

2015, is adopted as a final rule without change.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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

[FAC 2005-91; FAR Case 2015-036; Item II; Docket No. 2015-0036, Sequence No. 1]

RIN 9000-AN14

#### Federal Acquisition Regulation; Updating Federal Contractor Reporting of Veterans' Employment

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a final rule issued by the Department of Labor's (DOL) Veterans' Employment and Training Service (VETS) that replaced the VETS-100 and VETS-100A Federal Contractor Veterans' Employment Report forms with the VETS-4212, Federal Contractor Veterans' Employment Report form.

**DATES:** *Effective:* September 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-91, FAR Case 2015-036.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 80 FR 75908 on December 4, 2015, to implement a final rule issued by VETS of the DOL that was published in the **Federal Register** at 79 FR 57463 on September 25, 2014. The VETS of DOL rule rescinded the regulations at 41 CFR part 61-250 and revised the regulations at 41 CFR part 61-300, which implemented the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), as amended and the Jobs for Veterans Act (JVA) (Pub. L. 107-288).

VEVRAA requires Federal contractors and subcontractors to annually report on the total number of their employees who belong to the categories of veterans protected under VEVRAA, as amended by the JVA, and the total number of those protected veterans who were hired during the period covered by the report. No public comments were submitted on the interim rule.

##### II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) did not receive any comments on the interim rule; accordingly the Councils are finalizing the interim rule without change.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is issued to adopt as final, without change, an interim rule published in the **Federal Register** at 80 FR 75908 on December 4, 2015, implementing changes to 41 CFR 61-250 and 61-300 which was published in the **Federal Register** at 79 FR 57463 on September 25, 2014, by the Veterans' Employment and Training Service (VETS) of the Department of Labor (DOL). The objective of the VETS rule is to revise the current regulations implementing 38 U.S.C. 4212. The VETS rule rescinded obsolete regulations at 41 CFR 61-250, changed the manner in which Federal Contractors report veterans' employment data, updated terminology, and revised the annual report, the report name, and methods of filing the report.

No public comments were submitted in response to the initial regulatory flexibility analysis or the interim rule.

VETS used data in the VETS-100/100A Reporting System regarding reports on

veterans' employment filed in 2012 to estimate the number of small entities that would be subject to its rule. The VETS rule applies to any industry represented by a Federal contractor with a contract of \$150,000 or more. Therefore, VETS used the Small Business Administration's "fewer than 500 employees" limit when making an across-the-board size standard classification for estimating purposes. VETS estimated that 15,000 Federal contractors will be subject to the reporting requirements of the rule and of that, VETS approximated that the number of small entities that would be subject to the rule would be 8,000 (approximately 53 percent of the total Federal contractors impacted by the rule).

This FAR rule does not add any new reporting, recordkeeping, or other compliance burdens. The FAR rule makes contracting officers and contractors aware of the VETS reporting requirements.

DoD, GSA, and NASA are not aware of any significant alternatives to the rule which would accomplish the stated objectives of implementing the VETS final rule, while minimizing impact on small entities. DoD, GSA, and NASA do not have the flexibility of making any changes to the VETS rule, which has already been published for public comment and has taken effect as a final rule. There is no significant impact on small entities imposed by the FAR rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

##### V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* However, the applicable information collections are derived from the requirements of the 41 CFR part 61-300 regulations implementing the reporting requirements under VEVRAA; see detailed discussion in DOL's rule under the Paperwork Reduction Act section which was published in the **Federal Register** at 79 FR 57463 on September 25, 2014. OMB assigned OMB Control Numbers 1250-0004, OFCCP Recordkeeping and Reporting Requirements, 38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and 1293-0005, Federal Contractor Veterans' Employment Report.

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

Government procurement.

Dated: September 19, 2016.

**William F. Clark,**

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 1, 22, and 52, which was published in the **Federal Register** at 80 FR 75908 on December 4, 2015, is adopted as a final rule without change.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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

[FAC 2005-91; FAR Case 2016-007; Item III; Docket No. 2016-0007; Sequence No. 1]

RIN 9000-AN10

#### Federal Acquisition Regulation: Non-Retaliation for Disclosure of Compensation Information

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

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.), entitled “Non-Retaliation for Disclosure of Compensation Information,” and a final rule issued by the Department of Labor.

**DATES:** *Effective:* September 30, 2016.

*Applicability Date:* This rule applies to solicitations and contracts issued on or after the effective date of the FAR rule. Contracting officers are expected to work with their existing contractors and bilaterally modify their contracts, to the extent feasible, to include the amended clause at FAR 52.222-26, Equal Opportunity. See FAR 1.108(d).

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before November 29, 2016 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-91, FAR Case

2016-007, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “FAR Case 2016-007”. Select the link “Comment Now” that corresponds with “FAR Case 2016-007”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2016-007” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001.

*Instructions:* Please submit comments only and cite “FAR Case 2016-007” in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Zenaída Delgado, Procurement Analyst, at 202-969-7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-91, FAR Case 2016-007.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement Executive Order (E.O.) 13665, entitled “Non-Retaliation for Disclosure of Compensation Information.” The E.O. was signed April 8, 2014, and was published in the **Federal Register** at 79 FR 20749, on April 11, 2014. This interim rule is also implementing the final rule issued by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (DOL) to implement E.O. 13665. The DOL final rule was published in the **Federal Register** at 80 FR 54934, on September 11, 2015, entitled “Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions.” The DOL rule revises 41 CFR part 60-1.

E.O. 11246, originally issued September 24, 1965, establishes nondiscrimination and affirmative action obligations in employment for Federal contractors and subcontractors.

It prohibits employment discrimination because of race, color, religion, sex, sexual orientation, gender identity, or national origin. E.O. 13665 amends E.O. 11246 to provide for a uniform policy for the Federal Government to prohibit Federal contractors from discriminating against employees and job applicants who inquire about, discuss, or disclose their own compensation or the compensation of other employees or applicants. Also, the E.O. indicates that it promotes economy and efficiency in Federal Government procurement and supports enforcement of nondiscrimination and equal employment opportunity.

##### II. Discussion and Analysis

A. The DOL regulation implements E.O. 13665 by revising the equal opportunity clause to prohibit contractors from discharging, or in any manner discriminating against, any employee or applicant for employment because the employee or applicant inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant.

B. The FAR implements E.O. 11246 in FAR subpart 22.8, FAR clause 52.222-26, Equal Opportunity, and related clauses. This interim rule adds the new discrimination prohibition and incorporates the definitions “compensation,” “compensation information,” and “essential job functions” from the DOL final rule (41 CFR 60-1.3) within FAR subpart 22.8 and the clauses that are prescribed in FAR subpart 22.8 as follows:

1. *22.802, General.* Inserts the new discrimination prohibition.

2. *52.222-26, Equal Opportunity.* Inserts definitions for the terms “compensation,” “compensation information,” and “essential job functions,” and 52.222-26(c)(5), which prohibits contractors from discharging, or in any manner discriminating against, any employee or applicant for employment because the employee or applicant inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. FAR 52.222-26(c)(5) also requires the contractor to incorporate the new discrimination prohibition into existing employee manuals or handbooks and to post it.

C. Conforming changes were made in the FAR clauses 52.212-5, 52.213-4, and 52.244-6.

##### III. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if