

**PART 837—SERVICE CONTRACTING****Subpart 837.1—Service Contracts—  
General**

Sec.

837.103 Contracting officer responsibility.

837.104 Personal services contracts.

**Subpart 837.2—Consulting Services**

837.203 Types of consulting services.

837.270 Special controls for letters of agreement.

837.271 Management and professional services.

837.271-1 Scope.

837.271-2 Definition.

837.271-3 Guidelines for use of contracts for management and professional services.

837.271-4 Approval for use of contractual services.

**Subpart 837.3—Dismantling, Demolition, or  
Removal of Improvements**

837.300 Scope of subpart.

**Subpart 837.4—Nonpersonal Health-Care  
Services**

837.403 Contract clause.

**Subpart 837.70—Mortuary Services**

837.7001 General.

837.7002 List of qualified funeral directors.

837.7003 Funeral authorization.

837.7004 Administrative necessity.

837.7005 Unclaimed remains—all other cases.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12620, Mar. 29, 1984, unless otherwise noted.

**Subpart 837.1—Service  
Contracts—General****837.103 Contracting officer responsibility.**

When the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or nonpersonal services, he/she shall gather all the pertinent facts and request the opinion of District Counsel responsible for servicing the VA facility involved.

**837.104 Personal services contracts.**

(a) Personal service contracts having an employer-employee relationship shall not be awarded but will be consummated in accordance with VA Manual MP-5, Parts I and II.

(b) In addition to the elements used in assessing whether or not a contract is personal in nature identified in FAR 37.104(d), the following circumstances may also indicate a possible personal service contract.

(1) The contract does not call for an end product which is adequately described in the contract.

(2) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(3) Office space, equipment and supplies for contract performance are to be furnished by the Department of Veterans Affairs.

(4) Contractor personnel are to be used interchangeably with Department of Veterans Affairs personnel to perform the same function.

(5) The Department of Veterans Affairs retains the right to control and direct the means and methods by which contractor personnel accomplish the work.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 61 FR 20493, May 7, 1996]

**Subpart 837.2—Consulting  
Services****837.203 Types of consulting services.**

For the purpose of this subpart the definition of consulting services shall, in addition to examples listed in FAR 37.203, include peer review of research proposals.

**837.270 Special controls for letters of agreement.**

(a) Letters of agreement may be used to procure consulting services and advisory board memberships only by those individuals designated in 801.670-14(a) and individuals delegated authority under the conditions specified in paragraph (b) of that section, and will be limited to a value of \$500 per letter and to an accumulated annual total of \$2,500 to any individual or firm. Letters of agreement should only be used where normal procurement channels

## Department of Veterans Affairs

837.271-2

are not feasible and only for obtaining the following services:

(1) Consultant services including peer review of research proposals and advisory board memberships.

(2) Management and professional services (837.271)

(3) Instructors and training obtained pursuant to section 4122 of Title 38, United States Code.

(b) The delegated official will perform or have performed for each letter of agreement all those duties and requirements prescribed in this subpart, as modified by paragraphs (c) and (d) of this section. That official will also insure that all reporting requirements are completed for each action.

(c) The administration head or staff office director will be the highest level approving official for each procurement action which does not exceed \$500 in consulting fees (excluding travel, per diem and other travel-related costs) and which does not award more than an accumulated total of \$2,500 per year in consulting fees to any individual or firm. (Consulting services anticipated to exceed these dollar limitations will not be obtained through letters of agreement.)

(d) In lieu of the requirements outlined in appendix A of this subpart 837.2, justifications for letters of agreement will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services. The justification will also certify that the procurement action will not violate post-employment restrictions prescribed in the Ethics in Government Act and 803.101-3.

(e) All procurements for consulting services accomplished through letters of agreement will be entered into the agency consolidated listing of consultant contracts in the format prescribed by 837.205(d). All such log entries applicable to Central Office activities shall be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The office shall also be responsible for entering such information pertaining to Central Office

letters of agreement into the Federal Procurement Data System.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

### **837.271 Management and professional services.**

#### **837.271-1 Scope.**

(a) The controls in this section are applicable to management and professional services, special studies and analyses and management and support services for research and development. Specific types of services to be controlled are listed in appendix B of this subpart. Management and support services for research and development are the same services listed in appendix B when procured with Research and Development funds. However, the controls do not apply to the conduct of research and development.

(b) Services in other than the categories listed in appendix B are also controlled if covered by the definition in 837.271-2 and either represent unusual, nonroutine requirements or requirements having significant impact on Department operations. Contracting officers will be responsible for making such determinations.

(c) This section does not apply to contracts for the medical, dental and ancillary care of beneficiaries or to contracts for the provision of other services directly to beneficiaries, such as educational services.

[49 FR 12620, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

#### **837.271-2 Definition.**

The term *management and professional services* means those services related to the performance of operating functions of an agency, involving knowledge of an advanced type, and requiring the use of discretion and judgment. Management and professional services differ from consulting services in that the latter term refers to services of a purely advisory nature. Both categories of services involve selection of the contractor on the basis of qualifications, rather than price alone, and are therefore normally procured by negotiation.

**837.271-3 Guidelines for use of contracts for management and professional services.**

(a) Contracts are appropriate when:

(1) Unusual or peak workloads occur that cannot be accomplished by Government personnel.

(2) Work involved is of an intermittent, occasional, or one-time nature for which the hiring of Government personnel is not feasible.

(3) They result in a more economical method of performing the work (see OMB Circular No. A-76, revised.)

(b) Contracts are inappropriate (improper or illegal) when:

(1) The service involves exercising a Governmental judgment; i.e., managing programs requiring value judgments; selection of priorities; direction of Federal employees; and all regulatory responsibilities.

(2) An employer-employee relationship would be established or involved.

(3) They circumvent personnel salary or ceiling limitations.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

**837.271-4 Approval for use of contractual services.**

(a) All contracts controlled by this section require the approval of the Secretary except as provided in paragraph (b) of this section. The procedure to be used in obtaining approval is the same as that required for consulting service as prescribed in 837.205(c). The format and content of the supporting justification will be the same as that in appendix A of this subpart.

(b) Contracts not exceeding \$500 may be approved by the heads of facilities, without higher level review, for requirements emanating at the local level. In Central Office, contracts not exceeding \$500 may be approved at one level above the requesting activity, without higher level review. Supporting justifications will be the same as required in paragraph (a) of this section.

(c) The approvals of officials designated in paragraphs (a) and (b) of this section are in addition to and do not replace the technical and legal reviews of contract documents prior to award

prescribed elsewhere in these regulations.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

**Subpart 837.3—Dismantling, Demolition, or Removal of Improvements****837.300 Scope of subpart.**

Contracting officers should be cognizant of the requirements contained in VA Manual MP-3, Part II, Chapter 6, for approval necessary prior to entering into a contract for disposal of VA real property. Such approval(s) shall be included in the contract file.

**Subpart 837.4—Nonpersonal Health-Care Services****837.403 Contract clause.**

The contracting officer shall insert the clause at 852.237-7, Indemnification and Medical Liability Insurance, in lieu of FAR Clause 52.237-7, in solicitations and contracts for nonpersonal health-care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health-care services awarded under the procedures in FAR part 13 and (VAAR) 48 CFR part 813.

[61 FR 52709, Oct. 8, 1996]

**Subpart 837.70—Mortuary Services****837.7001 General.**

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of the Department of Veterans Affairs, as provided in 38 U.S.C. 903.

**837.7002 List of qualified funeral directors.**

Contracting officers will establish, in coordination with cognizant Medical Administration Service personnel, a list of funeral directors capable of performing the burial services specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of \$300. Each funeral director must be fully licensed in the

jurisdiction in which the business operates. If there has been no prior experience with the funeral director which would ensure the adequacy of the funeral director's services and casket, arrangements will be made prior to contract negotiation to inspect the premises and the casket to be provided, and to check with the local business bureau and/or Chamber of Commerce.

[ 49 FR 12620, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

**837.7003 Funeral authorization.**

(a) When a veteran dies while receiving care in a Department of Veterans Affairs health care facility or in a non-Department of Veterans Affairs institution at Department of Veterans Affairs expense, and the decedent's remains are unclaimed, the Chief, Medical Administration Service, will forward to the Chief, Supply Service, a properly executed VA Form 10-2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available grave space.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of \$300. This service will consist of and will be specified on the purchase order, VA Form 90-2138, Order for Supplies or Services, as follows:

(1) Preparation of the body, embalming.

(2) Clothing.

(3) Casket. (The casket, as a minimum, will be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable).

(4) Securing all necessary permits.

(5) Ensuring that a United States Flag (provided the funeral director in accordance with Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.40) accompanies the casket to place of burial.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 903(a)(2). This allowance will cover the transpor-

tation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside (shipment) box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the \$300 allowance.

(d) In accordance with Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.37, the contracting officer will designate the Chief, Medical Administration Service, or representative, to be responsible for the medical inspection of the mortuary services performed and inspection of the merchandise furnished. This designee will also be responsible for certifying receipt on the receiving report.

(e) The Chief, Supply Services, will assist the Chief, Medical Administration Service, in developing the local procedures specified in Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.37c.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

**837.7004 Administrative necessity.**

(a) When persons die under Department of Veterans Affairs care who are not legally entitled to such care at Department of Veterans Affairs expense, and no relatives or friends will claim the remains, and the municipal, county or State officials refuse to provide for final disposition, arrangements will be made and expenses assumed for burial locally under separate contractual agreement.

(b) When a full and complete funeral and burial service as prescribed in 837.7003 cannot be obtained by the contracting officer within the statutory allowance, he/she will, prior to taking any further action, secure from the facility director a written determination that the disposition of the remains must be accomplished by the Department of Veterans Affairs as an administrative necessity. The facility director will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose. The amount of these additional funds will be held to the minimum, keeping in

**837.7005**

mind, however, that the deceased must be given a proper and fitting interment.

(c) The determination and authorization by the facility director will be made a part of the contract file.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

**837.7005 Unclaimed remains—all other cases.**

Requests for information on the disposition of the unclaimed remains of a

**48 CFR Ch. 8 (10-1-97 Edition)**

veteran whose death occurs while not under the direct care or treatment of the Department of Veterans Affairs will be referred to the Veterans Services Officer for processing in accordance with Veterans Benefits Administration Manual M27-1, Part II. This manual is available at any Department of Veterans Affairs regional office, medical center or VA office.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]