

Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) to remove the program termination date of September 30, 1997.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 97-305), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.1001 is revised to read as follows:

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100-656 (15 U.S.C. 644 note). Pursuant to the Small Business Reauthorization Act (Pub. L. 105-135), the Small Business Competitiveness Demonstration Program has been extended indefinitely. The program is implemented by an OFPP Policy Directive and Test Plan, dated August 31, 1989, as amended on April 16, 1993, which remains in effect until supplemented or revised to reflect the statutory changes in Public Law 105-135. Pursuant to Section 713(a) of Public Law 100-656, the requirements of the FAR that are inconsistent with the

program procedures are waived. The program consists of two major components—

- (a) Unrestricted competition in four designated industry groups; and
- (b) Enhanced small business participation in 10 agency targeted industry categories.

3. Section 19.1003 is amended by revising the introductory text and the first sentence of paragraph (a) to read as follows:

19.1003 Purpose.

The purpose of the Program is to—
(a) Assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. * * *

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4. Section 19.1006 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

19.1006 Procedures.

* * * * *

(b) *Designated industry groups.* (1) Solicitations for acquisitions in any of the four designated industry groups that have an anticipated dollar value greater than \$25,000 shall not be considered for small business set-asides under Subpart 19.5 (however, see paragraphs (b)(2) and (c)(1) of this section). * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97-04; FAR Case 95-602; Item IX]

RIN 9000-AH86

Federal Acquisition Regulation; Special Disabled and Vietnam Era Veterans

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revised Department of Labor

(DoL) regulations regarding affirmative action for employment of disabled veterans and veterans of the Vietnam era. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-04, FAR case 95-602.

SUPPLEMENTARY INFORMATION:

A. Background

As a result of 1994 amendments to the Vietnam Veteran Readjustment Act, DoL published revisions to its regulations at 41 CFR 60-250 on January 5, 1995 (60 FR 1985), and corrections to these revisions on February 16, 1996 (61 FR 6116). This final rule amends the FAR to conform to the DoL revisions.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 95-602), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

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

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.13—Disabled Veterans and Veterans of the Vietnam Era

2. The heading of Subpart 22.13 is revised to read as set forth above.
 3. Sections 22.1300 and 22.1301 are revised to read as follows:

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4211 and 4212) (the Act); Executive Order 11701, January 24, 1973 (3 CFR 1971–1975 Comp., p. 752); and the regulations of the Secretary of Labor (41 CFR Part 60–250 and Part 61–250). In this subpart, the terms “contract” and “contractor” include “subcontract” and “subcontractor.”

22.1301 Policy.

Government contractors, when entering into contracts subject to the Act, are required to list all employment openings, except those for executive and top management positions, positions to

be filled from within the contractor’s organization, and positions lasting 3 days or less, with the appropriate local employment service office. Contractors are required to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era without discrimination based on their disability or veteran’s status.

22.1303 [Amended]

4. Section 22.1303 is amended in the last sentence of paragraph (d) by removing the word “calendar”.

5. Section 22.1304 is amended by revising the first sentence of paragraph (b) to read as follows:

22.1304 Department of Labor notices and reports.

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and disabled veterans unless all of the terms of the clause at 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, have been waived (see 22.1303). * * *

6. Section 22.1308 is amended by revising paragraphs (a)(1)(i) and (b) to read as follows:

22.1308 Contract clauses.

(a)(1) * * *
 (i) Work is performed outside the United States by employees recruited outside the United States (for the purposes of this subpart, “United States” includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam); or

(b) The contracting officer shall insert the clause at 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the clause at 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

22.1303, 22.1304, and 22.1306 [Amended]

7a. In the list below, for each section listed in the left column, remove the title indicated in the middle column, and add the title indicated in the right column:

Section	Remove	Add
22.1303(a) introductory text	Director, Office of	Deputy Assistant Secretary for.
22.1303(a) introductory text	(Director)	(Deputy Assistant Secretary).
22.1303(b)(1)	Director of OFCCP	Deputy Assistant Secretary.
22.1303(b)(2)	Director	Deputy Assistant Secretary.
22.1303(d)	Director	Deputy Assistant Secretary.
22.1304(a)	Director	Deputy Assistant Secretary.
22.1306, second sentence	Director of the Office of Federal Contract Compliance Programs of the DOL.	Deputy Assistant Secretary.

7b. In addition to the amendments set forth above, in Subpart 22.13 remove the phrase “Affirmative Action for Special Disabled and Vietnam Era Veterans” and add “Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era” in the following places:

- 22.1302(b)
- 22.1303(a) introductory text
- 22.1305
- 22.1307 introductory paragraph
- 22.1308(a)(1) introductory text

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.212–5 is amended by revising the date of the clause, and paragraphs (b)(7), (b)(9), and (e)(2) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

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Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Apr 1998)

* * * * *
 (b) * * *
 (7) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
 * * * * *
 (9) 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
 * * * * *
 (e) * * *
 (2) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);
 * * * * *

9. Section 52.213–4 is amended by revising the clause date and paragraphs (b)(1)(iii) and (b)(1)(v) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

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Terms and Conditions Simplified Acquisitions (Other than Commercial Items) (Apr 1998)

* * * * *
 (b)(1) * * *
 * * * * *
 (iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (Apr 1998) (38 U.S.C. 4212) (Applies to contracts over \$10,000).
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 (v) 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212) (Applies to contracts over \$10,000).
 * * * * *

10. Section 52.222–35 is amended—
 a. By revising the section heading, introductory paragraph, clause heading and date, and paragraph (a);

b. By revising paragraph (b)(1) introductory text;

c. In the first sentence of paragraph (c)(1) by removing the word “suitable”;

d. In (c)(2) by removing the words "their suitable" and adding "employment";

e. In the first sentence of paragraph (c)(3) by removing the word "suitable";

f. By removing paragraph (c)(5);

g. By revising paragraph (d);

h. In paragraph (e)(1)(i) by removing the word "special"; by revising (e)(2); and in (e)(3) by removing "special disabled and Vietnam Era veterans" and adding in its place "disabled veterans and veterans of the Vietnam era";

i. In the second sentence of paragraph (g) by removing the word "Director" and inserting in its place "Deputy Assistant Secretary"; and

j. By revising the introductory text of Alternate I. The revised text reads as follows:

52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(a)(1), insert the following clause:

Affirmative Action for Disabled Veterans and Veterans of the Vietnam ERA (Apr 1998)

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

All employment openings includes all positions except executive and top 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.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve 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 means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that 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.

Veteran of the Vietnam era means a person who—

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(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 disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as—

(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, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings.* * * *

(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 Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

Alternate I (Apr 1984). As prescribed in 22.1308(a)(2), add the following as a preamble to the clause:

11. Section 52.222-37 is amended—

a. By revising the section heading, clause heading, and date of the clause;

b. By revising the introductory text of paragraph (a);

c. In paragraphs (a)(1) and (a)(2) by removing the word "special"; and

d. By revising paragraph (e). The revised text reads as follows:

52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.

Employment Reports on Disabled Veterans and Veterans of the Vietnam ERA (Apr 1998)

(a) 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—

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

12. Section 52.244-6 is amended by revising the date of the clause and paragraph (c)(2) to read as follows:

52.244-6 Subcontracts for Commercial Items and Commercial Components.

Subcontracts for Commercial Items and Commercial Components (Apr 1998)

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97-04; FAR Case 97-039; Item X]

RIN 9000-AH93

Federal Acquisition Regulation; Treatment of Caribbean Basin Country End Products

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-04, FAR case 97-039.

SUPPLEMENTARY INFORMATION: