Subpart 22.14 - Employment of Workers with Disabilities

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

22.1400 Scope of subpart.

This subpart prescribes policies and procedures for implementing section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) (the Act); Executive Order 11758, January 15,1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

22.1401 Policy.

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

(a) Take affirmative action to employ, and advance in employment, qualified individuals with disabilities, and to otherwise treat qualified individuals without discrimination based on their physical or mental disability;

(b) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities; and

(c) Compare the utilization of individuals with disabilities in their workforces to the utilization goal, as prescribed in the regulations of the Secretary of Labor, on an annual basis.

22.1402 Applicability.

(a) Section 503 of the Act applies to all Government contracts in excess of $20,000 for *supplies* and services (including *construction*) except as waived by the Secretary of Labor. The clause at 52.222-36, Equal Opportunity for Workers with Disabilities, implements the Act.

(b) The requirements of the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, in any contract with a State or local government (or any agency, instrumentality, or subdivision) *shall* not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

22.1403 Waivers.

(a) The Director of the Office of Federal Contract Compliance Programs of the U.S. Department of Labor (Director of OFCCP), *may* waive the application of any or all of the terms of the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, 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 an 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 shall* notify the Director of OFCCP *in writing* within 30 days.

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

(d) A waiver granted for a particular class of contracts *may* be withdrawn for any contract within that class whenever considered necessary by the Director of OFCCP to achieve the purposes of the Act. The withdrawal *shall* not apply to contracts awarded before the withdrawal. The withdrawal *shall* not apply to *solicitations* under any means of sealed bidding unless it is made more than 10 days before the date set for bid opening.

22.1404 Department of Labor notices.

The *contracting officer shall* furnish to the contractor appropriate notices that state the contractor's obligations and the rights of individuals with disabilities. The *contracting officer may* obtain these notices from the Office of Federal Contract Compliance Programs (OFCCP) regional office.

22.1405 Collective bargaining agreements.

If performance under the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, *may* necessitate a revision of a collective bargaining agreement, the *contracting officer shall* 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 shall* discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1406 Complaint procedures.

(a) Following agency procedures, the *contracting office shall* forward any complaints received about the administration of the Act to-

(1) Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; or

(2) Any OFCCP regional or area office.

(b) The OFCCP *shall* institute investigation of each complaint and *shall* be responsible for developing

a complete case record.

22.1407 Actions because of noncompliance.

The *contracting officer shall* 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 52.222-36, Equal Opportunity for Workers with Disabilities. These sanctions (see 41 CFR60-741.66) *may* include-

(a) Withholding from payments otherwise due;

(b) Termination or *suspension* of the contract; or

(c) *Debarment* of the contractor.

22.1408 Contract clause.

(a) Insert the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, in *solicitations* and contracts that exceed or are expected to exceed $20,000, except when-

(1) Both the performance of the work and the recruitment of workers will occur outside the *United States*, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island; or

(2) The Director of OFCCP or *agency head* has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms of the clause.

(b) If the Director of OFCCP or *agency head* waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), use the basic clause with its *Alternate* I.