

respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor or subcontractor.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The head of an agency, with the concurrence of the Director, may waive the application to any contract or subcontract of any part of or all the affirmative action clause when he or she deems that special circumstances in the national interest so require. The agency head, with the concurrence of the Director, may also grant such waivers to groups or categories of contracts or subcontracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where such waiver will substantially contribute to convenience in administration of the Act.

(2) *National security.* Any requirement set forth in the regulations in this Part shall not apply to any contract or subcontract whenever the head of the contracting agency determines that such contract or subcontract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency will notify the Director in writing within 30 days.

(c) *Withdrawal of waiver.* When a waiver has been granted for any class of contracts or subcontracts under this section other than contracts granted waivers under paragraph (b)(2) of this section, the Director may withdraw the waiver for a specific contract or subcontract or group of contracts or subcontracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless

the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

[43 FR 49268, Oct. 20, 1978; 43 FR 51402, Nov. 3, 1978]

§ 60-250.4 Affirmative action clause.

Each agency and each contractor and subcontractor shall include the following affirmative action clause in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: Employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required. State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their employment openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The

listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside his own organization for that opening.

(h) As used in this clause: (1) "All employment openings" includes all positions except executive and top management, those positions that will be filled from within the con-

tractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

(2) "Appropriate office of the state employment service system" means the local office of the Federal-state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) "Positions that will be filled from within the contractor's organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

(i) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(j) In the event of a contractor's non-compliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance

Programs may direct to enforce such provisions, including action for noncompliance.

[43 FR 49268, Oct. 20, 1978; 43 FR 51402, Nov. 3, 1978; 60 FR 1987, Jan. 5, 1995; 61 FR 6117, Feb. 16, 1996]

EDITORIAL NOTE: At 47 FR 4258, Jan. 29, 1982, the effectiveness of paragraph (d) of § 60-250.4 was suspended. This suspension will remain in effect until the Department of Labor takes final action on the proposal to amend 41 CFR 60-250, published at 45 FR 86260, Dec. 30, 1980.

§ 60-250.5 Applicability of the affirmative action program requirement.

(a) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract of \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with § 60-250.6 of this part. This program may be integrated into or kept separate from other affirmative action programs of the contractor. Contractors presently holding Government contracts shall update their affirmative action programs within 120 days of the effective date of this part.

(b) The affirmative action program shall be reviewed and updated annually. If there are any significant changes in procedures, rights or benefits as a result of the annual updating, those changes shall be communicated to employees and applicants for employment.

(c) The full affirmative action program shall be available for inspection to any employee or applicant for employment upon request. The location and hours during which the program may be obtained shall be posted at each facility.

(d) *Invitation to self-identify.* (1) Except as provided in paragraphs (d) (2) and (3) of this section, the contractor shall, after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, invite the applicant to inform the contractor whether the applicant believes that he or she may be covered by the Act and wishes to benefit under the affirmative action program.

(2) The contractor may invite disabled veterans to self-identify prior to making a job offer only when:

(i) The invitation is made when the contractor actually is undertaking affirmative action for disabled veterans at the pre-offer stage; or

(ii) The invitation is made pursuant to a Federal, state or local law requiring affirmative action for disabled veterans.

(3) The contractor may invite veterans of the Vietnam era to self-identify prior to making a job offer only when:

(i) The invitation is made when the contractor actually is undertaking affirmative action for veterans of the Vietnam era at the pre-offer stage; or

(ii) The invitation is made pursuant to a Federal, state or local law requiring affirmative action for veterans of the Vietnam era.

(4) The invitation referenced in paragraphs (d)(1) through (3) of this section shall state that a request to benefit under the affirmative action program may be made immediately and/or at any time in the future. The invitation also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitation shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Act. If an applicant so identifies himself or herself, the contractor should also seek the advice of the applicant regarding proper placement and appropriate accommodation, after a job offer has been extended. The contractor also may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, (e.g., in the context of asking applicants to describe or demonstrate how they would perform the job). The contractor shall maintain a separate file on persons who have self-identified and provide that file to OFCCP upon request. This information may be used only in accordance with this part. (An acceptable form for such an invitation is set forth in Appendix A of this part. Because a contractor usually may not seek advice