

48 CFR Parts 12, 13, 22, and 52
Federal Acquisition Regulation; Veterans'
Employment; Proposed Rule

Friday
December 3, 1999

Part V

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Parts 12, 13, 22, and 52
Federal Acquisition Regulation; Veterans'
Employment; Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 12, 13, 22, and 52****[FAR Case 1998–614]****RIN 9000–AI46****Federal Acquisition Regulation;
Veterans' Employment**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Sections 7 and 8 of the Veterans Employment Opportunities Act of 1998. Section 7 expands and improves veterans' employment emphasis under Federal contracts. Section 8 amends the veterans' employment reporting requirements. This proposed rule also implements the Department of Labor's (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule amending 41 CFR Part 60–250, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era, which clarifies DoL implementation of the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

DATES: Comments should be submitted on or before February 1, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1998–614@gsa.gov.

Please submit comments only and cite FAR case 1998–614 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content,

contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAR case 1998–614.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed FAR rule amends FAR 12.503, 13.005, 22.13, and the associated clauses and provisions at FAR Part 52 to implement recent statutory and regulatory changes relating to veterans' employment opportunities and reporting. Paragraph (a) of Section 7 of the Veterans' Employment Opportunities Act of 1998 (Pub. L. 105–339) amends 38 U.S.C. 4212 in paragraph (a) to increase the threshold for covered contracts from \$10,000 to \$25,000, and expands applicability beyond "special disabled veterans and veterans of the Vietnam era" to include other eligible veterans, (*i.e.*, any other veterans who served on active duty during a war or in a campaign or an expedition for which a campaign badge has been authorized).

Paragraph (b) of Section 7 amends 31 U.S.C. 1354 to specifically prohibit contracting officers from obligating or expending appropriated funds to enter into covered contracts with a contractor that does not meet veteran's employment reporting requirements (VETS–100 Report). In accordance with 41 U.S.C. 429 and 41 U.S.C. 430, the Councils have listed this law as inapplicable to acquisitions not greater than the simplified acquisition threshold and acquisitions of commercial items.

Paragraph (b) also requires the DoL to maintain a database on those contractors that have submitted the required VETS–100 Reports for the current reporting period. However, the database will not contain data on whether those contractors that did not submit reports were required to do so. The Councils have added a new provision by which the offeror represents that, if subject to the reporting requirements of 38 U.S.C. 4212(d), it has not failed to submit the most recent required VETS–100 Reports. This representation is the least burdensome way to comply with the prohibitions of 31 U.S.C. 1354.

Specific attention is directed to the proposed changes to FAR 12.503, Applicability of certain laws to Executive agency contracts for the acquisition of commercial items, and FAR 13.005, Federal Acquisition Streamlining Act of 1994 list of inapplicable laws. 31 U.S.C. 1354(a) was enacted subsequent to the Federal Acquisition Streamlining Act of 1994 (FASA). As such, it does not apply to commercial items or those simplified acquisitions unless the Federal

Acquisition Regulatory Council decides to apply them. This rule lists 31 U.S.C. 1354(a) as not applicable to commercial item contracts and acquisitions not greater than the simplified acquisition threshold of \$100,000 pursuant to FASA at 41 U.S.C. 429 and 41 U.S.C. 430. This is to avoid encumbering these procurements with Government-unique requirements. Accordingly, the representation in the provision at 52.222–38, Compliance with Veterans' Employment Reporting Requirements, is not applicable to commercial item acquisitions and acquisitions not greater than the simplified acquisition threshold of \$100,000.

The Department of Labor believes a wider application of the funding restrictions, covering commercial items and acquisitions not greater than the simplified acquisition threshold of \$100,000, would provide better enforcement of the provisions of the VETS–100 reporting requirement. The Department of Labor believes that all contractors, at a minimum, should self certify that they are in compliance with the VETS–100 reporting requirements. The Federal Acquisition Regulatory Council is interested in the public's views as to whether the representation should be applied to commercial items and those simplified acquisitions.

Section 8 of Public Law 105–339 amends 38 U.S.C. 4212(d)(1) to require reporting of the maximum number and the minimum number of employees during the period covered by the report. We have added this requirement to the clause at 52.222–37, which summarizes the DoL reporting requirements.

The OFCCP issued a final rule in the **Federal Register** on November 4, 1998 (63 FR 59630), that revised 41 CFR 60–250, regulations that implement the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212). The rule was effective on January 4, 1999.

In conformance with the Veterans Employment Opportunities Act of 1998 and the OFCCP final rule, this proposed rule revises the clause at 52.222–35, adding definitions of "special disabled veterans," "qualified special disabled veteran," "other eligible veteran," and "executive and top management," and changes the definition of "veteran of the Vietnam Era." The clause requires contractors to list all employment openings, except executive and top management, with the local employment service office. Contractors may fulfill the listing requirement by listing jobs electronically with Americas Job Bank. The requirements for posting employment notices have also changed.

This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule implements the Contracting Restrictions of the Veterans Employment Opportunities Act of 1998 (Pub. L. 105-339) which will only affect offerors who were required to submit reports but did not do so; and also, implements the OFCCP final rule, which DoL has certified will not have a significant economic impact on a substantial number of small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1998-614), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose any reporting and recordkeeping requirements beyond those imposed by the DoL, for which DoL obtains the required approval from the Office of Management and Budget (OMB Control Numbers 1215-0072, 1215-0163, and 1293-0005).

List of Subjects in 48 CFR Parts 12, 13, 22, and 52

Government procurement.

Dated: November 29, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 12, 13, 22, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 12, 13, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Amend section 12.503 to add paragraph (a)(5) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) * * *

(5) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements (see 22.1302).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

3. Amend section 13.005 to add paragraph (a)(10) to read as follows:

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) * * *

(10) 31 U.S.C. 1354(a) (Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements).

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PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

4. Revise Subpart 22.13 to read as follows:

Subpart 22.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Sec.

22.1300 Scope of subpart.

22.1301 Definition.

22.1302 Policy.

22.1303 Applicability.

22.1304 Procedures.

22.1305 Waivers.

22.1306 Department of Labor notices and reports.

22.1307 Collective bargaining agreements.

22.1308 Complaint procedures.

22.1309 Actions because of noncompliance.

22.1310 Solicitation provision and contract clauses.

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4211 and 4212) (the Act); Executive Order 11701, January 24, 1973 (3 CFR 1971-1975 Comp., p. 752); the regulations of the Secretary of Labor (41 CFR Part 60-250 and Part 61-250); and the Veterans Employment Opportunities Act of 1998, Public Law 105-339.

22.1301 Definition.

United States, as used in this subpart, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

22.1302 Policy.

(a) Contractors and subcontractors, when entering into contracts or subcontracts subject to the Act, must—

(1) List all employment openings, with the appropriate local employment service office except for—

(i) Executive and top management positions;

(ii) Positions to be filled from within the contractor's organization; and

(iii) Positions lasting three days or less.

(2) Take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based on their disability or veteran's status.

(b) Except for contracts for commercial items or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted a required annual Form VETS-100, Federal Contractor Veterans' Employment Report (VETS-100 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

22.1303 Applicability.

(a) The Act applies to all contracts and subcontracts for personal property and nonpersonal services (including construction) of \$25,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in any contract with a State or local government (or any agency, instrumentality, or subdivision) do not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

(c) The Act requires submission of the VETS-100 Report in all cases where the contractor or subcontractor has received an award of \$25,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the United States.

22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS-100 Report, the contracting officer may—

(a) Query the Department of Labor's VETS-100 Database via the Internet at

<http://nvti.cudenver.edu/vets/vets100Search.htm> using the Validation Code "vets" to proceed with the search in the database; or

(b) Contact the VETS-100 Reporting Systems via e-mail at VETS100@dyncorp.com for confirmation, if the proposed contractor represents that it has submitted the VETS-100 Report and is not listed in the database.

22.1305 Waivers.

(a) The Deputy Assistant Secretary for Federal Contract Compliance Programs (OFCCP), Department of Labor (Deputy Assistant Secretary of Labor), may waive any or all of the terms of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) The head of the contracting agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency must notify the Deputy Assistant Secretary of Labor in writing within 30 days.

(c) The contracting officer must submit requests for waivers in accordance with agency procedures.

(d) The Deputy Assistant Secretary of Labor may withdraw an approved waiver for a specific contract or group of contracts to be awarded, when in the Deputy's judgment such action is necessary to achieve the purposes of the Act. The withdrawal does not apply to awarded contracts. For procurements entered into by sealed bidding, such withdrawal does not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of bids.

22.1306 Department of Labor notices and reports.

(a) The contracting officer must furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary of Labor.

(b) The Act requires contractors and subcontractors to submit a report at least

annually to the Secretary of Labor regarding employment of special disabled veterans, veterans of the Vietnam era, and other eligible veterans unless all of the terms of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, have been waived (see 22.1305). The contractor and subcontractor must use Standard Form VETS-100, Federal Contractor Veterans' Employment Report, to submit the required reports.

22.1307 Collective bargaining agreements.

If performance under the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer must advise the affected labor unions that the Department of Labor (DoL) will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer may discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1308 Complaint procedures.

Following agency procedures, the contracting officer must forward any complaints received about the administration of the Act to the Veterans' Employment and Training Service of the DoL, or through the local Veterans' Employment Representative or designee, at the local State employment office. The Deputy Assistant Secretary of Labor is responsible for investigating complaints.

22.1309 Actions because of noncompliance.

The contracting officer must take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. These sanctions (see 41 CFR 60-250.66) may include—

(a) Withholding payments;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

22.1310 Solicitation provision and contract clauses.

(a)(1) Insert the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era,

and Other Eligible Veterans, in solicitations and contracts when the contract is for \$25,000 or more or is expected to amount to \$25,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States; or

(ii) The Deputy Assistant Secretary of Labor has waived, in accordance with 22.1305(a) or the head of the contracting agency has waived, in accordance with 22.1305(b) all of the terms of the clause.

(2) If the Deputy Assistant Secretary of Labor or the head of the contracting agency waives one or more (but not all) of the terms of the clause, use the basic clause with its Alternate I.

(b) Insert the clause at 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts containing the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

(c) Insert the provision at 52.222-38, Compliance with Veterans' Employment Reporting Requirements, in solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-5 by revising the date of the clause, paragraphs (b)(13) and (b)(15); by removing from the introductory text of paragraph (e) of the clause "or" and adding "and" in its place; and revising (e)(2) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *

(13) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

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(15) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

* * * * *

(e) * * *

(2) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212);

* * * * *

6. Amend section 52.213-4 to revise the date of the clause; in paragraph (b)(1) by redesignating (b)(1)(ii) through (b)(1)(x) as (b)(1)(iii) through (b)(1)(xi), and by adding (b)(1)(ii). Revise newly redesignated paragraphs (b)(1)(iv) and (b)(1)(vi) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Date)

* * * * *

(b) * * *

(1) * * *

(ii) 52.222-21, Prohibition of Segregated Facilities (Feb. 1999) (E.O. 11246) (Applies to contracts over \$10,000).

* * * * *

(iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DATE) (38 U.S.C. 4212) (Applies to contracts over \$25,000).

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(vi) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DATE) (38 U.S.C. 4212) (Applies to contracts over \$25,000).

* * * * *

7. Revise the section heading and text of 52.222-35 to read as follows:

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(a)(1), insert the following clause:

Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Date)

(a) *Definitions.* As used in this clause—

All employment openings means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Executive and top management means any employee—

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote as much as 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Qualified special disabled veteran means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Special disabled veteran means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.* (1) The Contractor shall not discriminate against the individual because

the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (the Act), as amended (38 U.S.C. 4212).

(c) *Listing openings.* (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and non-veterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or

regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.* (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or

more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

Alternate 1 (Date). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract:

[List term(s)].

8. Revise the section heading and text of 52.222–37 to read as follows:

52.222–37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(b), insert the following clause:

Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Date)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of such Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS–100, entitled “Federal Contractor Veterans’ Employment Report (VETS–100 Report)”.

(c) The Contractor shall submit VETS–100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period during the period June through August 1st of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a)

of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

9. Add section 52.222–38 to read as follows:

52.222–38 Compliance with Veterans’ Employment Reporting Requirements.

As prescribed in 22.1310(c), insert the following provision:

Compliance With Veterans’ Employment Reporting Requirements (Date)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222–37, Employment Reports on Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS–100 Report required by that clause.

(End of provision)

10. Revise the date of the clause and paragraph (c)(2) of 52.244–6 to read as follows:

52.244–6 Subcontracts for Commercial Items and Commercial Components.

* * * * *

Subcontracts for Commercial Items and Commercial Components (Date)

* * * * *

(c) * * *

(2) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212(a));

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