

## 22.1301

(e) The regulations of the Secretary of Labor (41 CFR part 60-250, part 61-250, part 60-300, and part 61-300).

[75 FR 60251, Sept. 29, 2010]

### 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.

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### 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 serv-

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ice 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.

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### 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 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-100A Report in all cases where the contractor or subcontractor has received an award of \$100,000 or more, except for awards to State and

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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; 75 FR 60251, Sept. 29, 2010]

### 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.

(b) Contact the VETS-100 Reporting Systems via e-mail at [verify@vets100.com](mailto: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.

[66 FR 53488, Oct. 22, 2001, as amended at 71 FR 67779, Nov. 22, 2006; 75 FR 60251, Sept. 29, 2010]

### 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.

[66 FR 53488, Oct. 22, 2001, as amended at 75 FR 60251, Sept. 29, 2010]

### 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>).

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### 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