

CHAPTER 4
CONTRACT COMPLIANCE

541—4.1(19B) Responsibilities. The department of management is responsible for the administration and promotion of equal opportunity in all state contracts and services. It is also responsible for the prohibition of discriminatory and unfair practices within any program receiving or benefiting from state financial assistance in whole or in part.

4.1(1) The department of management shall:

a. Establish for all state agencies and departments a contract compliance policy applicable to state contracts, services, and programs receiving or benefiting from state financial assistance.

b. Adopt administrative rules to implement the contract compliance policy.

c. Monitor the actions of state agencies to ensure compliance in

(1) The equitable provision of services within state programs;

(2) Nondiscrimination in employment by state contractors and subcontractors;

(3) The utilization of minority and women business enterprises and disadvantaged business enterprises as sources of supplies, equipment, construction, and services.

d. Consider appropriate sanctions on individual state agencies and departments including the state board of regents and its institutions to ensure compliance with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and procurement set-aside programs.

e. Report results of contract compliance to the governor and the general assembly annually.

4.1(2) Reserved.

541—4.2(19B) Purpose and scope. The rules set forth in this part contain the procedures established by the department of management for carrying out the responsibilities stated in Iowa Code section 19B.7 and Executive Order Number 15, Article VIII[1973].

Equal opportunity functions and responsibilities by the director of the department of management are hereby delegated to the appropriate staff.

541—4.3(19B) Policy. It is the policy of the state of Iowa to promote equal opportunity in all state contracts and services and to provide leadership in affirmative action to assure fair and equitable participation within all programs receiving or benefiting from state financial assistance in whole or in part.

4.3(1) Therefore, no individual, except as specifically authorized by law, shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program receiving or benefiting from state financial assistance because of race, creed, color, religion, sex, national origin, age, physical or mental disability as authorized by rule.

4.3(2) Rescinded, IAB 7/27/88, effective 8/31/88.

4.3(3) As authorized by rule, departments utilizing "state financial assistance," as defined in rule 4.4(19B), must develop and submit a plan to utilize women and minority business enterprises in the purchase of supplies, equipment, construction, and services.

541—4.4(19B) Definitions. Words and terms not defined below shall have the ordinary meaning given to them in Iowa Code chapter 4, unless the construction would be inconsistent with the manifest intent of the general assembly.

“*Affirmative action*” means action appropriate to overcome the effects of past or present practices, policies or other barriers to equal employment opportunity.

“*Contract compliance*” means to conform with the applicable state equal opportunity rules and laws while performing a state contract or agreement.

“*DBE*” means disadvantaged business enterprise.

“*DOM*” means department of management.

“*MBE*” means minority business enterprise.

“*Minority, women’s, and disadvantaged business enterprises*” shall have the same meaning as the term is used in Iowa Code section 15.102(5): a small business which is 51 percent or more owned, operated, and actively managed by one or more women or minority persons. As used in this subsection, “minority person” means an individual who is a Black, Hispanic, Asian, or Pacific Islander, or American Indian or Alaskan native.

“*Protected class*” means racial or ethnic minorities, sex, age, creed, color, national origin, religion, or mental and physical disability.

“*State financial assistance*” means any state moneys which pass through a state department to other entities for the purpose of funding public improvements or programs providing a public service where there may be opportunities for purchasing supplies, equipment, construction, and services.

State financial assistance as defined in this program does not include:

1. Moneys subject to the requirements of Iowa Code sections 73.16 to 73.21.
2. State and federal matching dollars where federal guidelines are more stringent than state requirements.
3. Tax credit, tax replacements and fee refunds.
4. State mandated formula distribution.
5. Benefits paid directly to individuals.

“*Subcontractor*” means any person (other than a person who is an employee of the contractor) who has agreed or arranged with a contractor to undertake a portion of the contractor’s obligations or the performance of work in connection with a state contract.

“*WBE*” means women business enterprise.

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.

541—4.6(19B) Monitoring.

4.6(1) Each agency and department having purchasing authority, except the state board of regents, shall submit to the department of management an annual contract compliance report beginning August 15, 1988, consisting of the names of contractors, vendors, and suppliers, who had done business with the agency in excess of \$5,000 during the preceding fiscal year.

4.6(2) Each agency and department submitting a minority and women business utilization plan as required in 4.5(4)“a” shall provide the department of management a semiannual plan progress report beginning in January 1989.

4.6(3) DOM shall coordinate monitoring efforts by:

1. Providing a master list to agencies of companies whose affirmative action plans have been received.
2. Informing each agency of the compliance status of all companies that have been reviewed.

541—4.7(19B) Sanctions. The department of management may impose appropriate sanctions on individual state agencies and departments, including the state board of regents and its institutions, in order to ensure compliance with the rules. Any state agency or department, including the state board of regents and its institutions, who commit any of the following offenses shall be subject to the penalties outlined herein.

4.7(1) The offenses include:

- a.* Falsifying information to the department of management in connection with contract compliance matters.
- b.* Willfully failing to comply with the regulations and willfully failing to report suspected violations of the rules to the DOM.
- c.* Aiding, abetting, or assisting a private person in violating any of the provisions of the rules.
- d.* Failing to report suspected fraudulent activities of MBE/WBEs and failing to disqualify fraudulent MBEs or WBEs.
- e.* Consistent lack of effort to achieve minority and women business participation goals.

4.7(2) Any one or all of the following actions may be taken by the department of management against a state agency, the state board of regents and its institutions, or against state employees who commit any of the offenses listed or who otherwise violate any provision of the rules.

- a.* The department of management may recommend disciplinary action against the offending state employee.
- b.* The department of management may take action, as appropriate, to seek to terminate contracts or funding found to be in violation of the rules.
- c.* The department of management may seek decertification or disqualification of any person or business from bidding on state contracts in connection with Iowa Code sections 19B.7 and 73.16 to 73.21.
- d.* The department of management may report the violation to the governor or the appropriate legislative committee.
- e.* The department of management may impose any other sanctions it deems appropriate to ensure compliance with these rules.

541—4.8(19B) Reporting. The department of management shall report annually to the governor and the general assembly the results under the contract compliance policy and rules. The report shall include but not be limited to:

1. Details of specific efforts to promote equal opportunity through state contracts and services;
2. Details of specific efforts to promote, develop, and stimulate the utilization of minority and women's business enterprises/disadvantaged business enterprises in programs receiving or benefiting from state financial assistance;
3. Recommendations regarding strengthening contract compliance activities by state agencies and departments.

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