

681—7.6(262) Contract compliance.

7.6(1) *Equal employment opportunity.* The state board of regents and the institutions under its jurisdiction are responsible for the administration and promotion of equal opportunity in contracts and services and the prohibition of discriminatory and unfair practices within any program administered by institutions under the board of regents receiving or benefiting from state financial assistance in whole or in part. Every official responsible to the board of regents who is authorized to make contracts or subcontracts for public works or for goods or services shall cause to be inserted into every such contract or subcontract a clause in which the contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action. Contractors, vendors, and suppliers shall further be required to submit or have on file with the board of regents' equal employment opportunity compliance office a copy of their affirmative action program containing goals and time specifications. These contractual provisions shall be fully monitored and enforced. Any breach of them shall be regarded as a material breach of contract.

a. 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 opportunity employment.
- (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 the protected classes with an equal opportunity to qualify for employment and advancement.
- (7) The contractor's active support of local and national community action programs.
- (8) The effectiveness of the contractor's affirmative action program as evidenced, in part, by the number or percentage of persons of the protected classes employed at all levels, taking into account the geographical locations of the contractor's work force.

b. 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 these persons. Contractors must be able to demonstrate to the satisfaction of the compliance officer that their affirmative action program is productive.

7.6(2) *Procedures.*

a. Contractors will be sent periodically an informative statement explaining the regents' equal employment opportunity policy. In the case of construction contracts, the statement constitutes part of the general conditions and bid specifications, and compliance with these is a condition of doing business with regent institutions. It is the intention of the regents to be fair and to avoid harassment and unnecessary reporting requirements and to be clear and firm about policy and expectations.

b. Contractors are to submit periodic reports as requested by the compliance office. The report forms shall be as brief as possible and designed to elicit relevant information about employment practices. The compliance office may request other relevant information from a contractor at any time.

c. The compliance office will solicit and compile additional information about present and prospective contractors from any reliable source including regent institutions, the Iowa civil rights commission, department of economic development, and other state and federal agencies.

d. The compliance office shall 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 such reports and information, as to whether or not a contractor is discriminating or is failing to take affirmative action in compliance with the regents' policy, the compliance office shall undertake a compliance review of the contractor. Every reasonable effort

shall be made to secure compliance through conciliation and persuasion. The burden shall be on the contractor to demonstrate compliance and eligibility to do business with the regents.

e. The compliance office will receive written and signed complaints against a contractor from any person aggrieved by the contractor's alleged discrimination. The compliance office shall promptly notify the institution involved of a complaint. The burden shall be on the complainant to prove the truth of the allegations. Cognizance will also be taken of verbal complaints, newspaper reports, and any other legitimate source, and these will be followed up if investigation appears to be justified. Award of contracts may be deferred while an investigation is pending, but executed contracts will not be suspended except in compelling situations.

f. If an investigation or compliance evaluation discloses that a contractor has discriminated or has failed to take affirmative action, the executive director in consultation with regent institutions may declare the contractor ineligible unless it can otherwise be affirmatively determined that the contractor is able to comply. The executive director shall issue a written notice of ineligibility to the contractor, and give the contractor 30 days to show cause why enforcement proceedings should not be instituted. During the 30-day show cause period, every effort shall be made to effect compliance through the processes of conciliation, mediation, and persuasion.

g. If the contractor fails to show good cause for failure to comply or fails to remedy that failure, the executive director in consultation with regent institutions may issue a written notice of proposed cancellation or termination of the existing contract or subcontract and debarment from future contracts and subcontracts, giving the contractor ten days to request a hearing. If a request for hearing has not been received within ten days from the notice, the contractor may be declared ineligible for future contracts and current contracts may be terminated for default following the approval of the state board of regents.

h. Hearings shall be conducted by a hearing examiner appointed by the executive director of the board from a panel for hearing examiners selected and approved by the board. The hearing examiner shall submit findings of fact and conclusions to the executive director who shall make final recommendations for final action to the board of regents.

i. The equal opportunity compliance officer shall promptly notify the board of regents and regent institutions when such action is pending regarding the suspension, cancellation, or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts.

7.6(3) Bidding requirement. All construction specifications shall include, in the "instruction to bidders," the following paragraph: "Bidders shall file with each bid a completed board of regents equal employment opportunity data reporting form as included in the specifications or certify on the certificate of reporting that they have filed their annual equal employment opportunity data reporting form with the board of regents equal opportunity compliance office."