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SUBCHAPTER A—GENERAL

PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

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

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

801.000 Scope of part.

This part sets out general Department of Veterans Affairs (VA) Acquisition Regulation (VAAR) policies, including information regarding the maintenance and administration of the VAAR, acquisition policies and practices, and procedures for deviation from the VAAR and the Federal Acquisition Regulation (FAR).

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.

(a) VA established the VAAR to codify and publish uniform policies and procedures for VA's acquisition of supplies and services, including construction.

(b) The VAAR implements and supplements the FAR.

801.103 Authority.

The Secretary issues the VAAR under the authority of 40 U.S.C. 121(c), Title 48 of the Code of Federal Regulations (CFR) 1.301 through 1.304, and other authorities as cited.

801.104 Applicability.

(a) Unless otherwise specified in this chapter or excepted by statute (i.e., expenditures of the VA Canteen Service) or other VA regulations, the FAR and VAAR apply to all VA acquisitions (including construction) made with appropriated funds. Supply Fund monies (38 U.S.C. 8121) and General Post Funds (38 U.S.C. 8302) are appropriated funds.

(b) Use the VAAR and the FAR together. The FAR applies to VA acquisitions except as provided in the VAAR.

801.104–70 Exclusions.

The FAR and VAAR do not apply to purchases and contracts that use General Post Funds if using the FAR and the VAAR would infringe upon a donor's right to specify the exact item to be purchased and/or the source of supply (38 U.S.C. 8303).

801.105 Issuance.

801.105–2 Arrangement of regulations.

(a) *General.* The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every VAAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs.

(2) Subdivisions below the section or subsection level consist of parenthetical alphanumerics using the following sequence: (a)(1)(i)(A)(*I*)(*i*).

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this Chapter.

(2) This chapter may be referred to as the ''Department of Veterans Affairs Acquisition Regulation'' or the ''VAAR''.

(3) Using the VAAR coverage at 809.106–4(c) as a typical illustration, reference to the—

(i) Part would be ''VAAR Part 809'' outside the VAAR and ''Part 809'' within the VAAR.

(ii) Subpart would be ''VAAR Subpart 809.1'' outside the VAAR and ''Subpart 809.1'' within the VAAR.

(iii) Section would be ''VAAR 809.106'' outside the VAAR and ''809.106'' within the VAAR.

(iv) Subsection would be ''VAAR 809.106–4'' outside the VAAR and ''809.106–4'' within the VAAR.

(v) Paragraph would be ''VAAR 809.106–4(c)'' outside the VAAR and ''809.106–4(c)'' within the VAAR.

(4) Citations of authority (e.g., statutes or Executive orders) in the VAAR shall follow the FEDERAL REGISTER form guides.

801.106 OMB approval under the Paperwork Reduction Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), the Office of Management and Budget (OMB) has approved the reporting or recordkeeping provisions that are included in the VAAR and has

given VA the following approval numbers:

48 CFR part or section where identified and described	Current OMB control number	48 CFR part or section where identified and described	Current OMB control number
809.106–1	2900–0418	852.214–70	2900–0593
809.504(d)	2900–0418	852.228–71	2900–0590
813	2900–0393	852.236–72	2900–0422
832.006–4	2900–0688	852.236–79	2900–0208
832.202–4	2900–0688	852.236–80 (Alt. I)	2900–0422
836.606–71	2900–0208	852.236–82 through 852.236–84	2900–0422
852.207–70	2900–0590	852.236–88	2900–0422
852.209–70	2900–0418	852.236–89	2900–0622
852.211–70	2900–0587	852.236–91	2900–0623
852.211–71	2900–0588	852.237–7	2900–0590
852.211–72	2900–0586	852.270–3	2900–0589
852.211–73	2900–0585		

Subpart 801.2—Administration

801.201 Maintenance of the FAR.

801.201–1 The two councils.

Revisions to the FAR are prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council. A designee of the Office of Acquisition and Materiel Management will represent VA on the Civilian Agency Acquisition Council.

Subpart 801.3—Department Acquisition Regulations

801.304 Department control and compliance procedures.

The Assistant Secretary for Management is designated as the Department's Chief Acquisition Officer. The Deputy Assistant Secretary (DAS) for Acquisition and Materiel Management is designated as the Department's Senior Procurement Executive (SPE). The Associate DAS for Acquisitions is designated as the Deputy Senior Procurement Executive (DSPE). The DSPE is responsible for amending the VAAR for compliance with FAR 1.304.

Subpart 801.4—Deviations from the FAR or VAAR

801.403 Individual deviations.

(a) Authority to authorize individual deviations from the FAR and VAAR is delegated to the SPE and is further delegated to the DSPE.

(b) When a contracting officer considers it necessary to deviate from the policies in the FAR or VAAR, the contracting officer, in accordance with Administration or staff office procedures, must submit a request through the HCA to the DSPE for authority to deviate.

(c) The request to deviate must clearly state the circumstances warranting the deviation and the nature of the deviation.

(d) The DSPE may authorize individual deviations from the FAR and VAAR when an individual deviation is in the best interest of the Government. When the DSPE authorizes a deviation, the contracting officer must file the authorization in the purchase order or contract file.

801.404 Class deviations.

Authority to authorize class deviations from the FAR and VAAR is delegated to the SPE and is further delegated to the DSPE. The DSPE may authorize class deviations from the FAR and VAAR when a class deviation is in the best interest of the Government. The DSPE must comply with the provisions of FAR 1.404 through the SPE.

Subpart 801.6—Career Development, Contracting Authority, and Responsibilities

801.601 General.

(a) The HCA or the DSPE, within their authority, may appoint a contracting officer under FAR 1.603 and VA's Contracting Officer Certification Program (COCP).

(b) In addition, the HCA may delegate micro-purchase authority to VA employees under VA's purchase card program.

(c) An individual may not commit the Government for purchases of supplies, equipment, or services unless the individual has received delegated contracting authority as a contracting officer or purchase card holder or as provided in 801.670. Individuals making such commitments or acting beyond the scope of their authority may be held financially liable.

801.602 Contracting officers.

(a) Except as otherwise provided by statute, VA regulations, the VAAR, or the FAR, the authority vested in the Secretary to do the following is delegated to the SPE and is further delegated from the SPE to the DSPE:

(1) Execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds for construction and the acquisition of personal property and services (including architect-engineer services).

(2) Issue bills of lading.

(3) Sell personal property.

(4) Enter into leases, sales agreements, and other transactions.

(5) Prescribe and publish acquisition policies and procedures.

(6) Establish clear lines of contracting authority.

(7) Manage and enhance career development of the procurement work force.

(8) Examine, in coordination with the Office of Federal Procurement Policy, the procurement system to determine specific areas where VA should establish and apply Government-wide performance standards, and to participate in developing Government-wide procurement policies, regulations, and standards.

(9) Oversee the competition advocate program.

(b) The DSPE may further delegate authority to execute, award, and administer contracts, purchase orders, and other agreements to other VA officials, such as HCAs and contracting officers, in accordance with the COCP.

801.602–2 Responsibilities.

In the administration of a contract, many problems can and do arise that make the advice and assistance of the Office of General Counsel (OGC) either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

801.602–3 Ratification of unauthorized commitments.

(a) This section applies to unauthorized commitments, including any commitment made by a contracting officer that exceeds that contracting officer's contracting authority and unauthorized commitments made by individuals who lack contracting authority.

(b) A contracting officer must not ratify unauthorized commitments made by other VA personnel or by another contracting officer who lacks authority without prior approval as specified in paragraphs (b)(1) through (b)(3) of this section. The specified approval authorities may not be re-delegated.

(1) At field facilities, for supplies, services (except leases of real property), and construction, the approving authority for unauthorized commitments made by staff assigned to a field facility is the HCA.

(2) For VA Central Office (VACO) organizations, for supplies, services (except leases of real property), and construction, the approving authorities for unauthorized commitments made by staff assigned to the Administrations are the respective chief financial officers of the Administrations concerned. The approving authority for unauthorized commitments made by staff assigned to any other organization within VACO is the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For unauthorized commitments for leasehold interest in real property, the approving authority is:

(i) The Director, Office of Construction and Facilities Management, for unauthorized commitments for 1–5,000

square feet of space or for 1–100 parking spaces costing less than $50,000 per annum.

(ii) The Under Secretary for Health for unauthorized commitments for 5,001–20,000 square feet of space or for more than 100 parking spaces costing less than $100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet of space and above or for more than 100 parking spaces costing more than $100,000 per annum.

(c) The process for contracting officer requests for ratification will be as follows:

(1) The individual who made the unauthorized commitment will furnish the contracting officer with all records and documents concerning the commitment and a complete written statement of facts that includes the following:

(i) Why the procurement office was not used.

(ii) Why the proposed contractor was selected.

(iii) Other sources that were considered.

(iv) A description of work to be performed or products to be furnished.

(v) The estimated or agreed contract price.

(vi) A citation of the appropriation available.

(vii) A statement of whether the contractor has commenced performance.

(viii) The name of the individual responsible for the unauthorized commitment.

(2) The contracting officer will review the file and forward it to the approving authority specified in paragraph (b) of this section with any comments or information that the approving authority should consider in evaluating the request for ratification. If the approving authority determines that a legal review would be desirable, the approving authority will coordinate the request for ratification with OGC or the Regional Counsel, as appropriate.

(3) If the approving authority authorizes the ratification, the approving authority will return the file to the contracting officer for issuance of a purchase order or contract, as appropriate.

(d) If an otherwise proper contract award exceeds the limits of the contracting officer's delegated authority, the ratifying contracting officer must comply with the above requirements and the approving authority must inform the HCA. The HCA will take action to preclude future instances of such awards.

801.602–70 General review requirements.

(a) Contracting officers shall ensure that any document listed under 801.602–71 through 801.602–76 that is submitted for technical or legal review is submitted through or by an official at least one level above the contracting officer.

(b) Before opening a bid, awarding a contract, or signing a contract-related document as specified in 801.602–71 through 801.602–76, the contracting officer shall ensure that the appropriate VA official, including appropriate staff of the Acquisition Resources Service regional or VA Central Office, has reviewed and concurred with the document.

(c) Before signing a contract for a Veterans Benefits Administration field facility for any guidance center or vocational rehabilitation service with an anticipated expenditure of $100,000 or more, the contracting officer shall ensure that the Director, Vocational Rehabilitation and Employment Service, has reviewed and approved the solicitation or proposed contract.

(d) When the following items are for the management, sale, or lease of properties acquired by VA after liquidation of a guaranteed, direct, acquired, or vendee loan, the review requirements specified in 801.602–71 through 801.602–76 do not apply:

(1) Agreements.

(2) Licenses.

(3) Easements.

(4) Deeds.

(e) If there is insufficient time for the legal review required in 801.602–75(a)(3), the contracting officer (except contracting officers in the Office of Construction and Facilities Management) must at least obtain verbal concurrence from Acquisition Resources Service staff before issuing a change order where:

(1) The change order (unilateral agreement) has an anticipated value of $100,000 or more; or

(2) The change order is for a time extension of 60 days or more.

(f) Unless otherwise stated, all dollar values in 801.602–71 through 801.602–76 are expressed in total dollars involved in the acquisition action.

(1) The contracting officer may not consider the positive and negative status of the figures in determining the total dollar values involved.

(2) An acquisition of $550,000 with a trade-in credit of $70,000 would be valued at $620,000 for legal or technical review purposes rather than the net amount of $480,000. An Energy Savings Performance Contract requiring payment from savings of $10,000,000 to the contractor over the life of the contract would be valued at $10,000,000, despite the fact that there is no immediate cost to VA and no payment if there are no savings.

(g) By separate notice, the DSPE may require technical review of any contract-related materials, regardless of dollar value.

(h) Except as set forth in 801.602–73 and 801.602–75, at its discretion, the Office of Acquisition and Materiel Management may request OGC review.

(i) The requirements of this section or sections 801.602–71 through 801.602–76 do not apply to contracts awarded by or on behalf of the VA Office of Inspector General.

(j) Contracting officers and purchase card holders must ensure compliance with separate guidance on information technology (IT) tracking and approval prior to processing requests for acquisitions of IT and telecommunications software, equipment, and/or services, regardless of dollar value.

801.602–71 Basic review requirements.

Contracting officers must obtain technical review from Acquisition Resources Service staff of the documents set forth in column one of Table 801.602–71 that have anticipated award values equal to or greater than the value in column two.

TABLE 801.602–71

Document	Anticipated contract award value
(a) Supply or service solicitations or quotations (except as provided in 801.602–72 through 801.602–75) (includes indefinite quantity, option year, and multi-year solicitations or quotations where the contracting officer reasonably expects expenditures of $500,000 or more, inclusive of options).	$500,000 or more.
(b) Supply or service solicitations or quotations where a consolidated acquisition activity is performing acquisitions for three or more physically separated VA medical centers (excluding outpatient clinics).	$750,000 or more.
(c) Fixed price, sealed bid construction solicitations, other than 8(a) construction solicitations.	$1 million or more.
(d) 8(a) construction solicitations and task orders.	$500,000 or more.
(e) Request for Proposal (negotiated) construction solicitations and task orders.	$500,000 or more.
(f) Proposed task/delivery orders and blanket purchase agreements (includes orders under Federal Supply Schedule contracts).	$500,000 or more.
(g) Proposed cost-reimbursement, incentive, time-and-materials, and labor-hour contracts (see 816.102(b)).	$100,000 or more.
(h) Utility service agreements	$50,000 or more.
(i) Solicitations for advisory and assistance services (see 837.2).	$100,000 or more.
(j) Proposed letter contracts and ensuing formal contracts.	$25,000.

801.602–72 Exceptions and additional review requirements.

(a) In addition to the general review requirements in 801.602–71, contracting officers must obtain technical reviews from Acquisition Resources Service staff of any proposed agreement that is unique, novel, or unusual.

(b) Contracting officers must obtain technical reviews from Acquisition Resources Service staff of the following:

(1) Documents relating to bonds (see FAR 28.102–1 and 28.203 through 28.203–5) as follows:

(i) An irrevocable letter of credit.

(ii) A tripartite escrow agreement.

(iii) An individual surety bond. (Note that the FAR at 28.203(f) also requires legal review of the documents pledging the assets of an individual surety.)

(2) Proposed novation and change-of-name agreements (see FAR Subpart 42.12).

(3) Solicitations or proposed contracts containing an economic price

adjustment clause (other than a pre-approved VA clause) based on a cost index of material or labor (e.g., the urban consumer price index (CPI–U) (see FAR 16.203–4(d)) or where one of the economic price adjustment clauses specified in FAR 16.203–4 are used.

(4) Proposed multi-year contracts where the cancellation ceiling exceeds 20 percent of the contract amount, regardless of the dollar value of the proposed contract (see 817.105–1(b)).

(5) Proposed solicitations where the contract term total of the basic and option periods may exceed 5 years, regardless of the dollar value of the proposed acquisition (see 817.204).

(6) Proposed membership agreements in a group purchasing organization.

(7) A proposed termination settlement or determination of amounts due the contractor under a terminated contract that involves the expenditure of $100,000 or more of Government funds. Acquisition Resources Service staff shall obtain legal review (see 849.111–70).

(8) Consignment agreements with an anticipated expenditure of $250,000 or more per year (except for a consignment agreement established under, and provided for in, a Federal Supply Schedule contract).

(c) Contracting officers, including purchase card holders, must obtain technical and legal review of all proposed contracts with hotels or similar facilities for conferences or similar functions (e.g., training, meetings) where VA's commitment, expenditure, and liability (combined) exceed $25,000. This dollar figure is based on the combination of all direct costs to VA under the contract (e.g., conference rooms, audio-visual charges, refreshments, catering) and all potential liability (e.g., room guarantee liability, cancellation costs). Even if there is no direct cost to VA, if the proposed contract includes a guarantee on room usage or a cancellation fee that could potentially exceed $25,000, the proposed contract requires legal and technical review. Signing a contract committing VA to hold a conference at a particular hotel is a procurement and procurement laws and regulations must be followed.

801.602–73 Review requirements for scarce medical specialist contracts and contracts for health-care resources.

For contracts to be awarded under the authority of either 38 U.S.C. 7409 or 38 U.S.C. 8153, contracting officers must obtain technical and legal reviews from the Medical Sharing Office, OGC, and Acquisition Resources Service staff of the following documents:

(a) Each competitive solicitation, quotation, proposed contract, or agreement with an anticipated contract award value of $1,500,000 or more, inclusive of options.

(b) Each noncompetitive solicitation, quotation, proposed contract, or agreement with an anticipated contract award value of $500,000 or more, inclusive of options.

801.602–74 Review requirements for an interagency agreement.

Contracting officers or other staff must obtain technical review from Acquisition Operations Service staff of the following documents:

(a) Each proposed VA Central Office interagency agreement with another Federal agency to be awarded under authority of the Economy Act, regardless of dollar value. For VA Central Office, only the DSPE or designee may sign an interagency agreement.

(b) Each proposed VA field facility interagency agreement with another Federal agency awarded under authority of the Economy Act involving an anticipated expenditure of VA funds of $250,000 or more. A VA field facility contracting officer or a contracting officer at the VA National Acquisition Center or the Denver Acquisition and Logistics Center may sign an interagency agreement if the dollar threshold is within the contracting officer's warrant limit.

801.602–75 Review requirements—OGC.

(a) Contracting officers must obtain legal review or concurrence from OGC for the following categories of proposed contractual actions.

(1) Each contract termination, final decision, cure letter, or ''show cause'' notice proposed under any contract where the total value of the contract is

$100,000 or more. A contracting officer may not sign or release a document subject to this provision until OGC has concurred.

(2) Each dispute or claim from a contractor involving a potential total dollar value of $100,000 or more. A contracting officer may not sign or release a document subject to this provision until OGC has concurred.

(3) Each proposed contract modification, including any proposed modification to a supply or service contract, where the total value of the modification is $100,000 or more (e.g., a modification for a $60,000 increase and a $50,000 decrease equals $110,000). Contract modifications issued only to exercise contract options are exempt from this review requirement.

(4) Each proposed contract modification granting a time extension of more than 60 days. The Director, Acquisition Resources Service, may waive the preapproval requirement under this paragraph for an individual facility when the Director determines that the facility has obtained appropriate ''consideration'' for past time extensions and the extensions were otherwise appropriately granted.

(5) Each proposed modification increasing the value of a letter contract, regardless of dollar value.

(6) Each proposed contract modification for which the contractor takes exception to the accord and satisfaction language specified by VA. The contracting officer may not execute any proposed contract modification under this requirement until the contracting officer receives OGC's concurrence in the proposed language.

(7) An assignment of claims (see FAR Subpart 32.8).

(8) Each change or revision to a FAR or VAAR provision or clause or an internal VA-approved clause (e.g., architect/engineer ''SP'' clauses) not specifically authorized by the regulations.

(9) Each change or revision to a prescribed VA contract form.

(10) A proposed utility construction or connection contract with an anticipated contract award value of $50,000 or more.

(11) Each proposed novation and change-of-name agreement (see 842.1203).

(b) For an action specified in paragraph (a)(1) or (2) of this section, OGC may comment or concur in writing or by telephone.

(c) When a Central Office contracting activity requests legal assistance, the contracting officer will brief OGC on the facts and points of issue to facilitate prompt resolution.

(d) For each solicitation or contract awarded and administered by a Central Office contracting activity, that contracting activity will ask OGC to participate in conferences where legal problems or modifications to contract provisions may be considered and in meetings attended by legal representatives of private parties or other Government agencies. The contracting activity will request assigned procurement counsel participation in drafting correspondence involving significant controversial or sensitive contractual matters.

(e) OGC will prepare any response to the Government Accountability Office (GAO) on GAO bid protests. (See 833.104).

801.602–76 Business clearance review.

(a) A business clearance review is a technical review of all solicitation and contract award or modification documents immediately prior to contract award or modification over the specified dollar threshold.

(b) All VA contracting officers must obtain a business clearance review prior to award of any contract, task or delivery order, or blanket purchase agreement or execution of any contract modification with a value of $5 million or more or prior to award of any lease with a value of $300,000 or more per year.

(c) The dollar threshold in this paragraph is based on the total dollar value of all awards expected under a single solicitation, not the value of each individual award under a solicitation. For example, a solicitation for home oxygen for a Veterans Integrated Service Network (VISN) might result in multiple awards, each of which has a value of less than $5 million. If the total of all awards under that solicitation will exceed $5 million, the contracting officer must obtain a business clearance

review of the entire package, including all proposed individual awards.

801.602–77 Processing solicitations and contract documents for legal or technical review—general.

(a) Under 801.602–70 through 801.602–76, before taking contract action, a contracting officer must ensure that any required legal or technical review or concurrence is complete. Contracting officers shall not award or sign contracts, task or delivery orders, blanket purchase agreements, or contract modifications prior to receipt of the final legal and technical review. Should the contracting officer disagree with the advice provided, the contracting officer shall document in the contract file the reasons therefore and provide a copy of that document to the reviewing Office of Acquisition and Materiel Management office. The contracting officer must fully implement any accepted review comments as follows:

(1) Before opening the bid or proposal for a competitively awarded contract.

(2) Before executing contract documents for a contract modification or noncompetitive contract award.

(b) The contracting officer must advise potential bidders or offerors of changes made to the solicitation by issuing an amendment. The contracting officer must give bidders and offerors sufficient time for evaluation before the bid or proposal opens.

801.602–78 Processing solicitations and contract documents for legal or technical review—Veterans Health Administration field facilities, Central Office (except Office of Construction and Facilities Management), the National Acquisition Center, and the Denver Acquisition and Logistics Center.

(a) If legal or technical review is required, the documents listed in Table 801.602–78 must be forwarded for review and approval as shown therein.

TABLE 801.602–78

Documents	Person forwarding	Forward to
(1) Proposed solicitations, quotations, contract-related documents, and agreements specified in Table 801.602.71 and in 801.602–72.	One level above the contracting officer.	Appropriate Acquisition Resources Service central or regional office.
(2) Scarce medical specialist and health-care resource solicitations, quotations, and proposed contracts (i.e., contracts to be awarded under the authority of 38 U.S.C. 7409 or 8153) specified in 801.602–73.	One level above the contracting officer.	Director, Enhanced Sharing Program (10FL), VACO.
(3) Interagency agreements specified in 801.602–74	Approving official, contracting officer.	DSPE, Acquisition Operations Service.
(4) Proposed contract modifications, proposed contract modifications for which the contractor takes exception to the accord and satisfaction language VA specifies, assignment of claims, changes to clauses, and proposed utility connection agreements specified in 801.602–75(a)(3) through (a)(7) and in 801.602–75(a)(9) and (a)(10).	Contracting officer	OGC.
(5) Proposed contract terminations, final decisions, cure letters, show cause notices, disputes, and claims specified in 801.602–75(a)(1) and (a)(2).	Contracting officer	Regional Office of the General Counsel.

(b) The director of the Acquisition Resources Service office conducting the technical review has authority to determine whether to forward documents for legal review.

(c) When the contractor takes exception to the accord and satisfaction language VA specifies in a proposed contract modification, the contracting officer must not sign the modification until OGC concurs with the language proposed by the contractor.

(d) The contracting officer either must fax or send via overnight mail or e-mail all of the relevant documents on proposed contract terminations, final decisions, cure letters, show cause notices, disputes, and claims specified in 801.602–75(a)(1) and (a)(2). OGC will provide concurrence or comments either in writing or by telephone. The contracting officer must not sign or release a document to the contractor until OGC concurs.

(e) For any VA contract form subject to legal review under 801.602–75(a)(8), the contracting officer must process the change or revision in accordance with VA Manual MP–1, Part II, Chapter 4 and any supplements to it (*http://www.va.gov/publ/direc/benefits/mp1p2ch4.htm*).

801.602–79 Processing solicitations and contract documents for legal or technical review—Veterans Benefits Administration.

(a) Contracting officer must ensure that proposed solicitations, quotations, contract-related documents, and agreements listed in Table 801.602–71 are reviewed by the Office of Resource Management prior to document execution. The Office of Resource Management must request legal review of all these documents.

(b) Contracting officer must ensure that proposed solicitations or agreements for guidance center and vocational rehabilitation services are reviewed by the Director, Vocational Rehabilitation and Employment Service, if there is an anticipated expenditure of $100,000 or more.

801.602–80 Legal and technical review-Office of Construction and Facilities Management and National Cemetery Administration.

An Office of Construction and Facilities Management or National Cemetery Administration (Construction Support Division) contracting officer shall submit all A/E contracts, and all construction contracts, time extensions, and modifications, directly to Office of General Counsel (OGC) for review.

801.602–81 Documents required for business clearance reviews.

When a bid or offer, proposed contract modification, or proposed lease requires a business clearance review under 801.602–76, the contracting officer must forward the required documents (see 801.602–84) and the following information to the appropriate Acquisition Resources Service central or regional office. Office of Construction and Facilities Management and National Cemetery Administration (Construction Support Division) contracting officers shall forward the documents to OGC (025):

(a) The date on which award is anticipated.

(b) Results or efforts made to determine whether the contractor is responsible under FAR Subpart 9.4.

(c) A determination of price reasonableness.

(d) An explanation (e.g., the source selection decision as specified in FAR 15.308) if the contracting officer proposes an award to a contractor other than the low responsible bidder or offeror.

801.602–82 Documents to submit for legal or technical review—general.

Table 801.602–82 specifies the documents that must be submitted when a legal or technical review is required.

TABLE 801.602–82

Action or document subject to review	Documents to submit
(a) Proposed construction contract	One copy of each solicitation document, excluding drawings. Submit not later than the date on which the contracting officer furnishes the documents to prospective bidders.
(b) Proposed solicitation or contract for scarce medical specialist services or health-care resources.	One copy of the solicitation or proposed contract and documents required under VA Manual M–1, Part 1, Chapter 34.
(c) All other proposed solicitations, contracts, and agreements	One copy of each document to be used in the contract solicitation or award, and any other document that supports the proposed procurement action. Submit not later than the date on which the contracting officer furnishes the documents to prospective bidders.

801.602–83 Documents to submit for legal or technical review—contract modifications.

(a) The documents specified in this section related to proposed contract modifications must be submitted to Acquisition Resources Service for review under one or more of the following conditions:

(1) When the total modification value is $100,000 or more.

(2) When the modification is for a time extension of 60 days or more.

(3) Where the contractor takes exception to VA's accord and satisfaction language.

(b) The contracting officer must submit the following documents for review:

(1) A draft of the proposed modification prepared on SF 30, Amendment of Solicitation/Modification of Contract, specifying the exact language proposed and describing any change in work, time, or cost.

(2) A statement describing the need for the changed work with any back-up documentation, including a copy of the general statement of work in the original contract and any existing contract language that will be modified.

(3) A statement addressing whether the proposed modification is within the original scope of the contract and specifically addressing the facts considered in reaching the conclusion.

(4) A statement analyzing what necessitated the modification (e.g., a design error, technical changes, or medical center requirements).

(5) The contracting officer's technical representative's (COTR) technical evaluation of the proposed change.

(6) A memorandum from the appropriate office indicating that funds are available or a statement concerning the actions that must be taken to secure the required funds.

(7) The names and telephone numbers of the contracting officer and COTR.

(8) Costing information including the following:

(i) The contractor's cost proposal in the format required by the contract.

(ii) The COTR's independent cost evaluation.

(iii) The architect/engineer's independent cost evaluation, if applicable and available.

(iv) The contracting officer's Price Negotiation Memorandum under FAR 15.406–3.

(v) Any other relevant costing information, such as independent market research, that VA used or will use as negotiation criteria.

(c) For a proposed modification to an architect/engineer contract, the contracting officer must submit for review each document specified in paragraph (b) of this section and the following additional documents.

(1) A listing of the fees awarded in the original contract and previous modifications.

(2) For a working drawing contract, a statement regarding the actual or estimated cost of the original construction and any estimated change to the overall project cost as a result of the proposed modification.

(d) For a modification to a construction contract or, where applicable, to an architect/engineer contract, the contracting officer must submit for review a copy of the COTR's mark-up of any drawing that delineates the proposed changed work, including a copy of any pertinent technical specifications. When there is a proposed modification involving numerous changes to drawings and specifications for a VA Central Office project, the drawings and specifications must be available for review in the Office of the Project Director in VA Central Office.

801.602–84 Documents to submit for business clearance reviews.

A contracting officer must submit to Acquisition Resources Service (Office of Construction and Facilities Management and National Cemetery Administration contracting officers shall forward the documents to OGC (025)) for review copies of the following documents when a business clearance review is required in accordance with 801.602–76:

(a) The request for contract action, including a justification of need (i.e., the using service purchase request).

(b) The solicitation.

(c) The abstract of the subject bid or offer.

(d) Any applicable Price Negotiation Memorandum.

(e) A statement of the contracting officer's rationale for award.

(f) Any applicable justification and approval under FAR 6.303 and 6.304.

(g) Documents relevant to determining whether the contractor is responsible, including:

(1) Verification that the vendor is not suspended, debarred, or on the Department of Health and Human Services Exclusionary List;

(2) Verification that the vendor has filed any required VETS 100 report (not required if the acquisition is for a commercial item); and

(3) For acquisitions exceeding $10 million, the Equal Employment Opportunity Clearance.

(h) Any applicable approved subcontracting plan.

(i) Documents relevant to price reasonableness (i.e., all documents used to support the contracting officer's determination of price reasonableness).

801.602–85 Results of review.

(a) When the review is complete, the reviewing office will advise the appropriate Central Office activity or contracting officer that the proposal was approved as submitted or provide them with recommended changes. If the Central Office activity is notified, the Central Office activity will forward the information to the contracting officer.

(b) When changes are recommended by technical or legal review staff, if the contracting officer concurs, the contracting officer must take immediate action to amend the document. If the contracting officer does not concur, the contracting officer must discuss the recommended changes with the technical reviewer or the attorney involved and document in the contract file the reasons why the contracting officer is not following the reviewer's recommendations.

(c) Acquisition Resources Service and OGC will complete reviews as expeditiously as possible, with due regard for procurement actions that require an unusually short period for completing the procurement.

801.603 Selection, appointment, and termination of appointment.

801.603–1 General.

VAAR 801.690 through 801.690–9 and 801.670 establish the policy and procedures for selecting, appointing, and terminating a contracting officer.

801.603–70 Representatives of contracting officers.

(a) In carrying out the responsibilities of FAR 1.602–2, the contracting officer may designate another Government employee as COTR to perform the functions in this section and 801.603–71.

(1) Except as indicated in 801.603–71, a designation under this section must be in writing, must define the scope and limitation of the representative's authority, and must be addressed to the COTR with a copy forwarded to the contractor.

(2) The COTR may not re-delegate authority received under this paragraph.

(3) The contracting officer may not authorize a representative to make any commitment or change that will affect the price, quantity, quality, or delivery terms of a contract.

(4) A contracting officer acting within his or her warranted contracting authority must authorize any change to a contract.

(b) A contracting officer may authorize his or her technical representative to do the following:

(1) Furnish technical guidance and advice or generally supervise the work performed under the contract.

(2) Take any action authorized in the contract, such as issuing a delivery order, rejecting an unsatisfactory item, ordering a replacement of an unsatisfactory item (materials or services) or declaring a contractor in default on specific delivery orders.

(i) Except for a contract for blood, the contracting officer may delegate this authority only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state.

(ii) A centralized contract for blood must state that a contracting officer at an ordering office may designate representatives and alternate representatives to place a delivery order subject to the same restrictions in paragraph (b)(3) of this section.

(3) Place an oral or other informal delivery order for items such as, but not limited to, bread, milk, and blood against a local indefinite delivery type contract for which there is a blanket purchase arrangement and for which funds have been obligated.

(c) In the administration of research and development contracts, any representative appointed under this section must be acceptable to the contracting officer and the head of the organization concerned.

(d) When the contracting officer intends to designate a representative under this section for a particular solicitation or contract, the contracting officer must include the clause in 852.270–1, Representatives of contracting officers, in the solicitation and contract.

801.603–71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.

(a) Without prior notification to the contractor or vendor, the contracting officer may designate other competent personnel, i.e., COTRs, to represent him or her to receive and inspect supplies, equipment and services at a VA facility. The COTRs may perform duties, as specified by the contracting officer, such as, but not limited to, the following:

(1) Inspect and certify compliance with the quality and quantity requirements of the purchase order or contract.

(2) Inspect supplies and equipment for condition and quantity and accept supplies, equipment, and services, based on quality inspection made by another authorized representative.

(b) The Director, Library Services, VA Central Office, and the Chief, Library Service, at a field facility may act as representatives of the contracting officer to receive, inspect and accept library books, newspapers, and periodicals. Purchase documents will specify that delivery will be made directly to the library.

801.670 Special and limited delegation.

The authority vested in the Secretary to execute, award, and administer a contract, purchase order, or other agreement for the expenditure of funds to acquire the specific services set forth in 801.670–1 through 801.670–4 is delegated to the SPE. The SPE further delegates this authority to the DSPE and to employees appointed or designated to the positions specified in those sections.

801.670–1 Issuing bills of lading.

The authority to issue bills of lading previously contained in this section is rescinded. Except for individual small package shipments (e.g., United Parcel Service, Federal Express, or United States Postal Service small package shipments), no VA employee may issue a bill of lading or otherwise procure transportation services for goods unless the employee has been delegated authority to do so as a warranted contracting officer under the VA Contracting Officer Certification Program (ref. 801.690). All transportation services for goods, other than for small package shipments, require a bill of lading. Except for individual small package shipments, individuals with only micro-purchase authority may not issue bills of lading or otherwise procure transportation services. The dollar value of the bill of lading issued or transportation services acquired must not exceed the delegated authority of the contracting officer. Candidates for appointment as transportation contracting officers whose delegated authority will be limited to the acquisition of transportation services for goods only shall comply with the Education, Experience, and Training requirements, if any, in Part 102–117 of title 41 Code of Federal Regulations, the Federal Management Regulation, rather than the requirements in 801.690.

801.670–3 Medical, dental, and ancillary service.

(a) When medical, dental, and ancillary services under $10,000 per authorization are not available from an existing contract or agreement, the following VA officials at VA medical facilities may authorize these services:

(1) The Chief of Staff and the physician assigned the responsibility for the ambulatory care function.

(2) Chief, Medical Administration Service, or the person designated by the facility director to perform medical administration functions.

(b) Forms specified in Part 853 shall be used for ordering services under this paragraph from existing contracts.

(c) The officials named in paragraph (a) of this section may designate one or more of their subordinates to exercise the authority in paragraph (a) of this section.

(d) A designation under this section must be in writing and specifically set forth the scope and limitations of the designee's authority.

801.670–4 National Cemetery Administration.

The Director of Logistics Management Service, the Centralized Contracting Division, and the Construction Support Division are authorized to procure supplies, equipment and non-personal services (including construction) for National Cemetery Administration (NCA) field facilities and other NCA offices when there is an emergency during which the servicing supply organization cannot be used.

801.670–5 Letters of agreement.

(a) Letters of agreement shall not be used. The authority previously contained in this section is rescinded.

(b) The VA Office of Inspector General may issue contracts for commercial items, including services, using a letter format (see FAR 12.204(a)), provided billing information and required clauses are included in the contract. If the dollar value of the acquisition will exceed the simplified acquisition threshold, this is a deviation from the requirement to use Standard Form 1449 at FAR 12.204(a).

801.680 Contracting authority of the Inspector General.

(a) Under section 6(a) of Public Law 95–452 (October 12, 1978), the Inspector General may do the following:

(1) Contract or arrange for audits, studies, analyses, and other services with public agencies and with private persons.

(2) Make payments necessary to carry out the provisions of the Act, to the extent and in amounts provided in advance by appropriations acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may ask the servicing head of the contracting activity for assistance in developing appropriate contract or agreement documents.

(c) The FAR applies to contracts made under paragraph (a) of this section. Such contracts also are subject to provisions of the VAAR that implement and supplement the FAR on matters other than those stemming from or related to delegations of the Secretary's contracting authority. (For example, management controls and approvals specified in subpart 837.2 will not apply to contract actions under the contract authority of the Inspector General.)

801.690 VA's COCP.

801.690–1 Definitions.

Accredited college or university means a college or university that has been accredited by an accrediting agency recognized by the U.S. Department of Education (see *http://www.ed.gov/admins/finaid/accred/index.html*) or accredited by a foreign government.

ACEP means the Acquisition Continuing Education Program, a program to provide VA's acquisition workforce with classroom knowledge to further develop their acquisition skills. The program supports VA personnel in the GS 1102 contracting series, other contracting officers (regardless of General Schedule series), contracting officers' technical representatives, and contracting officers' representatives to ensure that they meet the continuing education requirements mandated by OFPP Policy Letter No. 05–01, Developing and Managing the Acquisition Workforce, dated April 15, 2005 (see *http://www.whitehouse.gov/omb/procurement/policy_letters/05–01_041505.html*) and the OFPP Memorandum dated January 20, 2006, titled The Federal Acquisition Certification in Contracting Program (see *http://www.whitehouse.gov/omb/procurement/acq_wk/fac_contracting_program.pdf*).

ACM means the Acquisition Career Manager, who is the Associate Deputy Assistant Secretary for Acquisitions.

Acquisition Workforce means those VA employees who are classified as: GS 1102 contract specialists; GS 1105 purchasing agents; contracting officers warranted above the micro-purchase

threshold; program and project managers and other significant acquisition-related positions as otherwise identified by the VA Chief Acquisition Officer; contracting officers' technical representatives; and contracting officers' representatives. The acquisition workforce may also include a limited number of employees that perform significant acquisition-related responsibilities, (e.g., employees in the GS–345, GS–346, GS–801, GS–1101, GS–1106, GS–1170, GS–2001, GS–2003, and GS–2005 job series and select program officials).

Appointment means the delegation of authority to any VA employee to enter into, administer, or terminate contracts and to make related determinations and findings.

ATCD means the Acquisition Training and Career Development Division.

Certificate of Appointment as Contracting Officer is a signed certificate on Standard Form 1402 used for the written appointment of contracting officers that states the scope, limitation, and term of the contracting officer's authority.

CLP means continuous learning point, as provided in OFPP Policy Letter 05–01. One CLP is generally equivalent to one hour of classroom training.

COCB means the Contracting Officers Certification Board, a group of VA officials, listed at 801.690–3(c), who evaluate and recommend to the DSPE individuals for delegation of contracting authority as Level II warrant or Level III warrant (Senior Limited or Unlimited) contracting officers.

COCP means the Contracting Officers Certification Program, VA's program established for the selection, appointment, and termination of appointment of contracting officers.

COQS means the Contracting Officer Qualification Statement, a document completed by a candidate for a position as contracting officer that accompanies the request for contracting authority. The certified statement includes information on experience, education, training, and pertinent contracting authority information. The COQS is accompanied by supporting documentation such as training certificates, copies of prior and current warrants, college transcripts, and other relevant information.

Federal Acquisition Certification (see OFPP Policy Letter 05–01, paragraph 8) means a certification program developed by the Federal Acquisition Institute and OFPP that generally reflects a Government-wide standard for education, training, and experience leading to the fulfillment of core competencies in acquisition-related disciplines.

Selection means the appointment of an employee as a contracting officer. The selection process shall consider the complexity and dollar value of the assigned work, the candidate's experience, training, education, business acumen, judgment, character, reputation, and knowledge of acquisition policies, rules and regulations.

Skills Currency means the level of knowledge and abilities that a Level I warrant or higher level warrant contracting officer attains as the result of participating in a minimum of 80 CLPs of continuing education or training every two years. The training is intended to ensure that the employee maintains current acquisition knowledge and skills, as mandated by OFPP Policy Letter No. 05–01 and the OFPP Memorandum dated January 20, 2006, titled The Federal Acquisition Certification in Contracting Program.

Termination means the revocation or rescission of an appointment as contracting officer.

801.690–2 General.

(a) The VA COCP applies to all VA programs except for the appointment of contracting officers under the Inspector General Act (Pub. L. 95–452) and for contracting officers designated in sections 801.670 through 801.670–5. The COCP also applies to VA officials granted authority to enter into sales agreements (see separate guidance under VA's Directives Management System).

(b) A Certificate of Appointment is not required for a contracting officer designated in 801.670 who exercises special and limited delegations of authority.

(c) Warrant levels are synonymous with the Federal Acquisition Certification in Contracting Program certification levels specified in the OFPP Memorandum dated January 20, 2006,

titled ''The Federal Acquisition Certification in Contracting Program.'' The COCP is based on the following levels and types of authority:

(1) *Level I warrant.* Authority for expenditures at or below the simplified acquisition threshold (see FAR 2.101) for open market contracts, blanket purchase agreements, basic ordering agreements, and delivery/task orders against established contracts (except Federal Supply Schedule (FSS) contracts), within the specified geographical limits of the contracting officer's warrant. For FSS contracts, Level I warrant authority includes authority for expenditures up to the maximum order threshold of the FSS contract, within the specified geographical limits of the contracting officer's warrant. This level was formally titled ''Basic'' and any current Basic Level warrant need not be reissued solely to change the title.

(2) *Level II warrant.* Authority for expenditures at or below $5,000,000 or as stated on Standard Form 1402 for open market contracts, blanket purchase agreements, basic ordering agreements, and delivery/task orders against established contracts, within the specified geographic limits of the contracting officer's warrant. This level was formally titled ''Intermediate'' and any current Intermediate Level warrant need not be reissued solely to change the title.

(3) *Level III (Senior Limited) warrant.* Authority for expenditures at or below the dollar threshold and within the geographical limits specified on the contracting officer's warrant, Standard Form 1402. This level was formally titled ''Senior Limited'' and any current Senior Limited Level warrant need not be reissued solely to change the title.

(4) *Level III (Senior Unlimited) warrant.* Authority granted to VA's contracting officers in contracting activities (e.g., the VA National Acquisition Center, Hines, IL, and Acquisition Operations Service, VA Central Office, Washington, DC) that are charged with meeting Department-wide acquisition needs of VA and its customers. The authority is for expenditures at any dollar level without geographical restriction. This level was formally titled ''Senior Unlimited'' and any current Senior Unlimited Level warrant need not be reissued solely to change the title.

(5) *Multi-VISN.* Authority at the Level II warrant and Level III (Senior Limited) warrant levels, granted by the DSPE, that permits procurement consolidations among Veterans Health Administration VISNs, Veterans Benefits Administration Area Offices, and other Government agencies that exist outside the contracting officer's normally assigned geographical area of appointed authority. Multi-VISN authority is generally granted to contracting officers for procurement-specific requirements or to contracting officers who are members of groups or consortiums established for regional contracting initiatives.

(d) *Micro-purchase Level.* Micro-purchase Level authority, not to exceed the micro-purchase threshold (currently $3,000) ($2,500 for acquisition of services subject to the Service Contract Act, and $2,000 for acquisition of construction subject to the Davis Bacon Act) (see FAR 2.101), is separately addressed under VA's purchase card program. Under that program, the HCA may delegate authority to a VA employee as a purchase card holder through the issuance of VA Form 0242.

801.690–3 Responsibilities under the COCP.

(a) *DSPE.* The DSPE is responsible for the following:

(1) Administering and overseeing the COCP;

(2) Appointing and terminating Level II warrant and Level III (Senior Limited and Unlimited) warrant contracting officers;

(3) Establishing and developing additional agency-specific training; and

(4) Developing and implementing policy, procedures, and guidance for VA's acquisition program.

(b) *The Chief, Acquisition Program Management Division.* The Chief, Acquisition Program Management Division, serves as the Executive Secretary to the COCB and is responsible for the following:

(1) Coordinating requests for contracting authority with the COCB;

(2) Proceeding accordingly with appropriate action to carry out the decisions of the DSPE and the COCB;

(3) Maintaining individual records on the appointment and termination of appointment of contracting officers. Records on contracting officers include HCA certifications and qualification statements, Certificates of Appointment, and other supporting documentation used to grant authority; and

(4) Ensuring appropriate and timely disposition of records through the Office of Acquisition and Materiel Management's Records Control Officer.

(c) *The COCB*. (1) The Director, Acquisition Resources Service, will chair the COCB.

(2) COCB membership consists of:

(i) The Chief, Acquisition Program Management Division; and

(ii) The Chief, Acquisition Training and Career Development Division (ATCD).

(d) *HCAs*. HCAs are responsible for the following:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and nonpersonal services required by the activity to which the HCA is assigned;

(2) Establishing adequate controls to ensure compliance with applicable laws and regulations;

(3) Appointing or terminating the appointment of contracting officers at the Micro-purchase Level and Level I warrant level within their assigned activity;

(4) Establishing procedures and maintaining records for the appointment and termination of appointment of purchase card holders at the Micro-purchase Level and Level I warrant contracting officers. Records maintained on contracting officers shall include the contracting authority, certification and qualification statements;

(5) Recommending to the DSPE the appointment or termination of appointment of contracting officers at the Level II warrant and Level III (Senior Limited or Unlimited) warrant levels of authority, certifying the candidate's qualifications, and justifying the organizational need;

(6) Ensuring that all GS 1102 contract specialists and other contracting officers meet the minimum core training and continuing education requirements; and

(7) Certifying that the assigned acquisition workforce meets the minimum training, education, and skills currency requirements prescribed by OFPP and the DSPE.

(e) *VA Acquisition Workforce*. All employees identified as members of VA's acquisition workforce (see 801.690–1) are responsible for maintaining records that include certificates of acquisition training, continuing education, college transcripts, work experience, and other supporting documentation needed to substantiate successful completion of all warrant requirements. These employees shall enroll in the Acquisition Career Management Information System (ACMIS), the data system that serves as the repository of required information on VA's acquisition workforce.

801.690–4 Selection.

(a) The HCA may appoint Level I warrant contracting officers or submit written requests to the DSPE for appointment of Level II warrant or Level III (Senior Limited or Unlimited) warrant contracting officers. A VA official one level above the HCA may submit a written request to the DSPE for the appointment of an HCA as a contracting officer.

(b) Appointment can only be requested in those circumstances where it can be demonstrated that a valid organizational need exists. In making this assessment and justification, the HCA will consider the complexity of the work, volume of actions, organizational structure, and human resource management actions and forecasts, such as rates of retirement, reassignment, and retention.

(c) The request shall consist of the following:

(1) Justification for requesting contracting authority to be granted;

(2) Certification that the candidate's experience and training meet the established minimum qualifications for the requested contracting authority;

(3) Certification that the candidate has a satisfactory-or-above performance rating;

(4) Certification that the candidate maintains high standards of conduct

and avoids apparent or actual conflicts of interest, and

(5) Certification that the candidate has appropriate working knowledge of the FAR, VAAR, and other applicable laws, regulations, policies and procedures.

(d) The accompanied COQS shall include the following information:

(1) Candidate's name, position title, series, grade, and location;

(2) Candidate's relevant acquisition or business-related experience that reflects the required number of years of progressive work assignments leading to broader technical abilities;

(3) Education background, including number of acquisition or business-related college credits;

(4) List of core training requirements or equivalent courses that have been successfully completed;

(5) List of continuing education requirements successfully completed within the last two years;

(6) List of current and prior warrant authorities, limitations, and information on termination and cause for termination;

(7) List of other acquisition related activities or memberships;

(8) Certification that the statement is accurate and complete to the best of the candidate's knowledge; and

(9) Attached copies of acquisition or business-related training certificates, course certificates, and diplomas, transcripts, or degrees from accredited colleges or universities.

801.690–5 Requirements for contracting authority.

(a) Effective January 1, 2007, no individual, regardless of job series, may be issued a new contracting officer warrant above the micro-purchase threshold unless the individual meets the requirements for Federal Acquisition Certification (Certification) for the applicable Level I, II, or III warrant level as specified in OFPP Policy Letter 05–01 and the OFPP Memorandum dated January 20, 2006, titled ''the Federal Acquisition Certification in Contracting Program.'' A new contracting officer warrant is defined in OFPP Policy Letter 05–01 as a warrant issued for the first time at a department or agency. For contracting officers warranted before January 1, 2007, certification will not be required to retain their existing warrants, but will be required before higher level warrants can be issued. Certification includes minimum requirements for education, training, and experience. A candidate for a warrant must have at least a satisfactory-or-above performance rating during the most recent performance period.

(b) For contracting officer warrants issued prior to January 1, 2007, the minimum requirements for qualifying as a contracting officer previously specified in VA regulation and other internal VA guidance shall apply.

(c) *Multi-VISN*. The HCA shall obtain written or e-mail concurrence from the HCAs of the other affected VISNs or Area Offices when requesting Multi-VISN contracting authority.

(d) *Training*. (1) Contracting officers and non-warranted contract specialists shall complete the required coursework and on-the-job training needed to possess the established competencies listed in OFPP's Federal Acquisition Institute Contract Specialist Training Blueprints (*http://www.fai.gov/policies/contract.htm*).

(2) The Chief, ATCD, oversees the ATP.

(3) Training course equivalency will be determined and approved by the Chief, ATCD. Candidates should contact the Chief, ATCD, for an equivalency determination and must furnish any information or evidence necessary to support the request. Appeals of decisions may be made to the VA ACM and the decisions of the ACM shall be final.

(e) *Skills Currency*. (1) Contracting officers and non-warranted contract specialists who have completed the core training requirements shall obtain a minimum of 80 CLPs of continuing education or training every two fiscal years to stay abreast of current acquisition knowledge and skills as mandated by OFPP. The HCA (for Level I warrant contracting officers) and the Chief, ATCD (for Level II warrant and Level III warrant contracting officers), shall make written determinations every October 1 for each warranted contracting officer on whether the required CLPs, as specified in OFPP guidance, were completed during the two prior fiscal years. The HCA shall

assign CLP values to training taken by Level I warrant contracting officers for training that does not have pre-assigned CLP or continuing education unit (CEU) values assigned to the training by the provider. The Chief, ATCD, shall assign CLP values to training taken by Level II warrant and Level III warrant contracting officers for training that does not have pre-assigned CLP or CEU values assigned to the training by the provider. Values shall be assigned based on guidance provided by OFPP and the combined efforts of the Federal Acquisition Institute and the Defense Acquisition University. Questions regarding the CLP or CEU values assigned to training shall be resolved by the ACM.

(2) The Chief, ATCD, is responsible for the management of the ACEP, the program that assists contracting officers and contract specialists to meet the training requirements.

(3) An expiring warrant will not be re-issued if the contracting officer has not met the continuing education or training requirement.

(f) *Education*. (1) The 24 business-related college credits shall be in any combination of the following fields of study at an accredited college or university: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

(2) The HCA will make the final determination whether a course is accepted as business-related for the purpose of granting Level I warrant authority. The Chief, ATCD, will make the final determination whether a course is accepted as business-related for the purpose of granting Level II warrant or Level III warrant contracting authority.

(3) American Council on Education (ACE) credits are not considered as college credits until they are converted and included on a transcript from an accredited college or university.

(g) *Grandfather provision for the education requirement*. (1) VA contracting officers, regardless of grade level, who currently hold Level I, Level II, or Level III (Senior Limited or Unlimited) warrants are considered as having met the Experience, Education, and Training requirements for their respective warrant levels. This includes transfers or laterals to other VA contracting activities with similar geographical restrictions. Contracting officers who are promoted up to a GS–12 can maintain their current warrant level authority.

(2) This Grandfather provision does not cover new VA employees, current VA employees who are not warranted, former VA employees who held contracting authority at their previous Federal Government agencies or VA positions, or VA employees whose warrants have been rescinded or have expired. VA contracting officers who are promoted to GS 13-and-above will no longer be covered by this Grandfather provision and, therefore, must meet the current Experience, Education, and Training requirements for the specific warrant authority that they currently hold or to which they wish to be appointed. Contracting officers requesting a higher level warrant (e.g., from Level I warrant to Level II warrant or from Level III (Senior Limited) warrant to Level III (Senior Unlimited) warrant) must also meet the current Experience, Education, and Training requirement for the specific warrant authority requested.

(3) This Grandfather provision for retaining a contracting officer's current warrant authority is voided if the contracting officer does not fully meet the minimum Skills Currency requirement prior to warrant expiration or when the warrant authority is suspended or revoked. The contracting officer will then need to meet all of the current warrant prerequisites before a new warrant can be issued or before the suspended or revoked warrant can be reinstated.

(h) The training requirements for contracting officers whose delegated authority is limited to the acquisition of transportation services, as provided in part 102–117 of title 41 Code of Federal Regulations, the Federal Management Regulation, shall be as specified therein.

801.690–6 Appointment.

(a) Only the DSPE (for Level II and Level III (Senior Limited or Unlimited)) warrants and the respective HCA (for Level I warrants) may sign the

Certificate of Appointment as Contracting Officer. HCAs are authorized to grant Micro-purchase Level and Level I warrant contracting authority up to the thresholds specified for these authorities at 801.690–2(c). The HCA may recommend a candidate to the DSPE for appointment as a Level II warrant or Level III warrant contracting officer. Only the DSPE may grant Level II warrant, Level III (Senior Limited or Unlimited) warrant, and Multi-VISN authority.

(b) All Certificates of Appointment as Contracting Officers and other written documents must clearly state any limitations or restrictions on the authority.

(c) The Privacy Act of 1974 applies to the information collected during contracting officer selection and appointment.

801.690–7 Termination.

(a) The DSPE (for all warrant levels) or HCA (for Micro-purchase Level and Level I warrants) may revoke or rescind the appointment of a contracting officer at any time. HCAs may submit a recommendation to revoke or rescind the appointment of a contracting officer's Level II warrant or Level III (Senior Limited or Unlimited) warrant to the DSPE. Revocation may be based on the following circumstances:

(1) There is no longer a need for the appointment;

(2) There has been a personnel action such as a resignation, retirement, transfer;

(3) Unsatisfactory performance;

(4) Alleged official misconduct pending criminal or administrative investigations;

(5) Failure to meet training or skills currency requirements;

(6) A contracting officer taking an action that exceeds his or her authority;

(7) Blatant disregard for adhering to acquisition regulations, policies and procedures; or

(8) Situations similar to those in paragraphs (a)(1) through (7) of this section that may require remedial action.

(b) The HCA should discuss a termination of contracting authority for cause with the servicing Human Resource Management Office to determine the impact, if any, on the contracting officer's continued employment.

(c) All changes in the status (e.g., departure, name, position, or grade change) of a micro-purchase cardholder or Level I warrant holder shall be reported in writing by the individual's supervisor to the HCA within five workdays of occurrence. All changes in the status of a Level II warrant or Level III (Senior Limited or Unlimited) warrant holder shall be reported in writing by the HCA to the DSPE within five workdays of occurrence. Level II warrants or Level III (Senior Limited or Unlimited) warrants that are terminated, rescinded, or superseded should be returned to the Director, Acquisition Resources Service (049A5), citing the exact reason for the termination, rescission, or supersession.

801.690–8 Interim appointment provisions.

(a) To ensure availability of procurement support, an interim appointment may be granted for a limited period of time when a candidate does not fully meet the minimum qualifications for Experience, Education, or successful completion of all acquisition Training requirements in previous VA regulations or VA internal guidance, if applicable, or as provided in the OFPP Memorandum dated January 20, 2006, titled ''the Federal Acquisition Certification in Contracting Program.'' All interim appointments made after January 1, 2007, for individuals who do not meet the minimum Experience, Education, or Training requirements for Levels I through III warrants shall be signed by the SPE or, if so delegated, the ACM, without power to redelegate, as provided in the OFPP Memorandum dated January 20, 2006, titled ''the Federal Acquisition Certification in Contracting Program.''

(1) In a request for an interim appointment, the HCA must include the information required by 801.690–4 on the candidate's training, experience, performance, and education, and a justification for the interim appointment.

(2) The HCA must ensure that the candidate with interim appointment

meets the minimum Experience, Education, and Training requirements within the time specified on the warrant.

(3) A contracting officer with interim appointment should successfully complete all remaining required courses or equivalent courses within the time specified on the warrant.

(b) At the HCA's written request, a permanent warrant may be issued during the interim appointment period when the contracting officer has satisfactorily met the requirements. The appropriate documentation (copies of course certificates) must be submitted with the HCA's request.

(c) An interim appointment may be appropriate for instances such as organizational changes or sudden, extreme, and unexpected increases in workload complexity and/or volume.

(d) Interim appointments will not be granted under the following circumstances:

(1) To a candidate who is warranted but does not meet the Education or Training requirements for higher level (e.g., from Level I warrant to Level II warrant) contracting authority (unless waived by the SPE);

(2) To a candidate who does not have a current record of satisfactory-or-above performance; or

(3) To a contracting officer whose authority has expired and who has not met the continuing education requirement during the two preceding years.

(e) Generally, an interim appointment may not exceed one year.

801.690–9 Distribution of Certificates of Appointment.

(a) The DSPE or HCA will issue an original Certificate of Appointment as Contracting Officer to the appointed candidate, who must display the Certificate at his or her duty station.

(b) The HCA shall file a copy of the warrant in the delegation of authority file.

(c) The contracting officer must furnish a copy to the respective fiscal activity.

(d) Each Certificate will be serially numbered, reflecting the facility number, the year of issuance (e.g., facility number—year of issuance (2 digits)—sequential number, 560–04–10), and have an effective and expiration date.

801.695 VA's Appointment of HCAs Program.

801.695–1 Policy.

(a) VA's policy is to have a minimum number of HCAs. Generally, there will be one HCA per VISN, other major VA organizational element, or major acquisition organization. The authority vested in the Secretary to select, appoint, and terminate HCAs is delegated to the SPE and is further delegated from the SPE to the DSPE.

(b) Under the FAR at 1.601(a) and 2.101, an HCA is a senior level position. The official who occupies this position should have the education, training, and experience necessary to make the decisions required of an HCA.

(c) Except as provided in the FAR, an HCA may delegate his or her authority to other individuals within the HCA's acquisition activity. Such delegations must be in writing and must set forth the specific limitations on the designee's authority. The delegation may include authority to appoint a contracting officer at the Micro-purchase Level or the Level I warrant levels.

801.695–2 Procedures for appointment of HCAs.

An HCA must be appointed in writing by the DSPE and in accordance with internal VA policy. The written delegation must state any limitation on the HCA's authority, other than a limitation contained in an applicable law or regulation.

801.695–3 Authority of the HCA.

(a) The HCA has overall responsibility for managing the procurement program assigned to the activity.

(b) The HCA's level of contracting authority, if any, shall be specified in the HCA's appointment letter.

(c) The HCA has the authority to appoint and terminate contracting officers with authority to conduct procurements of up to and including the simplified acquisition threshold or the maximum order threshold or limitation for orders placed against Federal

Supply Schedule contracts, and to terminate such appointments (Micro-purchase Level and Level I warrant appointments).

PART 802—DEFINITIONS OF WORDS AND TERMS

Subpart 802.1—Definitions

Sec.
802.101 Definitions.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

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

Subpart 802.1—Definitions

802.101 Definitions.

A/E means architect/engineer.

Chief Acquisition Officer means the Assistant Secretary for Management.

COTR means Contracting Officer's Technical Representative or Contracting Officer's Representative.

D&S Committee means the VA Debarment and Suspension Committee, a committee consisting of the Director, Acquisition Resources Service (chair), and representatives of the Office of Management, Office of Inspector General, and the program office to which the particular debarment or suspension case relates. A representative from OGC will serve as legal counsel to the D & S Committee.

Debarring official means the DSPE, who is also the Associate Deputy Assistant Secretary for Acquisitions. Authority to impose debarment is delegated to the SPE and is further delegated to the DSPE.

DSPE means the Deputy Senior Procurement Executive, who is also the Associate Deputy Assistant Secretary for Acquisitions. The DSPE must be career member of the Senior Executive Service.

FAR means the Federal Acquisition Regulation.

GAO means the Government Accountability Office.

HCA means the Head of the Contracting Activity, an individual appointed in writing by the DSPE under VA's Appointment of HCAs Program (see 801.695).

OGC means the Office of the General Counsel.

Resident Engineer has the same meaning as contracting officer's technical representative or contacting officer's representative (see 852.270–1).

Service-disabled veteran-owned small business concern (SDVOSB) has the same meaning as defined in the Federal Acquisition Regulation (FAR) part 2.101, except for acquisitions authorized by 813.106 and subpart 819.70. These businesses must then be listed as verified on the Vendor Information Pages (VIP) database at *http://www.vetbiz.gov*. In addition, some businesses may be owned and controlled by a surviving spouse.

Small business concern has the same meaning as defined in FAR 2.101.

SPE means the Senior Procurement Executive who is also the Deputy Assistant Secretary for Acquisition and Materiel Management. The SPE is responsible for the management direction of the VA acquisition system. The SPE may further delegate authority to the DSPE.

Surviving spouse means an individual who has been listed in the Department of Veterans Affairs' (VA) Veterans Benefits Administration (VBA) database of veterans and family members. To be eligible for inclusion in the VetBiz.gov VIP database, the following conditions must apply:

(1) If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more service-disabled veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described below, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

(2) The period referred to above is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran's death; or