

§ 60-1.32

thereafter. The filing of a reinstatement request 30 days before a fixed debarment period ends will not result in early reinstatement. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Order and implementing regulations. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.

[62 FR 44192, Aug. 19, 1997]

§ 60-1.32 Intimidation and interference.

(a) The contractor, subcontractor or applicant shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Order or any other Federal, state or local law requiring equal opportunity;

(3) Opposing any act or practice made unlawful by the Order or any other Federal, state or local law requiring equal opportunity; or

(4) Exercising any other right protected by the Order.

(b) The contractor, subcontractor or applicant shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by OFCCP against any contractor, subcontractor or applicant who violates this obligation.

[62 FR 44192, Aug. 19, 1997]

§ 60-1.33 Conciliation agreements.

(a) If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal oppor-

41 CFR Ch. 60 (7-1-05 Edition)

tunity clause, and (1) if the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and (2) if OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(b) The term "conciliation agreement" does not include "letters of commitment" which are appropriate for resolving minor technical deficiencies.

(E.O. 11246 (30 FR 12319) as amended by E.O. 11375 and 12086)

[44 FR 77002, Dec. 28, 1979]

EFFECTIVE DATE NOTE: At 70 FR 36265, June 22, 2005, § 60-1.33 was amended by removing paragraph (b), and by removing the designation "(a)" from the first paragraph, effective July 22, 2005.

§ 60-1.34 Violation of a conciliation agreement or letter of commitment.

(a) When a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violations alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(3) If the contractor is unable to demonstrate that it has not violated its commitments, or if the complaint alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement contained in this chapter.

(4) In any proceeding involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of

the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

(b) If the contractor has violated a letter of commitment, the matter shall be handled, where appropriate, pursuant to 41 CFR 60-2.2(c) or 60-4.8. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated.

(E.O. 11246 (30 FR 12319) as amended by EO 11375 and 12086)

[44 FR 77002, Dec. 28, 1979, as amended at 62 FR 44192, Aug. 19, 1997]

EFFECTIVE DATE NOTE: At 70 FR 36265, June 22, 2005, § 60-1.34 was amended by removing paragraph (b), removing the paragraph (a) designation, redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a) through (d) respectively, and revising the section heading, effective July 22, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 60-1.34 Violation of a Conciliation Agreement.

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Subpart C—Ancillary Matters

§ 60-1.40 Affirmative action programs.

(a)(1) Each nonconstruction (supply and service) contractor must develop and maintain a written affirmative action program for each of its establishments, if it has 50 or more employees and:

(i) Has a contract of \$50,000 or more; or

(ii) Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or

(iii) Serves as a depository of Government funds in any amount; or

(iv) Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

(2) Each contractor and subcontractor must require each nonconstruction subcontractor to develop and maintain a written affirmative action program for each of its establishments if it has 50 or more employees and:

(i) Has a subcontract of \$50,000 or more; or

(ii) Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or

(iii) Serves as a depository of Government funds in any amount; or

(iv) Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

(b) Nonconstruction contractors should refer to Part 60-2 for specific affirmative action requirements. Construction contractors should refer to Part 60-4 for specific affirmative action requirements.

[65 FR 68042, Nov. 13, 2000]

§ 60-1.41 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Deputy Assistant Secretary. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]