Subpart 22.13 - Equal Opportunity for Veterans

Parent topic: Part 22 - Application of Labor Laws to Government Acquisitions

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the following:

(a) The Vietnam Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C. 4211 and 4212) (the Act).

(b) The Veterans Employment Opportunities Act of 1998, Public Law 105-339.

(c) The Jobs for Veterans Act, Public Law 107-288.

(d) Executive Order 11701, January 24, 1973 (3 CFR 1971 - 1975 Comp., p. 752).

(e) The regulations of the Secretary of Labor (41 CFR part 60-300 and 61-300).

22.1301 Definitions.

As used in this subpart-

Active duty wartime or campaign badge veteran means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

Armed Forces service medal veteran means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a *United States* military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

Disabled veteran means-

(1)A veteran of the U.S. military, ground, naval, or air service, 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 Secretary of Veterans Affairs; or

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

Executive and senior management means-

(1) Any employee-

(i) Compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board,

lodging, or other facilities;

(ii) 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;

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

(iv) 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; or

(2)Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

Protected veteran means a veteran who is protected under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212; specifically, a veteran who *may* be classified as a "*disabled veteran*," "*recently separated veteran*," "*active duty wartime or campaign badge veteran*," or an "*Armed Forces service medal veteran*," as defined by this section.

Qualified disabled veteran means a *disabled veteran* who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

Recently separated veteran means any veteran during the three-year period beginning on the date of such veteran’s discharge or release from active duty in the U.S. military, ground, naval, or air service.

United States, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

22.1302 Policy.

(a) Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to-

(1) List all employment openings, with the appropriate employment service delivery system where the opening occurs, except for-

(i) *Executive and senior 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, advance in employment, and otherwise treat qualified individuals, including *qualified disabled veterans*, without discrimination based upon their status as a *protected veteran*, in all employment practices;

(3) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit *protected veterans*; and

(4)) Establish a hiring benchmark and apply it to hiring of *protected veterans* in each establishment, on an annual basis, in the manner prescribed in the regulations of the Secretary of Labor.

(b) Except for contracts for *commercial products* or *commercial services*, 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 the required annual VETS-4212, Federal Contractor Veterans' Employment Report (VETS-4212 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 $200,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Equal Opportunity for 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-4212 Report in all cases where the contractor or subcontractor has received an award of $200,000 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-4212 Report, the *contracting officer may*-

(a) Query the Department of Labor's VETS-4212 Database via the Internet at http://www.dol.gov/vets/vets4212.htm under "Filing Verification" and

(b) Contact the VETS-4212 customer support via e-mail at VETS4212-customersupport@dol.gov for confirmation, if the proposed contractor represents that it has submitted the VETS-4212 Report and is not listed on the verification file.

22.1305 Waivers.

(a) The Director, Office of Federal Contract Compliance Programs, Department of Labor, *may* waive any or all of the terms of the clause at 52.222-35, Equal Opportunity for Veterans, for-

(1) Any contract if a waiver is 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 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 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 (see http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm).

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of *protected veterans* (*i.e.*, *active duty wartime or campaign badge veterans*, *Armed Forces service medal veterans*, *disabled veterans*, and *recently separated veterans*, unless all of the terms of the clause at 52.222-35, Equal Opportunity for Veterans, have been waived see 22.1305). The contractor and subcontractor *must* file VETS-4212, Federal Contractor Veterans' Employment Report (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at http://www.dol.gov/vets/vets4212.htm).

22.1307 Collective bargaining agreements.

If performance under the clause at 52.222-35, Equal Opportunity for Veterans, *may* necessitate a revision of a collective bargaining agreement, the *contracting officer must* advise the affected labor unions that the Department of Labor 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 office must* forward any complaints received about the administration of the Act to the Veterans' Employment and Training Service of the Department of Labor, or to the Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Washington, DC 20210, or to any OFCCP regional, district, or area office or through the local

Veterans' Employment Representative or designee, at the local State employment office. The Director, Office of Federal Contract Compliance Programs, 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 Veterans. These sanctions (see 41 CFR 60-300.66) *may* include-

(a) Withholding progress 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 Veterans, in *solicitations* and contracts if the expected value is $200,000 or more, except when-

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

(ii) The Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, has waived, in accordance with 22.1305(a), or the *head of the agency* has waived, in accordance with 22.1305(b), all of the terms of the clause.

(2) If the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, or the *head of the 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 Veterans, in *solicitations* and contracts containing the clause at 52.222-35, Equal Opportunity for 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 products* or *commercial services*.