Part I Chapter 20[1]
Nondiscrimination

A. Nondiscrimination as a Contract Requirement.

1. The Nondiscrimination/Sexual Harassment Clause. Every agency contract shall contain the Nondiscrimination/Sexual Harassment Clause (Nondiscrimination & Sexual Harassment Clause) which bars discrimination in employment because of gender, race, religious creed, or color, as required by Management Directive 215.16, Contract Compliance Program. The Nondiscrimination/Sexual Harassment clause includes the Act 57 required contract provisions prohibiting discrimination found at *62 Pa.C.S. Section 3701.*

2. Contract Compliance. The Nondiscrimination/Sexual Harassment clause requires contractors to complete and submit to the purchasing agency (or the using agency, in the case of a Department of General Services purchase order) the Initial Contract Compliance Data Form, STD-21. The information provided by contractors on the form provides agencies with the capability to determine if contractors are complying with the assurances provided in the Nondiscrimination/Sexual Harassment Clause.

B. Nondiscrimination as a Responsibility Factor.

1. The Competitive Sealed Bidding Method of Awarding Contracts for Construction. In accordance with DGS construction policy and procedures, purchasing agencies shall, when using the Competitive Sealed Bidding method of awarding contracts for construction include a determination of contractor responsibility in regard to nondiscrimination with respect to the contractor's proposed use of MBEs and WBEs in the performance of the contract.

C. Exemptions. The Nondiscrimination requirements do not apply to the following:

1. Contracts awarded to agencies for persons with disabilities pursuant to Act 57, § 520.

2. Grants and licenses.

3. Contracts with political subdivisions of the Commonwealth including county and municipal governments.

4. Contracts awarded to licensed medical professionals when subcontracting opportunities are not available and where the work is performed at Commonwealth facilities.

5. Where application would jeopardize the receipt of federal funds.

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[1] 07-20-2012: Entire chapter has been rewritten in correlation with Small Business Procurement Initiative and changes to the Bureau of Small Business Opportunities. No dots will be used to indicate changes due to the number of changes.

D. Agency Responsibilities for Determining Contract Compliance. Agencies shall, in accordance with Management Directive 215.16, Contract Compliance Program:

1. Receive and review the completed Form STD-21 (Form STD-28, for construction contracts) submitted by contractors.

2. Determine contractors' or grantees' compliance status and assist contractors, as appropriate, to improve their compliance status.

3. Prepare reports and provide technical information to the Director of the DGS Bureau of Small Business Opportunities (BSBO) to implement the Contract Compliance Program.

4. Audit contractor documents using BSBO forms to ensure compliance.

5. Advise contractors to identify and mark the submitted contractor and grantee information that the contractor or grantee believes would reveal sensitive and confidential information or of a trade secret as defined by *Act 3 of 2008*, the *Right-to-Know Law (RTKL)*, so that it may be redacted from information provided to the public under the RTKL.

References:

1. Nondiscrimination & Sexual Harassment Clause (MD 215.16, page 10)

2. STD-21, Initial Contract Compliance Data Form

3. Management Directive 215.16, Contract Compliance Program

4. STD-28, Monthly Contract Compliance Report for Construction Contractors Form