DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 22, and 52

[FAC 2005-64; FAR Case 2011-028; Docket 2011-028; Sequence 1]

RIN 9000-AM21

Federal Acquisition Regulation; Nondisplacement of Qualified Workers Under Service Contracts

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 issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement an Executive order for nondisplacement of qualified workers under service contracts, as implemented in Department of Labor regulations.

DATES: Effective Date: January 18, 2013.

Applicability Date**:** This final rule is applicable to solicitations issued on or after the effective date. Contracting officers are expected to work with their existing service contractors and bilaterally modify their contracts, to the extent feasible, to include the clause at FAR 52.222-17. As an alternative, contracting officers

should consider entering into bilateral modifications with existing service contractors to agree to perform paragraph (c) of the clause at FAR 52.222-17, which: (1) informs the existing predecessor contractor's workforce of their right of first refusal; and (2) provides the list of service employees to the contracting officer no less than 30 days before contract completion. Contracting officers shall document the contract files of their existing service contracts to describe the steps that were taken.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202-501-0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-64, FAR Case 2011-028.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 77 FR 26232 on May 3, 2012, to implement Executive Order (E.O.) 13495, Nondisplacement of Qualified Workers Under Service Contracts, dated January 30, 2009, published at 74 FR 6103 on February 4, 2009, and the Department of Labor (DOL) regulations at 29 CFR part 9. This final rule amends the FAR to add subpart 22.12 and a new clause at FAR 52.222-17,

providing the policy of the Federal Government, as expressed in E.O. 13495, to require service contractors and their subcontractors under successor contracts to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified. Twenty seven respondents submitted comments on the proposed rule.

On January 4, 2011, Public Law 111-350 enacted a new codified version of Title 41 United States Code (U.S.C.), entitled "Public Contracts." The CAAC and DARC published a proposed rule on September 18, 2012, at 77 FR 57950 to update all references to Title 41 in the FAR to conform to the positive law codification. As part of these changes, the proposed rule would replace the term "Service Contract Act" with the term "Service Contract Labor Standards statute" (SCLS statute). If this change is adopted through that rulemaking, similar conforming changes in the use of terms will be made in the text to this final rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes

made to the proposed rule as a result of those comments are provided as follows:

A. Summary of significant changes

- Revised FAR 22.1200, Scope of subpart, to make it clear that the DOL regulations (29 CFR part 9) implementing E.O. 13495 are applicable.

- Revised the policy, FAR 22.1202, to clarify the applicability of the subpart.

- Revised FAR 22.1203-3, Waiver, to require the approval of waivers by the agency Senior Procurement Executive, without power of redelegation.

- Added three subsections to FAR 22.1203 to address "Method of job offer," "Exceptions," and "Reduced staffing."

- Added cross-references throughout FAR subpart 22.12 to the applicable section of the DOL implementing regulations.

- For clarity, a definition of "service employee" was added, and the term "service employee" is used throughout the rule.

B. Analysis of public comments

1. General Comments

Comments: Two respondents expressed support for the proposed rule and the underlying policy concerns it

addresses, including minimizing the risk of disruption of services during transition between predecessor and successor contractors and efficiency through the employment of trained employees.

Response: Although no response is required, the FAR Council appreciates all comments.

Comments: A respondent questioned the need for this rule, stating that most contractors try to hire incumbents where it makes sense. This respondent also expressed concern that the proposed rule would interfere with the employer/employee relationship and convert covered contracts to personal services contracts.

Response: In accordance with E.O. 13495 section 6(b), the Federal Acquisition Regulatory Council (FAR Council) is required to issue regulations implementing the E.O. Based upon the statement that most contractors try to hire incumbents, it does not appear that this rule will disrupt current hiring practices. Regarding the concern that this rule will interfere with the employer/employee relationship and convert covered service contracts to personal services contracts, nothing in this rule establishes an employer/employee relationship between the Government and a contractor's employees.

2. Out-of-Scope Comments

Comments: A respondent stated that evaluation criteria must focus on transition plans instead of staffing plans. Another respondent stated the belief that E.O. 13495 was short-sighted and that the Federal Government should not require the successor to hire predecessor contractor employees. The same respondent also stated that there are risks as well as rewards in hiring and training a workforce when competing for contracts. Another respondent questioned why the Government has no faith in open market efficiencies and why it is willing to exchange poor performance on contracts to provide longtime employment for poor job performers. Another respondent stated that the nondisplacement rule conflicts with the Service Contract Act (SCA) statute because the SCA does not authorize the FAR Council, the DOL, or the President to require successor contractors to hire predecessor contractor employees who are covered by the SCA. The same respondent stated that the rule does not provide evidence that its implementation will result in greater efficiencies in Federal procurement. This respondent felt that, because the rule conflicts with the SCA, it must be withdrawn in its entirety. One respondent expressed concern that, by requiring the successor contractor to hire the predecessor contractor's

employees, the contracting officer would be dictating how contractors staff their contracts.

Response: The purpose of this rule is to implement E.O. 13495, Nondisplacement of Qualified Workers Under Service Contracts and the DOL implementing regulations. Issues relating to the scope or coverage of either the E.O. or the DOL implementing regulations are outside the scope of this final rule.

Comments: One respondent asked the purpose of the rule. The respondent stated it would be more costly for successor contractors to train an entire workforce. The respondent asked whether the rule was intended to unionize everyone.

Response: The preamble of E.O. 13495 states that a carryover workforce "provides the Federal Government the benefits of an experienced and trained work force." In cases where the agency believes that extensive training would be needed to learn new technology or processes that would not be required of a new workforce, the agency could consider waiving FAR subpart 22.12. (See 29 CFR 9.4(d)(4)(ii)(A)).

Comments: One respondent indicated that this rule would seem to favor time-and-material contracting instead of fixed-price contracting. The respondent indicates that

in order to be most beneficial to the Government, vendors would need the ability to be creative and structure the approach in such a way that is flexible for technology changes and allows the vendor the best way to accomplish the objectives.

Response: The respondent's comment is outside the scope of this case. Nothing in this rule addresses or limits the type of contract to be used for service contracts.

Comments: A respondent recommended that the Councils consider possible privacy and liability implications.

Response: This comment is outside the scope of the FAR rule, as the FAR final rule is implementing the requirements of the E.O. and the DOL implementing regulations at 29 CFR part 9, which would have considered this issue (see 76 FR 53720 at 53731-53732).

3. Applicability

Comments: A respondent asked whether this rule will apply only to contracts covered by the SCA and whether professional services will be exempted. Another respondent stated that the proposed rule posed serious issues in contracting for information technology functions because of the need to be responsive to rapid changes in technology and opportunities for cost savings. A third respondent

asked whether the rule would apply to competed task orders or to service contracts performed outside the United States.

Response: There appears to be a broad misunderstanding of the types of work that are exempt from the SCA. Professional services (including professional services for information technology) are exempt from applicability of FAR subpart 22.12 for the reasons that follow. Section 2 of E.O. 13495 defines "employee" to mean a "service employee" as defined in the SCA. The definition of "service employee" at 41 U.S.C. 6701(3) provides, in part, that it "does not include an individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations". The regulation referenced, 29 CFR 541, entitled "Defining and Delimiting the Exemptions for Executive Administrative, Professional, Computer, and Outside Sales Employees," refers to "exempt professionals" as those whose primary duty is the "performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention,

imagination, originality or talent in a recognized field of artistic or creative endeavor" (29 CFR 541.3(b)(4)).

FAR 22.1003-5, entitled "Some examples of contracts covered," sets forth examples. One example of a contract covered by the SCA, at FAR 22.1003-5(k), is "maintenance and repair of all types of equipment, for example, electronic, office, and related business and construction equipment." The definition of "service employee" addresses this concept. Therefore, FAR 22.001, in the proposed rule, moved the definition of "service employee" from 22.1001 to 22.001 so that it would apply to this rule.

The SCA applies to service contracts over $2,500, the principal purpose of which is to furnish services in the United States through the use of service employees. FAR subpart 22.10, entitled "Service Contract Act of 1965, as amended," defines the term "Act or Service Contract Act". The definition of "Service contract" is moved to FAR 22.001. Paragraph (c)(1)(ii) of the clause at FAR 52.222-17 does not give a right of first refusal to "any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act, 41 U.S.C. 6701(3)."

The term "United States," for purposes of the implementation of E.O. 13495, is defined at FAR 22.1201.

The rule does not apply to service contracts that are performed entirely outside the United States.

If the clause is in the basic contract, then the clause applies to task orders issued under the contract to which the SCA applies. The exemptions to the SCA are listed at FAR 22.1003-3.

Comments: One respondent indicated that the FAR rule did not incorporate many of the provisions in the DOL rule. The respondent also indicated that the FAR rule differs from the DOL rule in many ways but fails to provide clear guidance as to the extent to which both sets of rules may be applicable. The respondent indicated that, for each provision in the DOL rule that is neither repeated nor cross-referenced, the FAR final rule should expressly state that the proposed rule does not incorporate the relevant DOL provision so contractors have clear direction on their obligations.

Response: The final rule has been revised to include guidance incorporating the DOL rule and adding cross-references throughout the FAR coverage where appropriate. The FAR and the DOL rule are consistent, and the changes noted above should eliminate any questions.

Comments: A respondent expressed a concern that the rule would hinder competition because it would be difficult

for competitors to get commitments from individuals to fill key personnel positions when they can be displaced by the incumbent personnel. This concern was echoed by another respondent, who felt that, if the Government were to require key staff resumes, then, the Government would also have to provide information regarding the key incumbent personnel the Government expects the successor contractor to hire. Other respondents stated that the rule will create disincentives for a firm to compete on a competitive project because the firm will not be able to employ its own staff and/or will have to make the case for not retaining incumbent staff.

Response: If the key person position is covered by the SCA, then a qualified employee of the predecessor contractor must be given the right of first refusal.

With regard to decreased competition, this rule could be one factor for a contractor to consider when deciding whether to participate in the Government market. The rule is unlikely to have a significant effect on competition.

Comments: A respondent stated that the solicitation must provide direct labor information (salaries and benefits) for every labor category; otherwise, the respondent felt, the incumbent (predecessor) contractor would have an unfair competitive advantage. Another

respondent expressed a similar concern: Given that "only the incumbent contractor knows the qualifications and realistic costs of the affected personnel, how can any other offeror submit an adequate bid and the Government perform a realistic analysis of the bid when a portion of the proposal cannot be accurately determined until after contract award?" This respondent was concerned that the right of first refusal would jeopardize a potential offeror's ingenuity in proposing a technical approach or solution based on limitations of the existing workforce. Further, a third respondent believed that offerors might tailor their personnel requirements to what was currently being done under the incumbent contract instead of proposing a more efficient solution. Another respondent expressed concern that the rule would limit offerors' ability to craft innovative solutions to Government requirements.

Response: Under the SCA, the successor contractor must pay the wage rates and fringe benefits found by the DOL to prevail in the locality, unless the predecessor contractor is operating under a collective bargaining agreement. In the latter case, the successor contractor must pay wages and fringe benefits specified in the

collective bargaining agreement (see FAR 22.1002 and 29 CFR 4.53), which would be an attachment to the solicitation.

Each offeror must propose an efficient method of performing the required work as that offeror understands the statement of work. The proposed rule made clear, at paragraph (b) of the clause at FAR 52.222-17, that the predecessor employees are offered a right of first refusal only for positions for which they are qualified; and the successor contractor and its subcontractors may employ fewer employees than did the predecessor contractor. The rule does not limit the technical solutions that may be proposed to meet Government requirements. It only implements the requirement to provide a right of first refusal to service contract employees of predecessor contractors in accordance with the regulations promulgated in this final rule and the DOL regulations set forth at 29 CFR part 9.

Comments: A respondent stated that the "same location" limitation on applicability of FAR subpart 22.12 was not clear. The respondent asked whether it meant the same building, base, city, county, command, or something else. The respondent noted that many indefinite delivery/indefinite quantity contracts require services in a wide geographic area and questioned whether, in the

Washington, D.C., area, services to be performed at Fort Myer or the Navy Yard would be considered the same location.

Response: Chapter 67, entitled "Service Contract Labor Standards," of Title 41, United States Code, does not define "same location." As a general matter, what constitutes the "same location" in this context will depend upon the geographic area in which performance under the predecessor and successor contracts occur. The determination of whether the predecessor and successor contract involve services at the "same location" may be resolved by reference to what the statement of work, or any similar contract provision (such as a statement of objectives) specified.

Comments: One respondent asked how "similar" will be defined in "same or similar" services. Another respondent asked how much variation in locations of performance would be permissible while claiming that a successor contract was for the same or similar job.

Response: 29 CFR 9.2 defines "same or similar service" to mean "a service that is either identical to or has one or more characteristics that are alike in substance to a service performed at the same location on a contract

that is being replaced by the Federal Government or a contractor on a Federal service contract."

Comments: A respondent noted that the proposed rule is silent on part-time or shared positions and asked whether such individuals must receive a bona fide offer of full time employment, given that they may be qualified to perform many other jobs.

Response: The DOL notes that "the Fair Labor Standards Act…does not define part-time or full-time employment; rather, this is generally a matter of agreement between the employer and the employee." (See www.dol.gov/dol/topic/workhours/full-time.htm). This is addressed at paragraph (a)(2) of 29 CFR 4.165, which states that the SCA "makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees, and the wage and fringe benefit determinations apply, in the absence of an express limitation, equally to all such service employees engaged in work subject to the Act's provisions." Therefore, the FAR does not provide an alternate definition of the term. If an individual is employed part-time by a predecessor, then the successor contractor must give that individual a right of first refusal. However, if the successor contractor needs that position to be full-time or part-

time, the contractor can make that a requirement for hiring.

Comments: A respondent noted that the DOL regulations expressly acknowledge that an offer by a successor contractor that contains different terms and conditions of employment is considered a bona fide offer and stated that no such provision was included in the proposed FAR rule.

Response: The final rule adds a subsection to FAR 22.1203-4 entitled "Method of job offer." This subsection includes the elements required for a job offer to be considered "bona fide."

Comments: A respondent suggested that the final rule would benefit if it provided additional guidance for contracting officers and contractors to better define when the rule is applicable. The respondent proposed the addition of some examples to assist interpretation of its applicability. Another respondent echoed the same comment.

Response: Examples of the applicability of the SCA are included at FAR 22.1003-5, "Some examples of contracts covered." In addition, a specific reference to the DOL final rule (29 CFR part 9) is added at FAR 22.1200, Scope of Subpart, and cross-references have been added where appropriate throughout the final rule.

Comments: A respondent stated that the proposed rule imposed such significant changes in business practices for both predecessor and successor contractors that the rule should be applied only to new contracts that are first solicited after the effective date of the FAR rule and DOL's rule. The respondent stated that this would be appropriate for two reasons: (1) The FAR rule does not provide for agencies' waiving nondisplacement requirements for existing contracts; and (2) contractors with existing contracts should not be required to prepare for the imposition of the requirements in the middle of contract performance at some unknown future date. Yet, a second respondent stated that the final rule must ensure that no service contractor "be permitted to not give employees notice of their right to continued employment with the successor contractor."

Response: The preamble to this final rule includes a section entitled "Applicability," which invokes the standard applicability rules at FAR 1.108(d). The rule will not be applied retroactively unless there is a bilateral modification to the contract with consideration. In addition, this section of the preamble provides that contracting officers are expected to work with their existing service contractors and bilaterally modify their

contracts, to the extent feasible to ensure that successor contractors under new solicitations will receive the required written notice and ensure contracting officers (and, hence, successor contractors) receive the employee list in sufficient time to ensure continuity of service. Specifically, under this rule, the predecessor contractor must provide a notice 30 days before the end of the contract. However, predecessor contractors performing at Federal facilities will already be operating under the existing notification clause set forth at FAR 52.222-41(n), under the SCA, which only requires a 10-day notice. While some have recommended that the rule be relaxed during the interim period, DOL explained in the preamble to its final rule that waiving the predecessor employees' right of first refusal of employment is not consistent with the E.O., and DOL is not authorized under the E.O. to provide such relief in any event.

Comments: A respondent was concerned that the FAR rule creates a protest risk by the predecessor contractor, as it may not want its employees to work for its competitor.

Response: For existing contracts, the predecessor contractor is required by paragraph (n) of the clause at FAR 52.222-41, Service Contract Act of 1965, to provide to

the contracting officer a certified list, not less than 10 days prior to completion of any contract at a Federal facility, of the names of all service employees on the contractor's or its subcontractors' payroll during the last month of contract performance. This list must contain the anniversary dates of employment on the contract. This final rule requires, at paragraph (d)(1) of the clause at FAR 52.222-17, for the contractor to furnish the list, including anniversary dates, not less than 30 days prior to completion of performance under the predecessor contract. Furnishing the list is a contractual requirement for predecessor contractors, and the rules for the successor contractor to make job offers are similarly included in the contract. Therefore, there is little or no risk of a non-frivolous protest.

4. Exemptions and HUBZone Considerations

Comments: Three comments were received concerning the policy statement and clause relating to the interaction of E.O. 13495 and other E.O.s or laws, such as the HUBZone provisions of the Small Business Act. One respondent stated that the rule did not consider the effect of E.O. 13495 on HUBZone small business concerns and the ability to meet the HUBZone program's residency requirements, while another respondent wanted to emphasize the importance of

excluding HUBZone small businesses from this rule. A third respondent thought that the rule should incorporate express guidance on how to comply with the nondisplacement obligations, while at the same time complying with a potentially conflicting law. This respondent believed the rule should incorporate an example into the rule, such as the one set forth in the preamble of the DOL regulation for HUBZone small business concerns.

Response: The proposed rule considered the effect E.O. 13495 may have on HUBZone small business concerns. Specifically, the rule set forth a policy statement and a paragraph in the contract clause, which state that nothing in E.O. 13495 can be construed to permit a contractor or subcontractor to fail to comply with any provision of other E.O. or law. This would include a HUBZone small business concern's compliance with the HUBZone provisions of the Small Business Act and any contractor's or subcontractor's compliance with E.O. 11246 (Equal Employment Opportunity) or the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Therefore, HUBZone small business concerns are not exempt from the E.O.; instead, the policy statement and clause explain that HUBZone small business concerns must try to meet the E.O.'s requirements in tandem with the

HUBZone program's requirements. (See 76 FR 53720 at page 53723).

Comments: One respondent stated that it was pleased the rule excluded service contracts and subcontracts awarded through the AbilityOne Program, which is administered by The Committee for Purchase From People Who Are Blind or Severely Disabled.

Response: Noted.

5. Predecessor's List of Qualified Employees

Comments: One respondent requested clarification for situations where the predecessor contract is split into more than one follow-on contract action. In this case, the respondent questioned whether the incumbent (predecessor) contractor would provide the agency only one list of covered employees or would be required to provide a list of covered employees for each of the follow-on contract actions.

Response: As stated in FAR 22.1204(a), the predecessor contractor is required to furnish the contracting officer a list of all service employees under the predecessor contract and its subcontracts. In FAR 22.1204(b), the contracting officer is responsible for providing the list to the successor contractor. In the respondent's scenario, where there is more than one successor contractor, then the

contracting officer, not the predecessor contractor, would be responsible for providing the list to the successor contractors. Without regard to the number of successor contracts, there is no obligation for all of the predecessor's employees to get a job offer if the number of job openings on the successor contract(s) is lower than the number of qualified predecessor employees. However, if an employee of the predecessor contractor thinks that he/she has not been offered a job and should have been offered a job, the employee may file a complaint with the Wage and Hour Division of the DOL within 120 days of the first date of contract performance (see 29 CFR 9.21).

Comments: One respondent noted that FAR 52.222-41(n) requires the contractor to submit a list of the names of all service employees and their anniversary dates of employment and that the proposed change at FAR 22.1204 requires no additional information. The respondent asked how the successor contractor would be able to contact these employees to offer employment when there is no information on how to contact the employees, what jobs these individuals held or were qualified for, or the individual's qualifications or work experience.

Response: The lists are not required to include contact information. The DOL rule (29 CFR part 9) did not

add a requirement for the predecessor contractor to provide contact information, and, if the predecessor contractor does not voluntarily provide contact information, then the successor contractor will still be required to reach out to those employees (see 29 CFR 9.12(a)(2) and 76 FR 53720 at 53734) (e.g., posting notices of job fairs or holding a session with current employees).

Comments: One respondent recommended sanctions against predecessor contractors that do not submit the certified list of employees within the required timeframe. Specifically, the respondent recommended the final rule include language allowing contracting officers to submit a negative performance review in the Federal Awardee Performance Integrity Information System (FAPIIS) or the Contractor Performance Assessment Reporting System (CPARS).

Response: FAPIIS is intended to track information regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; it is not appropriate for information regarding failure to meet a contract requirement. CPARS is the appropriate venue for contractor performance information. While contracting officers may choose to note the predecessor contractor's failure to provide the required list in a timely manner in CPARS, it is not necessary to

remind contracting officers of each circumstance where non-performance may be reported in CPARS. FAR 22.1206(c) provides that the Government may suspend contract payments until the list is provided.

Comments: A respondent suggested that the successor contractor should be required to offer employment to predecessor contractor employees who have worked on the predecessor contract for at least six months.

Response: The DOL examined this same comment prior to publishing its final rule and stated that "the Department does not agree that . . . predecessor contractors will be encouraged to 'dump' unsuitable employees onto expiring contracts." Lengthening the period of employment with the predecessor contractor would not address the concern that the predecessor contractor may retain some of its most qualified workforce (76 FR 53720 at page 53738).

Comments: One respondent stated it is unclear in FAR 52.222-17(d)(2) and (e)(2) who is responsible for providing the predecessor contractor's list of employees to "employees and their representatives."

Response: FAR 52.222-17(d)(2) and (e)(2) are revised in the final rule to match FAR 22.1204(b) and read as follows: "(2) Immediately upon receipt of the certified service employee list but not before contract award, the

contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives."

Comments: Two respondents requested clarification with respect to the timing of required notices when the successor contractor will begin performance before the predecessor's contract ends, e.g., when there is a phase-in period.

Response: The timing of the lists is mandated by the DOL and implemented at FAR 52.222-41(n) and the final rule at FAR 52.222-17(d)(1).

Comments: One respondent reiterated the requirement to submit an updated list "not less than 10 days before completion of services on the contractor" and stated that this timeframe is inadequate for the successor contractors to inform, interview, and evaluate displaced workers prior to commencement of the contract. Another respondent asked that the rule be amended to require the incumbent (predecessor) contractor to identify its qualified service employees earlier in the procurement process. A third respondent requested that, when there is a protest of the successor contract, then an additional time period should be added to FAR 22.1204(b) to ensure that no potential

source selection sensitive data is released prior to clearing all potential protest periods.

Response: Under the final rule, the ten-day notification will apply only in cases where the predecessor contractor has assigned employees to, or removed employees from, the contract after the 30-day notice has been submitted to the contracting officer. The predecessor contractor is not precluded from providing a list prior to the 30-day requirement in the final rule. The contract clause requires that the predecessor contractor must provide the list not less than 30 days prior to the end of contract performance. The DOL rule does not provide for additional time to provide the list for any reason.

Comments: One respondent asked how the contracting officer will know if the predecessor contractor is actually terminating the employment of the listed employees when the contract ends. In some cases, these employees may move to another job with the same contractor.

Response: As stated at 29 CFR 9.12(c), the successor contractor is required to presume that all employees hired to work on the predecessor contract: (1) Will be terminated, (2) are service employees, and (3) performed suitable work under the contract. Once contacted by the

successor contractor, employees on the list are free to accept or decline the offer of employment.

6. Predecessor's Written Notice to Employees

Comments: A respondent asked how Government contracting officers can enforce the requirement for the predecessor contractor to provide written notice to its employees of their possible right to an offer of employment with the successor contractor when there is no longer any contractual agreement between the predecessor contractor and the Government.

Response: Contracting officers may document the predecessor contractor's failure to provide the required notice to employees as an issue in a past performance evaluation. Completed past performance evaluations are made available to source selection officials evaluating offers for new contract awards. In addition, the contracting officer may suspend payments to the contractor until it complies with all contractual requirements. Further, in the case of willful or aggravated violations, then the contracting officer may refer the contractor to DOL or to the agency suspension and debarment official.

7. Which Employees Are Qualified

Comments: Several respondents asked how the successor contractor could determine all the positions that the

current employee was qualified to perform. The seniority list only provides very limited information.

Response: The FAR and the DOL rule allow the contractor to ask for information about employee qualifications. See 29 CFR 9.12(b)(4), which requires a successor contractor to base its decision regarding an employee's qualifications on credible information provided by a knowledgeable source such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. If the issue is unsuitable performance by a particular employee, the credible information must be in writing (29 CFR 9.12(c)(4)(ii)(A)). In its final rule preamble, the DOL explained that it would not require the list of employees to identify the relevant labor category, job duties, and current contact information, as the employee list is already a requirement of Federal service contractors under the SCA (see 76 FR 53720 at page 53739).

Comments: One respondent asked how the determination was to be made of which employees were qualified. According to the respondent, it was unclear whether this was to be determined by the predecessor contractor or, instead, anyone employed in the position during the last month of the contract was qualified.

Response: The FAR proposed rule preamble incorrectly referred to the list of employees as a list of qualified employees (see 77 FR 26234 in section E). The predecessor contractor does not determine whether the employee is qualified when the predecessor contractor makes the list. The successor contractor determines to which employees it will offer employment, based on the rule's requirements.

Comments: The proposed rule, at FAR 22.1202(a), stated that employees have a right of refusal for positions for which he/she is qualified. A respondent asked how the successor contractor should determine who has priority for that position, e.g., should this be done by seniority, where the most senior employee would have first choice of every position until accepting one, or should the more qualified employee be given the first choice. The respondent wanted to know if it would matter if the successor contractor was unionized.

Response: Executive Order 13495 does not mention seniority as a factor in offering a right of first refusal to employment. Therefore, the successor contractor will determine the order in which employees will be offered employment. Regardless of whether the successor contractor is unionized, the successor contractor determines which employees will be offered employment.

Comments: A respondent stated that offerors would have a hard time preparing a proposal because they would not know the expected salaries for the incumbent (predecessor) contractor's employees.

Response: This rule only concerns service employees covered by the SCA. Employees covered by the SCA would receive at least the minimum wage rates and fringe benefits required by the SCA procedures, based on prevailing rates or based on a collective bargaining agreement. (See FAR 22.1002). The SCA does not cover managerial, supervisory, or professional employees.

8. Poor Performance of Predecessor Employees

Comments: One respondent (6) stated that existing workers may be slow or resistant to adopt changes that the incoming contractor may feel are necessary to meet goals. Another respondent noted that, if a new contractor is brought on because of poor performance of the predecessor contractor, and that performance is due more to the contractor's personnel in place rather than the management, the Government would be perpetuating the problem rather than solving it. Several respondents remarked that the incumbent (predecessor) contractor would keep its best employees and leave the worst ones for the incoming contractor; this would affect the incoming contractor's

ability to do the work, disrupting the work, and injuring the contractor's reputation. Another respondent asked for additional flexibility to review qualifications of incumbent personnel when the predecessor contract was terminated for cause or default.

Response: DOL did not agree that predecessor contractors will be encouraged to place unsuitable employees onto expiring contracts, and would retain its most qualified workforce. DOL noted that employees not being retained would likely have more experience with the contract and contracting agency than new hires recruited by the successor contractor for the purpose of filling the contract requirements. (See 76 FR 53720 at page 53738). The successor contractor must extend offers to those service employees whose employment will be terminated; for those employees whose employment would not be terminated, the successor contractor may extend offers to them. DOL recognized that some predecessor contracts would be terminated for poor performance, but made clear that successor contractors were not to assume that this was the fault of the service employees rather than management; no extra time was given for review under this circumstance. An agency may waive subpart 22.12 application if the agency determines that performance problems on the predecessor

contract are not just due to the management but the entire predecessor workforce failing individually as well as collectively, and that it is not in the interest of economy and efficiency to provide supplemental training to the predecessor's workers. (See 29 CFR 9.4(d)(4)(ii)(C)).

Comments: A respondent was concerned that the successor contractor would be unable to obtain information about the poor performance of a particular worker, and therefore would hire that poor performer. The contractor is required to presume that all employees working under the predecessor contract in the last month of performance performed suitable work on the contract. Neither the FAR Council's rule nor DOL's rule requires a predecessor contractor to provide performance information for predecessor employees. The respondent stated that the potential lack of information about these workers' past performance and the limited time in which to vet them deprives the successor contractor of appropriate tools to determine whether the predecessor employee failed to perform suitably. Another respondent commented that relying on the predecessor contractor or the Government to furnish past performance information on individual employees would be problematic.

Response: The respondent is correct about the presumption and also correct that the predecessor contractor is not required to provide performance information. The emphasis of the E.O. is not on screening out predecessor employees, but on hiring them. Any evidence of poor performance by a particular employee needs to be credible information provided in writing by a knowledgeable source, such as the predecessor contractor and its subcontractors, the local supervisor, the employee, or the contracting agency. (See 29 CFR 9.12(c)(4)).

Comments: Several respondents asked about predecessor employees who perform poorly under the new contract. The respondents asked if the successor contractor would have the right to fire them. The respondents also asked whether the Government would assume the responsibility and/or risk for that poor performance or for performance that is lesser quality than the contractor could have provided with its own staff.

Response: The Government expects the successor contractor to manage its employees, including the predecessor's former employees who have been hired. If the contractor terminates an employee under circumstances suggesting the offer of employment may not be bona fide, the facts and circumstances of the offer and the

termination will be closely examined during any compliance action to ensure the offer was bona fide. (See 29 CFR 9.12(b)(6)). The successor contractor bears the responsibility for claiming an exception to the requirement to offer employment to any employee who had worked for the predecessor contractor (see FAR 22.1203-5). The successor contractor is expected to comply with the business ethics requirements of FAR subpart 3.10 and the relevant clauses in the contract.

Comments: Several respondents asked about a successor contractor having different standards. If a successor contractor had a better qualified employee with proven capabilities, could the successor contractor keep and promote the employee after award of the contract, rather than replacing the employee with an incumbent employee. The respondents asked what would happen if the successor contractor proposed a solution using its own employees who were more qualified, or less costly, than the predecessor contractor's employees. The respondents also asked what would happen if the successor contractor has a different level of acceptable conduct and performance.

Response: Paragraph (c)(1)(i) of FAR clause 52.222-17 allows the successor contractor to keep its own employees who would otherwise be facing lay-off or discharge, if the

employee had worked for the successor contractor for at least three months before the commencement of the new contract. The purpose of the E.O. and the DOL rule, as well as the FAR rule, is to give a right of first refusal to qualified predecessor contract employees who would otherwise be terminated. The successor contractor's belief that it can supply employees which it believes are better qualified or less costly is not the issue here. For example, the successor contractor could not determine that otherwise-qualified service employees are not qualified to perform the same or similar services on a successor contract because they lack a college degree. (See 76 FR 53720 at page 53736). The issue of an otherwise qualified employee being less qualified is different from the issue of an employee being unqualified or exhibiting unacceptable conduct or performance.

Comments: One respondent expressed concern that the process could result in denying the Government the discretion to select a new service provider when the predecessor's employees were qualified but lacking in performance. The respondent added that the process will allow successor contractors and subcontractors to manipulate the system by submitting a bid using employees that the successor contractor has no intention of hiring

and then, after award, replacing them with employees of the predecessor contractor who are poor performers.

Response: Under the E.O., this rule, and 29 CFR part 9, the successor contractor is not required to offer a right of first refusal to any employee(s) whom it reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. Additionally, the hypothetical workforce manipulation mentioned is unlikely to pose a problem, given that both the contracting agency and the successor contractor are aware of the rules on right-of-first refusal and the successor contractor clearly is responsible for the quality of its performance. The fact that the successor contractor has hired employees of the predecessor contractor does not absolve the former from the required level of performance.

9. Successor Efficiencies Require Fewer Employees

Comments: A question was posed regarding whether a reduction in staffing by the successor contractor due to efficiencies required a waiver.

Response: No waiver is required (FAR 22.1203-3) when the successor contractor employs fewer employees than the predecessor contractor due to efficiencies. The proposed rule is modified to include an additional provision

addressing this issue: FAR 22.1203-6, entitled "Reduced staffing."

Comments: Another respondent noted that the proposed rule did not include guidance in determining which of the predecessor contractor employees to extend offers of employment when the successor contractor's solution results in reduced staffing. It was suggested that the final FAR rule include a provision similar to the DOL's regulation at 29 CFR 9.12(d)(2) that allows the successor contractor to determine which of the predecessor contractor employees are provided offers of employment.

Response: Because this rule implements both E.O. 13495 and the DOL's regulations at 29 CFR Part 9, the guidance at 29 CFR 9.12(d)(2) should be followed. The service anniversary ("seniority") date is not meant to imply that the successor contractor must offer positions according to seniority.

10. Successor Hiring Process

Comments: Three respondents commented about the requirement for the offer to an employee to remain open for 10 days. This will potentially create a very long period to fill many positions when all the combinations and permutations are considered. If the prospective employee declines employment, it is possible that the successor

contractor will be unable to find a suitable replacement on such short notice. Indeed, under the proposed rule, it is conceivable that a successor contractor may not have its workforce in place for months.

Response: The contracting agency will be aware of these issues and should plan for such contingencies because compliance with E.O. 13495 and 29 CFR part 9 is mandatory, not optional.

Comments: One respondent asked either for the list to be provided with the release of the solicitation or for an equitable adjustment for the increased costs.

Response: E.O. 13495 cited FAR 52.222-41(n) and the requirement to provide the certified list of employees no less than 10 days before the end of performance on the predecessor contract. Using its authority as Executive implementing agency for E.O. 13495, DOL extended that time period to no less than 30 days prior to completion of performance on the predecessor contract. The FAR does not further extend that amount of time.

Comments: Three respondents were concerned with the prohibition in the DOL final rule at 29 CFR 9.12(b)(1) against screening employees prior to hire unless dictated by the agency or the terms of the contract. Many contractors have implemented Human Resources and recruiting

systems that entail robust screening of all applicants with respect to their educational background and work history, drug use, and other factors that could impact work performance, particularly with respect to job duties that entail access to sensitive or proprietary government or contractor information. Requiring contractors to develop a separate system of policies and modified hiring and screening processes for follow-on service employees is burdensome, costly, and disruptive to many companies' existing practices. Many contractors use the pre-employment drug testing program to demonstrate compliance with the Drug Free Workplace Act of 1988 and implementing FAR regulations. Background checks are one of several tools that responsible employers use to ensure that trustworthy employees are assigned to perform Government contracts, for example where the jobs involve handling sensitive Government and third party personal information. The respondents requested a clear statement that successor contractors will be permitted to perform identical screenings for all employees, regardless of their status as qualifying for hire under the Nondisplacement of Qualified Workers under Service Contract rule.

Response: DOL's preamble suggested that an offeror inform the contracting agency that the offeror requires

drug screening of all of its service employees, and recommended that the contracting agency provide for such drug testing in connection with the service contract. See 76 FR 53720 at page 53735. The requirements of the DOL rule concerning employment screening processes such as drug tests, background checks, and security clearance checks (29 CFR 9.12(b)) are addressed at FAR 22.1203-4, Method of job offer.

11. Waiver

Comments: A respondent suggested that the Government should provide supplemental information and/or subset lists to assist contracting officials with the written analysis as described in 29 CFR 9.4(d)(4)(i) in support of a waiver. The respondent expressed concern with the requirement that contracting officers must cross reference the requirements in 29 CFR 9.4 to effectuate the waiver.

Response: The FAR implementation conforms to the requirements in the DOL regulations and the E.O. Cross-referencing 29 CFR 9.4(d) ensures that contracting officials are familiar with all appropriate considerations for waiver. As noted in 29 CFR 9.4(d)(4)(i), a waiver is only appropriate where "any of the requirements of E.O. 13495 would not serve the purposes of this Order, or would impair the ability of the Federal Government to procure

services on an economical and efficient basis." As waivers are meant to be limited exceptions, supplemental information is not necessary.

Comments: One respondent noted that the waiver provisions at FAR 22.1203-3 do not provide the option for the agency to waive only some provisions of the requirement. The respondent stated that an agency should be authorized to waive the entire nondisplacement obligation, or one or more individual provisions of the obligation, despite the fact, reported by the respondent in a footnote, that "E.O. 13495…does not address waivers in its text." Doing so, according to the respondent, would afford flexibility to agencies to determine how best to transition services efficiently under particular contracts and classes of contracts.

Response: In fact, section 4 of E.O. 13495 addresses waivers, allowing for an agency waiver "from the requirements of any or all of the provisions of the order…" The DOL final rule, at 29 CFR 9.4(d)(1), allows that an "agency may exempt the agency from one or more individual provisions" as an alternative to exempting the agency from all provisions of 29 CFR part 9. The FAR proposed rule also allowed for the waiver of some of the provisions of subpart 22.12 at FAR 22.1203-3(a).

Comments: One respondent stated that, in keeping with FAR practice, contracting agency heads should be permitted to delegate waiver decision-making to the same extent they delegate other decisions. Another respondent also noted that approval levels for waivers should not rest at a level within the agency that would make obtaining a waiver unfeasible.

Response: The final rule limits the waiver authority to the senior procurement executive, without power of redelegation. FAR 1.108(b) states that each authority is delegable unless specifically stated otherwise. It is common practice in the FAR to limit redelegation when appropriate. The determination to waive some or all of the provisions of FAR subpart 22.12 is most appropriately made by senior officials within agencies.

12. Miscellaneous and Editorial Comments

Comments: A respondent stated that the FAR rule should mirror the DOL rule by incorporating limits on the Government's use of suspension and debarment action for violation under the non-displacement rule.

Response: The final FAR rule references the DOL rule at FAR 22.1200 and adds appropriate cross-references to the DOL rule throughout the FAR coverage. The Governmentwide debarment and suspension authority is addressed at FAR

subpart 9.4. That authority is in addition to the specific authority provided to DOL to debar or suspend an entity due to noncompliance with the implementation of E.O. 13495.

Comments: One respondent indicated that the requirements of the E.O. will result in additional work for the Government contracting community to follow up to make sure that the contractor complies with the requirements.

Response: There may be some additional contract administration responsibilities for the Government contracting officer, but these responsibilities will not be significant. In any case, these requirements are mandated by E.O. 13495 and 29 CFR part 9.

Comments: One respondent recommended a number of edits which should be adopted to correct drafting errors and conform to the FAR Drafting Guide.

Response: The edits have been made in the final rule.

C. Changes Requested by DOL

Comments: DOL provided language to be added as a new subsection of FAR 22.1203, Applicability. The new subsection, to be entitled "Method of job offer," springs from the requirements at 29 CFR 9.12(a), which states, in part, "the contractor and its subcontractors shall make a bona fide, express offer of employment to a position for which the employee is qualified to each employee and shall

state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 days."

Response: The new subsection FAR 22.1203-4, Method of job offer, is added in the final rule. In addition to restating the means of making a job offer and the minimum of 10 days for the employee's acceptance, the new subsection also explains in more detail what constitutes a "bona fide" job offer (based on 29 CFR 9.12(b), Method of job offer) and how to determine a predecessor employee's qualifications.

Comments: DOL provided language to be added as a new subsection of FAR 22.1203, Applicability. The new subsection, to be entitled "Exceptions" and numbered FAR 22.1203-5, is based on the requirements at 29 CFR 9.12(c), Exceptions, which provides the following exceptions from the requirement to provide the right of first refusal to employees of the predecessor contractor:

- Nondisplaced employees of the predecessor contractor.
- Successor's current employees who would otherwise face lay-off or discharge and who have worked for the successor contractor at least three months

immediately preceding performance of the successor contract.

- Predecessor contractor's non-service employees.
- Predecessor contractor's employees with past unsuitable performance.

Comments: DOL provided language to be added as a new subsection of FAR 22.1203, Applicability. The new FAR subsection, 22.1203-6, entitled "Reduced staffing," repeats some of the requirements in 29 CFR 9.12(d), Reduced staffing.

Response: The new FAR subsection 22.1203-6 addresses circumstances when the successor contractor need not offer employment to all of the displaced employees of the predecessor contractor. In addition, the new FAR subsection repeats the caveat from 29 CFR 9.12(d) that, when employment is not initially offered to all of the displaced employees, the successor contractor and its subcontractors still remain obligated for 90 days after the first date of performance on the contract to provide displaced employees a right of first refusal if additional service personnel are needed.

D. Other issues

29 CFR Section 9.12(e)(1) of the DOL regulations implementing E.O. 13495 provides that the contractor shall

furnish the contracting officer with a certified list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. This requirement is implemented in paragraph (d)(1) of FAR clause 52.222-17, Nondisplacement of Qualified Workers. Pursuant to 41 U.S.C. 1304, a new non-statutory certification may not be included in the FAR unless written justification for such certification is provided to the OFPP Administrator by the FAR Council, and the Administrator approves such request in writing. In accordance with FAR 1.107, this non-statutory certification requirement was approved.

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 a significant regulatory action and, therefore, was 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:

> Executive Order (E.O.) 13495, Nondisplacement of Qualified Workers Under Service Contracts, dated January 30, 2009, and the DOL implementing regulations, published August 29, 2011, in the Federal Register at 76 FR 53720, make the policy of the Federal Government to require service contractors and their subcontractors under successor contracts to offer employees of the predecessor contractor a right of first refusal of employment for positions for which they are qualified. The E.O. provides a contract clause for service contract solicitations that will succeed service contracts for performance of the same or similar work at the same location.
>
> Five comments were received on the initial regulatory flexibility analysis. Four of these comments alleged an increased administrative burden on contractors, and they failed to account for the decreased burden of not having to recruit and process new employees. The fifth comment requested the publication of a Small Entity Compliance Guide with the final rule. These comments did not cause a change in the final rule.
>
> No comments were received from the Office of Advocacy of the Small Business Administration on this rule because the office submitted comments on the DOL rule.
>
> The estimated impact that follows is based entirely upon the DOL figures reported in the proposed and final rules it published implementing E.O. 13495 (29 CFR part 9). Although DOL prepared an initial regulatory flexibility analysis, the agency, in the final rule, certified that 29 CFR part 9 does not have a significant economic impact on a substantial number of small entities. There is no additional impact due to the implementation of the DOL regulations in the FAR. The requirements in the FAR are taken from the E.O. and 29 CFR part 9 without addition.
>
> DOL estimated that 28,800 small entities will be subject to the regulations and the majority of these small entities will incur compliance costs of less than $100.

The analysis offsets the actions that a successor contractor would already be taking, such as determining an individual's suitability for available positions and documenting employment decisions. Further, DOL assumed a time/cost savings on the part of small entities because the entities will not have to engage in recruiting and training an entirely new workforce.

The predecessor contractor is required to provide to the successor contractor a certified list of the names of all service employees working under that contract, and its subcontracts, no later than 30 days before completion of performance of the predecessor contract. DOL notes, however, that there is little or no cost associated with this requirement because the certified list contains the same information as the seniority list currently required to be provided under paragraph (n) of the clause at FAR 52.222-41, Service Contract Act of 1965.

The minimal new reporting requirements mandated by the DOL implementation of E.O. 13495 are addressed in the information collection justification submitted by DOL in connection with its final rule (see 76 FR 53720 dated August 29, 2011). No additional reporting requirements are imposed by the FAR final rule, which merely relocates the contract clause from 29 CFR part 9 into FAR part 52. The requirements of E.O. 13495 do not allow for any alternatives.

Comments: Three respondents expressed concerns with the estimate in the proposed rule with respect to Initial Regulatory Flexibility Act (IRFA) analysis, which addresses the impact of the rule on small entities. According to the respondents, the estimated costs of this rule will be much higher than the Government's initial estimate. The respondents stated their belief that the Government did not consider the steps prime contractors must take to ensure smooth contract transitions, hiring staff and pricing proposals, and requested that the Government consider that, in some cases, successor contractors may not be able to automatically absorb predecessor contractor employees in a manner that creates a time/cost savings. One respondent explained that with the new rule, the successor will have to determine every available position and develop a matrix to allow a timely execution of offers. Another of these respondents said that it is unlikely that the successor contractor would be able to perform as efficiently with the predecessor employees as it would with a workforce of its own choosing.

Response: The IRFA explained that it was based entirely upon the DOL's figures as set forth in the proposed and final rules that the DOL published implementing E.O. 13495. Although DOL prepared an IRFA, the agency, in the final rule, certified that 29 CFR part 9 does not have a significant economic impact on a substantial number of small entities. The FAR rule does not

impose any requirements other than those set forth in the DOL regulations, which implement the E.O. As a result, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council continue to rely on DOL's certification that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, the Councils note that the actions required by the E.O. are those that a successor contractor would already be taking, such as determining an individual's suitability for available positions and documenting employment decisions. The Councils do not believe that the E.O. adds more to the steps the prime contractors must currently undertake to ensure smooth contract transitions, the hiring of staff, and the pricing of proposals. Rather, the successor contractor will offer the right of first refusal only if it has employment openings and will offer it only to those employees of the predecessor who the predecessor will not retain and are qualified for the position. As a result, DOL's IRFA assumed a time/cost savings on the part of small entities because they will not have to engage in recruiting and training an entirely new workforce.

Comments: A respondent expressed a concern that requiring predecessor contractors to provide employee lists places an administrative burden on contractors.

Response: Paragraph (n) of the clause at FAR 52.222-41 has for many years required a predecessor contractor to provide a list when the services were performed on a Federal facility. While this rule applies to all service contracts for the same or similar work performed at the same location, any additional administrative burden is minimal for businesses, including small entities that have a standard hiring process.

Comments: A respondent felt that the FAR Council should provide small business contractors with a "Small Entity Compliance Guide."

Response: The Small Entity Compliance Guide will be prepared by the Regulatory Secretariat in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in the Federal Acquisition Circular, which amends the Federal Acquisition Regulation.

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) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget Control Number 1235-0007 and 1235-0025, entitled Labor Standards for Federal Service Contracts—Regulations 29 CFR Part 4, and Nondisplacement of Qualified Workers Under Service Contracts, E.O. 13495, respectively.

List of Subjects in 48 CFR Parts 1, 2, 22, and 52

Government procurement.

Dated: December 14, 2012

LAURA AULETTA,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 22, and 52 is revised to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106, in the table following the introductory text, by adding in sequence, FAR segment "22.12" and its corresponding OMB Control Numbers "1235-0007 and 1235-0025", and FAR Segment "52.222-17" and its OMB Control Numbers "1235-0007 and 1235-0025".

PART 2-DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101, in paragraph (b), in the definition of "United States" by redesignating paragraphs (4) through (10) as paragraphs (5) through (11), respectively; and adding a new paragraph (4) to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

United States * * *

(4) For use in subpart 22.12, see the definition at 22.1201.

* * * * *

PART 22-APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

4. Amend section 22.001 by adding, in alphabetical order, the definitions "Service contract" and "Service employees" to read as follows:

22.001 Definitions.

* * * * *

Service contract means any Government contract, or subcontract thereunder, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted by the Service Contract Act (41 U.S.C. chapter 67; see 22.1003-3 and 22.1003-4). See 22.1003-5 and 29 CFR 4.130 for a partial list of services covered by the Act.

Service employee means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term "service employee" includes all such persons regardless of any contractual relationship that may

be alleged to exist between a contractor or subcontractor and such persons.

* * * * *

22.1001 [Amended]

5. Amend section 22.1001 by removing the definitions "Service contract" and "Service employee".

6. Revise section 22.1103 to read as follows:

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222-46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated contracts when the contract amount is expected to exceed $650,000 and services are to be provided which will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employee compensation may be assessed

adversely as one of the factors considered in making an award.

7. Add Subpart 22.12 to read as follows:

Subpart 22.12—Nondisplacement of Qualified Workers Under Service Contracts

Sec.

Subpart 22.12—Nondisplacement of Qualified Workers Under Service Contracts

22.1200 Scope of subpart.

This subpart prescribes policies and procedures for implementing Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, and related Secretary of Labor regulations and instructions (see 29 CFR part 9).

22.1201 Definitions.

As used in this subpart—

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), but does not include any other place subject to United States jurisdiction or any United States base or possession in a foreign country (see 29 CFR 4.112).

22.1202 Policy.

(a) When a service contract succeeds a contract for performance of the same or similar services, as defined at 29 CFR 9.2, at the same location, the successor contractor and its subcontractors are required to offer those service employees that are employed under the predecessor contract, and whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified. Executive Order 13495 generally prohibits employment openings under the successor contract until such right of first refusal has been provided, when consistent with applicable law.

(b) Nothing in Executive Order 13495 shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive order

or law. For example, the requirements of the HUBZone Program (see subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may, in certain circumstances, conflict with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495 and this subpart.

22.1203 Applicability.

22.1203-1 General.

This subpart applies to service contracts that succeed contracts for the same or similar services (29 CFR 9.2) at the same location.

22.1203-2 Exemptions.

(a) This subpart does not apply to—

(1) Contracts and subcontracts under the simplified acquisition threshold;

(2) Contracts or subcontracts awarded pursuant to 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled;

(3) Guard, elevator operator, messenger, or custodial services provided to the Government under contracts or subcontracts with sheltered workshops

employing the “severely handicapped” as described in 40 U.S.C. 593;

(4) Agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph Sheppard Act, 20 U.S.C. 107; or

(5) Service employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the service employees were not deployed in a manner that was designed to avoid the purposes of this subpart.

(b) The exemptions in paragraphs (a)(2) through (a)(4) of this subsection apply when either the predecessor or successor contract has been awarded for services produced or provided by the “severely handicapped.”

22.1203-3 Waiver.

(a) The senior procurement executive of the procuring agency may waive some or all of the provisions of this subpart after determining in writing that the application of this subpart would not serve the purposes of Executive Order 13495 or would impair the ability of the Federal Government to procure services on an economical and efficient basis. Such waivers may be made for a contract, subcontract, or purchase order, or with respect to a class of contracts, subcontracts, or purchase orders. See 29 CFR

9.4(d)(4) for regulatory provisions addressing circumstances in which a waiver could or would not be appropriate. The waiver must be reflected in a written analysis as described in 29 CFR 9.4(d)(4)(i) and must be completed by the contract solicitation date, or the waiver is inoperative. The senior procurement executive shall not redelegate this waiver authority.

(b)(1) When an agency exercises its waiver authority with respect to any contract, subcontract, or purchase order, the contracting officer shall direct the contractor to notify affected workers and their collective bargaining representative in writing, no later than five business days after the solicitation issuance date, of the agency's determination. The notice shall include facts supporting the determination. The contracting officer's failure to direct that the contractor provide the notice as provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222-17 in the solicitation.

(2) Where a contracting agency waives application to a class of contracts, subcontracts, or purchase orders, the contracting officer shall, with respect to each individual solicitation, direct the contractor to notify incumbent workers and their collective bargaining representatives in

writing, no later than five business days after each solicitation issuance date, of the agency's determination. The notice shall include facts supporting the determination. The contracting officer's failure to direct that the contractor provide the notice provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222-17 in the solicitation.

(3) In addition, the agency shall notify the Department of Labor of its waiver decision and provide the Department of Labor with a copy of its written analysis no later than five business days after the solicitation issuance date (see 29 CFR 9.4(d)(2)). Failure to comply with this notification requirement shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222-17 in the solicitation. The waiver decision and related written analysis shall be sent to the following address: U.S. Department of Labor, Wage and Hour Division, Branch of Government Contracts Enforcement, 200 Constitution Avenue, Room S-3006, Washington, D.C. 20210, or email to: Displaced@dol.gov.

22.1203-4 Method of job offer.

A job offer made by a successor contractor must be a bona fide express offer of employment on the contract.

Each bona fide express offer made to a qualified service employee on the predecessor contract must have a stated time limit of not less than 10 days for an employee response. Prior to the expiration of the 10-day period, the contractor is prohibited from offering employment on the contract to any other person, subject to the exceptions at 22.1203-5. Any question concerning an employee's qualifications shall be decided based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and a contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with the Executive Order. An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12(b) for regulatory provisions addressing circumstances in which a bona fide offer of employment can occur.)

22.1203-5 Exceptions.

(a) A successor contractor or its subcontractors are not required to offer employment to any service employee of the predecessor contractor who—

(1) Will be retained by the predecessor contractor.

(2) The successor contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job. (See 29 CFR 9.12(c)(4) for regulatory provisions addressing circumstances in which this exception would or would not be appropriate.)

(b) A successor contractor or its subcontractors may employ under the contract any of its current service employees who (1) have worked for the successor contractor or its subcontractors for at least three months immediately preceding the commencement of the successor contract, and (2) would otherwise face lay-off or discharge.

(c) The successor contractor bears the responsibility of demonstrating the appropriateness of claiming any of the preceding exceptions and the exemption listed at 22.1203-2(a)(5) involving nonfederal work.

22.1203-6 Reduced staffing.

A successor contractor and its subcontractors may employ fewer service employees than the predecessor

contractor employed in connection with performance of the work. Thus, the successor contractor need not offer employment on the contract to all service employees on the predecessor contract, but must offer employment only to the number of eligible service employees the successor contractor believes necessary to meet its anticipated staffing pattern. Where a successor contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract. (See 29 CFR 9.12(d) for regulatory provisions addressing circumstances in which reduced staffing can occur.)

22.1204 Certified service employee lists.

(a) Not less than 30 days before completion of the contract, the predecessor contractor is required to furnish to the contracting officer a certified list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. The certified list must also contain anniversary dates of employment of each service employee under the contract and subcontracts for services. The information on this list is the same as that on the seniority list required by paragraph (n) of the clause at 52.222-41, Service Contract

Act of 1965. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of 52.222-41(n) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(b) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

22.1205 Notification to contractors and service employees.

(a) The contracting officer shall direct that the predecessor contractor provides written notice to service employees of their possible right to an offer of employment with the successor contractor. The written notice shall be—

(1) Posted in a conspicuous place at the worksite; or

(2) Delivered to the service employees individually. If such delivery is via e-mail, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(b) Contracting officers may advise contractors to provide the notice in Appendix B to 29 CFR chapter 9. Where a significant portion of the predecessor contractor's workforce is not fluent in English, the contractor shall provide the notice in English and the language(s) with which service employees are more familiar. English and Spanish versions of the notice are available on the Department of Labor website at http://www.dol.gov/whd/govcontracts.

22.1206 Remedies and sanctions for violations of this subpart.

(a) The Secretary of Labor has the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring the successor contractor to offer employment, in positions for which the employees are qualified, to service employees from the predecessor contract and payment of wages lost. (See 29 CFR 9.24(a)).

(b) After an investigation (see 29 CFR 9.23) and a determination by the Administrator, Wage and Hour Division,

Department of Labor, that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld as are necessary to pay the monies due. Upon the final order of the Secretary of Labor that such monies are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement. (See 29 CFR 9.24(c)).

(c) If the contracting officer or the Administrator, Wage and Hour Division, Department of Labor, finds that the predecessor contractor has failed to provide the list required by 22.1204, the contracting officer may, in his or her discretion, or on request by the Administrator, suspend contract payment until such time as the contractor provides the list to the contracting officer.

(d) The Secretary of Labor may also suspend or debar a contractor or subcontractor for a period of up to three years for violations of 29 CFR part 9.

22.1207 Contract clause.

The contracting officer shall insert the clause at 52.222-17, Nondisplacement of Qualified Workers, in solicitations and contracts for (1) service contracts, as defined at 22.001, (2) that succeed contracts for

performance of the same or similar work at the same location and (3) that are not exempted by 22.1203-2 or waived in accordance with 22.1203-3.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.212-5 by—

(a) Revising the date of the clause;

(b) Redesignating paragraphs (c)(7) and (c)(8) as paragraphs (c)(8) and (c)(9), respectively;

(c) Adding a new paragraph (c)(7); and

(d) Adding paragraph (e)(1)(iii).

The revision and additions read as follows:

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

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OF EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2013)

* * * * *

(c) * * *

__(7) 52.222-17, Nondisplacement of Qualified Workers (JAN 2013) (E.O.13495).

* * * * *

(e)(1) * * *

(iii) 52.222-17, Nondisplacement of Qualified Workers (JAN 2013) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

* * * * *

9. Add section 52.222-17 to read as follows:

52.222-17 Nondisplacement of Qualified Workers.

As prescribed in 22.1207, insert the following clause:

NONDISPLACEMENT OF QUALIFIED WORKERS (JAN 2013)

(a) Service employee, as used in this clause, means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(b) The Contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the service employees were hired, a right of first refusal of employment under this contract in positions for which the service employees are qualified.

(1) The Contractor and its subcontractors shall determine the number of service employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor Contractor employed in connection with performance of the work.

(2) Except as provided in paragraph (c) of this clause, there shall be no employment opening under this contract, and the Contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation.

(i) The successor Contractor and its subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Contractor and its subcontractors shall decide any question concerning a service employee's qualifications based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and the Contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bonafide offer of employment).

(c)(1) Notwithstanding the obligation under paragraph (b) of this clause, the successor Contractor and any subcontractors (i) may employ under this contract any service employee who has worked for the contractor or subcontractor for at least three months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (ii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act, 41 U.S.C. 6701(3), and (iii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor whom the Contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12 (c)(4) for additional information). The successor Contractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(2) In addition, any Contractor or subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (e.g., it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The HUBZone small business Contractor or subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(3) Nothing in this clause shall be construed to permit a Contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

(d)(1) The Contractor shall, not less than 30 days before completion of the Contractor's performance of services on the contract, furnish the Contracting Officer with a certified list of the names of all service employees working under this contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Contractor shall, in accordance with paragraph (e) of this clause, not less than 10 days before completion of the services on this contract, furnish the Contracting Officer with an updated certified list of the names of all service employees employed within the last month of contract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor Contractors or their subcontractors.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(3) The Contracting Officer will direct the predecessor Contractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor contractor. Where a significant portion of the predecessor Contractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be—

(i) Posted in a conspicuous place at the worksite; or

(ii) Delivered to the service employees individually. If such delivery is via e-mail, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(e)(1) If required in accordance with 52.222-41(n), the predecessor Contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor Contractors or their subcontractors. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor Contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of 52.222-41(n) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the

contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(f) The Contractor and subcontractor shall maintain the following records (regardless of format, e.g., paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor contract to whom an offer was made.

(2) A copy of any record that forms the basis for any exemption claimed under this part.

(3) A copy of the service employee list provided to or received from the contracting agency.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Contractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

(g) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause (52.233-1) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the service employees under the contract or its predecessor

contract. The Contracting Officer will refer any service employee who wishes to file a complaint, or ask questions concerning this contract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Contact e-mail: displaced@dol.gov.

(h) The Contractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor or its subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

(j) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance. However, if the Contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the Contractor may request that the United States, through the Secretary, enter into such litigation to protect the interests of the United States.

(k) The Contracting Officer will withhold, or cause to be withheld, from the prime Contractor under this or any other Government contract with the same prime Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the Contractor has failed to provide a list of the names of service employees working under the contract,

the Contracting Officer may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the Contracting Officer.

(l) Subcontracts. In every subcontract over the simplified acquisition threshold entered into in order to perform services under this contract, the Contractor shall include a provision that ensures—

(1) That each subcontractor will honor the requirements of paragraphs (b) through (c) of this clause with respect to the service employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor Contractor and its subcontractors;

(2) That the subcontractor will provide the Contractor with the information about the service employees of the subcontractor needed by the Contractor to comply with paragraphs (d) and (e) of this clause; and

(3) The recordkeeping requirements of paragraph (f) of this clause.

(End of clause)

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