



**Headquarters
Policy Flash**

Flash #99-03

DATE: May 28, 1999

TO: Distribution
FROM: Office of Procurement and Assistance Policy (MA-51)
Office of Procurement and Assistance Management

SUBJECT: *VETS 100 Reporting - FAR Deviation - Effective July 20, 1999*

SUMMARY: The Energy and Water Development and Interior Appropriations Acts for Fiscal Years 1997 and 1998 contained riders which prohibited certain uses of those appropriations. Among the prohibitions were awards to contractors who have not filed their required "VETS 100" annual report. That report is required by the clause at 52.222-37 which is prescribed by 22.1308.

Flash # 99-03

The only exceptions to the requirement are if the contract is performed outside the United States with employees recruited outside the United States or the requirement is waived by an Agency Head. The riders were included in Acquisition Letters 97-10R and 97-10.

For Fiscal Year 1999, the Energy and Water Development Appropriations Act did not contain this rider. Instead, this same requirement has now been made permanent and Government-wide by its inclusion as Section 1354 of Public Law 105-339 enacted October 31, 1998. On December 18, 1998, the Chairman of the Civilian Agency Acquisition Council provided guidance on the subject, pending modification of the FAR. That letter, transmitted as Civilian Agency Acquisition Council Letter 98-6 recommends:

- a. Use of a solicitation provision requiring prospective contractors, subject to the reporting requirement, to indicate whether they have or have not submitted their most recent report and advising them that no award can be made if they have not submitted the required report;
- b. Increase from \$10,000 to \$25,000 in the threshold for including the clause at FAR 52.222-37;
- c. Substitution of the \$25,000 threshold for the \$10,000 threshold at paragraph (f) of the clause regarding flow down to subcontracts; and,
- d. Exercise of a contract option exceeding \$25,000 only after determining that the contractor has submitted its most recent required report.

Following issuance of the Civilian Agency Acquisition Council Letter 98-6, the Department of Labor established an Internet site containing a database of contractors who have filed reports. It may be accessed at <http://nvti.cudenver.edu/vets/Vets100Search.htm>. This address is case sensitive. Use "vets" as your access validation code when using the system. There is a time delay in entering the contractor reports into the system. If a contractor is not listed, you may E-mail the system operator at VETS100@dynacorp.com and request they verify whether the contractor has filed its report. Questions may be addressed to the Department of Labor at (703) 461-2460 or to Richard Langston, Department of Energy, at (202) 586-8247.

Prior to implementing the CAAC recommendations, DOE was required, in accordance with section 302 of the Energy and Water Development Appropriations Act of Fiscal Year 1999, to obtain Secretarial approval and to notify certain Congressional Committees regarding any FAR deviations which will be used in a DOE contract award, amendment or modification. Accordingly, a FAR deviation was approved by the Secretary of Energy on May 21, 1999 and Congressional notification has been made. A copy is attached for your information and use. If the FAR changes are finalized prior to that date, the FAR will take precedence over this notification.

Please note that the Energy and Water Development Appropriations Act for 1999 requires a 60 day notification period prior to the effectivity of any FAR deviation. Therefor, the attached deviation authority is effective on July 20, 1999.



Gwendolyn S. Cowan, Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Attachments

cc: Richard H. Hopf, MA-5
Steve Mournighan, MA-52
Ed Simpson, MA-52



U.S. GENERAL SERVICES ADMINISTRATION
Office of Governmentwide Policy

DEC 18, 1998

CIVILIAN AGENCY ACQUISITION COUNCIL LETTER 98-6

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:

Edward C. Loeb
EDWARD C. LOEB
CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: VETS-100 Reporting

Title 38, US Code, Section 4212 (d) requires that Federal contractors report on several aspects of their employment and hiring of special disabled and Vietnam era veterans or other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. The report is to be submitted each year not later than September 30. The report is known as the VETS-100 report. The statutory requirement is implemented in the Department of Labor (DOL) regulations at 41 CFR 61-250.

Public Law 105-339, which was enacted October 31, 1998, provides in summary at Section 1354:

(a)(1) No agency may obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract described in 4212(a) of title 38 with a contractor from which a report was required under section 4212(d) with respect to the preceding fiscal year if the contractor did not submit the required report.

(a)(2) Paragraph (a)(1) ceases to apply to a contractor otherwise covered by that paragraph on the date on which the contractor submits the report required by section 4212(d) for the fiscal year concerned.

The statute also increases the threshold of covered contractors and subcontractors from \$10,000 to \$25,000, and requires the Department of Labor to make available in a database the list of contractors that have filed the VETS-100 report for the current reporting report.

Pending modification of the Federal Acquisition Regulation, and the establishment of the aforementioned database at DOL, it is recommended that civilian agencies include a solicitation provision substantially the same as the following in all solicitations over \$25,000.00 using appropriated funds.

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COMPLIANCE WITH VETERANS EMPLOYMENT REPORTING REQUIREMENTS

(a) The Offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e. the VETS -100 report required by the Federal Acquisition Regulation clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has [], has not [] submitted the most recent report required by 38 U.S.C. 4212(d).

(b) An Offeror who checks "has not" may not be awarded a contract until the required reports are filed. (31 U.S.C. 1354)

(End of Provision)

Civilian agencies are advised that, for any contracts containing the clause at 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, the contracting officer should exercise an option with a value exceeding the \$25, 000.00 threshold only after determining that the contractor has submitted the most recent report required by that clause.

For further information regarding questions related to the Veterans Employment Reporting Requirements, contracting officers may contact the DOL Office of Veterans Employment and Training at (703) 461-2460 or E-mail VETS100@dyncorp.com.

Until the FAR is amended to reflect these policies, civilian agencies are encouraged to immediately follow the procedures described herein. In accordance with FAR 1.404(a), this letter serves as evidence of consultation with the Chairman of the Civilian Agency Acquisition Council as provided in FAR 1.404(a)(1).

DEPARTMENT OF ENERGY
DETERMINATION AND FINDINGS
FEDERAL ACQUISITION REGULATION (FAR) DEVIATION
REGARDING
FAR 52.222-37 EMPLOYMENT REPORTS ON
SPECIAL DISABLED AND VIETNAM ERA VETERANS

FINDINGS

1. The clause at FAR 52.222-37, Employment Reports on Special Disabled and Vietnam Era Veterans, required by FAR 22.1308, directs Federal contractors to file an annual report, by September 30 of each year, regarding the employment of certain veterans. The clause is required in contracts of \$10,000 or greater.
2. Public Law 105-339, enacted October 31, 1998, provides at Section 1354 that no agency may enter into a contract with a contractor from which a veterans report was required if that contractor has not filed it report for the preceding fiscal year. It also provides that the requirement ceases to apply to a contractor on the date on which the contractor submits the report for the fiscal year concerned. The statute also increases the threshold of covered contractors and subcontractors from \$10,000 to \$25,000 and requires the Department of Labor to make available in a database the list of contractors who have filed the VETS-100 report for the current reporting year.
3. The Chairman, Civilian Agency Acquisition Council, has transmitted Civilian Agency Acquisition Council Letter 98-6 on the subject. That letter recommends:
 - a. Use of a solicitation provision requiring prospective contractors, subject to the reporting requirement, to indicate whether they have or have not submitted their most recent report and advising them that no award can be made if they have not submitted the required report;
 - b. Exercise of a contract option exceeding \$25,000 only after determining that the contractor has submitted the most recent required report;
 - c. Substitution of the \$25,000 threshold for the \$10,000 threshold at paragraph (f) of the clause regarding flow down to subcontracts; and,
 - d. Use of a Department of Labor telephone number or E-mail address to obtain information or confirm that a contractor has filed its report.

DETERMINATION

I hereby authorize a deviation from the requirements of FAR 22.1308 and 52.222-37 in order to include a solicitation provision entitled Compliance With Veterans Employment Reporting Requirements in subsequent contract awards and to increase the contract and subcontract threshold for including the clause and reporting requirement from \$10,000 to \$25,000 pending amendment of the FAR.

APPROVAL



Bill Richardson
Bill Richardson
Secretary of Energy