

Federal Acquisition Regulation

22.1103

the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

22.1025 Ineligibility of violators.

A list of persons or firms found to be in violation of the Act is contained in the Excluded Parties List System (see 9.404). No Government contract may be awarded to any violator so listed because of a violation of the Act, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

[54 FR 19816, May 8, 1989, as amended at 60 FR 33066, June 26, 1995; 69 FR 76349, Dec. 20, 2004]

22.1026 Disputes concerning labor standards.

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause at 52.222-41, Service Contract Act of 1965, as amended, and not under the clause at 52.233-1, Disputes.

Subpart 22.11—Professional Employee Compensation

22.1101 Applicability.

The Service Contract Act of 1965 was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees.

[48 FR 42258, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986; 57 FR 60582, Dec. 21, 1992; 65 FR 36014, June 6, 2000]

22.1102 Definition.

Professional employee, as used in this subpart, means any person meeting the definition of *employee employed in a bona fide . . . professional capacity* given in 29 CFR part 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through pro-

longed study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics), and teaching. To be a professional employee, a person must not only be a professional but must be involved essentially in discharging professional duties.

[48 FR 42258, Sept. 19, 1983, as amended at 66 FR 2130, Jan. 10, 2001]

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222-46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated service contracts when the contract amount is expected to exceed \$550,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employees compensation may be assessed adversely as one of the factors considered in making an award.

[57 FR 60582, Dec. 21, 1992, as amended at 71 FR 57368, Sept. 28, 2006]

Subpart 22.12 [Reserved]

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

SOURCE: 66 FR 53488, Oct. 22, 2001, unless otherwise noted.

22.1300

48 CFR Ch. 1 (10-1-06 Edition)

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (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 \$100,000 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 \$100,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the United States.

[66 FR 53488, Oct. 22, 2001, as amended at 71 FR 57368, Sept. 28, 2006]

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://www.vets100.cudenver.edu/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 verify@vets100.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, 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 in the national interest; or