



DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Parts 831, 833, 852 and 871

RIN 2900-AQ02

VA Acquisition Regulation: Contract Cost Principles and Procedures; Protests, Disputes and Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate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 These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors.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. In particular, this rulemaking revises VAAR concerning Contract Cost Principles and Procedures and Protests, Disputes and Appeals.

DATES: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

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: On April 6, 2018, VA published a proposed rule in the Federal Register (83 FR 14826), which announced VA's intent to amend regulations for VAAR Case RIN 2900-AQ02 (Parts 831 and 833). In particular, this final rule revises VAAR part 831 to clarify the cost principles under the chapter 31 program and to apply those principles to both fixed-price and cost reimbursement contracts with educational institutions, as well as those with commercial and non-profit organizations. It revises VAAR part 833 to update information for where an interested party may protest to the contracting officer; provides for independent review a level above the contracting officer; and clarifies how interested parties may appeal a contracting officer's decision on a protest. Other revisions include clarification of the types of protests that may be dismissed by VA without consideration of the merits, or may be forwarded to another agency for appropriate action; states that certain challenges of the legal status of a firm as a regular dealer or manufacturer is determined solely by the procuring agency, the Small Business Administration (SBA) if a small business is involved, and the Secretary of Labor; updates two clauses in part 852 related to protests; clarifies a contractor's obligation to continue performance under a dispute; and, revises a definition of a term in VAAR part 871 to comport with the same term used in VAAR part 831.

VA provided a 60-day comment period for the public to respond to the proposed rule. The comment period for the proposed rule ended on June 5, 2018 and VA

received no comments. This document adopts as a final rule the proposed rule published in the Federal Register on April 6, 2018, with minor stylistic and grammatical edits. This final rule has Federal Register administrative format changes in the amendatory text which make no substantive text changes at the affected sections.

### 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 final rule will have no such effect on State, local, and tribal Governments or on the private sector.

### Paperwork Reduction Act

This final 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 final 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. This final rule will generally be small business neutral. The overall impact of the rule will 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 businesses will 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 final rule will 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.

#### 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 final rule is not subject to the requirements of E.O. 13771 because this final rule is expected to result in no more than *de minimis* costs.

#### 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 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. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on August 24, 2018, for publication.

Dated: August 28, 2018.

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

For the reasons set out in the preamble, VA amends 48 CFR parts 831, 833, 852 and 871 as follows:

1. Part 831 is revised to read as follows:

## PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 831.70—Contract Cost Principles and Procedures for Veterans Services

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.

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 831.70—Contract Cost Principles and Procedures for Veterans 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 vocational rehabilitation and employment (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.

2. Part 833 is revised 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) Agency protests. 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) Agency actions on specific types of protests. 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 the Government Accountability Office's (GAO) timeliness requirements for protests to GAO. By filing an appeal as provided in this paragraph (d), 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, or 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.cbca.gsa.gov>.

833.215 Contract clauses.

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

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. 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.

4. The heading of subpart 852.2 is revised to read as follows:

Subpart 852.2—Text of Provisions and Clauses

5. 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 (SEP 2018)

(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)

6. 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 (SEP 2018)

- (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 or 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

7. 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

8. 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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