for its duration, regardless of the
amounts ordered, or reasonably ex-
pected to be ordered in any year.

(3) Employment activities within the
United States. This part applies only to
employment activities within the
United States and not to employment
activities abroad. The term “employ-
ment activities within the United
States” includes actual employment
within the United States, and decisions
of the contractor made within the
United States pertaining to the con-
tractor’s applicants and employees who
are within the United States, regarding
employment opportunities abroad
(such as recruiting and hiring within
the United States for employment
abroad, or transfer of persons employed
in the United States to contractor es-
tablishments abroad).

(4) Contracts with state or local govern-
ments. The requirements of the equal
opportunity clause in any contract or
subcontract with a state or local gov-
ernment (or any agency, instrumenta-
tality or subdivision thereof) shall not
be applicable to any agency, instrumentality or subdivision of such gov-
ernment which does not participate in
work on or under the contract or sub-
contract.

(b) Waivers—(1) Specific contracts and
classes of contracts. The Deputy Assist-
ant Secretary may waive the applica-
tion to any contract of the equal oppor-
tunity clause in whole or part when
he or she deems that special cir-
cumstances in the national interest so
require. The Deputy Assistant Sec-
cretary may also grant such waivers to
groups or categories of contracts:
Where it is in the national interest;
where it is found impracticable to act
upon each request individually; and
where such waiver will substantially
contribute to convenience in adminis-
tration of the Act. When a waiver has
been granted for any class of contracts,
the Deputy Assistant Secretary may
withdraw the waiver for a specific con-
tact or group of contracts 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 con-
tracts awarded prior to the withdrawal,
except that in procurements entered
into by formal advertising, or the var-
ious forms of restricted formal adver-
tising, 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.

(2) National security. Any requirement
set forth in the regulations of this part
shall not apply to any contract when-
ever the head of the contracting agen-
cy determines that such contract is es-
tential 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 con-
tracting agency will notify the Deputy
Assistant Secretary in writing within
30 days.

(3) Facilities not connected with con-
tracts. The Deputy Assistant Secretary
may waive the requirements of the
equal opportunity clause with respect
to any of a contractor’s facilities which
he or she finds to be in all respects sepa-
rate and distinct from activities of
the contractor related to the perform-
ance of the contract, 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 re-
quest of the contractor.

§ 60–250.5 Equal opportunity clause.

(a) Government contracts. Each con-
tracting agency and each contractor
shall include the following equal oppor-
tunity clause in each of its covered
Government contracts or subcontracts
(and modifications, renewals, or exten-
sions thereof if not included in the
original contract):

Equal Opportunity for Special Disabled
Veterans, Veterans of the Vietnam Era, Re-
cently Separated Veterans, and Other Pro-
tected Veterans.

1. The contractor will not discriminate
against any employee or applicant for em-
ployment because he or she is a special dis-
abled veteran, veteran of the Vietnam era,
recently separated veteran, or other pro-
tected veteran in regard to any position for
which the employee or applicant for employ-
ment is qualified. The contractor agrees to
take affirmative action to employ, advance
in employment and otherwise treat qualified
individuals without discrimination based on
their status as a special disabled veteran,
veteran of the Vietnam era, recently sepa-
rated veteran, or other protected veteran in

175
§ 60–250.5  

all employment practices, including the following:

1. Recruitment, advertising, and job application procedures;

2. Hiring, firing, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

3. Rates of pay or any other form of compensation and changes in compensation;

4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

5. Leaves of absence, sick leave, or any other leave;

6. Fringe benefits available by virtue of employment, whether or not administered by the contractor;

7. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

8. Activities sponsored by the contractor including social or recreational programs; and

9. Any other term, condition, or privilege of employment.

2. The contractor agrees to immediately 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 employment service office of the state employment security agency wherein the opening occurs. Further, listing employment openings with the state workforce agency job bank where the opening occurs or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service office.

3. Listing of employment openings with the local employment service office 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 placement 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.

4. Whenever the contractor becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the state employment security agency in each state where it has establishments of the name and location of each hiring location in the state. Provided, That this requirement shall not apply to state and local governmental contractors. As long as the contractor is contractually bound to these provisions and has so advised the state agency, there is no need to advise the state agency of subsequent contracts. The contractor may advise the state agency when it is no longer bound by this contract clause.

5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

6. As used in this clause: i. All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor’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.

ii. Executive and top management means any employee: (a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (d) who customarily and regularly exercises discretionary powers; and (e) who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph. Provided, that (e) of this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he or she is employed.

iii. 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.

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

8. In the event of the 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.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans. The contractor must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

10. The contractor will notify each labor organization 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 of 1974, as amended, and is committed to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans.

11. The contractor will include the provisions of this clause in every subcontract or purchase order of $25,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 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 Deputy Assistant Secretary for Federal Contract Compliance may direct to enforce such provisions, including action for noncompliance.

[End of Clause]

(b) Subcontracts. Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) Adoption of language. Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

(d) Inclusion of the equal opportunity clause in the contract. It is not necessary that the equal opportunity clause be quoted verbatim in the contract. The clause may be made a part of the contract by citation to 41 CFR 60-250.5(a).

(e) Incorporation by operation of the Act. By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) Duties of contracting agencies. Each contracting agency shall cooperate with the Deputy Assistant Secretary and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Deputy Assistant Secretary with any information which comes to the agency’s attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Deputy Assistant Secretary, and taking such actions for noncompliance as are set forth in §60–250.66 as may be ordered by the Secretary or the Deputy Assistant Secretary.

[70 FR 72151, Dec. 1, 2005, as amended at 73 FR 18715, Apr. 7, 2008]