

**64 FLRA No. 90**

UNITED STATES  
DEPARTMENT OF ENERGY  
OAK RIDGE OFFICE  
OAK RIDGE, TENNESSEE  
(Agency)

and

OFFICE AND PROFESSIONAL  
EMPLOYEES INTERNATIONAL UNION  
LOCAL 2001  
(Union)

0-AR-4508

—  
DECISION

February 26, 2010

Before the Authority: Carol Waller Pope, Chairman,  
and Thomas M. Beck and Ernest DuBester, Members

**I. Statement of the Case**

This matter is before the Authority on exceptions to an award of Arbitrator Robert G. Williams filed by the Agency under § 7122 of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.<sup>1</sup>

The Arbitrator sustained the Union's grievance as to the first of two issues and awarded a remedy. The Arbitrator retained jurisdiction to address a second issue, if required, after implementation of the awarded remedy. For the reasons discussed below, we deny the exceptions in part, grant them in part, and modify the award.

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1. In its opposition, the Union argues that the Agency's exceptions should be dismissed as untimely. We find that this argument is without merit, as the Agency filed its exceptions within thirty days of the date of service of the award. *See* 5 C.F.R. § 2425.1(b). In addition, the Agency filed a motion to strike certain information and evidence found in the Union's opposition, and the Union responded to this motion. As the Authority's Regulations do not provide for the filing of supplemental submissions, and as the Agency failed to request permission to file its submission under 5 C.F.R. § 2429.26, we do not consider the supplemental submissions. *See e.g., AFGÉ, Local 1417*, 63 FLRA 349, 349 n.2 (2009).

**II. Background and Arbitrator's Award**

The Agency posted an opening for a contract specialist position, GS-1102-13. The grievant and two other candidates applied for the position. Following his non-selection, the grievant filed a grievance, which was unresolved and submitted to arbitration. The issues, as framed by the Arbitrator, were:

1. Did the Agency violate existing statutes and/or regulations during the process followed to fill a position applied for by the [g]rievant as well as others and, if so, what shall be the remedy?
2. Did the Agency discriminate against the [g]rievant as the result of his age, sex or union activity and, if so, what shall be the remedy?

Award at 2.

In resolving the first issue, the Arbitrator analyzed the statutory and regulatory qualifications for acquisition employees, such as contract specialists, established by the Office of Personnel Management (OPM), the Office for Federal Procurement Policy (OFPP) and the Agency. He found that although OPM established "minimum qualification standards" for GS-1102 contract specialists, *id.* at 42, agencies were required to work with the OFPP to develop and implement specific qualification requirements for such employees. *Id.* at 43. According to the Arbitrator, the Agency fulfilled this requirement by issuing Order 361.1A and, later, the Acquisition Career Management Program (ACMP) Handbook, both of which added to OPM's basic Qualification Standards.<sup>2</sup> *Id.* at 43-46.

The Arbitrator found that Order 361.1A and the ACMP Handbook set forth certification levels for contracting specialists based on educational, training and experience requirements. *Id.* at 43. The Arbitrator noted that GS-13 employees are required to be certified at Level III, which mandates at least seven years of experience in addition to education and training requirements. *Id.* at 45, 66. In addition, the Arbitrator found that the Agency had independent requirements for warrant officers, including five years of contract experience. *Id.* at 46. The Arbitrator found that the Agency was allowed, within certain parameters, to grant waivers for these qualifications. *Id.* at 44.

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2. The relevant portions of OPM's Qualification Standards, Order 361.1A, and the ACMP Handbook are included in the appendix to this decision.

The Arbitrator determined that the job posting to which the grievant responded specified that the person selected needed to be eligible for Level III certification within eighteen months of appointment and would serve as a warranted contracting officer. *Id.* at 7-8. The Arbitrator found that the candidate selected for the position (the current selectee) had fewer than five years of experience at the time of her selection and, thus, could not achieve the posted requirement of seven years of experience within eighteen months of her selection. *Id.* at 63. Accordingly, the Arbitrator concluded that the Agency selected a candidate who did not meet the requirements announced for the position. *Id.* Further, the Arbitrator found that the Agency's job posting failed to provide accurate information about the position because it did not indicate that candidates who did not meet agency requirements, such as the current selectee, would be considered. *Id.* In addition, noting that Agency officials testified that they did not "particularly consider" the candidates' performance appraisals and incentive awards, the Arbitrator found that the Agency violated 5 C.F.R. § 335.103(b)(3) by failing to give this information "due weight."<sup>3</sup> *Id.* at 65.

To remedy these violations, the Arbitrator ordered the Agency to redraft and post the job announcement and then rank candidates based on their qualifications as of the date of the original posting. *Id.* at 69-70. He disallowed the use of waivers to fill the position. *Id.* at 69. The Arbitrator also awarded backpay to whatever individual is ultimately selected for the position (the ultimate selectee), retroactive to the date when the current selectee began working. *Id.* at 70.

The Arbitrator declined to decide the discrimination issue, stating that it would be "premature until the award reopening and filling the position remedy is implemented." *Id.* at 69. Accordingly, the Arbitrator stated that, if the grievant is not selected for the position, then the Union could "renew" the grievant's discrimination claims "based on evidence in the complying as well as the original erroneous selection process." *Id.* The Arbitrator retained jurisdiction over issues relating to the implementation of the awarded remedy and any "renewed . . . discrimination claims." *Id.*

### III. Positions of the Parties

#### A. Agency's Exceptions

The Agency asserts that the Arbitrator's award is contrary to 41 U.S.C. § 433 because it requires that can-

didates meet higher qualification standards than those promulgated by OPM and OFPP.<sup>4</sup> In this regard, the Agency argues that "it is understood that [an] agency[-specific] certification program must not infringe upon the authority of OFPP by changing the qualification standards established by OFPP, approved by OPM and used by agencies for selecting applicants."<sup>5</sup> Exceptions at 9.

The Agency also argues that the Arbitrator exceeded his authority by: (1) awarding backpay to the eventual selectee regardless of whether he or she is encompassed in the original grievance, *id.* at 13; and (2) retaining jurisdiction over discrimination claims arising out of the new selection process, *id.* at 16.

The Agency further argues that the Arbitrator's conclusion that the Agency violated 5 C.F.R. § 335.103(b)(3) is based on a nonfact. *Id.* at 10. In this regard, the Agency contends that, because the grievant did not submit performance appraisals and awards with his application, the Arbitrator erred in finding that the Agency did not give "due weight" to such appraisals and awards. *Id.* at 11.

#### B. Union's Opposition

The Union argues that the Agency's acquisition workforce qualifications, as set forth in Order 361.1A and the ACMP Handbook, are not contrary to the minimum qualifications established by OPM or OFPP. *Opp'n* at 7-8. The Union also argues that the Arbitrator correctly found that the Agency guidelines, rather than the OPM minimum qualifications, constitute the requirements for the Agency's employees. *Id.* at 7.

In addition, the Union contends that, because the issues framed by the Arbitrator included consideration of the remedy, the backpay remedy was within his authority to award. *Id.* at 9-10. In the alternative, the Union requests that the Arbitrator's award be modified so that only the original applicants who were not selected for the position are eligible for the backpay award. *Id.* at 10. As to the assertion that the Arbitrator exceeded his authority by maintaining jurisdiction over

4. The relevant portions of 41 U.S.C. § 433 are included in the appendix to this decision.

5. In making this argument, the Agency references 5 C.F.R. § 1.603 and Agency Order 541.1(B)(4), both of which address the qualification standards for contracting officers. Exceptions at 5. As there is no evidence that the Agency cited these provisions before the Arbitrator, we do not consider them. 5 C.F.R. § 2429.5 ("The Authority will not consider . . . any issue[] which was not presented in the proceedings before the . . . arbitrator.").

3. 5 C.F.R. § 335.103(b)(3) is included in the appendix to this decision.

the discrimination claim, the Union argues that, because the Arbitrator has jurisdiction over issues arising out of the original job posting, he also has jurisdiction over issues arising out of the reposting of the position. *Id.* at 10-11.

With regard to the Agency's nonfact argument, the Union argues that the Arbitrator's legal finding was based on uncontested hearing testimony that selecting officials did not consider any applicant's awards. *Id.* at 8-9.

#### IV. Preliminary Issue

##### A. Order to Show Cause and Parties' Responses

The Authority issued an Order to Show Cause (Order) directing the Agency to show cause why its exceptions should not be dismissed as they appeared to be interlocutory. The Authority noted that the Arbitrator did not resolve the discrimination claim and that he had retained jurisdiction of "any renewed discrimination claims." Order at 2.

In response to the Order, the Agency argues that its exceptions are not interlocutory because the award "effectively constitutes a complete resolution of all issues[.]" Agency Response to Order at 1-2. In this regard, the Agency argues that the discrimination issue is moot because the awarded remedy allows the grievant to reapply for the position with the prospect of backpay. *Id.* at 5. Additionally, the Agency contends that rerunning the selection process in accordance with the awarded remedy will "completely or irrevocably eradicate the effects of the previous selection action even if the grievant is not selected." *Id.* at 5-6.

The Union also filed a response to the Order. The Union asserts that the Agency's exceptions are interlocutory because the Arbitrator did not decide the discrimination issue submitted to him. Union Response to Order at 2. In this connection, the Union argues that, because the discrimination claim is based on more than just flawed hiring procedures, the awarded remedy does not fully resolve the issue. *Id.* at 3-4.

##### B. The exceptions are not interlocutory.

The Authority's Regulations provide that "the Authority . . . ordinarily will not consider interlocutory appeals." 5 C.F.R. § 2429.11. Pursuant to this regulation, the Authority ordinarily will not resolve exceptions to an arbitration award unless the award constitutes a complete resolution of all of the issues submitted to arbitration. *U.S. Dep't of Transp., Fed. Aviation Admin., Wash., D.C.*, 60 FLRA 333, 334 (2004).

The Arbitrator's award requires the Agency to rerun the selection process for the contract specialist position in accordance with the Agency's written guidelines and government-wide regulations. The Arbitrator stated that, if the grievant is selected in this process, then he will be entitled to backpay and the discrimination claim will not be further considered. *See* Award at 69. The Arbitrator's statement that he would consider a "renew[ed]" discrimination claim *only if* the grievant is not selected for the position, *id.*, indicates that whether a discrimination claim will exist and/or be submitted to arbitration is purely speculative. As such, the award is a final resolution of all the "live" issues submitted to arbitration.<sup>6</sup>

In these circumstances, we find that the award is final and, thus, that the Agency's exceptions are not interlocutory.

#### V. Analysis and Conclusions

##### A. The award does not violate 41 U.S.C. § 433.

The Authority reviews questions of law raised by exceptions to an arbitrator's award *de novo*. *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying a standard of *de novo* review, the Authority determines whether the arbitrator's legal conclusions are consistent with the applicable standard of law. *See NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998). In making that determination, the Authority defers to the arbitrator's underlying factual findings. *See id.*

The qualification standards for Federal acquisition employees, including GS-1102 contract specialists, are established by OFPP and approved by OPM. 41 U.S.C. § 433(g)(1) and (3). The qualification standards promulgated by OPM "describe the minimum qualification requirements (for example, educational, medical, age, experience, etc.) for each occupational series." OPM, *Qualifications Standards, Introduction* (available at [www.opm.gov/qualifications/Standards/index-Standards.asp](http://www.opm.gov/qualifications/Standards/index-Standards.asp)). The minimum qualifications for GS-1102

6. We note that finding the exceptions interlocutory, and declining to resolve them, would require the Agency to take actions it believes to be unlawful in order to obtain Authority review. We also note that, if the Authority finds that the exceptions are interlocutory and the Agency fails to comply with the award, then the Union would likely be unable to obtain compliance through unfair labor practice proceedings because the award would not be considered final. *See, e.g., U.S. Dep't of Transp., Fed. Aviation Admin., Nw. Mountain Region, Renton, Wash.*, 55 FLRA 293, 296 (1999) ("final and binding" awards subject to enforcement in ULP proceedings).

at level 13 include “[c]ompletion of all mandatory training prescribed by the head of the agency for progression to GS-13 . . . contracting positions, including at least 4-years experience in contracting or related positions.” OPM, *Qualifications Standards, Contracting Series, 1102* (available at [www.opm.gov/qualifications/standards/IORs/gs1100/1102.htm](http://www.opm.gov/qualifications/standards/IORs/gs1100/1102.htm)). In addition to establishing government-wide standards, OFPP is required to assist individual agencies in developing and implementing agency-specific acquisition workforce policies that address topics such as accession and training. 41 U.S.C. § 433(b)(1).

The Arbitrator found, and the Agency does not contest, that the Agency’s Order 361.1A and ACMP Handbook were created under the direction of the OFPP to comport with § 433. Award 42-45. In this connection, the Agency’s written policies comply with § 433(b)(1) by setting forth uniform training and experience requirements for accession to acquisition positions. See 41 U.S.C. § 433(b)(1). Contrary to the Agency’s arguments, there is no requirement in § 433 that agency-specific acquisition workforce policies be officially approved by OPM or that they be identical to OPM’s minimum guidelines. *Id.* Subsection (g) of § 433, cited by the Agency to establish that the Agency guidelines are not valid unless approved by OPM, is not pertinent here because it addresses the establishment of the government-wide standards promulgated by OPM, not the agency-specific policies required by subsection (b). See 41 U.S.C. § 433 (b) and (g). Further, the OPM guidelines for GS-13, which provide for “at least” four years of experience, explicitly set the minimum threshold for GS-1102 employees, not the maximum. OPM, *Qualifications Standards, Contracting Series, 1102*. The Agency’s written policies are not contrary to this guideline merely because they require more than the minimum. *Cf. U.S. Gov’t Printing Office, Wash., D.C.*, 57 FLRA 299, 302 (2001) (Chairman Cabaniss dissenting) (bargaining agreement providing benefits that “exceed[] the minimum entitlements provided by other statutes” is not contrary to law).

For these reasons, we deny this exception.

- B. The Arbitrator exceeded his authority with regard to backpay, but not with regard to retention of jurisdiction over “renewed discrimination claims.”

Arbitrators exceed their authority by failing to resolve an issue submitted to arbitration, resolving an issue not submitted to arbitration, disregarding specific limitations on their authority, or awarding relief to persons who are not encompassed within the grievance.

*U.S. Dep’t of Def., Army & Air Force Exch. Serv.*, 51 FLRA 1371, 1378 (1996).

#### 1. Award of Backpay

The Authority has consistently held that if a grievance is limited to a particular grievant, then the remedy must be similarly limited. See *U.S. Dep’t of the Air Force, Air Force Logistics Ctr., Tinker Air Force Base, Okla.*, 45 FLRA 1234, 1240 (1992) (*Tinker AFB*). See also *U.S. Dep’t of the Air Force, Okla. City Air Logistics Ctr., Tinker Air Force Base, Okla.*, 42 FLRA 680, 685-86 (1991) (arbitrator exceeded authority by providing remedy to “similarly situated” employees who were not grievants).

In the present case, the Union filed a grievance on behalf of a single grievant. See Award at 1-2. The Arbitrator, therefore, was authorized to resolve the grievance only as it pertained to that grievant. See *Tinker AFB*, 45 FLRA at 1240. As part of the award, the Arbitrator granted backpay to the eventual selectee, even if that person is not the grievant. Award at 70. To the extent that the eventual selectee is not the grievant, the award of backpay exceeds the Arbitrator’s authority.

Where the Authority is able to modify an award to bring it into compliance with applicable law, it will do so. See, e.g., *U.S. Dep’t of Veterans Affairs, Med. Ctr., W. Palm Beach, Fla.*, 63 FLRA 544, 548 (2009) (award modified to strike portions inconsistent with 5 C.F.R. § 630.401); *U.S. Dep’t of Veterans Affairs, Ralph H. Johnson Med. Ctr., Charleston, S.C.*, 60 FLRA 46, 49-50 (2004) (Chairman Cabaniss and then-Member Pope separately concurring on unrelated issue) (award modified to strike remedy inconsistent with 5 C.F.R. § 335.103). As the award of backpay is deficient to the extent that it applies to an individual other than the grievant, we modify the award to clarify that backpay is payable only to the grievant.

#### 2. Retaining Jurisdiction of “Renewed Discrimination Claims”

Arbitrators may retain jurisdiction of a case for the purpose of “overseeing the implementation of remedies[.]” *U.S. Dep’t of Veterans Admin., Med. Ctr., Leavenworth, Kan.*, 38 FLRA 232, 238-39 (1990). Thus, an arbitrator may properly consider disputes arising out of the manner in which an awarded remedy is carried out. See, e.g., *U.S. Dep’t of the Navy, Naval Surface Warfare Ctr., Indian Head Div., Indian Head, Md.*, 56 FLRA 848, 852 (2000) (*Naval Surface Warfare Ctr.*). For example, the Authority has held that an arbitrator properly retained jurisdiction over a disputed promotion that arose out of a process directed by the arbitrator in an

earlier award. *Id.* at 852. By contrast, the Authority has found that retention of jurisdiction was improper when an arbitrator claimed broad jurisdiction over “further actions of the parties regarding official time proposals, agreements or unilateral decisions as well as rulings by the FLRA.” *AFGE, Local 2923*, 61 FLRA 725, 726 (2006).

After resolving the statutory issue, the Arbitrator retained jurisdiction to address “any dispute arising out of or relating to the implementation of this award . . . [and] any renewed discrimination claims.” Award at 70. By retaining jurisdiction over the implementation of the award, the Arbitrator has established a proper basis for considering issues arising out of the manner in which the selection process is carried out, including claims that the Agency discriminated against the grievant. *See Naval Surface Warfare Ctr.*, 56 FLRA at 852. Further, the issue of whether the Agency discriminated against the grievant in the selection process was submitted to the Arbitrator and has the possibility of being a “live” claim at a later time. Therefore, the Arbitrator properly limited his retained jurisdiction to the implementation of the specific remedy that he ordered and an issue that was originally before him. *See AFGE, Local 2923*, 61 FLRA at 727.

In retaining jurisdiction of the potential discrimination claim, the Arbitrator stated that he would consider evidence of discrimination from both the original and rerun selection processes if the discrimination issue arises again. Award at 69. The Authority has held that *an arbitrator did not exceed her authority when she considered performance appraisals made after a grievant’s non-selection in her determination of whether the grievant was discriminated against in the selection process.* *U.S. Gov’t Printing Office, Wash., D.C.*, 62 FLRA 419, 426 (2008). Consistent with this precedent, there is no basis for finding that the Arbitrator exceeded his authority by stating that he may consider evidence developed in the rerun selection process to determine whether the grievant was discriminated against in the original process.

Accordingly, we deny this exception.

C. The award is not based on a nonfact.

To establish that an award is based on a nonfact, the appealing party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result. *U.S. Dep’t of the Treasury, Internal Revenue Serv., Kan. City Field Compliance Serv.*, 60 FLRA 401, 402 (2004) (*IRS*).

The Arbitrator concluded that the Agency violated 5 C.F.R. § 335.103(b)(3) because it did not adequately consider candidates’ performance awards and appraisals. Award at 65. The Agency contends that this conclusion is deficient because it is based on the nonfact that the grievant submitted performance awards or appraisals with his application. However, the Arbitrator did not base his conclusion on whether or not any of the candidates submitted such documentation. Rather, the Arbitrator based his finding on the testimony of an Agency witness, who stated that performance awards and appraisals were “not particularly” considered in the selection process. *Id.* at 62-63. Therefore, the Agency has established neither that a central fact is clearly erroneous nor that, but for the alleged factual error, the Arbitrator would have reached a different conclusion. *IRS*, 60 FLRA at 402.

Accordingly, we deny this exception.

## VI. Decision

We deny the exceptions in part, grant them in part, and modify the award in accordance with the determinations above.

### Appendix

#### Relevant portions of the Office of Personnel Management Qualification Standards for GS-1102

Individual Occupational Requirements for GS-1102:  
Contract Specialist

*This is an individual qualification standard developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. § 433. . . .*

. . . .

Basic Requirements for GS-13 and Above

- A. Completion of all mandatory training prescribed by the head of the agency for progression to GS-13 or higher level contracting positions, including at least 4-years experience in contracting or related positions. At least 1 year of that experience must have been specialized experience at or equivalent to work at the next lower level of the position, and must have provided the knowledge, skills, and abilities to perform successfully the work of the position.

AND

- B. A 4-year course of study leading to a bachelor's degree, that included or was supplemented by at least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

. . . .

- C. Waiver: When filling a specific vacant position, the senior procurement executive of the selecting agency, at his or her discretion, may waive any or all of the requirements of Paragraphs A and B above if the senior procurement executive certifies that the applicant possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decision making capabilities, job performance, and qualifying experience. With respect to each waiver granted under this Paragraph D, the senior procurement executive must document for the record the basis of the waiver. If an individual is placed in a position in an agency on the basis of a waiver, the agency may later reassign that individual to another position at the same grade within that agency without additional waiver action.

Union's Supplemental Submission, Attach. 1 at 2-3.

#### Relevant Portions of Department of Energy Order 361.1A

ORDER

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#### 4. REQUIREMENTS

. . . .

i. All acquisition workforce members must meet all requirements for certification at their current levels before being assigned to positions requiring the next higher level of certification. For example, an employee at the GS-7 level, a Level I position under the Contracting and Purchasing Career Development (CPCD) (contracting) Program, cannot be promoted to GS-9, a Level II position, without having completed the certification requirements for Level I.

j. If a potential assignee to a vacant position in the next higher level has not met the requirements for certification at that level, the FEM must qualify him or her to meet the requirements within the specified amount of time (see individual program modules/chapters in this Order) or justify a waiver from them. For example, under the CPCD (contracting) Program, a GS-7 (Level I) promoted to GS-9 (Level II) has 18 months to complete all Level II requirements.

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#### CHAPTER I. CONTRACTING AND PURCHASING CAREER DEVELOPMENT PROGRAM MODULE

. . . .

2. CONTRACTING SERIES QUALIFICATION STANDARDS. The Federal Acquisition Reform Act gave to the Administrator, Office of Federal Procurement Policy, the responsibility for establishing qualification requirements for acquisition workforce positions in non-Department of Defense (non-DoD) Agencies. The new qualification standards are comparable to those established for DoD positions in 1990 by the Defense Acquisition Workforce Improvement Act. For the GS-1102-05 through GS-1102-12 levels, either a baccalaureate degree from an accredited educational institution (with a major in any field) or at least 24 semester hours in any combination of the following fields is required: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative

methods, or organization and management. Personnel at the GS-1102-13 level and higher must have a baccalaureate degree in business or a baccalaureate in any field supplemented by at least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management. More complete information regarding the requirements established by the Office of Personnel Management can be found at www.opm.gov.

....

4. CONTRACTING AND PURCHASING CERTIFICATION PROGRAM. Three proficiency levels—Levels I, II, and III—have been established covering training, experience, and education requirements.

....

c. Level III—Advanced. By the time an individual reaches the senior levels of acquisition, he or she must have completed all the mandatory training and education requirements (or equivalents) leading up to that level and should have advanced through a career pattern that has imparted in-depth knowledge in his/her functional areas and breadth of knowledge across the entire acquisition process.

Advanced acquisition education and training become imperative for a more global perspective. The lower-level requirements and courses form the basis for the next progressively higher levels in the ACD Program, and the requirements are cumulative.

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CHAPTER VII. CONTRACTING OFFICER/CONTRACTING OFFICER REPRESENTATIVE TRAINING REQUIREMENTS

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5. CONTRACTING OFFICER/CONTRACTING OFFICER REPRESENTATIVE CURRICULUM.

Function: Procurement contracts, inter-Agency agreements and sales contracts

Experience: At least 5 years of progressively complex and responsible experience in negotiation/sealed bidding and performing business administration of procurement. Extensive experience in the GS-1102 or GS-1105 job series, or directly comparable military experience as a contracting officer is highly desirable

Minimum Training: Certified Level II under the Contracting and Purchasing Career Development (CPCD) (contracting) Program.

Agency's Exceptions, Attach. 6.

Relevant Portions of the Department of Energy Acquisition Career Management Program Handbook

Chapter 3: Contracting and Purchasing Certification

....

GS-1102 Statutory Education Requirements

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To hold a GS-1102 position at the GS-13 and above level, a person must have completed a 4-year course of study leading to a Baccalaureate degree that included or was supplemented by at least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management. Guidance on what satisfies the requirement for business courses can be found at Appendix G.

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GS-1102 Certification Requirements

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Career Level: GS-1102

Level III: Grade 13-15

Education: Baccalaureate Degree AND at least 24 semester hours among accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management

Experience: An additional 4 years of contracting experience [7 years cumulative experience].

Agency's Exceptions, Attach. 7.

**5 C.F.R. § 335.103(b)(3) provides:**

*Requirement 3.* To be eligible for promotion or placement, candidates must meet the minimum qualification standards prescribed by the Office of Personnel Management (OPM). Methods of evaluation for promotion and placement, and selection for training which leads to promotion, must be consistent with instructions in part 300, subpart A, of this chapter. Due weight shall be given to performance appraisals and incentive awards.

**41 U.S.C. § 433 (b) and (g) provides:****(b) Management policies****(1) Policies and procedures**

The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of Title 5.

**(2) Uniform implementation**

The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

**(3) Government-wide policies and evaluation**

The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that such policies are consistent with the policies and procedures established and enhanced system of incentives provided pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 263 note). The Administrator shall evaluate the implementation of the provisions of this section by executive agencies.

....

**(g) Qualification requirements****(1) In general**

(A) Subject to paragraph (2), the Administrator shall establish qualification requirements, including education requirements, for the following positions:

(i) Entry-level positions in the General Schedule Contracting series (GS-1102).

(ii) Senior positions in the General Schedule Contracting series (GS-1102).

(iii) All positions in the General Schedule Purchasing series (GS-1105).

(iv) Positions in other General Schedule series in which significant acquisition-related functions are performed.

(B) Subject to paragraph (2), the Administrator shall prescribe the manner and extent to which such qualification requirements shall apply to any person serving in a position described in subparagraph (A) at the time such requirements are established.

**(2) Relationship to requirements applicable to defense acquisition workforce**

The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of Title 10 with appropriate modifications.

**(3) Approval of requirements**

The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of Personnel Management for approval. If the Director does not disapprove a requirement or prescription within 30 days after the date on which the Director receives it, the requirement or prescription is deemed to be approved by the Director.