

74 FR 52856 on October 14, 2009, to a final rule with minor changes.

This final rule amends the FAR to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and section 867 of the Duncan Hunter 2009 National Defense Authorization Act for Fiscal Year 2009. This rule requires agencies to—

(1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) Clarify that a base fee amount greater than zero may be included in a cost-plus-award-fee type contract at the discretion of the contracting officer;

(3) Prescribe narrative ratings that will be utilized in award-fee evaluations;

(4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) Conduct a risk and cost-benefit analysis and consider the results of the analysis when determining whether to use an incentive-fee type contract or not;

(6) Include specific content in the award-fee plans; and

(7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

#### **Item V—Offering a Construction Requirement—8(a) Program (FAR Case 2009–020)**

This final rule amends the FAR to revise FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), specifically FAR 19.804–2(b) to conform to the Small Business Administration (SBA) regulations. The SBA regulation 13 CFR 124.502(b)(2) requires that the offering letter for an open construction requirement be submitted to the SBA District Office for the geographical area where the work is to be performed. The SBA regulation 13 CFR 124.502(b)(3) requires that the offering letter for a construction requirement offered on behalf of a specific participant be submitted to the SBA District Office servicing that concern. This rule revises FAR 19.804–2 accordingly.

#### **Item VI—Encouraging Contractor Policies To Ban Text Messaging While Driving (FAR Case 2009–028) (Interim)**

This interim rule amends the FAR to implement Executive Order 13513, entitled “Federal Leadership on

Reducing Text Messaging while Driving,” which was issued on October 1, 2009 (74 FR 51225, October 6, 2009). Section 4 of the Executive order requires each Federal agency, in procurement contracts, entered into after the date of the order, to encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Section 4 also requires Federal agencies to encourage contractors to conduct initiatives such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts. Contracting officers are encouraged to modify existing contracts to include the FAR clause.

#### **Item VII—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009–039) (Interim)**

This interim rule implements section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

Dated: September 21, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

[FR Doc. 2010–24217 Filed 9–28–10; 8:45 am]

**BILLING CODE 6820–EP–P**

## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 1, 22, and 52**

[FAC 2005–46; FAR Case 2009–007; Item I; Docket 2010–0101, Sequence 1]

**RIN 9000–AL67**

#### **Federal Acquisition Regulation; Equal Opportunity for Veterans**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Department of Labor (DoL) regulations on equal opportunity provisions for various categories of military veterans. This rule sets forth revised coverage and definitions of veterans covered under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA) and includes new reporting requirements established under the VEVRAA and the Jobs for Veterans Act (JVA).

**DATES:** *Effective Date:* September 29, 2010.

*Applicability date:* Contracting officers may modify existing contracts of \$100,000 or more that were awarded or modified on or after December 1, 2003, to require the use of the new VETS–100A form starting with the report filed September 30, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–46, FAR Case 2009–007, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–007” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2009–007.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–007” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005–46, FAR Case 2009–007, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr.

Ernest Woodson, Procurement Analyst, at (202) 501-3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-46, FAR Case 2009-007.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The DoL Office of Federal Contract Compliance Programs (OFCCP) published a final rule in the **Federal Register** at 72 FR 44393 on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA) as amended by the Jobs for Veterans Act (JVA), Public Law 107-288. This final DoL rule changed the categories of veterans protected by these laws for covered Government contracts entered into or modified on or after December 1, 2003. These changes were published in 41 CFR part 60-300 and specifically modified the equal opportunity clause to be included in each covered Government contract or subcontract.

The JVA amendments eliminated listing employment openings solely with America's Job Bank as an option for complying with the mandatory job listing requirement. The final DoL rule provides that listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list job openings with the appropriate employment service delivery system.

The categories of veterans covered by the equal opportunity provisions changed to include: Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans. The JVA eliminated the separate coverage category of Vietnam-era veterans; however, DoL in its rule explained that many people in this category may be covered under the other categories. The JVA expanded the coverage of veterans with disabilities to all veterans who were discharged or released from active duty because of a service-connected disability.

In addition, the DoL Veterans' Employment and Training Service (VETS) published a final rule in the **Federal Register** at 73 FR 28710 on May 19, 2008, that further implements the requirements under the VEVRAA and the JVA that Government contractors track and annually report the number of veteran employees in their workforces. This final DoL rule adopted a new Federal Contractor Veterans' Employment Report, VETS-100A form,

to be used for reporting the revised categories of veterans that contractors are to track and report. These reporting requirements are published in 41 CFR part 61-300 and require each covered contract or subcontract contain the clause for reporting using the new VETS-100A form for contracts entered into or modified on or after December 1, 2003. The new VETS-100A form was required to be used for the report to be filed by September 30, 2009.

This interim FAR rule re-titles FAR subpart 22.13 from "Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" to "Equal Opportunity for Veterans." Accordingly, FAR clause 52.222-35 is also renamed "Equal Opportunity for Veterans" and incorporates the new categories and definitions of protected veterans as established by DoL. In addition, the FAR clause at 52.222-37, "Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans," is renamed "Employment Reports on Veterans" and the new DoL requirements for using the VETS-100A report are incorporated. Lastly, the FAR provision at 52.222-38, "Compliance with Veterans' Employment Reporting Requirements," is revised to incorporate new title references for FAR 52.222-37 and the new report form VETS-100A.

The interim rule also makes conforming changes to the lists of FAR clauses in 52.212-5, 52.213-4, and 52.244-6.

This is a significant regulatory action and, therefore, was subject to 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**

The Councils do not expect this interim rule 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 contractors are already required to annually track and report their veteran workforces on the VETS-100 form in accordance with VEVRAA. This rule implements a new form, VETS-100A, that simply includes the revised categories of veterans for reporting purposes. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities

concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-46, FAR Case 2009-007) in all correspondence.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 1293-0005 and 1215-0072.

##### **D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the Department of Labor (DoL) final rule on Veterans' Employment and Training Service (VETS) published in the **Federal Register** at 73 FR 28710 on May 19, 2008, and a DoL final rule, published in the **Federal Register** on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA), as amended by the Jobs for Veterans Act (JVA). However, pursuant to 41 U.S.C. 418b and FAR 1.501-3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

##### **List of Subjects in 48 CFR Parts 1, 22, and 52**

Government procurement.

Dated: September 21, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 22, and 52 as set forth below:

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

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

##### **PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

###### **1.106 [Amended]**

■ 2. Amend section 1.106, in the table following the introductory text, by removing from FAR segment 22.13 OMB

Control Number “1215–0072” and adding “1293–0005 and 1215–0072” in its place; and adding, in numerical sequence, FAR segment “52.222–37” and its corresponding OMB Control Number “1293–0005”.

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

- 3. Revise the heading of subpart 22.13 to read as follows:

### Subpart 22.13—Equal Opportunity for Veterans

- 4. Revise sections 22.1300, 22.1301, and 22.1302 to read as follows:

#### 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 60–250, part 61–250, part 60–300, and part 61–300).

#### 22.1301 Definitions.

As used in this subpart—

*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.

*Other protected 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.

*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 or subcontracts subject to the Act, must—

- (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 disabled veteran, recently separated veteran, other protected veteran, and Armed Forces service medal veteran, in all employment practices.

(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 the required annual form VETS–100, Federal Contractor Veterans' Employment Report (VETS–100 Report and/or VETS–100A 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.

(c) 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 the required annual form VETS–100, Federal Contractor Veterans' Employment Report (VETS–100 Report and/or VETS–100A 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 [Amended]

- 5. Amend section 22.1303 by removing from paragraph (b) “Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible”; and removing from paragraph (c) “VETS–100 Report” and adding “VETS–100A Report” in its place.

- 6. Amend section 22.1304 by revising the introductory text, and paragraph (a) to read as follows:

#### 22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS–100 and/or the VETS–100A Report, the contracting officer may—

- (a) Query the Department of Labor's VETS–100 Database via the Internet at <http://www.vets100.com/login.aspx>. Contracting officer organization, name, e-mail, telephone, and password information are required on the Contracting Officer Registration page to register for system use.

\* \* \* \* \*

- 7. Amend section 22.1305 by revising the introductory text of paragraph (a) to read as follows:

#### 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—

\* \* \* \* \*

- 8. Revise section 22.1306 to read as follows:

#### 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 disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal 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 use form VETS–100A, Federal Contractor Veterans' Employment Report, to submit the required reports (see <https://vets100.vets.dol.gov>).

#### 22.1307 [Amended]

- 9. Amend section 22.1307 by removing the words “Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible”.

- 10. Revise section 22.1308 to read as follows:

#### 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.

■ 11. Amend section 22.1309 by revising the introductory text, and paragraph (a) to read as follows:

**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;

\* \* \* \* \*

■ 12. Amend section 22.1310 by revising paragraphs (a) and (b) to read as follows:

**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 \$100,000 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, 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, 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.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 13. Amend section 52.212–5 by revising the date of the clause, paragraphs (b)(24), (b)(26), and (e)(1)(v);

and the date of Alternate II and paragraph (e)(1)(ii)(E) of Alternate II 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 (SEP 2010)**

\* \* \* \* \*

(b) \* \* \*

—(24) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).

\* \* \* \* \*

—(26) 52.222–37, Employment Reports on Veterans (SEP 2010) (38 U.S.C. 4212).

\* \* \* \* \*

(e)(1) \* \* \*

(v) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).

\* \* \* \* \*

Alternate II (SEP 2010). \* \* \*

\* \* \* \* \*

(e)(1) \* \* \*

(ii) \* \* \*

(E) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).

\* \* \* \* \*

■ 14. Amend section 52.213–4 by revising the date of the clause, and paragraphs (a)(2)(vii), (b)(1)(iii) and (b)(1)(v) 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) (SEP 2010)**

(a) \* \* \*

(2) \* \* \*

(vii) 52.244–6, Subcontracts for Commercial Items (SEP 2010).

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212) (applies to contracts of \$100,000 or more).

\* \* \* \* \*

(v) 52.222–37, Employment Reports on Veterans (SEP 2010) (38 U.S.C. 4212) (applies to contracts of \$100,000 or more).

\* \* \* \* \*

■ 15. Revise section 52.222–35 to read as follows:

**52.222–35 Equal Opportunity for Veterans.**

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

**EQUAL OPPORTUNITY FOR VETERANS (SEP 2010)**

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

*All employment openings* means all positions except executive and senior 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.

*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.

*Other protected 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.

*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 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.

(b) *General.* (1) The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal 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 individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

(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.

(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 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR part 60–300, subpart C.

(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 employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.

(2) The Contractor shall make the listing of employment openings with the appropriate employment service delivery system 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 nonveterans. 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 workforce 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, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, 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 disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and

(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are 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 disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal 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. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause (52.222–35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60–300.66) may include—

(1) Withholding progress payments;

(2) Termination or suspension of the contract; or

(3) Debarment of the contractor.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

(End of clause)

*Alternate I (Dec 2001).* 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)].

16. Revise section 52.222–37 to read as follows:

#### **52.222–37 Employment Reports on Veterans.**

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

#### **EMPLOYMENT REPORTS ON VETERANS (SEP 2010)**

(a) *Definitions.* As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “other protected veteran,” and “recently separated veteran,” have the meanings given in the Equal Opportunity for Veterans clause 52.222–35.

(b) 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 total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS–100A,

entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 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).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

■ 17. Amend section 52.222-38 by revising the date of the provision and the provision to read as follows:

**52.222-38 Compliance with Veterans' Employment Reporting Requirements.**

\* \* \* \* \*

**COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (SEP 2010)**

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 Veterans), it has submitted the most recent VETS-100A Report required by that clause.

(End of provision)

■ 18. Amend section 52.244-6 by revising the date of the clause and paragraph (c)(1)(v) to read as follows:

**52.244-6 Subcontracts for Commercial Items.**

\* \* \* \* \*

**SUBCONTRACTS FOR COMMERCIAL ITEMS (SEP 2010)**

\* \* \* \* \*

(c)(1) \* \* \*

(v) 52.222-35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212(a));

\* \* \* \* \*

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**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4, 25 and 52**

**[FAC 2005-46; FAR Case 2010-012; Item II; Docket 2010-0102, Sequence 1]**

**RIN 9000-AL71**

**Federal Acquisition Regulation; Certification Requirement and Procurement Prohibition Relating to Iran Sanctions**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 102 and partially implements section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 102 requires certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996, as amended (the Iran Sanctions Act). Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of section 106 in FAR Case 2010-018.

**DATES:** *Effective Date:* September 29, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-46, FAR Case 2010-012, by any of the following methods:

• *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010-012" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010-012." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010-012" on your attached document.

• *Fax:* 202-501-4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Attn: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005-46, FAR Case 2010-012, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219-0202. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-46, FAR Case 2010-012.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule implements section 102 and partially implements section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), enacted July 1, 2010. Section 102, entitled "Expansion of Sanctions under the Iran Sanctions Act of 1996," requires that, not later than 90 days after the date of the enactment of Public Law 111-195, the FAR shall be revised to require a certification from each person that is a prospective contractor that the person, and any person owned or controlled by the person, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

This interim rule has added in FAR subpart 25.7 a new section 25.703, Prohibition on contracting with entities that engage in certain activities relating to Iran. This section provides a definition of "person" at FAR 25.703-1, which is applicable to both of the following subsections.

FAR 25.703-2 implements section 102 of Public Law 111-195. It explains the certification requirement at FAR 25.703-2(a) and provides a summary of the activities for which sanctions may be imposed, which are described in