



Date: February 1, 2017

To: The Honorable Terry E. Branstad, Governor of Iowa
Charlie Smithson, Secretary of the Senate
Carmine Boal, Chief Clerk of the House of Representatives

From: Janet E. Phipps, Director
Department of Administrative Services

RE: Pursuant to Code of Iowa, Chapter 19B.7, please find attached the Contract Compliance Report.

If you have any questions or need additional information, please contact Janet Phipps, Director at 725-2205.



Subject: Compliance Report Required by Iowa Code Section 19B.7

The assignment of Iowa Code Section 19B.7 to the Department of Administrative Services (DAS), which became effective December 31, 2015, requires DAS to promote equal opportunity in all State contracts. Subsection 1d requires an annual contract compliance policy report to be submitted to the Governor and General Assembly. The DAS Central Procurement and Fleet Services Enterprise (CPFSE) performed the following steps to implement the requirements of 19B.7.

- December 2015 –
 - CPFSE, working with the Office of the Attorney General, updated the CPFSE contract terms and conditions templates for goods and services to ensure compliance with 19B.7.
 - DAS drafted Iowa Administrative Code rule 11-121 CONTRACT COMPLIANCE which became effective on December 31, 2015.
 - CPFSE published the updated contract templates on its website.
 - DAS Director notified all Department Directors and Elected Officials regarding the requirements of 19B.7.
- January 2016
 - CPFSE notified all State agency CFOs, purchasing contacts and business managers of the updated contract templates and advised them to update their agency specific contract templates.
 - CPFSE ensured all Requests for Proposals, Master Agreements and Contracts issued by CPFSE include the updated terms and conditions.

CPFSE Annual Activities:

- Review contract template language and ensure the links to these templates are on the CPFSE website.
- Provide a reminder notice to all State agencies regarding the requirement to include equal opportunity and non-discrimination compliance language in all State contracts.
- Submit a contract compliance report to submit to the Governor and General Assembly.

Compliance Monitoring:

DAS Internal Auditors implemented a review process to ensure 19B.7 requirements are included in new contracts. Internal Auditor review was initiated for all new Master Agreements issued by CPFSE on or after January 1, 2016 to ensure the appropriate nondiscrimination language is included. The reviews are performed quarterly. The results of those reviews follow:

19B.7 Review Results		
Date	Findings	Resolutions
January –June 2016	3	3
July -September 2016	0	0
October – December 2016	0	0

Copies of 11 IAC 121 and updated contract terms and conditions for 19B.7 compliance and non-discrimination in employment are attached for reference.

CHAPTER 121
CONTRACT COMPLIANCE

11—121.1(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 ensure fair and equitable participation within all programs receiving or benefiting from state financial assistance in whole or in part. 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, or physical or mental disability as authorized by rule.

121.1(1) *Nondiscrimination in employment by contractors and subcontractors.*

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

b. Every state official who is responsible to the governor and who is authorized to enter into contracts or subcontracts for public works or for goods or services shall cause to be inserted into every contract a clause which states that 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 the provisions 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 administrative services 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 contractor 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.

121.1(2) *Monitoring.* Central procurement shall monitor procurement by state agencies to ensure compliance with this chapter.

[ARC 2268C, IAB 11/25/15, effective 12/30/15]

This rule is intended to implement Iowa Code section 19B.7.

[Filed ARC 2268C (Notice ARC 2144C, IAB 9/16/15), IAB 11/25/15, effective 12/30/15]

GOODS CONTRACT

1.13.3 Compliance with the Law; Nondiscrimination in Employment.

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (*e.g.*, Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers.

Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.13.8, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

SERVICE CONTRACT

1.15.4 Compliance with the Law; Nondiscrimination in Employment.

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (*e.g.*, Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.15.11, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.