

## 831.7001-6

rates established by the Under Secretary for Health.

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

### 831.7001-6 Consumable instructional supplies.

(a) VA will provide reimbursement for consumable instructional supplies that the institution requires for the instruction of all students, veteran or nonveteran, 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 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

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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.

### 831.7001-7 Reimbursement for other supplies and services.

VA will provide reimbursement for other services and assistance that may be authorized under provisions of applicable Chapter 31 regulations, including, but not limited to, employment and self-employment services, initial and extended evaluation services, and independent living services.

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

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

#### 832.006 Reduction or suspension of contract payments upon finding of fraud.

##### 832.006-1 General.

The SPE is authorized to make determinations that there is substantial evidence that contractors' requests for advance, partial, or progress payments are based on fraud and may direct that further payments to the contractors be reduced or suspended, as provided in FAR 32.006. This authority may not be redelegated.

##### 832.006-2 Definitions.

The *remedy coordination official* for VA is the DSPE.

##### 832.006-3 Responsibilities.

VA personnel must report suspected fraud related to advance, partial, or progress payments to the DSPE and VA Office of the Inspector General. The report must include all available information supporting the suspicion.

##### 832.006-4 Procedures.

(a) Any recommendation from a VA employee through the DSPE to the SPE to reduce or suspend payment to a contractor under FAR 32.006 must address the considerations in FAR 32.006-4(d).

(b) The DSPE shall carry out the responsibilities of the Secretary or designee in FAR 32.006-4(e) to notify the contractor of proposed action under FAR 32.006. The notice of proposed action will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the notice of proposed action may be sent to any partner, principal, officer, director, owner or co-owner, or joint venture. The contractor will be afforded an opportunity to appear before the DSPE to

present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceedings will be conducted in an informal manner and without the requirement for a transcript. If the DSPE does not receive a reply from the contractor within 30 calendar days, the DSPE will base his or her recommendations on the information available. Any recommendation of the DSPE under paragraph (a) of this section must address the results of this notification and the information, if any, provided by the contractor.

(c) The SPE must provide a copy of each final determination and the supporting documentation to the contractor, the DSPE and the contracting officer. The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

### Subpart 832.1—Non-Commercial Item Purchase Financing

#### 832.111 Contract clauses for non-commercial purchases.

In solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments under Fixed-Price Construction Contracts, the contracting officer shall insert the following clauses:

(a) If the solicitation or contract does not contain a section entitled "Network Analysis System (NAS)," the contracting officer must insert the clause at 852.236-82, Payments under fixed-price construction contracts (without NAS). When the solicitation or contract includes guarantee period services, the contracting officer must use the clause with its Alternate I.

(b) If the solicitation or contract contains a section entitled "Network Analysis System (NAS)," the contracting officer must insert the clause at 852.236-83, Payments under fixed-price construction contracts (including NAS). When the solicitation or contract includes guarantee period services, the contracting officer must use the clause with its Alternate I.

### Subpart 832.2—Commercial Item Purchase Financing

#### 832.201 Statutory authority.

The contracting officer may make the determination that terms and conditions for payment for commercial items are appropriate and customary in the commercial marketplace and are in the best interest of the Government, provided the terms and conditions for payment do not conflict with FAR Subpart 32.2.

#### 832.202 General.

##### 832.202-1 Policy.

As provided in FAR 32.202-1(d), contracting officers must obtain the approval of the DSPE before awarding a contract that includes unusual contract financing. The contracting officer must fully support the request with the reasons why the proposed unusual contract financing is in the best interest of the Government. In addition, contracting officers must not use commercial interim payment or commercial advance payment terms in solicitations or contracts without the approval of the DSPE.

##### 832.202-4 Security for Government financing.

An offeror's financial condition may be considered adequate security to protect the Government's interest when the Government provides contract financing. In assessing the offeror's financial condition, the contracting officer may obtain, to the extent required, the following information to establish the offeror's financial capability and to determine the offeror's financial condition:

(a) A current year interim balance sheet and income statement and balance sheets and income statements for the two preceding fiscal years. The statements should be prepared in accordance with generally accepted accounting principles and must be audited and certified by an independent public accountant or an appropriate officer of the firm.

(b) A cash flow forecast for the remainder of the contract term showing the planned origin and use of cash

within the firm or branch performing the contract.

(c) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor's exposure to financial crisis, and credit arrangements.

(d) A statement of the status of all State, local, and Federal tax accounts, including any special mandatory contributions.

(e) A description and explanation of the financial effects of any leases, deferred purchase arrangements, patent or royalty arrangements, insurance, planned capital expenditures, pending claims, contingent liabilities, and other financial aspects of the business.

(f) Any other financial information deemed necessary.

(g) A Dun and Bradstreet Report on the company.

### Subpart 832.4—Advance Payments for Non-Commercial Items

#### 832.402 General.

Authority to make the determination required by FAR 32.402(c)(1)(iii) and to approve contract terms, as provided by FAR 32.402(e)(1), is delegated to the SPE and is further delegated to the DSPE. Before award, contracting officers must submit a request for approval to use advance payment to the DSPE. The request must include the information required by FAR 32.409-1 and must address the standards for advance payment in FAR 32.402(c)(2).

#### 832.404 Exclusions.

(a) Under 31 U.S.C. 3324(d)(2), VA allows advance payment for subscriptions or other charges for newspapers, magazines, periodicals, and other publications for official use, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual use.

(b) Under 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(c) Under 5 U.S.C. 4109, VA allows advance payment for all or any part of

the necessary expenses for training Government employees in Government or non-Government facilities, including the purchase or rental of books, materials, and supplies or services directly related to the training of a Government employee.

**Subpart 832.5—Progress Payments Based on Costs**

**832.502 Pre-award matters.**

**832.502-2 Contract finance office clearance.**

Contracting officers must obtain approval from the DSPE before taking the actions listed in FAR 32.502-2. Full justification and the recommendations of the contracting officer must accompany requests for approval.

**Subpart 832.8—Assignment of Claims**

**832.805 Procedure.**

**832.805-70 Distribution/notification of assignment of claims.**

(a) Prior to acknowledgement of receipt, in addition to the requirements of FAR 32.805(d), the contracting officer shall obtain legal review of the assignment (see 801.602-75(a)(7)). Upon acknowledgement of receipt, the contracting officer shall:

(1) File the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the Government Accountability Office copy of the contract; and

(2) Forward a copy of the notice of assignment and instrument of assignment to the local finance office and to the payment office cited in the contract.

(b) Contracting officers must notify field facilities of any recognized assignment of payments for contracts under which payment for articles and services is certified and approved for payment in the field.

**Subpart 832.9—Prompt Payment**

**832.904 Determining payment due dates.**

(a) When preparing specification packages, contracting officers must give full consideration to the time reasonably required for constructive acceptance or approval of the goods or services and for making invoice payments. Based on this analysis, contracting officers may, when authorized by FAR 32.904, modify the number of days allowed for notifying contractors of defects in invoices or, for construction solicitations, the number of days allowed for payment of invoices specified in the applicable prompt payment clause. Changes, if any, should be made before issuing the solicitation.

(b)(1) For construction solicitations, the analysis specified in paragraph (a) of this section may routinely take more than the 7 days provided in paragraph (a)(2) of the FAR clause at 52.232-27, Prompt Payment for Construction Contracts, to evaluate and return defective progress payment invoices.

(2) It also may take more than the 14 days provided in paragraph (a)(1)(i)(A) of the prompt payment clause to adequately inspect the work, determine the adequacy of the contractor's performance, approve, and pay progress payment invoices.

(3) Contracting officers should consider the following and, if necessary, revise the number of days stated in paragraphs (a)(2) and (a)(1)(i)(A) of the prompt payment clause before issuing construction solicitations (see FAR 32.904(d)(1)(i)):

- (i) Recent interest payment history.
- (ii) The complexity of the project.
- (iii) Workload.
- (iv) Work site location.

(4) In no event may the number of days be set in excess of 14 days for return of a defective progress payment invoice or 30 days for payment of the invoice.

**Subpart 832.11—Electronic Funds Transfer**

**832.1106 EFT mechanisms.**

(a) The Assistant Secretary for Management may, with the concurrence of the Department of the Treasury office

responsible for making payment, authorize the use of EFT mechanisms other than those authorized under FAR 32.1106(a).

(b) The Assistant Secretary for Management may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT for payments to be received by or on behalf of a contractor outside the United States or Puerto Rico or for contracts paid in other than United States currency, as provided in FAR 32.1106(b).

## PART 833—PROTESTS, DISPUTES, AND APPEALS

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

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 833.1—Protests

#### 833.102 General.

Solicitations must instruct interested parties (see FAR provision 52.233-2) to send a copy of any protest filed with the Government Accountability Office (GAO) to the contracting officer and the appropriate VA Central Office activity as follows:

(a) For contracts to be awarded by the Office of Construction and Facilities Management: Director, Office of Construction and Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) For all other contracts: Deputy Assistant Secretary for Acquisition

and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

#### 833.103 Protests to VA.

(a) *Filing of protests.* (1) An interested party may protest to the contracting officer or, as an alternative, may request an independent review by filing a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management (DAS for A&MM), or for solicitations issued by the Director, Office of Construction and Facilities Management. A protest filed with the DAS for A&MM or the Director, Office of Construction and Facilities Management, will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(2) Protests to the contracting officer must be in writing and addressed where the offer/bid is to be submitted.

(3) Protests requesting an independent review must be in writing and addressed to the Deputy Assistant Secretary for Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or, for solicitations issued by the Office of Construction and Facilities Management, to the Director, Office of Construction and Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

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

(i) *Contract administration.* Disputes between a contractor and VA are resolved under the disputes clause of the contract and the Contract Disputes Act of 1978. (41 U.S.C. 601-613).

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

(iii) *Small business certificate of competency program.* A protest made under section 8(b)(7) of the Small Business