

541—4.5(19B) Contract compliance.

4.5(1) Equitable provision of service. Except where authorized by law, no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any state program or any program receiving or benefiting from state financial assistance because of race, creed, color, religion, sex, national origin, age, or disability. Programs and activities affected shall include but not be limited to the following:

- State services and facilities,
- State employment service,
- State contracts and subcontracts,
- State licensing and regulatory agencies,
- State financial assistance.

4.5(2) Nondiscrimination in employment by contractors and subcontractors.

a. Every official who is authorized to make contracts or subcontracts for public works or for goods or services shall cause to be inserted into every contract or subcontract a clause in which the contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and state law, executive orders and rules of the department of management, which pertain to equal employment opportunity and affirmative action.

b. Every state official who is responsible to the governor and who is authorized to make contracts or subcontracts for public works or for goods or services shall cause to be inserted into every contract a clause which states the contractor or subcontractor may be required to have on file a copy of the affirmative action program, containing goals and time specifications. These contractual provisions shall be fully enforced. Any breach of them shall be regarded as a material breach of contract.

c. Each state contract shall provide that compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the department of management prior to the execution of the contract shall be a condition of the contract or agreement binding upon the contractor or service provider, its successors, and assignees. The contract shall further provide that failure to fulfill the nondiscrimination requirements of this contract or any of the rules and orders may cause the contract to be canceled, terminated, or suspended in whole or in part, and the contract or service provider may be declared ineligible for future state contracts in accordance with authorized procedure or the contractor may be subject to other sanctions as provided by law or rule.

d. Contractors, vendors, suppliers doing business with the state in excess of \$5,000 annually and employing 50 or more full-time employees may be required to submit to the department of management or the contracting agency a copy of their affirmative action plan containing goals and time specifications.

e. Compliance shall be determined by a comprehensive review and evaluation of a contractor's employment policies and practices and shall depend on an analysis of all relevant factors including the following:

- (1) The contractor's publicly stated and posted policy regarding equal employment opportunity.
- (2) The contractor's external dealings with unions, employment agencies, newspapers, and other sources of employees.
- (3) The methods by which and places where the contractor seeks to recruit employees.
- (4) The contractor's use of tests and qualifications for positions which are job related and not culturally biased.
- (5) Classification and compensation plans which apply equally to all employees.
- (6) Training programs which provide all persons, including those in protected classes, with an equal opportunity to qualify for employment and advancement.
- (7) The effectiveness of the contractor's affirmative action program as evidenced, in part, by the number of protected classes employed at all levels, taking into account the geographical location of the contractor's work force.

f. The judgment regarding compliance shall be favorable if it is determined that the contractor is working affirmatively toward extending opportunities for members of the protected classes and is not discriminating against them.

g. Contractors must be able to demonstrate to the satisfaction of the department of management or the contracting agency that their affirmative action program is productive.

4.5(3) Procedures.

a. Contractors may be required to submit reports as requested by the department of management. The report forms shall be as brief as possible and designed to elicit relevant information about employment practices. The department of management may request other relevant information from a contractor at any time.

b. The department of management may solicit and compile additional information about present and prospective contractors from any reliable source including the Iowa civil rights commission, department of economic development, and other state and federal agencies.

c. The department of management may systematically review the reports and all other available information concerning the employment practices of present and prospective contractors. Whenever there is reasonable doubt, based on the reports and information as to whether or not a contractor is discriminating or is failing to take affirmative action in compliance with department of management policy:

- (1) The department of management may undertake a compliance review of the contractor.
- (2) Every reasonable effort shall be made to secure compliance through conciliation and persuasion.
- (3) The burden shall be on the contractor to demonstrate compliance and eligibility to do business with the state.

d. If any investigation or compliance evaluation discloses that a contractor has discriminated or has failed to take affirmative action, the director of the department of management, in consultation with the contract compliance manager, may request the contracting agency to pursue all contract remedies authorized by law.

4.5(4) Utilization of minority and women business enterprises as sources of supplies, equipment, construction and service.

a. Every executive department responsible for “state financial assistance” as defined in rule 4.4(19B), which is spent by other entities to purchase supplies, equipment, construction, and services totaling in excess of \$100,000 annually, shall submit a plan to the department of management showing how minority and women businesses will be utilized as sources of these purchases.

b. The plan shall include, but not be limited to:

- (1) The combined annual fiscal year dollar value of these purchases.
- (2) The combined anticipated annual fiscal year dollar value of minority and women business participation in these purchases.
- (3) A description of the means by which minority and women business participation will be measured.
- (4) A description of actions the agency and those receiving state financial assistance will take to ensure the utilization of women and minority businesses.

c. The initial plan shall be submitted to the department of management no later than July 1, 1988; updates and adjustments should be submitted as conditions warrant.