

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject:
Contract Compliance Program

Number:
215.16 Amended

Date:

September 1, 2010

By Direction of:

James P. Creedon, Secretary of General Services

Contact Agency:
Department of General Services, Bureau of Minority and Women
Business Opportunities, Telephone 717-783-3119

This directive establishes policy, responsibilities, and procedures for the commonwealth's Contract Compliance Program in compliance with Executive Order 2006-2, Contract Compliance and Act 57 of 1998. Changes are indicated by marginal dots.

1. **PURPOSE.** To establish policy, responsibilities, and procedures for the commonwealth's Contract Compliance Program.
2. **SCOPE.** This directive applies to all departments, boards, commissions, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction.
3. **OBJECTIVE.** To ensure that all commonwealth contractors and grantees comply with the commonwealth's Contract Compliance Program; do not discriminate in the hiring and treatment of their employees; and establish a policy to prohibit sexual harassment.
4. **DEFINITIONS.**
 - a. **Contract.** A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction or the lease of real estate.
 - b. **Contract Compliance Program.** A program designed to ensure that commonwealth contracting and grant funding is nondiscriminating in intent and effect. The program involves three aspects:
 - (1) Nondiscrimination in the commonwealth's award of contracts and grants.
 - (2) Nondiscrimination by those who are awarded commonwealth contracts and grants in their award of subcontracts and supply contracts for the performance under commonwealth contracts.

- (3) Nondiscrimination by those who are awarded commonwealth contracts and grants in the hiring and treatment of their employees.
- c. **Contractor.** Any person that enters into a contract or lease with the commonwealth.
 - d. **Employee.** An individual drawing a salary, wages, stipend, honorarium or earning a commission from a company, organization or agency, and any non-compensated individual performing services for a company, organization or agency.
 - e. **Grant.** A commitment of funds and programmatic authority by a commonwealth agency serving as the grantor to an outside entity (e.g., local government, school district, individual, nonprofit organization, or service provider) for the purpose of carrying out public policy and/or implementing program service delivery. A grant differs most importantly from other agency procurements in that the grantor does not receive specific goods or services.
 - f. **Grant Agreement.** A legally binding agreement between grantor and grantee which delineates all terms and conditions of a particular grant.
 - g. **Grantee.** The entity that contracts with the state agency to receive grant funding to implement the grant purpose.
 - h. **Labor Force.** Employable civilian persons, within a reasonable recruitment area, who have particular skills and abilities, e.g., persons counted in Equal Employment Opportunity (EEO) job category or EEO occupation group or census occupation code industry census data.
 - i. **Recruitment or Labor Area.** The local area within which the contractor can reasonably expect people to commute.
 - j. **Under-Utilization.** A situation in which a contractor's or grantee's workforce (total or by job category) percentage of race group (minority or non-minority) and/or gender is less than in the labor force.

5. POLICY.

- a. Pursuant to [*Executive Order 2006-2, Contract Compliance*](#), and *Section 3701 of Act 57 of 1998*, the Department of General Services (DGS) is designated to administer and enforce the commonwealth's Contract Compliance Program.
- b. Every agency contract must contain Enclosure 1, Nondiscrimination/Sexual Harassment Clause [Contracts], barring discrimination in employment because of gender, race, creed, and color. For those contracts that involve the expenditure of federal funds, if the agency is required by federal law, regulation or policy, to include a nondiscrimination clause, the agency shall comply with the federal contract compliance program and include the required nondiscrimination clause and shall not be required to include Enclosure 1, Nondiscrimination/Sexual Harassment Clause [Contracts].

- c. Every grant agreement including; but not limited to, state loans or state guarantees of student loans, banking institutions or other organizations must contain Enclosure 2, Nondiscrimination/Sexual Harassment Clause [Grants]. For those grant agreements that involve the transfer of federal funds, if the agency is required by federal law, regulation or policy, to include a nondiscrimination clause, the agency shall comply with the federal contract compliance program and include the required nondiscrimination clause and shall not be required to include Enclosure 2, Nondiscrimination/Sexual Harassment Clause [Grants].
- d. Every state contract for the deposit of commonwealth funds in any banking institution or trust company must contain, upon approval of the Board of Finance and Revenue, Enclosure 3, Nondiscrimination/Sexual Harassment Clause [Deposit of Commonwealth Funds].

6. RESPONSIBILITIES.

a. **Department of General Services, Bureau of Minority and Women Business Opportunities** shall:

- (1) Administer and enforce a uniform Contract Compliance Program.
- (2) Ensure that contractors and grantees receiving commonwealth funds have a written sexual harassment policy and that the employees of the contractor or grantee are aware of the policy.
- (3) Provide the necessary resources and training to ensure that discrimination does not occur within the state procurement process.
- (4) Monitor and coordinate programs of agency contract compliance staff and provide uniform guidelines and procedures.
- (5) Review and assist agencies in the implementation of the Contract Compliance Program.
- (6) Provide technical assistance to contractors with complaints regarding agency contract compliance practices.
- (7) Review programs, plans, reports, and procedures to ensure consistency with the Contract Compliance Program.
- (8) Notify the Secretary of DGS and the respective contracting or granting agencies when the director has evidence that the practices of any contractor or grantee are not in compliance with the Nondiscrimination/Sexual Harassment Clause or related state or federal laws.

b. **Agency Heads** shall designate a deputy secretary, or equivalent, as the agency responsible official to administer the respective agency's Contract Compliance Program.

c. **Agency Responsible Officials** shall direct the agency's Contract Compliance Program, ensure that Form STD-21, Initial Contract Compliance Data (Form STD-21) is submitted by grantees and contractors, supervise contract compliance staff, issue compliance notices to contractors, and consult with DGS prior to issuing sanctions against contractors. The agency responsible official may designate an agency employee to handle supervision of contract compliance staff and issuance of compliance notices, but remains responsible for the agency's Contract Compliance Program and consulting with DGS prior to issuing sanctions.

d. **Agency Contract Compliance Staff** shall:

- (1) Ensure that a process is established and responsibilities are assigned so that Form STD-21 is sent to the contractor or grantee upon agency award for contracts above the dollar thresholds, and that the Preliminary Input is entered into the DGS Contract Compliance Application.
- (2) Receive and review the completed Form STD-21 submitted by contractors.
- (3) Determine contractors' or grantees' compliance status and assist contractors and grantees, as appropriate, to improve their compliance status.
- (4) Prepare reports and provide technical information to the Director of the Bureau of Minority and Women Business Opportunities (BMWBO) to implement the Contract Compliance Program.
- (5) Audit contractor and grantee documents to ensure compliance. Agency contract compliance staff shall attempt to minimize the burden and expense of such requirements for information by:
 - (a) Using forms issued by BMWBO and receiving electronic submission of these forms and supporting documentation.
 - (b) Accepting forms and reports prepared for federal agencies when the information contained therein is sufficient for the commonwealth's purposes.
 - (c) Minimizing duplication of programs and procedures.
 - (d) Inspecting and copying relevant documents contained in the agency's contractor and grantee files rather than requiring the contractor to provide them.
 - (e) Accepting, as in compliance with the provisions of this directive, EEO plans approved by the state and federal government or issued by a court order or decree.

- (6) Advise contractors and grantees 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.

7. PROCEDURES.

a. Agency Contract Awards. Each agency shall award and administer contracts, purchase orders and grants in a nondiscriminatory manner in accordance with state law and policy established by DGS. Each agency shall upon award, for contracts and grants which meet or exceed program thresholds, send Form STD-21 to the contractor or grantee and enter the Preliminary Input into the DGS Contract Compliance Application.

b. Compliance Audit.

- (1) Agency contract compliance staff shall review information and make a determination as to whether contractors and grantees are in compliance with state law, this directive, and the Nondiscrimination/Sexual Harassment Clause.
- (2) The first information gathered from the contractor or grantee is Form STD-21. If the initial compliance review indicates compliance issues or insufficient information to determine the compliance status, a full document or onsite contract compliance audit may be conducted. The purpose of a contractor compliance audit is to determine if a state contractor or grantee maintains nondiscriminatory hiring and employment practices under which applicants are employed and employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to gender, race, creed, or color. If a contractor is operating under an existing EEO plan, the compliance audit will also seek to determine whether the contractor is making a good faith effort to comply with that plan.
- (3) Underutilization is not sufficient evidence by itself to determine discrimination. In gathering evidence on whether contractors and grantees are discriminating against applicants and/or employees, the following factors shall be considered, where relevant:
 - (a) Percentage of the employees in the contractor's or grantee's workforce by race and gender, total and grouped by EEO-1 Job Categories, according to the DGS Contract Compliance Application, (which contains definitions for EEO-1 Job Categories on Form STD-21 that is sent by email to the contractor or grantee), or according to the [United States \(US\) Census Bureau's Web site](#) by EEO-1 Job Categories, EEO Occupation Groups or Occupation Codes and Industry.

- (b) Percentage of the labor force by race and gender among those having requisite skills, according to the DGS Contract Compliance Application, (which uses the most recent census EEO data in the reasonable recruitment area, as defined in Section 4.i.) or according to the [US Census Bureau's Web site](#) by EEO-1 Job Categories, EEO Occupation Groups or Occupation Codes and Industry.
 - (c) Determination of race group (minority or non-minority) and gender (male or female) underutilized in the contractor's or grantee's workforce when compared to the labor force in the labor area, according to the DGS Contract Compliance Application, (which uses the most recent census EEO data available), or according to the [US Census Bureau's Web site](#) by EEO-1 Job Categories, EEO Occupation Groups or Occupation Codes and Industry.
 - (d) Determination of job categories where the contractor's or grantee's workforce employees are underutilized as compared to the labor force by race and gender among those having requisite skills in the labor area, according to the DGS Contract Compliance Application, (which uses the most recent census EEO data available), or according to the [US Census Bureau's Web site](#) by EEO-1 Job Categories, EEO Occupation Groups or Occupation Codes and Industry.
 - (e) Percentage of the employees by race and gender among those promotable or transferable within the facility.
 - (f) Percentage of the applicants or employees by race and gender among those provided training in requisite skills.
 - (g) Degree of training which the contractor or grantee is reasonably able to undertake as a means of making underutilized job categories available to otherwise qualified applicants and employees from race and gender groups that have been determined to be underutilized in the said job categories.
 - (h) Degree to which good faith efforts have been made by the contractor or grantee to recruit, hire, retain, and promote underutilized race and gender groups into the underutilized job categories.
- (4) The compliance audit shall consist of a thorough analysis of each contractor's and grantee's employment practices and the effects of such practices. Exact proportional representation of the race and gender group(s) in the EEO job categories is not required by the provisions of this directive. Good faith efforts to reduce underutilization and to implement nondiscriminatory policies, taking into account the effects of past discrimination, are required.
- (5) A determination by one state contracting agency that a contractor or grantee is in compliance shall create a presumption of compliance for all other state agencies using the contractor for similar work in the same area.

- (6) If an EEO program exists, the contractor's or grantee's compliance status shall not be judged solely by whether or not all objectives or timetables have been met. Rather, a contractor's or grantee's compliance posture may be determined by reviewing the contents of the program, the extent of adherence to the program, and good faith efforts to make the program work.

c. Notifying Contractor or Grantee.

- (1) The agency contract compliance staff, through the agency responsible official or the designee, shall notify the contractor or grantee indicating whether or not it has workforce underutilization or deficiencies or whether additional information is needed to determine whether it is in compliance. If deficiencies exist, reasonable efforts shall be made to secure commitments to work toward compliance through conciliation and persuasion. Commitments by contractors and grantees may include preparation and implementation of an EEO program.
- (2) Commitments by contractors and grantees shall include precise actions to be taken and dates for completion. The established time period shall be no longer than the minimum period necessary to effect such changes.
- (3) A contractor or grantee shall be considered in compliance if it makes good faith efforts to keep commitments.

d. Notice of Noncompliance.

- (1) If efforts to secure compliance with state law or this directive, through conciliation and persuasion have failed, or the agency finds that the contractor or grantee has not made the requisite good faith efforts to meet its commitments, the agency responsible official shall issue a notice of noncompliance to such contractor or grantee to show cause why the agency should not pursue sanctions or remedies under state or federal law, the Nondiscrimination/Sexual Harassment Clause, and this directive. Such notice shall set forth the specific deficiencies that constitute the basis of the asserted noncompliance.
- (2) During the show-cause period, agency contract compliance staff shall continue, through conciliation, mediation, and persuasion, to resolve the deficiencies that led to the determination of noncompliance. Technical assistance may be offered by the contracting agency.
- (3) If the contractor or grantee is unable to show good cause for its failure to resolve the deficiencies, the commonwealth contracting agency, after consultation with DGS, shall pursue one or more of the sanctions or remedies listed below unless compliance is obtained by agreement.

e. Sanctions/Remedies. The commonwealth may pursue one or more of the following sanctions or remedies, as appropriate:

- (1) Bring appropriate legal action for noncompliance with the Nondiscrimination/Sexual Harassment Clause.

- (2) Terminate the contract or grant agreement for breach of the Nondiscrimination/Sexual Harassment Clause.
- (3) Recommend to the appropriate law enforcement official that criminal proceedings be brought for willfully furnishing false information to the commonwealth.
- (4) Refrain from entering into further state contracts or extensions, or grant agreements or extensions or other modifications of existing contracts or grant agreements with any noncomplying contractor or grantee. (See [Management Directive 215.9, Contractor Responsibility Program](#), for procedures relevant to the following actions.)
 - (a) The agency may proceed with debarment or suspension of the contractor or grantee.
 - (b) The agency may place the contractor or grantee in the Contractor Responsibility File to alert other agencies of its deficiencies.
- (5) Contractors or grantees can provide additional information that demonstrates that they are in compliance at any point to have sanctions reassessed.

f. Equal Employment Opportunity.

- (1) An EEO program is a detailed set of procedures designed to achieve equality in the effects of all employment practices at all levels. The objective of these procedures and efforts is to assure equal employment opportunity. An acceptable EEO program shall include an analysis of problem areas and deficiencies regarding utilization, compliance with the Nondiscrimination/Sexual Harassment Clause and/or discrimination complaints, and objectives and timetables to which the good faith efforts of the contractor shall be directed to correct deficiencies at all levels and in all segments of its work force and in all its employment practices.
- (2) Effective EEO programs should contain, but not necessarily be limited to:
 - (a) Development or reaffirmation of the contractor's EEO and sexual harassment policy in all personnel actions.
 - (b) Formal internal and external dissemination of the contractor's policy with documentation that employees were informed.
 - (c) Establishment of responsibilities for implementation of the contractor's EEO program.
 - (d) Identification of problem areas (underutilization) by organization units and job categories, including timetables for completion. Goals and objectives for correcting underutilization may not be rigid and inflexible, nor may they be quotas that must be met, but must be objectives reasonably attainable by applying good faith efforts to make all aspects of the entire EEO program work.

- (e) Development and execution of action-oriented programs designed to attain established objectives.
- (f) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.
- (g) Marketing and recruitment through solicitation of the support and cooperation of local and national community action programs and community service programs and through presentations (e.g., "Career Days") at middle/high/votech schools or other means designed to improve the employment opportunities of underutilized race and gender groups for filling vacancies in underutilized job categories.
- (h) Consideration of applicants from underutilized race and gender groups not currently in the work force having requisite skills that may be recruited through equal employment marketing and recruitment efforts.
- (i) In establishing timetables to meet objectives and commitments, the contractor or grantee shall consider the anticipated expansion or contraction of and turnover in the work force.
- (j) EEO commitments shall be designed to correct any identifiable deficiencies and be part of the contractor's or grantee's written EEO program.

The Contract Compliance Manual contains more detailed guidance applicable to this directive.

Enclosure 1 – Nondiscrimination/Sexual Harassment Clause [Contracts]

Enclosure 2 - Nondiscrimination/Sexual Harassment Clause [Grants]

Enclosure 3 - Nondiscrimination/Sexual Harassment Clause [Deposit of Commonwealth Funds]

This directive replaces, in its entirety, *Management Directive 215.16* dated July 19, 2010.

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Contracts]

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Grants]

The Grantee agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
2. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed, or color.
3. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of gender, race, creed, or color against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.
5. The Grantee, any subgrantee, any contractor or any subcontractor shall, within the time periods requested by the commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the granting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within 15 days after award of any grant, the Grantee shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. Grantees who have fewer than five employees or whose employees are all from the same family or who have completed the STD-21 form within the past 12 months may, within the 15 days, request an exemption from the STD-21 form from the granting agency.
6. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
7. The commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

**NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Deposit of
Commonwealth Funds]**

The Contractor agrees:

1. In the hiring of any employee(s) for the performance of work, or any other activity required under the contract or any subcontract, the Contractor, subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and any subcontractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the Contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or BMWBO.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.