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March 28, 2006

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VIA FACSIMILE & REGULAR MAIL
PERSONAL & CONFIDENTIAL

James C. Pierce
Acting Director
Division of Policy, Planning and Program Development
U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs
200 Constitution Ave., NW, Room N3422
Washington, DC 20210

Re: NILG Comment Regarding OFCCP's Proposed Regulations to Implement Amendments to VEVRAA Effectuated by the Job for Veterans Act
OFCCP Reference Code: RIN # 1215-AB46

Dear Acting Director Pierce:

The National Industry Liaison Group (NILG) hereby offers its observations and a request for clarification regarding the Office of Federal Contract Compliance Programs's (OFCCP) proposed regulations to implement the amendments to the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA) made by the Job for Veterans Act enacted in 2002.

THE PROPOSED REQUIREMENT THAT CONTRACTORS MUST LIST ALL APPROPRIATE JOB OPENINGS WITH LOCAL EMPLOYMENT SERVICES AGENCIES – AND CAN NO LONGER SATISFY THIS OBLIGATION SOLELY BY LISTING WITH AMERICA'S JOB BANK – IMPOSES A SUBSTANTIAL ADMINISTRATIVE BURDEN

A large portion of the contractor community has become accustomed to listing all appropriate job openings with America's Job Bank (AJB) in order to satisfy the existing regulatory obligation to list openings with local employment services agencies. The requirement contained in the proposed regulations that contractors must list employment openings with "the appropriate employment service delivery system", *i.e.*, separately



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list openings with each individual local employment services agency on a state-by-state basis – and the fact that the proposed regulation explicitly states that simply listing openings with AJB will *not* satisfy this requirement – will impose a substantial new administrative burden on contractors. This is particularly true for large contractors that frequently (or constantly) have job openings in multiple states at the same time. The money, time and resources these contractors will need to devote to complying with this proposed requirement is substantial. Furthermore, compliance with this requirement is made more challenging by the lack of procedural consistency among the various local employment services agencies across the country. For example, various employment service agencies in different states (and at times different agency offices within the same state) may require that contractors post openings only by regular mail, while others only accept listings via fax. Some agencies only accept postings via e-mail and finally others allow for some combination of these methods.

There are also other significant differences in the timing and manner in which various employment services agencies will accept openings, or the services that they will provide to contractors, that make this proposed requirement substantially burdensome. For example, some agencies will simply act as a “pass through” for applicants, referring on all applicants, even those clearly unqualified, while other agencies will act as a “screener” whereby the agency will refer only those candidates who satisfy certain requirements provided to the agency by the contractor. Consequently, multi-state contractors may need to develop different definitions of “applicant” and may be required to maintain different applicant tracking procedures from state to state.

NILG understands that this proposed obligation arises from changes to the VEVRAA statute made by Congress and was not initiated by the OFCCP. Nonetheless, NILG encourages OFCCP to consider alternatives to the proposed regulatory language that may reduce the burden on contractors that this new requirement will impose.



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NILG SEEKS CLARIFICATION REGARDING WHETHER, UNDER THE PROPOSED REGULATIONS, CONTRACTORS: 1. THAT HAVE EXISTING CONTRACTS WHICH WERE IN EFFECT BEFORE DECEMBER 1, 2003; AND, 2. THAT ENTER NEW CONTRACTS ON OR AFTER DECEMBER 1, 2003, ARE OBLIGATED TO PREPARE TWO SEPARATE AFFIRMATIVE ACTION PLANS FOR COVERED VETERANS

OFCCP has proposed these new regulations not as a replacement for the existing 60-250 regulations but rather as an entirely new regulatory part, with the intention of maintaining two separate sets of regulations covering contractors' affirmative action obligations for veterans. The proposal explicitly states that the 60-250 regulations would continue to apply to existing contracts which were entered into before December 1, 2003 and the proposed regulations would govern applicable contracts entered into on, or after, that date. While much of the existing regulations and proposed regulations are identical, several important differences exist, including issues as basic as the definition of a "covered" veteran. The proposed regulations seem to imply (but do not clearly state) that contractors with existing contracts entered into *both* before December 1, 2003 *and* on, or after, that date may be obligated to develop and maintain two separate affirmative action plans for veterans in order to comply with both sets of regulations. Such a requirement would not only be more burdensome but also duplicative and may often be quite confusing for contractors. NILG requests that OFCCP clarify its proposal regarding whether contractors in this scenario would be required to maintain two separate veterans AAPs. If that is the OFCCP's intent, NILG asks that OFCCP consider alternatives that will permit each contractor to maintain a single affirmative action plan covering veterans regardless of when the contractor entered into its government contracts.

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We would like to thank the OFCCP in advance for its consideration of our observations and request for clarification. If the OFCCP should wish to discuss NILG's Comment, please contact Mickey Silberman, NILG Board Counsel, at (631) 247-0404 or silbermm@jacksonlewis.com.

Respectfully submitted,

The National Industry Liaison Group (NILG)