include a new dedicated email address to facilitate electronic protest submissions.

In subpart 833.2, Disputes and Appeals, section 833.209, Suspected fraudulent claims, we propose to revise the text to clarify that the contracting officer may not initiate any collection, recovery, or other settlement action concerning suspected fraudulent claims reported to the Office of the Inspector General (OIG), and referred to the Department of Justice, without first obtaining the concurrence of the U.S. Attorney concerned, through the OIG.

We propose to delete paragraphs (a) and (b) of the existing language in section 833.211, Contracting officer's decision, as the language is redundant to the FAR and is adequately covered in FAR 33.211. We propose to revise the language in the existing paragraph (c) and renumber it as (a) to align with the FAR in order to clarify that for purposes of appealing a VA contracting officer's final decision, the cognizant Board of Contract Appeals is the Civilian Board of Contract Appeals (CBCA).

We propose to delete section 833.212, Contracting officer's duties upon appeal, since it contains procedural guidance that is internal to VA and will be updated and moved to the VA Acquisition Manual (VAAM). The cognizant FAR part that this implements provides adequate notice to potential offerors.

We propose to revise section 833.213, Obligation to continue performance. Paragraph (a) would be revised to make one grammatical correction by adding "FAR" at the beginning of the second sentence in front of the FAR clause. Paragraph (b) would be revised to clarify that, in the event of a dispute not arising under, but relating to, the contract, if the contracting officer directs continued performance and considers providing financing for such continued performance, the contracting officer shall contact OGC for advice prior to requesting higher level approval for or authorizing such financing. It would also require the contracting officer to document in the contract file any required approvals and to explain how the Government's interest would be properly secured with respect to such financing.

We propose to revise section 833.214, Alternative dispute resolution (ADR), to clarify that guidance for ADR procedures may be obtained at the U.S. Civilian Board of Contract Appeals website <http://www.cbc.ca.gsa.gov>. This section would retain the

requirement that contracting officers and contractors are encouraged to use ADR procedures.

We propose to revise the language in the existing section 833.215, Contract clause, and rename it “Contract clauses” as this would implement the FAR section with the same title. This would retain existing language to provide that the contracting officer shall use the clause at 52.233-1, Disputes, with its Alternate I (see 833.213). This is necessary to reconcile the FAR requirement with recent updates to the dispute statutes.

VAAR Part 852—Solicitation Provisions and Contract Clauses

We propose to revise the VAAR title for subpart 852.2 to “Text of Provisions and Clauses” in lieu of “Texts of Provisions and Clauses” to comport with the FAR title to which the VAAR’s subpart corresponds.

We propose to revise two provisions—852.233-70, Protest Content/Alternative Dispute Resolution, and 852.233-71, Alternate Protest Procedure. In the current version of the VAAR both of these provisions are prescribed in section 833.106. We propose to change the prescription for each provision: 852.233-70 would now be prescribed in 833.106-70(a) and 852.233-71 would now be prescribed in 833.106-70(b). The language in 852.233-71 would be revised to reorganize the existing single and unlettered paragraph by adding paragraphs (a) and (b). Paragraph (a) would provide the address where to file an alternate protest to other than the contracting officer and would provide a new VA email address to address the protest to the Risk Management and Compliance Service: EDProtests@va.gov. At paragraph (b), the provision would state that a protest will not be considered if the interested party has a protest on the same or similar issue(s) pending with the contracting officer.

VAAR Part 871—Loan Guaranty and Vocational Rehabilitation and Employment Programs

We propose to revise the authority citations for Part 871 to add 38 U.S.C. Chapter 31, which is the basic statute for providing training and rehabilitation for veterans with service-connected disabilities.

In section 871.201-1, Requirements for the use of contracts, we propose to revise the introductory paragraph to clarify the language before the two conditions in paragraphs (a) and (b). We propose to revise paragraph (b), Special services or special courses, to comport with the revision of that term in section 831.7001-2.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the Department of Veterans Affairs Acquisition Regulation (VAAR) for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with Federal Acquisition Regulation (FAR) subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible,

such guidance is superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review, defines "significant regulatory action" to mean any regulatory action that is likely to result in a rule that may: "(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order."

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not to be a significant regulatory action under E.O. 12866 because it does not raise novel legal or policy

issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date. This proposed rule is not expected to be an EO 13771 regulatory action because this proposed rule is not significant under EO 12866.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act.

This proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating procedures. VA is merely adding existing and current regulatory requirements to the VAAR and removing any guidance that is applicable only to VA's internal operation processes or procedures. VA estimates no cost impact to individual business would result from these rule updates. This rulemaking does not change VA's policy

regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 831

Accounting, Government procurement.

48 CFR Part 833

Administrative practice and procedure, Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 871

Government procurement, Loan programs-social programs, Loan programs-Veterans, Reporting and recordkeeping requirements, Vocational rehabilitation.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on August 25, 2017, for publication.

Dated: February 22, 2018

Consuela Benjamin
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 48 CFR, chapter 8, parts 831, 833, 852 and 871 as follows:

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for part 831 is revised to read as follows:

Authority: 38 U.S.C. Chapter 31; 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.

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Revise subpart 831.70 to read as follows

Subpart 831.70—Contract Cost Principles and Procedures for Veterans Services under 38 U.S.C. Chapter 31

Sec.

831.7000 Scope of subpart.

831.7000-1 Definitions.

831.7001 Allowable costs and negotiated prices under vocational rehabilitation and education contracts.

831.7001-1 Tuition.

831.7001-2 Special services or courses.

831.7001-3 Books, supplies, and equipment required to be personally owned.

831.7001-4 Medical services and hospital care.

831.7001-5 Consumable instructional supplies.

831.7001-6 Reimbursement for other supplies and services.

831.7000 Scope of subpart.

This subpart contains general cost principles and procedures for the

determination and allowance of costs or negotiation of prices under cost reimbursement or fixed-price contracts for providing vocational rehabilitation, education, and training to eligible Veterans under 38 U.S.C. chapter 31, (referred to as a “Chapter 31 program”). This subpart applies to contracts with educational institutions as well as to contracts with commercial and non-profit organizations.

831.7000-1 Definitions.

Chapter 31 refers to the VR&E program that provides training and rehabilitation for Veterans with service-connected disabilities under chapter 31 of Title 38 U.S.C.

Consumable instructional supplies means those supplies which are required for instruction in the classroom, shop school, and laboratory of an educational institution, which are consumed, destroyed, or expended by either the student, instructor or both in the process of use, and which have to be replaced at frequent intervals without adding to the value of the institution’s physical property.

Similarly circumstanced non-Veteran student means a student in equal or like situations as a person who is neither receiving educational or training benefits under chapter 31 or chapter 33 of Title 38 U.S.C. or the savings provisions of section 12(a) of Public Law 85-857, nor having all or any part of tuition fees or other charges paid by the educational institution.

Work adjustment training means a specialized structure program that is facility or community based and designated to assist an individual in acquiring or improving work skills, work behaviors, work tolerance, interpersonal skills or work ethics.

831.7001 Allowable costs and negotiated prices under vocational rehabilitation and education contracts.

831.7001-1 Tuition.

(a) Tuition and enrollment fees shall be paid at the institution's customary amount that—

(1) Does not exceed the tuition charged to similarly circumstanced non-Veteran students; and

(2) Is equal to the lowest price offered or published for the entire course, semester, quarter, or term.

(b) The cost of the Veteran student's tuition and fees under a contract shall be offset by—

(1) Any amount of tuition and fees that are waived by a State or other government authority; or

(2) Any amounts the Veteran student receives from a fellowship, scholarship, grant-in-aid, assistantship, or similar award that limits its use to payment of tuition, fees, or other charges that VA normally pays as part of a chapter 31 program.

(c) VA will not pay tuition or incidental fees to institutions or establishments furnishing apprentice or on-the-job training. VA may elect to pay charges or expenses that fall into either of the following categories:

(1) Charges customarily made by a nonprofit workshop or similar establishment for providing work adjustment training to similarly circumstanced non-Veteran students even if the trainee receives an incentive wage as part of the training.

(2) Training expenses incurred by an employer who provides on-the-job training following rehabilitation to the point of employability when VA determines that the additional training is necessary.

831.7001-2 Special services or courses.

Special services or courses are those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students, and that the contracting officer considers them to be necessary for the rehabilitation of the trainee. VA will negotiate the costs/prices of special services or courses prior to ordering them.

831.7001-3 Books, supplies, and equipment required to be personally owned.

(a) Reimbursement for books, supplies, and equipment. VA will provide reimbursement for books, equipment, or other supplies of the same variety, quality, or amount that all students taking the same course or courses are customarily required to own personally. VA will provide reimbursement for items that the institution does not specifically require for pursuit of the course if VA determines that such items are needed because of the demands of the course, general possession by other students, and the disadvantage imposed on a Veteran student by not having the item.

(b) Partial payment agreements. Agreements in which VA would pay the institution a partial payment with the remainder to be paid by the Veteran student are not authorized.

(c) Thesis expenses. The institution's costs in connection with a Veteran student's thesis are considered supplies and are therefore authorized for reimbursement if the Veteran student's committee chairman, major professor, department head, or appropriate dean certifies that the thesis is a course requirement and the expenses are

required to complete the thesis. These expenses may include research expenses, typing, printing, microfilming, or otherwise reproducing the required number of copies.

(d) Reimbursement for books, supplies, and equipment. Books, supplies, and equipment that the institution purchases specifically for trainees will be reimbursed at the net cost to the institution. The VA shall reimburse the institution for books, supplies, and equipment when these items are—

- (1) Issued to students from its own bookstore or supply store;
- (2) Issued to students from retail stores or other non-institutionally owned establishments not owned by the contractor/institution but arranged or designated by them in cooperation with VA; or
- (3) Rented or leased books, supplies and equipment and are issued to students for survey classes when it is customary that students are not required to own the books.

(e) Handling charges. VA shall reimburse the institution for any handling charges not to exceed more than 10 percent of the allowable charge for the books, equipment or other supplies unless—

- (1) The tuition covers the charges for supplies or rentals or a stipulated fee is assessed to all students; or
- (2) The handling charge is for Government-owned books that the contractor procures from the Library of Congress.

831.7001-4 Medical services and hospital care.

(a) VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced non-Veteran students. If payment of the fee is not required

for similarly circumstanced non-Veteran students, payment may be made if VA determines that payment is in the best interest of the Veteran student and the Government.

(b) When the customary Veteran student's health fee does not cover medical services or hospital care, but these medical services are available in an institution-operated facility or with doctors and hospitals in the immediate area through a prior arrangement, VA may provide reimbursement for these services in a contract for the services if—

- (1) An arrangement is necessary to provide timely medical services for Veteran students attending the facility under provisions of chapter 31; and
- (2) The general rates established for medical services do not exceed the rates established by VA.

(c) VA may reimburse a rehabilitation facility for incidental medical services provided during a Veteran student's program at the facility.

831.7001-5 Consumable instructional supplies.

(a) VA will provide reimbursement for consumable instructional supplies that the institution requires for the instruction of all students, Veteran or non-Veteran students, pursuing the same or comparable course or courses when—

- (1) The supplies are entirely consumed in the fabrication of a required project; or
- (2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse by disassembling or dismantling the end product.

(b) VA will not provide reimbursement for consumable instructional supplies if

any of the following apply:

- (1) The supplies can be salvaged for reuse.
- (2) The supplies are used in a project that the student has elected as an alternate class project to produce an end product of greater value than that normally required to learn the skills of the occupation, and the end product will become the Veteran's property upon completion.
- (3) The supplies are used in a project that the institution has selected to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the Veteran student to elect a particular course of study.
- (4) The sale value of the end product is equal to or greater than the cost of supplies plus assembly, and the supplies have not been reasonably used so that the supplies are not readily salvaged from the end product to be reused for instructional purposes.
- (5) The end product is of permanent value and retained by the institution.
- (6) A third party loans the articles or equipment for repair or improvement and the third party would otherwise pay a commercial price for the repair or improvement.
- (7) The number of projects resulting in end products exceeds the number normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.
- (8) The cost of supplies is included in the charge for tuition or as a fee designated for such purpose.

831.7001-6 Reimbursement for other supplies and services.

VA will provide reimbursement for other services and assistance that may be authorized

under applicable provisions of 38 U.S.C. chapter 31 regulations, including, but not limited to, employment and self-employment services, initial and extended evaluation services, and independent living services.

3. Revise part 833 to read as follows

PART 833—PROTESTS, DISPUTES, AND APPEALS

Sec.

Subpart 833.1—Protests

833.103-70 Protests to VA.

833.106-70 Solicitation provisions.

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

833.211 Contracting officer's decision.

833.213 Obligation to continue performance.

833.214 Alternative dispute resolution (ADR).

833.215 Contract clauses.

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; 41 U.S.C. chapter 71; and 48 CFR 1.301-1.304.

Subpart 833.1—Protests

833.103-70 Protests to VA.

(a) Pursuant to FAR 33.103(d)(4), an interested party may protest to the contracting officer or, as an alternative, may request an independent review at a level above the contracting officer as provided in this section. An interested party may also appeal to VA a contracting officer's decision on a protest.

(1) Protests to the contracting officer. Protests to the contracting officer shall be in writing and shall be addressed where the offer/bid is to be submitted or as indicated in the solicitation.

(2) Independent review or appeal of a contracting officer decision—protest filed directly with the agency.

(i) Protests requesting an independent review a level above the contracting officer, and appeals within VA above the level of the contracting officer, shall be addressed to:

Executive Director, Office of Acquisition and Logistics, Risk Management and Compliance Service (RMCS), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(ii) The protest and pertinent documents shall be mailed to the address in paragraph (a)(2)(i) of this section or sent electronically to: EDProtests@va.gov.

(3) An independent review of a protest filed pursuant to paragraph (a)(2) of this section will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(b) The following types of protests may be dismissed by VA without consideration of the merits or may be forwarded to another agency for appropriate action:

(1) Contract administration. Disputes between a contractor and VA are resolved under the disputes clause see the Dispute statute, 41 U.S.C. chapter 71.

(2) Small business size standards and standard industrial classification. Challenges of established size standards, ownership and control or the size status of particular firm, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration (SBA) (see 15 U.S.C. 637(b)(6); 13 CFR 121.1002).

Pursuant to Pub. L. 114-328, SBA will also hear cases related to size, status, and ownership and control challenges under the VA Veterans First Contracting Program (see 38 U.S.C. 8127(f)(8).)

(3) Small business certificate of competency program. A protest made under section 8(b)(7) of the Small Business Act, or in regard to any issuance of a certificate of competency or refusal to issue a certificate under that section, is not reviewed in accordance with bid protest procedures unless there is a showing of possible fraud or bad faith on the part of Government officials.

(4) Protests under section 8(a) of the Small Business Act. The decision to place or not to place a procurement under the 8(a) program is not subject to review unless there is a showing of possible fraud or bad faith on the part of Government officials or that regulations may have been violated (see 15 U.S.C. 637(a)).

(5) Affirmative determination of responsibility by the contracting officer. An affirmative determination of responsibility will not be reviewed unless there is a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(6) Contracts for materials, supplies, articles, and equipment exceeding \$15,000. Challenges concerning the legal status of a firm as a regular dealer or manufacturer within the meaning of 41 U.S.C. chapter 65 are determined solely by the procuring agency, the SBA (if a small business is involved), and the Secretary of Labor (see FAR subpart 22.6).

(7) Subcontractor protests. The contracting agency will not consider subcontractor protests except where VA determines it is in the interest of the Government.

(8) Judicial proceedings. The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(c) Alternative dispute resolution. Bidders/offerors and VA contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, VA will not furnish any documentation in an ADR proceeding beyond what is allowed by the FAR.

(d) Appeal of contracting officer's protest decision--agency appellate review. An interested party may request an independent review of a contracting officer's protest decision by filing an appeal in accordance with paragraph (a)(2) of this section.

(1) To be considered timely, the appeal must be received by the cognizant official in paragraph (a)(2) of this section within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal.

(2) Appeals do not extend GAO's timeliness requirements for protests to GAO. By filing an appeal as provided in this paragraph, an interested party may waive its rights to further protest to the Comptroller General at a later date.

(3) Agency responses to appeals submitted to the agency shall be reviewed and concurred in by the Office of the General Counsel (OGC).

833.106-70 Solicitation provisions.

(a) The contracting officer shall insert the provision at 852.233-70, Protest Content/Alternative Dispute Resolution, in solicitations expected to exceed the simplified acquisition threshold, including those for commercial items.

(b) The contracting officer shall insert the provision at 852.233-71, Alternate Protest Procedure, in solicitations expected to exceed the simplified acquisition threshold, including those for commercial items.

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

The contracting officer must refer matters relating to suspected fraudulent claims to the Office of Inspector General for investigation and potential referral to the Department of Justice. The contracting officer may not initiate any collection, recovery, or other settlement action while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Office of the Inspector General.

833.211 Contracting officer's decision.

(a) For purposes of appealing a VA contracting officer's final decision, the Board of Contract Appeals referenced in FAR 33.211(a) and elsewhere in this subpart is the Civilian Board of Contract Appeals (CBCA), 1800 F Street, N.W., Washington, DC 20405.

833.213 Obligation to continue performance.

(a) As provided in FAR 33.213, contracting officers shall use FAR clause 52.233-1, Disputes, with its Alternate I. FAR clause 52.233-1 requires the contractor to continue performance in accordance with the contracting officer's decision in the event of a claim arising under a contract. Alternate I expands this authority, adding a requirement for the contractor to continue performance in the event of a claim relating to the contract.

(b) In the event of a dispute not arising under, but relating to, the contract, as permitted by FAR 33.213(b), if the contracting officer directs continued performance and considers providing financing for such continued performance, the contracting officer shall contact OGC for advice prior to requesting higher level approval for or authorizing such financing. The contracting officer shall document in the contract file any required

approvals and how the Government's interest was properly secured with respect to such financing (see FAR 32.202-4 and VAAR subpart 832.2).

833.214 Alternative dispute resolution (ADR).

Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures. Guidance on ADR may be obtained at the U.S. Civilian Board of Contract Appeals website: <http://www.caca.gsa.gov>.

833.215 Contract clauses.

The contracting officer shall use the clause at 52.233-1, Disputes, with its Alternate I (see 833.213).

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

Subpart 852.2—Texts of Provisions and Clauses

5. The heading of subpart 852.2 is revised to read "Text of Provisions and Clauses."

6. Section 852.233-70 is revised to read as follows:

852.233-70 Protest Content/Alternative Dispute Resolution.

As prescribed in 833.106-70(a), insert the following provision:

PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (DATE)

(a) Any protest filed by an interested party shall—

(1) Include the name, address, fax number, email and telephone number of the protester;

- (2) Identify the solicitation and/or contract number;
 - (3) Include an original signed by the protester or the protester's representative and at least one copy;
 - (4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;
 - (5) Specifically request a ruling of the individual upon whom the protest is served;
 - (6) State the form of relief requested; and
 - (7) Provide all information establishing the timeliness of the protest.
- (b) Failure to comply with the above may result in dismissal of the protest without further consideration.
- (c) Bidders/offerors and contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(End of provision)

7. Section 852.233-71 is revised to read as follows:

852.233-71 Alternate Protest Procedure.

As prescribed in 833.106-70(b), insert the following provision:

ALTERNATE PROTEST PROCEDURE (DATE)

(a) As an alternative to filing a protest with the contracting officer, an interested party may file a protest by mail or electronically with:

Executive Director, Office of Acquisition and Logistics

Risk Management and Compliance Service (003A2C)

Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, DC 20420

Email: EDProtests@va.gov

(b) The protest will not be considered if the interested party has a protest on the same or similar issue(s) pending with the contracting officer.

(End of provision)

Part 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND
EMPLOYMENT PROGRAMS

8. The authority citation for part 871 is revised to read as follows:

Authority: 38 U.S.C. Chapter 31; 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.

Subpart 871.2—Vocational Rehabilitation and Employment Service

9. Amend section 871.201-1 by revising the introductory text and paragraph (b) to read as follows:

871.201-1 Requirements for the use of contracts.

The costs for tuition, fees, books, supplies, and other expenses are allowable under a contract with an institution, training establishment, or employer for the training and rehabilitation of eligible Veterans under 38 U.S.C. chapter 31, provided the services meet the conditions in the following definitions:

* * * * *

(b) Special services or special courses. Special services or courses are those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students and that the contracting officer considers to be necessary for the rehabilitation of the trainee.

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