



Department of Energy
Acquisition Regulation

No. 95-05
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ACQUISITION LETTER

AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) Subpart 901.301-70.

CONTENTS

CITATION

FAR 52.222-35

TITLE

Affirmative Action for Special Disabled Veterans and Veterans of the Vietnam Era

I. **Purpose.** The purpose of this Acquisition Letter is to implement the changes to FAR 52.222-35, Affirmative Action for Special Disabled Veterans and Veterans of the Vietnam Era, made necessary by a final rule issued by the Department of Labor (DOL).

II. **Background.**

On January 5, 1995, the DOL issued a final rule regarding veterans. The rule, published in the Federal Register at 60 FR 1986, made revisions to the Labor regulations at 41 CFR Part 60-250. The regulatory changes made by DOL require that changes be made to the Federal Acquisition Regulation (FAR) clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans. Pending a final rulemaking to the FAR Clause, the Procurement Executive has approved a class deviation to implement the required DOL changes.

III. **Guidance.** The clause provided as Attachment 1 shall be used in lieu of the FAR clause at 52.222-35. A copy of the approved findings and determination is provided as Attachment 2.

IV. **Effective Date.** This AL is effective on the date of issuance.

V. **Expiration Date.** This AL is effective until the DOL changes are incorporated into the FAR unless canceled or superseded prior to that date.

AFFIRMATIVE ACTION FOR SPECIAL
DISABLED AND VIETNAM ERA VETERANS
(APRIL 1995)

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Employment openings," as used in this clause, includes full-time employment, temporary employment of over 3 days and part-time employment, but does not include

- (1) executive and top management positions,
- (2) positions that will be filled from within the Contractor's organization or under a customary and traditional employer-union hiring arrangement, or
- (3) openings in an educational institution that are restricted to students of that institution.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Positions that will be filled from within the Contractor's organization," as used in this clause, means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as _____

the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would be in the Government's interest.

(d) Applicability.

- (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor propose to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its organization or employer-union arrangement for that opening.

(e) Postings.

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, 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 and Vietnam Era veterans.

(f) Noncompliance.

If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

FINDINGS AND DETERMINATION
CLASS DEVIATION
FEDERAL ACQUISITION REGULATION

I. **Findings.** Federal Acquisition Regulation (FAR) clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans implements Department of Labor (DOL) regulations issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1972. On January 5, 1995, the DOL published in the Federal Register, a final rule revising its regulations. The revisions reflect amendments made by the Veterans' Benefits Act of 1992 (Pub L. 102-568) and the Veterans' Benefits Improvements Act of 1994 (Pub L. 103-446). Pub. L. 102-568 repealed the December 31, 1994, sunset date for a provision defining "veteran of the Vietnam era." Pub. L. 103-446 eliminated the \$25,000 salary ceiling in DOL's regulations, expanded the scope of employment openings that must be listed with the state employment service office by deleting the word "suitable" from the phrase "suitable employment openings," broadly defined the revised phrase, and limited the exceptions to the mandatory listing requirement. The only exceptions to the mandatory listing requirement now are:

1. Executive and top management positions,
2. Positions that will be filled from within the contractor's organization or under a customary and traditional employer-union hiring arrangement,
3. Openings in an educational institution that are restricted to students of that institution, and
4. Positions lasting 3 days or less.

II. **Determination.** On February 17, 1995, the Civilian Agency Acquisition Council (CAAC) issued letter 95-2 recommending that civilian agencies authorize a class deviation to implement the changes to FAR 52.222-35 made necessary by the DOL final rule. The letter serves as evidence of consultation with the Chairman of the CAAC.

DOE proposes to deviate from the FAR clause at 52.222-35 by:

- (1) revising three definitions in paragraph (a);
- (2) deleting the word "suitable" in subparagraphs (c) (1), (c) (2), and (c); and
- (3) revising subparagraph (d) (1) so that the clause will confirm to DOL's revised regulations.

The enclosure to this findings and determination illustrates the changes which were made to FAR Clause 52.222-35.

DEVIATION TO FAR CLAUSE 52.222-35

1. The Department of Energy (DOE) deviation revises the definition of "appropriate office of the State employment service system," substitutes the phrase "positions that will be filled from within the Contractor's organization" for the phrase "openings that the Contractor proposes to fill from within its own organization" and revises the definition; defines the phrase "employment openings" and substitutes it for "suitable employment openings." The affected portions of paragraph (a) so revised, read as follows:

"(a) Definitions.

Appropriate office of the State employment service system, as used in this clause, means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization, as used in this clause, means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

Employment openings, as used in this clause, includes full-time employment, temporary employment of over 3 days, and part-time employment, but does not include (1) executive and top management positions, (2) positions that will be filled from within the Contractor's organization or under a customary and traditional employer-union hiring arrangement, or (3) openings in an educational institution that are restricted to students of that institution."

2. The DOE deviation would delete the word "suitable" before "employment" in subparagraphs (c) (1) and (c) (3) and before "openings" in subparagraph (c) (2). These paragraphs so revised read as follows:

"(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at the appropriate office of the State employment service system in the locality where the opening occurs.