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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulation; Rules
SUPPLEMENTARY INFORMATION:
Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and dates see separate documents, which follow these item summaries. FAC 2005–76 amends the FAR as specified below:

Item I—Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities (FAR Case 2014–013)

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement final rules issued on September 24, 2013, by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities. The DOL rules provide clarification of mandatory listing of employment openings, the posting of notices, making notices accessible to persons with disabilities, and requiring nondiscrimination statements in contractor solicitations or advertisements for employees. The FAR clauses have been restructured to provide a citation to the applicable clause in the DOL regulations and include a statement that summarizes the contractors’ top level obligations under each clause. There is no significant impact on small entities imposed by the FAR rules.

Item II—Small Business Protests and Appeals (FAR Case 2012–014)

This final rule amends the FAR to provide revised regulatory coverage for small business size and small business status protest and appeal procedures and to ensure that the FAR contains consistent and coherent protest and appeal procedures that are congruent with Small Business Administration regulations.

This final rule will have no direct negative impact on any small business concern, since it is aimed at preventing other than small business concerns from receiving or performing contracts set aside for small business concerns. This rule will indirectly benefit small business concerns by preventing awards to ineligible concerns, or shortening the length of time other than small business concerns perform small business set-aside contracts.

Item III—Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013–017)

This finalizes an interim rule that revised the cost principle at FAR 31.205–47 to implement sections 827(g) and 828(d) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. The cost principle is revised in the final rule to allow reasonable legal proceeding costs in certain settlements. Because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal.

Item IV—Technical Amendments

Editorial changes are made at FAR 4.605, 4.1601, and 32.009–1. The change at 32.009–1 shows the recent extension of the policy to provide accelerated payment to small business subcontractors.

Dated: July 18, 2014.

William Clark,
Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Federal Acquisition Circular (FAC) 2005–76 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–76 is effective July 25, 2014 except for item II, which is effective August 25, 2014.

Dated: July 18, 2014.

Richard Ginman,
Director, Defense Procurement and Acquisition Policy.

Dated: July 18, 2014.
Jeffrey A. Koses,  
Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.


William P. McNally,  
Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE  
GENERAL SERVICES ADMINISTRATION  
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52  
[FAC 2005–76; FAR Case 2014–013; Item I; Docket 2014–0013, Sequence 1]

RIN 9000–AM76

Federal Acquisition Regulation: Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities

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 final rules issued by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities.


Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before September 23, 2014 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005–76, FAR Case 2014–013, by any of the following methods:

• Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2014–013” Select the link “Comment Now” that corresponds with “FAR Case 2014–013.” Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2014–013” on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–76, FAR Case 2014–013, in all correspondence related to this case. All comments received will be posted without change to http://www.regulations.gov, including any personal and/or business confidential information provided.


SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement two DOL final rules that were published in the Federal Register on September 24, 2013 at 78 FR 58614 and at 78 FR 58682 as follows:

• “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans”, which amended DOL regulations at 41 CFR parts 60–250 and 60–300 (78 FR 58614).

• “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities”, which amended DOL regulations at 41 CFR part 60–741 (78 FR 58682).

II. Discussion and Analysis

A. Subpart 22.13—Equal Opportunity for Veterans

This interim rule amends the definitions in FAR subpart 22.13 to conform to the definitions in 41 CFR 60–300.2.

• Adds a definition of “active duty wartime or campaign badge veteran,” which replaces the definition of “other protected veteran.” The only change is in the definition title.

• Adds a definition of “protected veteran.”

• Expands policy at FAR 22.1302 to address appropriate outreach and recruitment, and hiring benchmarks.

B. Subpart 22.14—Employment of Workers With Disabilities

The interim rule amends FAR subpart 22.14 to conform to DOL regulations at 41 CFR part 60–741.

• Changes references to the title of the FAR clause at 52.222–36 to “Equal Opportunity for Workers with Disabilities”.

• Changes the responsible official at DOL to the “Director of Federal Contract Compliance Programs” (Director of OFCCP).

• Expands policy at FAR 22.1401 to address appropriate outreach and recruitment, and utilization goals, as prescribed in the regulations of the Secretary of Labor.

• Amends the waiver authority at FAR 22.1403 to be the Director of the Office of Federal Contract Compliance Programs to conform to the Department of Labor regulations. Also revises the policy at FAR 22.1403(b) concerning national security waivers to conform to the DOL regulations.

C. Clauses

The DOL regulations contain two revised Equal Opportunity clauses at 41 CFR 60–300.5 (relating to veterans) and 41 CFR 60–741.5 (relating to individuals with disabilities).

• The clause for Equal Opportunity for VEVRAA Protected Veterans provides clarification of mandatory listing of employment openings and posting of notices, in paragraphs 2, 4, 9, and 12 of 41 CFR 60–300.5(a).

• The clause for Equal Opportunity for Workers with Disabilities adds some requirements with regard to posting in electronic format and making notices accessible to persons with disabilities, in paragraphs 4 and 7 of 41 CFR 60–741.5(a).

• Both clauses add requirements with regard to contractor solicitations or advertisements for employees, requiring inclusion of statements that all qualified applicants will receive consideration for employment, without regard to their protected veteran status; and that qualified applicants will not be discriminated against on the basis of disability.

At 41 CFR 60–300.5(d) and 41 CFR 60–741.5(d), each entitled “Inclusion of the equal opportunity clause in the contract,” the DOL regulations provide that it is not necessary to include the equal opportunity clause verbatim in the contract (as had been considered in the proposed rule), but that the clause shall be made a part of the contract by citation to 41 CFR 60–300.5(a) and 41 CFR 60–741.5(a) respectively, and then provides a short paragraph that must be