

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1091

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-9-84
DATE FOR REVIEW _____
DATE DUE 10-23-84

Adopted w/a hearing _____
Adopted w/o hearing _____
Temporary rule ✓

Approved _____ Disapproved 10/23/84 (OS) Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 10.10.84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 10.4.84 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
7.26 + 8.30.84 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificates 7.26 + 8.30.84

✓ Publication in State Register
7.30.84 At least ~~30~~/20 25 days prior to ~~hearing~~/adoption

✓ Errata Notice, 9.3.84

N/A Hearing Examiner's Report

_____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

_____ LCRAR Report or agency Affidavit

_____ Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

_____ Statement of Need and Reasonableness

_____ Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

? Affidavit of Mailing Notice of Submission to Attorney General
see letter from MACI

_____ Notice of Submission to the Attorney General

LDS
10-22-84
Notes re
RR File #1091

Issuance of Variance - By Law re Revisor's Duties

14.30 – Notice

MN Laws 1981 Ch. 326 Sec. 1 – Req. that K^s over 50K w/ firm w/ 20 or more full-time employees in MN have an approved affirmative action plan – Certg. of Compliance TBI by Com.r/ Dept. of Human Rights.

PROBLEM: w/rejection, these rules don't make it.

① NOTICE: 14.38 not satisfied (?)

a) No stat. re nature and effect of rules ("purpose of rule-making laws" (req.?)

b) No stat. re avail. of notice (upon request) of when rules submitted to Atty. Gen.

c) Effectiveness – not stated in notice – not adequate notice × 1-7-78 1-16-78

② "Included, but not limited to".

– p. 8 l. 36 – ok, if intend minimum?

– p. 9 l. 23

"at a min. shall include"

③ "shall" 3-24-76 6-6-77 → must? p. 12, l. 20 ×

(non-rule or change to "shall" or "must" p. 37, l. 8

④ omitted language – nonsensical × – p. 24, l. 27

~~non-sensical~~ can't understand – under

⑤ "appropriate" – p. 35, l. 29 × 6-6-78 unable of compliance.

– compliance w/plan × 4-14-76 – req/shall

⑥ Absence of criteria – p. 41, l. 10

– p. 42, l. 6

– p. 42, l. 17

⑦ Unexplained distinction: const. K^rs v. K^rs p. 46 subp. 1-3

⑧ Discretion (in Compliance Officer)
"must be implicit in statute
to flex - esp. w/ stat.
req. stds. for review
of implementation plans
(§363.073, sec. 2

p. 48 l. 36 → 49 l. 1
p. 50, l. 27
p. 51, l. 1

ok inherent discretion (supp. by C. Warner)

p. 50 l. 25 shows

1.

⑦ Unreasonable req. p. 51, l. 1 - re req. K's to submit data under protest.

⑩

p. 52, l. 30 req. agencies to supply copies of law and rules - approx. 54 pgs. to each bidder.

ok - C. Warner says no harm w/ receipt of irrelevant info. - not trade secret type, etc.

Joe Jasmer

To: Larry
Date: 10/23/84
Re: Human Rights – Certificates of Compliance

Documents Not Submitted

Affidavits of Mailing
Certificates of Mailing.

Two of each required, one each for Notice and Errata Notice.

If rules were not mailed with the notice, the notice lacks adequate explanation of the rules.

rules were not mailed out w/notice

Notice of Rulemaking

There is no time period given for the effectiveness of the rules contrary to Minn. Stat. § 14.35. ~~No~~ ~~statements re availability of free copy~~ No statement of submission to Atty. Gen, contrary to 14.3

Rules As Adopted

p. 2 line 28 .3400 subp. 8 (OK) ?- ok if intended to be minimal.
p. 8 line 36 .3430 subp. 1 " ?
p. 9. line 23 " " . G.

contains the phrase "included but not limited to" without criteria to suggest what else might be included.

p. 12 line 20 .3450 subp 1.

Not clear what agency intends by use of "should" – do they mean "may" or "must"

? – (10?)

p. 15, line 26 (OK) .3460 subp. 1
p. 18, line 31 (OK) .3480 subp. 4

p. 16, line 24. 3470 subp. I. J.
Not clear what notification to subcontractors is being referenced — re: communications, but ok.

p. 18, line 28. 3480. subp. H
Statement of fact — a non-rule (ok) explanatory.

p. 19, line 5. 3480. subp. 5. A.
Statement of fact — non-rule ok — implicitly is reference for recruitment & w.

(X)
p. 24 line 27. 3530 paragraph 4.
The sentence does not "read" (agree) — language missing

p. 33, line 5. 3550 paragraph 2 (b)
typo — "complied" not "compiled" agree, but Heading ok — Where is the revision?

p. 33, line 8. 3550 paragraph 2 (c) ok
preferable to use "requiring" rather than "conducting"

(X)
p. 35, line 29. 3550 paragraph 5(i) agree - pos. ok. because rules will be std?
Not clear what notice to subcontractors must request as "appropriate"

p 36 line 1. 3550 paragraph 6 SL guidance
The first sentence appears to be a non-rule

(X)
p. 37 line 8. 3550 paragraph 7(a) agree (yes)
Not clear if agency intends "should" to mean "may" or "must".

(X) p. 41 line 10. 3570 subp. 2. agree (?)

Not clear under what circumstances good faith efforts by contractor would not be determined by factors listed.

(X) p. 42, line 6. 3570 subp 3 agree (?)

same comment as above.

(X) p. 42 line 17. 3570 subp. 4 agree (?)

same comment as above

p. 44, line 8. 3570 subp. 6. C. (ok)

"administrative law judge" not "hearing examiner"

(X) p. 46, . 3580 subps 1, 2, 3.

The authorizing statute, Minn Stat. 363.073, appears to make no distinction between construction contractors and nonconstruction contractors. Why do these rules differentiate? ASK AGENCY — probably due to peculiar nature of const. industry.

(XXX) p. 49, line 1. 3590 subp. 3 ok

p. 50, line 27 " subp. 4 F ok

p. 51, line 1 " subp. 5 —

Stds. used To review Implement (363.073, Sub. 4 (watch for fed. rules)

Rules give agency broad discretion in investigation without criteria (Much discretion allowed compliance officer to det. what contractor must provide.

(X) p. 51 line 1. 3590 subp. 5 et seq.

The appeal of a contractor re submission of particular information appears moot if, pending appeal process, contractor is required to provide said information - relevance is Std., Dept. to be returned. to cycle Bal. Typed

p. 52 line 30 .3600 subp. 8.

If each bidder is to be provided with a copy of these voluminous rules the state will go bankrupt! Perhaps "make available" would be preferable.

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
1100 BREMER TOWER
SEVENTH PL. AND MINNESOTA ST.
ST. PAUL, MN 55101
TELEPHONE: (612) 296-9412

October 4, 1984

J. Michael Miles
Assistant Attorney General
Office of Attorney General
50 Sherburne Avenue
St. Paul, Minnesota 55155

ATTENTION: Judith Wehrwein

Re: Proposed Emergency Rules Governing Certificates of Compliance and Public Contracts

Dear Ms. Wehrwein:

We are submitted the above-referenced emergency rules regarding the issuance of certificates of compliance for state contractors to the Attorney General pursuant to Minnesota Statutes Section 14.32.

Very truly yours,

CARL WARREN
Special Assistant
Attorney General

Telephone: (612) 296-7860

CW/smo
Enclosure

RECEIVED
OCT 09 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : DR. LINDA C. JOHNSON
Commissioner of Human Rights

DATE: 10-23-84

ATTN: CARL WARREN
Special Assistant Attorney General

FROM : LARRY D. STARNS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State of Minnesota, Department of Human Rights, Governing Certificates of of Compliance for Public State Contracts

The above-referenced rules have not been approved by this office for the following reasons:

1. The Notice of Rulemaking accompanying these rules fails to apprise persons that they may receive notice of the date of submission of the rules to the Attorney General upon request made to the agency. The effect is possibly to fail to afford persons the opportunity to comment upon the legality of these rules, in violation of the clear requirement of Minn. Stat. § 14.30. A new Notice of Rulemaking containing this notification must be issued before these rules can be promulgated.

2. Minn. Rules Parts 5000.3430 subpart 1, in referring to managerial responsibilities for management officials, and Minn. Rules Part 5000.3430 subpart 2 in referring to Director responsibilities, use the phrase "include, but (are) not (to) be limited to." Such phrasing, while possibly intended to encourage the voluntary imposition of additional responsibilities on the part of those being supervised by the agency, nevertheless also permits the agency to impose, involuntarily, additional managerial responsibilities. This is impermissible because the language fails to provide notice to the regulated party of any additional responsibilities that the agency might impose in the application of its rules. To correct this defect, the phrase must be deleted and any additional responsibilities, if sought to be imposed, must be clearly articulated in the rules.

3. Minn. Rules Parts 5000.3450 subpart 1 states "...job titles should be listed by department..."(emphasis added). Minn. Rules Part 5000.3550.7(a) states that "techniques should include regular discussions with local managers,..." (emphasis added). Minn. Rules Part 5000.3590 subpart 4.F states that "An off-site analysis should be conducted..." (emphasis added). The use of the word "should" renders these rules nugatory in that no clear declaration of policy is being stated. Rather, a mere suggestion is being given to persons subject to the agency's regulatory authority, not a rule as defined by Minn. Stat. § 14.02 Subd. 4. Therefore, this is a non-rule and is not lawfully capable of promulgation. Either the non-rule should be deleted, or it should be redrafted so as to be mandatory.

4. Minn. Rules Part 5000.3530.4 appears to have omitted essential language between the words "agency" and "shall". As it reads, the rule makes no sense and, as such, both fails to adequately notify affected persons of its requirement and also renders itself a non-rule. Clarifying language must be added to correct this deficiency.

5. Minn. Rules Part 5000.3550.5(i) refers to "requesting appropriate action..." (emphasis added). The use of the word "appropriate" renders this rule excessively vague. The effect is to cause those attempting to comply with it to be inadequately apprised of exactly what to request of subcontractors, et al in a written notification of company policy. This vagueness voids the rule for failure to comply with Due Process. The required action intended must be explicitly stated in the rule in order to cure this defect.

6. Minn. Rules Parts 5000.3570 Subpart 2, Subpart 3 and Subpart 4 use the term "may" when describing how a required determination or analysis is to be conducted. While the intent in using this term is, perhaps, to give discretion to the regulated party in conducting its determination or analysis and to be merely advisory on the part of the agency; nevertheless, the term permits the agency discretion to impose inarticulated requirements on such determination or analysis procedure, which affords no notice of such and thus is violative of Due Process. Either the word "shall" must be substituted for "may" in these instances, or the rules must unequivocably express the intent that discretion is being afforded the regulated party.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for our review. Upon resubmission, please include a new or supplemental Order Adopting and four copies of the new Rules as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain out initial file in this matter.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

LDS:slz

cc: Duane Harves
Kathy Burek
Paul Marinac

AG copy

Department of Human Rights

Adopted Emergency Rules Relating to Certificates of Compliance and Public Contracts

Emergency Rules as Adopted

CERTIFICATES OF COMPLIANCE FOR PUBLIC STATE CONTRACTS

5000.3400 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5000.3400 to 5000.3600 [Emergency] the following terms have the meanings given them.

Subp. 2. **Affirmative action policy.** "Affirmative action policy" means a managerial objective to eliminate all barriers to employment opportunity that are not based on specific job requirements. It refers also to the identification of such barriers in the use of action-oriented programs to advance employment opportunities for women, minorities, and qualified disabled individuals.

Subp. 3. **Affirmative action program.** "Affirmative action program" means a coherent set of goal-oriented management policies and procedures which implement a contractor's affirmative action policy including the contractor's self-examination of its workforce and entire employment practices and policies, availability and utilization analyses, and the establishment of goals and timetables for the correction of any underutilization of women, minorities, and qualified disabled persons identified in the self-analysis.

Subp. 4. **Availability.** "Availability" means the percentage of minorities and women among those persons who may reasonably be considered eligible currently or may reasonably be considered eligible during the term of the affirmative action program.

Subp. 5. **Civilian labor force.** "Civilian labor force" means persons 16 years old and older who are either:

A. at work during the reference week; or

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B. with a job but not at work during the reference week.

"At work" means that the person works as a paid employee, or in his or her own business or profession, or on his or her own farm; or who works 15 or more hours as an unpaid worker on a family farm or in a family business, during the reference week.

"With a job but not at work" means any person who does not work during the reference week but who has a job or business from which he or she was temporarily absent due to illness, bad weather, industrial dispute, vacation, or personal reasons.

Members of the armed forces are not included in the civilian labor force.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Rights.

Subp. 7. **Construction work.** "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Subp. 8. **Contract.** "Contract" means any agreement or modification of an agreement between a contracting agency and a business or firm for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services," as used in this definition includes, but is not limited to the following services: utility, construction, transportation, research, insurance, and fund depository.

? what else

Subp. 9. **Contractor.** "Contractor" means a firm or business which has employed more than 20 full-time employees in Minnesota at any time during the previous 12 months, and which executes, holds, or submits a bid or proposal for a state contract for goods or services in excess of $50,000.

Subp. 10. **Covered state contract.** "Covered state

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contract" means a state contract for goods or services in excess of $50,000.

Subp. 11. **Department.** "Department" means the Minnesota Department of Human Rights.

Subp. 12. **Deficiency.** "Deficiency" means an underutilization of women, minorities, and qualified disabled employees or a failure to take corrective action to eliminate barriers to equal employment opportunity identified in the contractor's self-analysis.

Subp. 13. **Disabled individual.** "Disabled individual" means a person who has a physical or mental impairment which substantially limits one or more major life activity; it does not include an alcoholic or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others.

Subp. 14. **Good faith effort.** "Good faith effort" means a reasonable effort undertaken by a contractor to accomplish the goals and implement the corrections identified in the self-analysis.

Subp. 15. **Immediate labor area.** "Immediate labor area" means that geographic area from which employees and applicants may reasonably commute to the contractor's establishment. The immediate labor area may include one or more contiguous cities, counties, or Standard Metropolitan Statistical Areas or parts thereof, in which the establishment is located.

Subp. 16. **Life activity.** "Life activity" includes communication, ambulation, self-care, socialization, education, vocational training, employment, transportation, or adapting to housing. For the purpose of this item, primary attention is given to those life activities that affect employability.

Subp. 17. **Minorities and women with requisite skills.** "Minorities and women with requisite skills" means minorities and women who have demonstrated that they possess the skills for the job in question, for example: through performance on another job, those who have completed training or educational programs designed to provide skills for the job in

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question, and those who could reasonably be expected to acquire the skills within a relatively short time after placement.

Subp. 18. **Minority.** "Minority" includes:

A. Blacks, persons having origins of any of the Black African racial groups not of Hispanic origin;

B. Hispanic, persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race;

C. Asian and Pacific Islander, persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; and

D. American Indian or Alaskan Native, persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Subp. 19. **Modification.** "Modification" means an alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

Subp. 20. **Promotable or transferable.** "Promotable or transferable" means, within the context of developing data for availability, those employees who are currently employed in a job group or groups which serve or could serve as a source from which selections are or could be made for another job group.

Subp. 21. **Qualified disabled individual.** "Qualified disabled individual" means a disabled individual who is capable of performing a particular job, with reasonable accommodation to his or her disability.

Subp. 22. **Relevant recruitment area.** "Relevant recruitment area" means the geographic area from which the contractor may reasonably recruit its employees. It is at least the area from which the contractor recruits, and may include geographic areas not contiguous with the immediate labor area.

Subp. 23. **Substantially limited.** "Substantially limited" means the degree that an impairment affects employability. A disabled individual who is likely to experience great difficulty in securing, retaining, or advancing in employment would be

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considered substantially limited.

Subp. 24. **Utilization analysis.** "Utilization analysis" means a comparison of the availability of minorities and women in the immediate labor area to their presence in a contractor's workforce.

Subp. 25. **Workforce analysis.** "Workforce analysis" means a listing of job titles as they appear in applicable collective bargaining agreements or payroll records, not job group, ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision.

5000.3410 [Emergency] GENERAL PROVISIONS.

Subpart 1. **Purpose.** The purpose of parts 5000.3400 to 5000.3600 [Emergency] is to increase employment opportunities for women, minorities, and disabled individuals by requiring contractors to adopt and implement affirmative action programs approved by the commissioner.

Subp. 2. **Persons regulated.** Parts 5000.3400 to 5000.3600 [Emergency] apply to contractors:

A. who are doing business or desire to do business with the state;

B. who employ more than 20 full-time employees 12 months before, or any time during, performance on a state contract; and

C. whose contract amount exceeds $50,000 or is reasonably expected to exceed $50,000 in any one year.

5000.3420 [Emergency] CRITERIA FOR APPROVAL AND IMPLEMENTATION OF AFFIRMATIVE ACTION PLANS FOR CONTRACTORS.

Subpart 1. **General requirements.** Under the affirmative action obligation imposed by the Human Rights Act, Minnesota Statutes, section 363.073, contractors shall take affirmative action to employ and advance in employment qualified minority, female, and disabled individuals at all levels of employment, including the executive level. Affirmative action must apply to all employment practices including the following:

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A. hiring, upgrading, demotion, or transfer;

B. recruitment or recruitment advertising;

C. layoff or termination;

D. rates of pay or other forms of compensation; and

E. selection for training, including apprenticeship.

Subp. 2. **Proper consideration of qualifications.** Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough, and systematic consideration of the job qualifications of known minority, female, and disabled applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. To the extent that it is necessary to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action plan required under this part. These procedures must be designed to facilitate a review of the implementation of this requirement by the contractor or the department.

Subp. 3. **Affirmative action plan.** Before submitting a bid or proposal for a covered state contract, a contractor shall prepare and maintain an affirmative action plan at each establishment which must set forth the contractor's policies, practices, and procedures in accordance with this part. This plan may be integrated into or kept separate from other affirmative action plans of the contractor.

Subp. 4. **Plan review.** The affirmative action plan must be reviewed and updated annually. If there are any significant changes in procedures, rights, or benefits as a result of the annual updating, those changes must be communicated to employees and applicants for employment and submitted to the department's compliance division.

Subp. 5. **Identify plan coverage.** The contractor shall invite all applicants and employees who believe themselves covered by Minnesota Statutes, section 363.073 and who wish to benefit under the affirmative action plan to identify themselves to the contractor. The invitation must state that the

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information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the Human Rights Act and rules adopted under the act. If a disabled applicant or employee identifies himself or herself, the contractor shall also seek their advice regarding proper placement and appropriate accommodation.

An employee shall not be precluded from informing a contractor at any future time of his or her desire to benefit under the program.

A contractor shall not be relieved of its obligation to take affirmative action with respect to those applicants or employees whose minority, female, or disabled status is known to the contractor provided that the contractor is not obligated to search the medical files of any applicant or employee to determine the existence of a disability.

A contractor shall not be relieved from liability for discrimination under the Human Rights Act.

Subp. 6. **Notice.** The contractor shall agree to post a notice in a conspicuous place which is available to employees and applicants for employment. The notice must be in a form prescribed by the commissioner. The notice must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified minority, female, and disabled employees and applicants for employment, and the rights of applicants and employees.

Subp. 7. **Employee access to plan.** The complete affirmative action plan must be available for inspection to an employee or applicant for employment upon request. The location and hours during which the program may be obtained must be posted at each facility.

Subp. 8. **Equal opportunity policy statement.** The contractor shall prepare and include in its affirmative action plan an equal employment opportunity policy statement.

The equal employment opportunity policy statement must

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indicate that the contractor is committed to the principles of equal employment opportunity, assign overall responsibility to an executive of the contractor, and provide for a reporting and monitoring procedure. The policy statement must indicate that it is the policy of the contractor to:

A. recruit, hire, train, and promote persons in all job titles, without regard to race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age except where such status is a bona fide occupational qualification;

B. make employment decisions in a manner which will further the principles of equal employment opportunity;

C. ensure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities; and

D. ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, and social and recreation programs will be administered without regard to race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age.

This statement must be signed by the chairperson of the board or the chief executive officer.

NONCONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

5000.3430 [Emergency] ASSIGNMENT OF RESPONSIBILITY FOR PROGRAM TO EXECUTIVE OR TOP-MANAGEMENT OFFICIAL.

Subpart 1. **Director.** An executive of the contractor shall be appointed as director or manager of the company equal opportunity program. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. The director shall be given the necessary top management support and staffing to execute the assignment. The identity of the director or manager must appear on all internal and external communications ~~and~~ on the company's equal opportunity programs. The responsibilities include, but are not

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limited to:

A. developing policy statements, affirmative action programs, and internal and external communication techniques;

B. assisting in the identification of problem areas;

C. assisting line management in arriving at solutions to problems;

D. designing and implementing audit and reporting systems that will:

(1) measure effectiveness of the contractor's programs;

(2) indicate need for remedial action; and

(3) determine the degree to which the contractor's goals and objectives have been attained;

E. serving as liaison between the contractor and enforcement agencies;

F. serving as liaison between the contractor and minority organizations, women's organizations, and community action groups concerned with employment opportunities of minorities and women; and

G. keeping management informed of the latest developments in the entire equal opportunity area.

Subp. 2. **Director responsibilities.** Line responsibilities of the director or manager shall include, but not be limited to, the following:

A. assistance in the identification of problem areas and establishment of local and unit goals and objectives;

B. active involvement with local minority organizations, women's organizations, community action groups, and community service programs;

C. periodic audit of training programs, hiring, and promotion patterns to remove impediments to the attainment of goals and objectives;

D. regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed;

E. review of the qualifications of all employees to

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ensure that minorities and women are given full opportunities for transfers and promotions;

F. career counseling for all employees;

G. periodic audits to ensure that each location is in compliance in areas such as:

(1) Posters must be properly displayed.

(2) All facilities, including company housing, which the contractor maintains for the use and benefit of its employees, shall be desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms, and rest rooms, they must be comparable for both sexes.

(3) Minority and female employees shall be afforded a full opportunity and encouraged to participate in all company sponsored educational, training, recreational, and social activities.

H. supervisors shall be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results as well as other criteria; and

I. it shall be the responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

5000.3440 [Emergency] PROCEDURES FOR DISSEMINATING POLICY INTERNALLY AND EXTERNALLY.

Subpart 1. **Internal.** The contractor shall disseminate its policy internally as follows:

A. Include it in contractor's policy manual.

B. Publicize it in company newspaper, magazine, annual report, and other media.

C. Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

D. Schedule special meetings with all other employees to discuss policy and explain individual employee

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responsibilities.

E. Discuss the policy thoroughly in both employee orientation and management training programs.

F. Meet with union officials to inform them of policy, and request their cooperation.

G. Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

H. Publish articles covering equal employment opportunity programs, progress reports, and promotions of minority and female employees in company publications.

I. Post the policy on company bulletin boards.

J. When employees are featured in product or consumer advertising, employee handbooks, or similar publications both minority and nonminority men and women should be pictured.

K. Communicate to employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable employees to know of and avail themselves of its benefits.

Subp. 2. **External.** The contractor shall disseminate its policy externally as follows:

A. Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

B. Incorporate the equal opportunity clause in all purchase orders, leases, and contracts.

C. Notify minority and women's organizations, community agencies, community leaders, secondary schools, and colleges, of company policy, preferably in writing.

D. Communicate to prospective employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable prospective employees to know of and avail themselves of its benefits.

E. When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and

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women shall be shown.

F. Send written notification of company policy to all subcontractors, vendors, and suppliers requesting appropriate action on their part.

5000.3450 [Emergency] WORKFORCE ANALYSIS, INCLUDING AVAILABILITY AND UTILIZATION ANALYSES.

Subpart 1. **Workforce analysis.** The affirmative action plan must include a workforce analysis including a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department, a separate list must be provided for each work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job family, or discipline, in order of wage rate or salary range. For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including managerial job titles, must be listed.

? "must" or "may"

Subp. 2. **Underutilization.** An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups. "Job groups" means one or a group of jobs having similar content, wage rates, and opportunities. "Underutilization" means having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In making the utilization FF analysis, the contractor shall conduct such analysis separately for minorities

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and women.

Subp. 3. **Minority analysis.** In determining whether minorities are underutilized in any job group, the contractor shall consider at least all of the following factors:

A. the minority population of the labor area surrounding the facility;

B. the size of the minority unemployment force in the labor area surrounding the facility;

C. the percentage of the minority work force as compared with the total work force in the immediate labor area;

D. the general availability of minorities having requisite skills in the immediate labor area;

E. the availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

F. the availability of promotable and transferable minorities within the contractor's organization;

G. the existence of training institutions capable of training persons in the requisite skills; and

H. the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

Subp. 4. **Women analysis.** In determining whether women are underutilized in any job group, the contractor shall consider at least all of the following factors:

A. the size of the female unemployment force in the labor area surrounding the facility;

B. the percentage of the female workforce as compared with the total workforce in the immediate labor area;

C. the general availability of women having requisite skills in the immediate labor area;

D. the availability of women having requisite skills in an area in which the contractor can reasonably recruit;

E. the availability of women seeking employment in the labor or recruitment area of the contractor;

F. the availability of promotable and transferable female employees within the contractor's organization;

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G. the existence of training institutions capable of training persons in the requisite skills; and

H. the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

5000.3460 [Emergency] GOALS AND OBJECTIVES ESTABLISHED BY ORGANIZATIONAL UNITS AND JOB GROUPS INCLUDING TIMETABLES FOR COMPLETION.

Subpart 1. **Factors.** The goals and timetables developed by the contractor must be attainable in terms of the contractor's analysis of its deficiencies and its entire affirmative action program. In establishing the size of its goals and the length of its timetables, the contractor shall consider the results which could reasonably be expected from its putting forth every good faith effort to make its overall affirmative action program work. In determining levels of goals, the contractor shall consider at least the factors listed in part 5000.3430 [Emergency], subpart 2, item C.

Subp. 2. **Personnel relations.** The contractor shall involve personnel relations staff, department and division heads, and local and unit managers in the goalsetting process.

Subp. 3. **Goals.** Goals must be significant, measurable, and attainable. Goals must be specific for planned results, with timetables for completion. Goals must not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

Subp. 4. **Expansion; contraction.** In establishing timetables to meet goals and commitments, the contractor shall consider the anticipated expansion, contraction, and turnover of and in the workforce.

Subp. 5. **Deficiencies.** Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies.

Subp. 6. **Relevant percentages.** Where deficiencies exist

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and where numbers of percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

Subp. 7. **Written program.** Goals and timetables, with supporting data and the analysis, must be a part of the contractor's written affirmative action program and be maintained at each establishment of the contractor.

Subp. 8. **Factor analysis.** Where the contractor has not established a goal, its written affirmative action program must specifically analyze each of the factors listed in part 5000.3450 [Emergency] and must detail its reason for a lack of a goal.

Subp. 9. **Separate goals; timetables.** In the event it comes to the attention of the department that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the department may require separate goals and timetables for that minority group and may further require, where appropriate, goals and timetables by sex for each group for the job classifications and organizational units specified by the department.

Subp. 10. **Support data.** Support data for the required analysis and program must be compiled and maintained as part of the contractor's affirmative action program. This data must include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status. ? what else

Subp. 11. **Copies.** Copies of affirmative action plans or programs and copies of support data must be made available to the department upon request for the purposes as may be appropriate to the fulfillment of the department's responsibilities under the act.

5000.3470 [Emergency] IDENTIFICATION OF PROBLEM AREAS OR DEFICIENCIES BY ORGANIZATIONAL UNITS AND JOB GROUPS.

Subpart 1. **Analysis.** Paying particular attention to

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trainees and those categories listed in part 5000.3450 [Emergency], subpart 2, an in-depth analysis of the following shall be made:

A. composition of the work force by minority group status and sex;

B. composition of applicant flow by minority group status and sex;

C. the total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors;

D. transfer and promotion practices;

E. facilities, company sponsored recreation and social events, and special programs such as educational assistance;

F. seniority practices and seniority provisions of union contracts;

G. apprenticeship programs;

H. all company training programs, formal and informal;

I. work force attitude; and

J. technical phases of compliance, such as poster and notification to labor unions, retention of applications, or notification to subcontractors. what notification?

Subp. 2. **Problem areas.** If any of the following items are found in the analysis, special corrective action shall be appropriate:

A. an "underutilization" of minorities or women in specific job groups;

B. lateral or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees;

C. the selection process which eliminates a significantly higher percentage of minorities or women than nonminorities or men;

D. application or employment forms not in compliance

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with local, state, or federal law;

E. position descriptions inaccurate in relation to actual functions and duties;

F. formal or scored selection procedures that are not validated;

G. referral ratio of minorities or women to the hiring supervisor or manager which indicates a significantly higher percentage rejected as compared to nonminority and male applicants;

H. minorities or women excluded from or not participating in company sponsored activities or programs;

I. de facto segregation exists at some facilities;

J. seniority provisions that contribute to overt or inadvertent discrimination, that is, a disparity by minority group status or sex exists between length of service and types of jobs held;

K. nonsupport of company policy by managers, supervisors, or employees;

L. minorities or women underutilized or significantly underrepresented in training or career improvement programs;

M. no formal techniques established for evaluating the effectiveness of equal employment opportunity programs;

N. lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities;

O. lack of suitable transportation, public or private, to the workplace inhibits minority employment;

P. purchase orders do not contain equal employment opportunity clause; and

Q. posters not on display.

5000.3480 [Emergency] MEASURES TO FACILITATE IMPLEMENTATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY AND AFFIRMATIVE ACTION PROGRAMS.

Subpart 1. **Consistent positions.** The contractor shall conduct detailed analyses of position descriptions to ensure that they accurately reflect position functions, and are consistent for the same position from one location to another.

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Subp. 2. **Worker specifications.** The contractor shall validate worker specifications by division, department, location, or other organizational unit and by job title using job performance criteria. Special attention must be given to academic, experience, and skill requirements to ensure that the requirements in themselves do not constitute inadvertent discrimination. Specifications must be consistent for the same job title in all locations and should be free from bias as regards to race, color, creed, religion, sex, national origin, marital status, status regarding public assistance, age, and disability except where such status is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women, the requirements must be professionally validated to job performance.

Subp. 3. **Position descriptions.** Approved position descriptions and worker specifications, when used by the contractor, must be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies must also be distributed to all recruiting sources.

Subp. 4. **Selection process evaluation.** The contractor shall evaluate the total selection process to ensure freedom from bias and, thus, aid the attainment of goals and objectives.

All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes must be carefully selected and trained to ensure elimination of bias in all personnel action.

Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include, but are not limited to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where data exists suggesting that there is unfair discrimination or exclusion of minorities or women, the contractor shall analyze its unscored procedures and eliminate them if they are not

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objectively valid.

Subp. 5. **Recruitment techniques.** Suggested techniques to improve recruitment and increase the flow of minority or female applicants are as follows:

A. Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., concentrated employment programs, Neighborhood Youth Corps, secondary schools, colleges, and city colleges with high minority enrollment, the state employment services, specialized employment agencies are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, welfare rights organizations, Women's Equity Action League, Talent Bank for Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish women's groups, Catholic women's groups, Protestant women's groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

B. Formal briefing sessions shall be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements shall be made for referral of applicants, follow-up with sources, and feedback on disposition of applicants.

C. Minority and female employees, using procedures similar to item B, shall be actively encouraged to refer applicants.

D. A special effort shall be made to include minorities and women on the personnel relations staff.

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E. Minority and female employees shall be made available for participation in career days, youth motivation programs, and related activities in their communities.

F. Active participation in "job fairs" is desirable. Company representatives participating shall be given authority to make on-the-spot commitments.

G. Active recruiting programs shall be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

H. Recruiting efforts at all schools shall be undertaken whenever possible. Some possible programs are:

(1) technical and nontechnical co-op programs at predominantly black and women's colleges;

(2) "after school" or work-study jobs for minority youths, male and female;

(3) summer jobs for underprivileged youth, male and female;

(4) summer work-study programs for male and female faculty members of the predominantly minority schools and colleges; and

(5) motivation, training, and employment programs for the hardcore unemployed, male and female.

I. When recruiting brochures pictorially present work situations, the minority and female members of the workforce must be included, especially when brochures are used in school and career programs.

J. Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

Subp. 6. **Promotion.** The contractor shall ensure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

A. Post or otherwise announce promotional opportunities.

B. Make an inventory of current minority and female employees to determine academic, skill, and experience level of

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individual employees.

C. Initiate necessary remedial, job training, and workstudy programs.

D. Develop and implement formal employee evaluation programs.

E. Make certain "worker specifications" have been validated on job performance related criteria. Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.

F. When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

G. Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system, and similar programs.

H. Review seniority practices and seniority clauses in union contracts to ensure the practices or clauses are nondiscriminatory and do not have a discriminatory effect.

I. Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

J. Encourage child care, housing, and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

5000.3490 [Emergency] INTERNAL AUDIT AND REPORTING SYSTEMS.

The contractor shall monitor records of referrals, placements, transfers, promotions and terminations at all levels to ensure that its equal employment opportunity and affirmative action policies are carried out.

The contractor shall require formal reports from the unit managers on a scheduled basis regarding the degree to which corporate or unit goals are attained and timetables are met.

The contractor shall review report results with all levels of management.

The contractor shall advise top management of program effectiveness and submit recommendations to improve

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unsatisfactory performance.

5000.3500 [Emergency] DISABLED INDIVIDUALS PLAN.

An affirmative action plan shall be made for disabled individuals in accordance with 12 MCAR S 1.053 D. (Temporary).

5000.3510 [Emergency] ADDITIONAL REQUIRED CONTENT OF AFFIRMATIVE ACTION PLANS.

Affirmative action plans must contain the following additional requirements:

A. development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions;

B. formal internal and external dissemination of the contractor's policy;

C. establishment of responsibilities for implementation of the contractor's affirmative action program;

D. identification of problem areas (deficiencies) by organizational units and job group;

E. establishment of goals and objectives by organizational units and job groups, including timetables for completion;

F. development and execution of an action-oriented program designed to eliminate problems and further designed to attain established goals and objectives;

G. design and implementation of internal audit and reporting systems to measure effectiveness of the total program;

H. active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women; and

I. consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

5000.3520 [Emergency] CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS.

The commissioner, from time to time, shall issue goals and timetables for minority and female utilization which must be

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based on appropriate workforce, demographic, or other relevant data and which shall cover construction projects, or construction contracts performed in specific geographical areas. The goals must be applicable to each construction trade in an area covered by the contractor's entire workforce which is working in the area covered by the goals and timetables. Goals must be published as notices in the State Register, and must be inserted by contracting state agencies and applicants, as applicable, in the notice required by part 5000.3530 [Emergency].

5000.3530 [Emergency] NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY.

Contracting state agencies shall include the following notice in all solicitations for offers and bids on all state and state assisted construction contracts in excess of $50,000 to be performed in geographical areas designed by the commissioner.

The notice requirements shall take the following form:

"NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPURTUNITY

1. The offeror's or bidder's attention is called to the "equal opportunity clause" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Timetables	Goals for minority participation in each trade	Goals for female participation in each trade
Insert the timetables as determined pursuant to 12 MCAR S 1.053 C.1. [Temporary].	Insert the goals as determined pursuant to 12 MCAR S 1.053 C.1. [Temporary].	Insert the goals as determined pursuant to 12 MCAR S 1.053 C.1. [Temporary].

These goals are applicable to all the contractor's construction work (whether or not it is state or state assisted) performed in the covered area.

The contractor's compliance with Minnesota Statutes, section 363.073 and part 5000.3520 [Emergency] shall be based on

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its implementation of the equal opportunity clause, specific affirmative action obligations required by the specifications in part 5000.3540 [Emergency], and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, Minnesota Statutes, section 363.073 and part 5000.3520 [Emergency]. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Compliance Division of the Minnesota Department of Human Rights within ten working days of award of any construction subcontract at any tier for construction work under the contract resulting from the solicitation. The notification must list the name, address, and telephone number of the subcontractor; employer identification number, estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is the contracting state agency shall insert the description of the geographical areas where the contract is to be performed giving the state, county, city, town, or municipality if any."

? language missing

5000.3535 [Emergency] STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS.

Each contracting state agency and each contractor shall include the following equal opportunity clause in each of its covered state and state assisted construction contracts (and modifications, renewals, or extensions thereof if not included

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in the original contract):

"STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS

1. The contractor shall implement the specific affirmative action standards provided in paragraphs 4(a) to (o) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor shall reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor shall make substantially uniform progress toward its goals in each craft during the period specified.

2. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Minnesota Statutes, section 363.073 of the Minnesota Human Rights Act, or the rules adopted under the act.

3. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained according to training programs approved by the Minnesota Department of Human Rights, the Minnesota Department of Labor and Industry, or the United States Department of Labor.

4. The contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications must be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the

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following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, shall assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

(d) Provide immediate written notification to the commissioner of the Minnesota Department of Human Rights when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly

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include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the state of Minnesota. The contractor shall provide notice of these programs to the sources compiled under (b).

(f) Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its equal employment opportunity obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company equal employment opportunity policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's equal employment opportunity policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the contractor's equal employment opportunity policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's equal employment opportunity policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written,

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to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

(k) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, such opportunities.

(l) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.

(m) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(n) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(o) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's equal employment opportunity policies and affirmative action

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obligations.

5. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (4(a) to (o)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 4(a) to (o) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be defense for the contractor's noncompliance.

6. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the contractor may be in violation of part 5000.3520 [Emergency] if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of part 5000.3520 [Emergency] if a specific minority group is underutilized).

7. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age.

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8. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts under the federal Executive Order 11246 or a local human rights ordinance, or whose certificate of compliance has been suspended or revoked pursuant to Minnesota Statutes, section 363.073.

9. The contractor shall carry out such sanctions for violation of these specifications and of the equal opportunity clause, including suspension, termination, and cancellation of existing contracts as may be imposed or ordered pursuant to Minnesota Statutes, section 363.073, and its implementing rules. Any contractor who fails to carry out such sanctions shall be in violation of these specifications and Minnesota Statutes, section 363.073.

10. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at lease as extensive as those standards prescribed in paragraph 4, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of Minnesota Statutes, section 363.073, its implementing rules, or these specifications, the commissioner shall proceed in accordance with part 5000.3570 [Emergency].

11. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Minnesota Department of Human Rights, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (for example, mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that

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existing records satisfy this requirement, contractors shall not be required to maintain separate records.

12. Nothing provided in this part shall be construed as a limitation upon the application of other state or federal laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents."

5000.3540 [Emergency] CONSTRUCTION CONTRACTOR AFFIRMATIVE ACTION PLANS.

Construction contractors shall also have affirmative action plans for disabled individuals in accordance with part 5000.3550 [Emergency].

5000.3550 [Emergency] ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR DISABLED INDIVIDUALS.

Each state agency and each contractor shall include the following affirmative action clause in each of its covered state contracts and modifications, renewals, or extensions thereof if not included in the original contract.

"AFFIRMATIVE ACTION FOR DISABLED WORKERS

1. Contractor duties.

(a) The contractor shall not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

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(c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363.073 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes, section 363.073 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

2. Physical and mental qualifications.

(a) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical or mental job qualification requirements to ensure that, to the extent qualification requirements tend to screen out qualified disabled individuals, they are job related and are consistent with business necessity and the safe performance of the job.

(b) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification requirements tend to screen out qualified disabled

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individuals, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(c) Nothing in this section shall prohibit a contractor from conducting a comprehensive medical examination prior to employment provided that the results of such an examination shall be used only in accordance with the requirements of this section. Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment or change in employment status, information obtained in response to such inquiries or examination shall be kept confidential except that:

(i) supervisors and managers may be informed regarding restrictions on the work or duties of disabled individuals and regarding accommodations;

(ii) first aid and safety personnel may be informed, where and to the extent appropriate, if the condition might require emergency treatment; and

(iii) officials, employees, representatives, or agents of the department of local human rights agencies investigating compliance with the act or local human rights ordinances shall be informed.

3. Accommodation to physical and mental limitations of employees. A contractor shall make a reasonable accommodation to the physical and mental limitations of an employee or applicant unless the contractor can demonstrate that such an accommodation would impose an undue hardship on the conduct of the contractor's business. In determining the extent of a contractor's accommodation obligations, the following factors among others may be considered: (1) business necessity and (2) financial cost and expenses.

4. Compensation. In offering employment or promotions to disabled individuals, the contractor shall not reduce the amount

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of compensation offered because of any disability income, pension, or other benefit the applicant or employee receives from another source.

5. Outreach, positive recruitment, and external dissemination of policy. Contractors shall review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified disabled individuals. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below. It is not contemplated that contractors will necessarily undertake all the listed activities or that their activities will be limited to those listed. The scope of a contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(a) Develop internal communication of its obligation to engage in affirmative action efforts to employ qualified disabled individuals in such a manner as to foster understanding, acceptance, and support among the contractor's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the contractor in meeting this obligation.

(b) Develop reasonable internal procedures to ensure that its obligation to engage in affirmative action to employ and promote qualified disabled individuals is being fully implemented.

(c) Periodically inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified disabled individuals.

(d) Enlist the assistance and support of recruiting sources (including state employment security agencies, state vocational rehabilitation agencies or facilities, sheltered workshops, college placement officers, state education agencies, labor organizations and organizations of or for disabled individuals)

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for the contractor's commitment to provide meaningful employment opportunities to qualified disabled individuals. (A list of numerous national organizations serving the disabled, many of which have state or local affiliates, is found in the "Directory of Organizations Interested in the Handicapped" published by the Committee for the Handicapped People-to-People Program, Washington, D.C.)

(e) Engage in recruitment activities at educational institutions which participate in training of the disabled, such as schools for the blind, deaf, or retarded.

(f) Establish meaningful contracts with appropriate social service agencies, organizations of and for disabled individuals, vocational rehabilitation agencies or facilities, for such purposes as advice, technical assistance, and referral to potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training, and accommodations contractors may undertake, but no such resource providing technical assistance shall have the authority to approve or disapprove the acceptability to affirmative action programs.

(g) Review employment records to determine the availability of promotable and transferable qualified known disabled individuals presently employed, and to determine whether their present and potential skills are being fully utilized or developed.

(h) Include disabled workers when employees are pictured in consumer, promotional, or help wanted advertising.

(i) Send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(j) Take positive steps to attract qualified disabled persons not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for disabled individuals described in part 5000.3480 [Emergency].

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6. Internal dissemination of policy. A strong outreach program shall be ineffective without adequate internal support from supervisory and management personnel and other employees, who may have had limited contact with disabled persons in the past. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall adopt, implement, and disseminate this policy internally as follows:

(a) Include it in the contractor's policy manual.

(b) Publicize it in the company newspaper, magazine, annual report, and other media.

(c) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(d) Schedule meetings with all employees to discuss policy and explain individual employee responsibilities.

(e) Discuss the policy thoroughly in both employee orientation and management training programs.

(f) Meet with union officials to inform them of the contractor's policy, and request their cooperation.

(g) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(h) Include articles on accomplishments of disabled workers in company publications.

(i) Post the policy on company bulletin boards, including a statement that employees and applicants are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under the Minnesota Human Rights Act.

(j) When employees are featured in employee handbooks or similar publications for employees, include disabled employees.

7. Responsibility for implementation. An executive of the contractor shall be designated as director or manager of company affirmative action activities under these regulations. His or

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her identity shall appear on all internal and external communications regarding the company's affirmative action programs. This executive shall be given necessary top management support and staff to manage the implementation of this program, including the following activities:

(a) Develop policy statements, affirmative action programs, and internal and external communication techniques. The latter techniques should include regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed. In addition, supervisors shall be advised that:

"may" or "must" — what is agency intention?

(1) their work performance is being evaluated on the basis of their affirmative action efforts and results, as well as other criteria; and

(2) the contractor is obligated to prevent harassment of employees placed through affirmative action efforts.

(b) Identify problem areas in conjunction with line management and known disabled employees, in the implementation of the affirmative action plan, and develop solutions. This is particularly important for the accommodations requirements.

(c) Design and implement audit and reporting systems that will:

(1) measure effectiveness of the contractor's plan;

(2) indicate need for remedial action;

(3) determine the degree to which the contractor's objectives have been attained;

(4) determine whether known disabled employees have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities; and

(5) ensure that each location is in compliance with the Minnesota Human Rights Act and 12 MCAR S 1.053 D. [Temporary].

(d) Serve as liaison between the contractor and the Minnesota Department of Human Rights.

(e) Serve as liaison between the contractor and organizations of and for disabled persons, and arrange for the active involvement by company representatives in the community

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service programs of local organizations of and for the disabled.

(f) Keep management informed of the latest developments in the entire affirmative action area.

(g) Arrange for career counseling for known disabled employees.

8. Development and execution of affirmative action programs.

(a) Job qualification requirements reviewed pursuant to 12 MCAR S 1.053 D.2. [Temporary] shall be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

(b) The contractor shall evaluate the total selection process including training and promotion to ensure freedom from stereotyping disabled persons in a manner which limits their access to all jobs for which they are qualified.

(c) All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be carefully selected and trained to ensure that the commitments in its affirmative action program are implemented.

(d) Formal briefing sessions shall be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature shall be an integral part of the briefings. Formal arrangements shall be made for referral of applicants, follow up with sources and feedback on disposition of applicants.

(e) A special effort shall be made to include qualified disabled persons on the personnel relations staff.

(f) Disabled employees shall be made available for participation in career days, youth motivation programs, and related activities in their communities.

(g) Recruiting efforts at all schools shall include special efforts to reach disabled students.

(h) An effort shall be made to participate in work study

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programs with rehabilitation facilities and schools which specialize in training or educating disabled individuals.

(i) The contractor shall use all available resources to continue or establish on-the-job training programs.

9. Sheltered workshops. Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the contractor's own workforce. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become qualified as "qualified disabled individual" as defined in 12 MCAR S 1.051 Q. [Temporary].

10. Determination of disability.

(a) Any contractor requiring a determination of an applicant's or employee's disability may require the applicant or employee to provide medical documentation of the impairment or, in the alternative, may require the applicant or employee to undergo a medical examination at the contractor's expense.

(b) Any determination of disability required pursuant to subpart 1 of this section must meet the requirements of 12 MCAR S 1.053 D.2(c) [Temporary] and must be for the purpose of affirmative action and proper job placement. Information obtained therefrom shall not be used to exclude or otherwise limit the employment opportunities of qualified disabled individuals.

(c) All medical documentation required under this section shall be based upon the American Medical Association Guides to the Evaluation of Permanent Impairment, provided that the guides shall be used only to determine the existence of impairment without regard to the degree of impairment.

11. Listing of employment openings. Contractors shall request the Minnesota Department of Economic Security to refer qualified disabled individuals for consideration under their affirmative action programs.

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12. The requirements contained in 12 MCAR S 1.053 B. and C. regarding the performance of availability and utilization analyses and the establishment of goals and timetables do not apply to disabled applicants and employees.

5000.3560 [Emergency] PROCEDURES FOR ISSUING CERTIFICATES OF COMPLIANCE.

Subpart 1. **Information required.** All businesses or firms desiring a certificate of compliance shall submit to the department one of the following:

A. an affirmative action plan in compliance with parts 5000.3400 to 5000.3600 [Emergency]; or

B. letters or documentation establishing their compliance with federal or local agency rules together with an affirmative action program for disabled individuals.

Subp. 2. **Certificates issued.** Except as provided in subpart 3, certificates of compliance shall be issued within 30 days after the department has received the information required in subpart 1.

Subp. 3. **Insufficient information.** A business or firm whose submission does not meet the requirements of subpart 1 shall be notified within 15 days that its submission must be revised. The notification shall state specifically how the submission fails to meet the requirements of subpart 1. Certificates of compliance shall be issued 15 days after the department has received a revised submission which complies with subpart 1.

Subp. 4. **Duration of certificates.** Certificates of compliance are effective for two years and shall expire after the second year has elapsed.

5000.3570 [Emergency] DETERMINATION OF COMPLIANCE STATUS.

Subpart 1. **General criteria for review.** A contractor's compliance status shall not be based solely upon whether or not it reaches its goals or meets its timetables. A contractor's compliance status shall be determined by reviewing its compliance with Minnesota Statutes, section 363.073 and parts

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5000.3400 to 5000.3600 [Emergency], the contents of its affirmative action plan, the extent of its adherence to the plan or the equal opportunity clauses contained in its state contracts, and its employment practices and their effects. In determining a contractor's status, the department shall also consider the extent to which a contractor has made good faith efforts to implement its affirmative action plan or the equal opportunity clauses contained in its state contracts.

Subp. 2. **Determination of good faith efforts.** A contractor's good faith efforts may be determined by whether it takes prompt corrective action when it becomes aware that any of the following conditions exist with regard to its workforce:

? under what circs. would good faith not be determined by these factors

A. underutilization of women or minorities in any job group;

B. minority or female employees move laterally, vertically, at a lesser rate than nonminority or male employees;

C. a selection process eliminates minorities or women at higher rate than nonminority or male employees;

D. preemployment inquiries and application forms do not satisfy state law requirements;

E. descriptions of jobs do not accurately reflect functions involved;

F. selection procedures are not valid predictors of job performance;

G. disproportionately high rejection of women or minorities by hiring supervisors;

H. women, minorities, and disabled individuals who are not participating in company sponsored activities;

I. segregation still exists at some facilities;

J. disparities by minority group status or sex in terms of length of service and type of job held;

K. managers, supervisors, or employees lack interest in company equal employment opportunity policies;

L. underrepresentation of women or minorities in training or career improvement programs;

M. techniques for evaluating effectiveness of its

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equal employment opportunity programs have not been established; and

N. inadequate display of equal employment opportunity posters.

Subp. 3. **Additional factors regarding good faith efforts.** Good faith efforts may also be determined by:

but by what other factors?

A. whether a contractor submits timely compliance review reports as required by part 5000.3580 [Emergency];

B. whether a contractor permits an on-site compliance review to be conducted;

C. whether a contractor makes available records or other information as required by parts 5000.3400 to 5000.3600 [Emergency]; or

D. whether a contractor implements conciliation agreements.

Subp. 4. **Analysis of good faith efforts.** Good faith efforts may be analyzed by:

? by what other factors

A. the results of an investigation of a charge of discrimination;

B. the results of an analysis of the contractor's affirmative action plan; or

C. the results of an on-site review of the contractor's compliance with its affirmative action plan or equal opportunity clause.

Subp. 5. **Notification of deficiencies.** If the department determines that a contractor has failed to adhere to its affirmative action plan or the equal opportunity clauses contained in its state contracts, that the contractor has failed to exercise good faith efforts to implement the plan or the equal opportunity clauses, or has failed to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], it shall notify the contractor by first-class mail identifying the nature of the deficiency and stating specifically the corrective measures necessary for eliminating the deficiency. The contractor shall have 15 days to reply to the notice of deficiency.

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Where deficiencies are found to exist, the department shall attempt to secure compliance through conciliation and persuasion unless it determines that such efforts would be unsuccessful or unproductive. Before the contractor can be found to be in compliance, the contractor shall make a specific commitment in writing to correct the deficiencies set forth in the notice. The commitment must include the precise action to be taken and dates for completion. The time period allotted must be no longer than the minimum period necessary to effect such changes. Upon approval of the commitment by the commissioner, the contractor may be considered in compliance, on condition that the commitment is faithfully kept. The contractor shall be notified that making such a commitment does not preclude future determinations of noncompliance based on a finding that the commitment is not sufficient to achieve compliance.

Subp. 6. **Notification of sanctions and hearing.** Where a contractor fails to respond to a notice of deficiency within 15 days or the department determines that attempts to correct the deficiencies through conciliation and persuasion have been or would be unsuccessful or unproductive, the department may impose one or more of the sanctions set forth in Minnesota Statutes, section 363.073, subdivision 2. The department shall serve the contractor with notice of the sanctions by mailing a copy thereof to the contractor by first-class mail. The sanctions shall become effective 20 days after the notice is served.

A contractor may obtain a hearing regarding the department's determination of deficiencies or any sanctions which it has imposed by filing a written request for a hearing with the department within 20 days after service of the notice of sanction. The hearing shall be a contested case proceeding pursuant to the Administrative Procedure Act, Minnesota Statutes, sections 14.57 to 14.70.

A. If a timely request for a hearing is filed, the commissioner shall issue and serve upon the contractor by certified mail a notice and order directing the contractor to appear at the hearing, at a time and place specified in the

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notice, and show cause why the sanctions determined by the department should not be imposed.

B. The filing of a timely request for a hearing shall stay the enforcement of the sanctions in question until a final decision is issued or the request for a hearing is withdrawn or dismissed with prejudice. The failure of a contractor to appear at the hearing may be grounds for dismissal with prejudice.

C. The hearing examiner a.l.j. shall make and file with the commissioner a report stating the findings of fact, conclusions, and recommendations. The commissioner shall serve each party with a copy of the report by mail. Within 20 days after service of the report, any party including the department, may file with the commissioner and serve exceptions to the report and reasons in support of their exceptions.

D. Exceptions with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. When exception is taken to a statement of fact, a corrected statement must be incorporated. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. A reply to exceptions is not required, but may be filed by any party including the department within ten days after service of the exceptions to which reply is made along with proof of service thereof on all parties of record.

E. Exceptions and replies shall contain written arguments in support of the position taken by the party filing such exceptions or reply. An opportunity for oral argument before the commissioner or his or her designee shall be permitted if requested by a party at the time that they file their exceptions or reply, unless the commissioner in the exercise of his or her discretion, determines that oral argument is unnecessary because the facts and legal arguments could be adequately presented by the briefs and records and the decisional process would not be significantly aided by oral argument. Oral arguments shall be limited to a discussion of legal questions and a restatement of facts in evidence. No new

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evidence shall be received at oral arguments.

F. Within 20 days from the date of the mailing by the commissioner of the final decision or order, any party including the department, may petition for a rehearing, or for an amendment or vacation of the findings of fact, decision or order, or for reconsideration or reargument. If the petition is for a rehearing, vacation, reconsideration, or reargument, the grounds relied upon shall be specifically set forth and the claimed errors clearly stated. If the petition is for an amendment of the findings of fact, decision, or order, it shall contain the desired proposed amendments, and the reasons for it shall be clearly stated. The petition shall be served upon all parties to the proceeding. An adverse party shall have ten days from the date of the service of the petition to answer and no reply will be permitted. The commissioner may grant or deny the petition without a hearing, or in his or her discretion set a hearing thereon. Pending the decision of the commissioner on the petition, the commissioner may vacate and set aside the decision or order. No petition will extend the time of appeal from the decision or order.

G. A second petition for rehearing, amendment, or vacation of any finding of fact, decision, or order, reconsideration or reargument by the same party or parties and upon the same grounds as a former petition which has been considered and denied, will not be entertained.

Within ten days after the date that sanctions become effective, the department shall notify the state agency or state agencies which hold contracts with the affected contractor about the sanctions and make recommendations regarding whether such contracts should be terminated pursuant to Minnesota Statutes, section 363.073, subdivision 3.

Subp. 7. **Recertification.** A contractor whose certificate of compliance has been suspended or revoked or who has been declared ineligible for further certificates of compliance pursuant to Minnesota Statutes, section 363.073, subdivision 2, may request reinstatement in a letter to the commissioner. The

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commissioner may grant the request if, based upon the contractor's showing, the department's file regarding the contractor's past performance, a compliance review, the recommendations of the department or a conciliation agreement the commission determines that the contractor has established and will carry out employment policies and practices that are in compliance with Minnesota Statutes, section 363.073 and with parts 5000.3400 to 5000.3600 [Emergency].

Subp. 8. **Evidence of discrimination.** If a compliance review indicates a violation of Minnesota Statutes, section 363.03, the commissioner may proceed to file a charge and process the matter under Minnesota Statutes, section 363.06 or part 5000.3570 [Emergency].

5000.3580 [Emergency] SUBMISSION OF COMPLIANCE REPORTS.

Subpart 1. **Construction contractors; monthly reports.** Each construction contractor shall submit a monthly utilization report. The report must state for each state project during the month in question:

A. total hours of employment on the project;

B. total hours of employment of women;

C. total hours of employment of minorities;

D. total hours of training;

E. total hours of training provided to women; and

F. total hours of training provided to minorities.

Subp. 2. **Construction contractors; semiannual reports.** Construction contractors shall also submit semiannual compliance reports of their affirmative action programs for nonconstruction personnel. These compliance reports must contain the same, be submitted at the same time, and contain the same documents as required for nonconstruction contractors in part 5000.3520 [Emergency].

Subp. 3. **Nonconstruction contractors; semiannual reports.** Nonconstruction contractors shall submit semiannual compliance reports. The report must include the following data, by job, group, race, sex, and disability:

A. total number of employment applicants;

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B. total number of applicants interviewed;

C. total number of applicants tested;

D. total number of applicants hired;

E. total number of employees promoted;

F. total number of employees demoted;

G. total number of employees transferred;

H. total number of employees laid off;

I. total number of employees recalled from layoff;

J. total number of employees terminated;

K. total number of employees receiving company sponsored training; and

L. total number of people employed by company.

Subp. 4. **Minimizing duplication of reports.** The department shall attempt to the fullest extent possible to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies by:

A. utilizing forms and standards similar to those by federal equal employment opportunity programs;

B. accepting forms and reports prepared for federal or local agencies where the information contained therein is sufficient for parts 5000.3400 to 5000.3600 [Emergency]; and

C. minimizing duplication of programs and procedures.

5000.3590 [Emergency] PROCEDURES FOR COMPLIANCE REVIEW.

Subpart 1. **Procedures for contractor evaluation.** A contractor evaluation shall proceed as follows:

A. a desk audit of the contractor's affirmative action plan with special attention directed to the included workforce analysis;

B. an on-site review of those matters which still are not fully or satisfactorily addressed in the affirmative action plan and workforce analysis; and

C. where necessary, an off-site analysis of information supplied by the contractor during or pursuant to the on-site review. Contractors may reach agreement with the department on nationwide Affirmative Action Plan formats or on frequency of updating statistics.

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Subp. 2. **Desk audit.** The department shall routinely request from among the state contractors within their jurisdiction affirmative action programs and supporting documentation, including the workforce analysis and support data for audit. As used throughout this part, the term "Affirmative Action Plan and supporting documentation" means the required contents of affirmative action plans, and methods of implementing those requirements set forth in part 5000.3420. "Workforce analysis" is defined as a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job groups) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job family, or discipline, in order of wage rates or salary ranges. For each job title, the total number of incumbents, the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate of salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

Subp. 3. **Exceptions to desk audit requirements.** For preaward reviews, the desk audit need not be carried out or an abbreviated desk audit may be performed and an immediate on-site review performed. Special reports that meet the criteria in subpart 4, item C may be requested from contractors as required, for submission to the department for complaint investigations and follow-up reviews performed within one year of a full compliance review. The commissioner may approve other special

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compliance reviews when the circumstances require an immediate on-site review.

Subp. 4. **On-site review.** On-site reviews must be conducted as follows:

A. Each contractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews and inspecting and copying books, records, accounts, and other materials as may be relevant to compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency]. Information obtained in this manner must be used only in connection with the administration or enforcement of the Minnesota Human Rights Act and in the furtherance of the act's objectives.

B. If upon selection of an affirmative action plan and included workforce analysis for desk audit, the department finds that the material submitted does not demonstrate a reasonable effort by the contractor to meet all the requirements which are applicable under parts 5000.3420 to 5000.3600 [Emergency] the on-site review need not be carried out and the enforcement procedures specified in Minnesota Statutes, section 363.073 and part 5000.3570 [Emergency] shall be applicable. Otherwise following a desk audit of the affirmative action plan and supporting documentation the department shall schedule an on-site review of the establishment, provided that an on-site review need not be carried out when the department can determine that the contractor's affirmative action plan is acceptable. This determination must be based on the current desk audit and an on-site review conducted within the preceding 24 months and also must include an affirmative determination that the circumstances of the previous on-site review have not substantially changed.

C. The department shall request contractors who are scheduled for on-site reviews to have the information necessary to perform the review available on-site. Specifically, this includes:

(1) information necessary to conduct an in-depth

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analysis of apparent deficiencies in the contractors' utilization of women or minorities;

(2) information required for a complete and thorough understanding of data contained in or offered as support for the affirmative action plan; and

(3) information concerning matters relevant to a determination of compliance with the requirements of Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], but not adequately addressed in the affirmative action plan.

D. The contractor shall be requested to furnish only the specific items of information which the compliance officer determines are:

(1) necessary for conducting the review and completing the standard compliance review report; and

(2) not contained in or able to be derived from the material submitted by the contractor.

E. In order to pursue certain issues uncovered in the compliance review, it may be necessary for the compliance officer to request certain additional information on-site even though such data have not been previously identified. The additional information must also meet the criteria in this part.

F. Where necessary, the compliance officer may take information made available during the on-site review off-site for further analysis. An off-site analysis should be conducted where issues have arisen concerning deficiencies or an apparent violation which, in the judgment of the compliance officer, should be more thoroughly analyzed off-site before a determination of compliance is made.

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Subp. 5. **Review of contractor data.** If the contractor is concerned with the confidentiality of information such as lists of employees, employee names, reasons for termination, and pay data then alphabetic or numeric coding or the use of an index of pay and pay ranges is acceptable for desk audit purposes.

The contractor shall provide full access to all relevant data on-site as required by subpart 4, item A.

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The contractor shall provide all data determined by the compliance officer to be necessary for off-site analysis pursuant to subpart 4, item F. The data may only be coded if the contractor makes the code available to the compliance officer. If the contractor believes that particular information which is to be taken off-site is not relevant to compliance, the contractor may request a ruling by the supervisor of the department's compliance division who shall issue a ruling within ten days. The contractor may appeal that ruling to the commissioner within ten days. The commissioner or his or her designee shall issue a final ruling within ten days. Pending a final ruling, the information in question must be made available to the compliance officer off-site, and shall be considered a part of the investigatory file. Data determined to be not relevant to the investigation must be returned to the contractor immediately.

Subp. 6. **Employee interviews.** The compliance officer shall contact, where appropriate, a reasonable number of employees for interviews as part of the on-site review of the contractors employment practices. The number, scope, and manner of conducting the interviews must be discussed in advance with the contractor.

5000.3600 [Emergency] DUTIES OF CONTRACTING STATE AGENCY.

Subpart 1. **Cooperation with commissioner.** Each state agency shall cooperate with the commissioner in the performance of his or her responsibilities under Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency]. Cooperation includes the responsibility to ensure that contractors are cognizant of their obligations under Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency].

Subp. 2. **Information provided to contractors.** Each state agency shall include in all and each contract the contractor's obligation and requirements to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], and provide documentation describing the law and rules

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pertaining to the law and the specific criteria by which the affirmative action plan will be approved or rejected.

Subp. 3. **Information provided to department.** Each contracting state agency shall provide any information which comes to its attention which indicates that a contractor is not in compliance with Minnesota Statutes, section 363.073 or any rule relating to that statute.

Subp. 4. **Contract clause required.** Each contract must contain an affirmative action clause which should state the intention of the agency to carry out its responsibility for requiring affirmative action by its contractors and specific language outlining consequences for failure to implement the contractors' affirmative action plan or make a good faith effort to do so.

Subp. 5. **Submission of bidders list.** The contracting agency shall submit to the department a list of prospective bidders prior to the opening of a contractor's bid to ensure compliance with Minnesota Statutes, section 363.073.

Subp. 6. **Contractors list from department.** Every 60 days the department shall furnish state agencies with a list of currently certified contractors and contractors whose certificates of compliance have been suspended or revoked or who have been ineligible with Minnesota Statutes, section 363.073, subdivision 2.

Subp. 7. **State agency's duty to provide information to department.** Each contracting state agency shall provide the department with any information or assistance the department deems necessary to seek compliance with Minnesota Statutes, section 363.073 and the rules adopted under it.

Subp. 8. **Copy of statute and rules to be furnished.** Each contracting agency shall provide each bidder with a copy of Minnesota Statutes, section 363.073 and the rules adopted pursuant to it.

unreasonable burdensome for procurement

Subp. 9. **Bid specifications, modifications; incorporation of statutory and rule requirements.** Each contracting state agency shall include the following paragraph in all bid

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

specifications and modifications:

"It is hereby agreed between the parties that Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 [Emergency] are incorporated into any contract between these parties based upon this specification or any modification of it. The bidder acknowledges receipt of a copy of Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 [Emergency]."

APPLICATION. During the period that parts 5000.3400 to 5000.3600 [Emergency] are effective they supercede parts 5000.0100, 5000.2500 to 5000.2700.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

29 CFR 1910.1047 "Ethylene oxide" applies to any workplace where exposure to EtO may be found except those exempted workplaces (i.e., workplaces that process, handle or use products containing EtO where objective data show that the product cannot release EtO at or above the action level.) Employers must maintain documentation that supports the exemption. The standard provides for methods of exposure control, personal protective equipment, measurement of employee exposures, training, medical surveillance, signs and labels, material safety data sheets, regulated areas, emergency procedures and recordkeeping. An "action level" of 0.5 ppm as an 8-hour time-weighted average is established as the level above which employers must initiate certain compliance activities such as periodic employee exposure monitoring and medical surveillance. In instances where the employer can demonstrate that employee exposures are below the action level, the employer is not obligated to comply with most of the requirements set forth in this standard. Other provisions of the standard cover respiratory protection, written plans for emergency situations, communication of EtO hazards to employees, recordkeeping, and provisions for employees or their designated representatives to observe any monitoring of employee exposure to EtO that is conducted under this standard. Non-mandatory appendices are included as part of the standard to provide additional information. Appendix A provides safety data sheet information for EtO (substance identification, health hazard data, emergency first aid procedures, respirators and protective clothing, safe use/handling/storage, etc.); Appendix B provides technical guidelines for EtO (physical and chemical data; fire, explosion, and reactivity hazard data; spill, leak, and disposal procedures; monitoring and measurement procedures; and protective clothing and equipment); Appendix C provides medical surveillance guidelines; and Appendix D provides sampling and analytical methods for EtO.

Conforming revisions were also made to two existing OSHA standards. 29 CFR 1910.19 "Special provisions for air contaminants" was amended by adding paragraph (h) indicating that 1910.1047 applies to the exposure of employees to ethylene oxide in every employment and place of employment covered by sections 1910.12, 1910.13, 1910.14, 1910.15 and 1910.16. Section 1910.1000 was amended by deleting the entry "Ethylene oxide . . . 50 ppm . . . 90 mg/m^3" from Table Z-1 of this section.

By this notice, Minnesota OSHA proposes to adopt 29 CFR 1910.1047 "Ethylene oxide" and the revisions to 29 CFR Part 1910.19 and 1910.1000.

Department of Human Rights

554E

Proposed Emergency Rules Relating to Certificates of Compliance and Public Contracts

Request for Public Comment

Notice is hereby given that the Department of Human Rights has proposed the following emergency rules for the purpose of implementing the provisions of Laws of 1981, Ch. 326 Sec. 1. the certificate of compliance program. All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register*. All submissions must be in writing and addressed to:

James Robinson, Supervisor
Compliance Unit
Department of Human Rights
500 Bremer Tower
St. Paul, MN 55101

The emergency rule may be revised on the basis of comments received. Any written material received will become a part of the record and will be submitted to the Attorney General.

July 16, 1984

Kathryn R. Roberts
Acting Commissioner of Human Rights

Emergency Rules as Proposed (all new material)

CERTIFICATES OF COMPLIANCE FOR PUBLIC STATE CONTRACTS

5000.3400 [Emergency] DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 5000.3400 to 5000.3600 [Emergency] the following terms have the meanings given them.

Subp. 2. Affirmative action policy. "Affirmative action policy" means a managerial objective to eliminate all barriers to employment opportunity that are not based on specific job requirements. It refers also to the identification of such barriers in the use of action-oriented programs to advance employment opportunities for women, minorities, and qualified disabled individuals.

Subp. 3. Affirmative action program. "Affirmative action program" means a coherent set of goal-oriented management policies and procedures which implement a contractor's affirmative action policy including the contractor's self-examination of its workforce and entire employment practices and policies, availability and utilization analyses, and the establishment of goals and timetables for the correction of any underutilization of women, minorities, and qualified disabled persons identified in the self-analysis.

Subp. 4. Availability. "Availability" means the percentage of minorities and women among those persons who may reasonably be considered eligible currently or may reasonably be considered eligible during the term of the affirmative action program.

Subp. 5. Civilian labor force. "Civilian labor force" means persons 16 years old and older who are either:

A. at work during the reference week; or

B. with a job but not at work during the reference week.

"At work" means that the person works as a paid employee, or in his or her own business or profession, or on his or her own farm; or who works 15 or more hours as an unpaid worker on a family farm or in a family business, during the reference week.

"With a job but not at work" means any person who does not work during the reference week but who has a job or business from which he or she was temporarily absent due to illness, bad weather, industrial dispute, vacation, or personal reasons.

Members of the armed forces are not included in the civilian labor force.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Human Rights.

Subp. 7. Construction work. "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Subp. 8. Contract. "Contract" means any agreement or modification of an agreement between a contracting agency and a business or firm for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services," as used in this definition includes, but is not limited to the following services: utility, construction, transportation, research, insurance, and fund depository.

Subp. 9. Contractor. "Contractor" means a firm or business which has employed more than 20 full-time employees in Minnesota at any time during the previous 12 months, and which executes, holds, or submits a bid or proposal for a state contract for goods or services in excess of $50,000.

Subp. 10. Covered state contract. "Covered state contract" means a state contract for goods or services in excess of $50,000.

Subp. 11. Department. "Department" means the Minnesota Department of Human Rights.

Subp. 12. Deficiency. "Deficiency" means an underutilization of women, minorities, and qualified disabled employees or a failure to take corrective action to eliminate barriers to equal employment opportunity identified in the contractor's self-analysis.

Subp. 13. Disabled individual. "Disabled individual" means a person who has a physical or mental impairment which substantially limits one or more major life activity; it does not include an alcoholic or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others.

Subp. 14. Good faith effort. "Good faith effort" means a reasonable effort undertaken by a contractor to accomplish the goals and implement the corrections identified in the self-analysis.

Subp. 15. Immediate labor area. "Immediate labor area" means that geographic area from which employees and applicants may reasonably commute to the contractor's establishment. The immediate labor area may include one or more contiguous cities, counties, or Standard Metropolitan Statistical Areas or parts thereof, in which the establishment is located.

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Supb. 16. Life activity. "Life activity" includes communication, ambulation, self-care, socialization, education, vocational training, employment, transportation, or adapting to housing. For the purpose of this item, primary attention is given to those life activities that affect employability.

Subp. 17. Minorities and women with requisite skills. "Minorities and women with requisite skills" means minorities and women who have demonstrated that they possess the skills for the job in question, for example: through performance on another job, those who have completed training or educational programs designed to provide skills for the job in question, and those who could reasonably be expected to acquire the skills within a relatively short time after placement.

Subp. 18. Minority. "Minority" includes:

A. Blacks, persons having origins of any of the Black African racial groups not of Hispanic origin;

B. Hispanic, persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race;

C. Asian and Pacific Islander, persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; and

D. American Indian or Alaskan Native, persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Subp. 19. Modification. "Modification" means an alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

Subp. 20. Promotable or transferable. "Promotable or transferable" means, within the context of developing data for availability, those employees who are currently employed in a job group or groups which serve or could serve as a source from which selections are or could be made for another job group.

Subp. 21. Qualified disabled individual. "Qualified disabled individual" means a disabled individual who is capable of performing a particular job, with reasonable accommodation to his or her disability.

Subp. 22. Relevant recruitment area. "Relevant recruitment area" means the geographic area from which the contractor may reasonably recruit its employees. It is at least the area from which the contractor recruits, and may include geographic areas not contiguous with the immediate labor area.

Subp. 23. Substantially limited. "Substantially limited" means the degree that an impairment affects employability. A disabled individual who is likely to experience great difficulty in securing, retaining, or advancing in employment would be considered substantially limited.

Subp. 24. Utilization analysis. "Utilization analysis" means a comparison of the availability of minorities and women in the immediate labor area to their presence in a contractor's workforce.

Subp. 25. Workforce analysis. "Workforce analysis" means a listing of job titles as they appear in applicable collective bargaining agreements or payroll records, not job group, ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision.

5000.3410 [Emergency] GENERAL PROVISIONS.

Subpart 1. Purpose. The purpose of parts 5000.3400 to 5000.3600 [Emergency] is to increase employment opportunities for women, minorities, and disabled individuals by requiring contractors to adopt and implement affirmative action programs approved by the commissioner.

Subp. 2. Persons regulated. Parts 5000.3400 to 5000.3600 [Emergency] apply to contractors:

A. who are doing business or desire to do business with the state;

B. who employ more than 20 full-time employees 12 months before, or any time during, performance on a state contract; and

C. whose contract amount exceeds $50,000 or is reasonably expected to exceed $50,000 in any one year.

5000.3420 [Emergency] CRITERIA FOR APPROVAL AND IMPLEMENTATION OF AFFIRMATIVE ACTION PLANS FOR CONTRACTORS.

Subpart 1. General requirements. Under the affirmative action obligation imposed by the Human Rights Act, Minnesota Statutes, section 363.073, contractors shall take affirmative action to employ and advance in employment qualified minority, female, and disabled individuals at all levels of employment, including the executive level. Affirmative action must apply to all employment practices including the following:

A. hiring, upgrading, demotion, or transfer;

B. recruitment or recruitment advertising;

C. layoff or termination;

D. rates of pay or other forms of compensation; and

E. selection for training, including apprenticeship.

Subp. 2. Proper consideration of qualifications. Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough, and systematic consideration of the job qualifications of known minority, female, and disabled applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. To the extent that it is necessary to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action plan required under this part. These procedures must be designed to facilitate a review of the implementation of this requirement by the contractor or the department.

Subp. 3. Affirmative action plan. Before submitting a bid or proposal for a covered state contract, a contractor shall prepare and maintain an affirmative action plan at each establishment which must set forth the contractor's policies, practices, and procedures in accordance with this part. This plan may be integrated into or kept separate from other affirmative action plans of the contractor.

Subp. 4. Plan review. The affirmative action plan must be reviewed and updated annually. If there are any significant changes in procedures, rights, or benefits as a result of the annual updating, those changes must be communicated to employees and applicants for employment and submitted to the department's compliance division.

Subp. 5. Identify plan coverage. The contractor shall invite all applicants and employees who believe themselves covered by Minnesota Statutes, section 363.073 and who wish to benefit under the affirmative action plan to identify themselves to the contractor. The invitation must state that the information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the Human Rights Act and rules adopted under the act. If a disabled applicant or employee identifies himself or herself, the contractor shall also seek their advice regarding proper placement and appropriate accommodation.

An employee shall not be precluded from informing a contractor at any future time of his or her desire to benefit under the program.

A contractor shall not be relieved of its obligation to take affirmative action with respect to those applicants or employees whose minority, female, or disabled status is known to the contractor provided that the contractor is not obligated to search the medical files of any applicant or employee to determine the existence of a disability.

A contractor shall not be relieved from liability for discrimination under the Human Rights Act.

Subp. 6. Notice. The contractor shall agree to post a notice in a conspicuous place which is available to employees and applicants for employment. The notice must be in a form prescribed by the commissioner. The notice must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified minority, female, and disabled employees and applicants for employment, and the rights of applicants and employees.

Subp. 7. Employee access to plan. The complete affirmative action plan must be available for inspection to an employee or applicant for employment upon request. The location and hours during which the program may be obtained must be posted at each facility.

Subp. 8. Equal opportunity policy statement. The contractor shall prepare and include in its affirmative action plan an equal employment opportunity policy statement.

The equal employment opportunity policy statement must indicate that the contractor is committed to the principles of equal employment opportunity, assign overall responsibility to an executive of the contractor, and provide for a reporting and monitoring procedure. The policy statement must indicate that it is the policy of the contractor to:

A. recruit, hire, train, and promote persons in all job titles, without regard to race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age except where such status is a bona fide occupational qualification;

B. make employment decisions in a manner which will further the principles of equal employment opportunity;

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C. ensure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities; and

D. ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, and social and recreation programs will be administered without regard to race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age.

This statement must be signed by the chairperson of the board or the chief executive officer.

NONCONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

5000.3430 [Emergency] ASSIGNMENT OF RESPONSIBILITY FOR PROGRAM TO EXECUTIVE OR TOP-MANAGEMENT OFFICIAL.

Subpart 1. Director. An executive of the contractor shall be appointed as director or manager of the company equal opportunity program. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. The director shall be given the necessary top management support and staffing to execute the assignment. The identity of the director or manager must appear on all internal and external communications and the company's equal opportunity programs. The responsibilities include, but are not limited to:

A. developing policy statements, affirmative action programs, and internal and external communication techniques;

B. assisting in the identification of problem areas;

C. assisting line management in arriving at solutions to problems;

D. designing and implementing audit and reporting systems that will:

(1) measure effectiveness of the contractor's programs;

(2) indicate need for remedial action; and

(3) determine the degree to which the contractor's goals and objectives have been attained;

E. serving as liaison between the contractor and enforcement agencies;

F. serving as liaison between the contractor and minority organizations, women's organizations, and community action groups concerned with employment opportunities of minorities and women; and

G. keeping management informed of the latest developments in the entire equal opportunity area.

Subp. 2. Director responsibilities. Line responsibilities of the director or manager shall include, but not be limited to, the following:

A. assistance in the identification of problem areas and establishment of local and unit goals and objectives;

B. active involvement with local minority organizations, women's organizations, community action groups, and community service programs;

C. periodic audit of training programs, hiring, and promotion patterns to remove impediments to the attainment of goals and objectives;

D. regular discussions wulh local managers, supervisors, and employees to be certain the contractor's policies are being followed;

E. review of the qualifications of all employees to ensure that minorities and women are given full opportunities for transfers and promotions;

F. career counseling for all employees;

G. periodic audits to ensure that each location is in compliance in areas such as:

(1) Posters must be properly displayed.

(2) All facilities, including company housing, which the contractor maintains for the use and benefit of its employees, shall be desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms, and rest rooms, they must be comparable for both sexes.

(3) Minority and female employees shall be afforded a full opportunity and encouraged to participate in all company sponsored educational, training, recreational, and social activities.

H. supervisors shall be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results as well as other criteria; and

I. it shall be the responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

5000.3440 [Emergency] PROCEDURES FOR DISSEMINATING POLICY INTERNALLY AND EXTERNALLY.

Subpart 1. Internal. The contractor shall disseminate its policy internally as follows:

A. Include it in contractor's policy manual.

B. Publicize it in company newspaper, magazine, annual report, and other media.

C. Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

D. Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

E. Discuss the policy thoroughly in both employee orientation and management training programs.

F. Meet with union officials to inform them of policy, and request their cooperation.

G. Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

H. Publish articles covering equal employment opportunity programs, progress reports, and promotions of minority and female employees in company publications.

I. Post the policy on company bulletin boards.

J. When employees are featured in product or consumer advertising, employee handbooks, or similar publications both minority and nonminority men and women should be pictured.

K. Communicate to employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable employees to know of and avail themselves of its benefits.

Subp. 2. External. The contractor shall disseminate its policy externally as follows:

A. Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

B. Incorporate the equal opportunity clause in all purchase orders, leases, and contracts.

C. Notify minority and women's organizations, community agencies, community leaders, secondary schools, and colleges, of company policy, preferably in writing.

D. Communicate to prospective employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable prospective employees to know of and avail themselves of its benefits.

E. When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women shall be shown.

F. Send written notification of company policy to all subcontractors, vendors, and suppliers requesting appropriate action on their part.

5000.3450 [Emergency] WORKFORCE ANALYSIS, INCLUDING AVAILABILITY AND UTILIZATION ANALYSES.

Subpart 1. Workforce analysis. The affirmative action plan must include a workforce analysis including a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department, a separate list must be provided for each work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job family, or discipline, in order of wage rate or salary range. For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in

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each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including managerial job titles, must be listed.

Subp. 2. Underutilization. An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups. "Job groups" means one or a group of jobs having similar content, wage rates, and opportunities. "Underutilization" means having fewer minorities or women in a particular job group than would reasonably be expected by their analysis, the contractor shall conduct such analysis separately for minorities and women.

Subp. 3. Minority analysis. In determining whether minorities are underutilized in any job group, the contractor shall consider at least all of the following factors:

A. the minority population of the labor area surrounding the facility;

B. the size of the minority unemployment force in the labor area surrounding the facility;

C. the percentage of the minority work force as compared with the total work force in the immediate labor area;

D. the general availability of minorities having requisite skills in the immediate labor area;

E. the availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

F. the availability of promotable and transferable minorities within the contractor's organization;

G. the existence of training institutions capable of training persons in the requisite skills; and

H. the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

Subp. 4. Women analysis. In determining whether women are underutilized in any job group, the contractor shall consider at least all of the following factors:

A. the size of the female unemployment force in the labor area surrounding the facility;

B. the percentage of the female workforce as compared with the total workforce in the immediate labor area;

C. the general availability of women having requisite skills in the immediate labor area;

D. the availability of women having requisite skills in an area in which the contractor can reasonably recruit;

E. the availability of women seeking employment in the labor or recruitment area of the contractor;

F. the availability of promotable and transferable female employees within the contractor's organization;

G. the existence of training institutions capable of training persons in the requisite skills; and

H. the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

5000.3460 [Emergency] GOALS AND OBJECTIVES ESTABLISHED BY ORGANIZATIONAL UNITS AND JOB GROUPS INCLUDING TIMETABLES FOR COMPLETION.

Subpart 1. Factors. The goals and timetables developed by the contractor must be attainable in terms of the contractor's analysis of its deficiencies and its entire affirmative action program. In establishing the size of its goals and the length of its timetables, the contractor shall consider the results which could reasonably be expected from its putting forth every good faith effort to make its overall affirmative action program work. In determining levels of goals, the contractor shall consider at least the factors listed in part 5000.3430 [Emergency], subpart 2, item C.

Subp. 2. Personnel relations. The contractor shall involve personnel relations staff, department and division heads, and local and unit managers in the goalsetting process.

Subp. 3. Goals. Goals must be significant, measurable, and attainable. Goals must be specific for planned results, with timetables for completion. Goals must not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

Subp. 4. Expansion; contraction. In establishing timetables to meet goals and commitments, the contractor shall consider the anticipated expansion, contraction, and turnover of and in the workforce.

Subp. 5. Deficiencies. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies.

Subp. 6. Relevant percentages. Where deficiencies exist and where numbers of percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

Subp. 7. Written program. Goals and timetables, with supporting data and the analysis, must be a part of the contractor's written affirmative action program and be maintained at each establishment of the contractor.

Subp. 8. Factor analysis. Where the contractor has not established a goal, its written affirmative action program must specifically analyze each of the factors listed in part 5000.3450 [Emergency] and must detail its reason for a lack of a goal.

Subp. 9. Separate goals; timetables. In the event it comes to the attention of the department that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the department may require separate goals and timetables for that minority group and may further require, where appropriate, goals and timetables by sex for each group for the job classifications and organizational units specified by the department.

Subp. 10. Support data. Support data for the required analysis and program must be compiled and maintained as part of the contractor's affirmative action programs. This data must include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

Subp. 11. Copies. Copies of affirmative action plans or programs and copies of support data must be made available to the department upon request for the purposes as may be appropriate to the fulfillment of the department's responsibilities under the act.

5000.3470 [Emergency] IDENTIFICATION OF PROBLEM AREAS OR DEFICIENCIES BY ORGANIZATIONAL UNITS AND JOB GROUPS.

Subpart 1. Analysis. Paying particular attention to trainees and those categories listed in part 5000.3450 [Emergency], subpart 2, an in-depth analysis of the following shall be made:

A. composition of the work force by minority group status and sex;

B. composition of applicant flow by minority group status and sex;

C. the total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors;

D. transfer and promotion practices;

E. facilities, company sponsored recreation and social events, and special programs such as educational assistance;

F. seniority practices and seniority provisions of union contracts;

G. apprenticeship programs;

H. all company training programs, formal and informal;

I. work force attitude; and

J. technical phases of compliance, such as poster and notification to labor unions, retention of applications, or notification to subcontractors.

Subp. 2. Problem areas. If any of the following items are found in the analysis, special corrective action shall be appropriate:

A. an "underutilization" of minorities or women in specific job groups;

B. lateral or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees;

C. the selection process which eliminates a significantly higher percentage of minorities or women than nonminorities or men;

D. application or employment forms not in compliance with local, state, or federal law;

E. position descriptions inaccurate in relation to actual functions and duties;

F. formal or scored selection procedures that are not validated;

G. referral ratio of minorities or women to the hiring supervisor or manager which indicates a significantly higher percentage rejected as compared to nonminority and male applicants;

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H. minorities or women excluded from or not participating in company sponsored activities or programs;

I. de facto segregation exists at some facilities;

J. seniority provisions that contribute to overt or inadvertent discrimination, that is, a disparity by minority group status or sex exists between length of service and types of jobs held;

K. nonsupport of company policy by managers, supervisors, or employees;

L. minorities or women underutilized or significantly underrepresented in training or career improvement programs;

M. no formal techniques established for evaluating the effectiveness of equal employment opportunity programs;

N. lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities;

O. lack of suitable transportation, public or private, to the workplace inhibits minority employment;

P. purchase orders do not contain equal employment opportunity clause; and

Q. posters not on display.

5000.3480 [Emergency] MEASURES TO FACILITATE IMPLEMENTATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY AND AFFIRMATIVE ACTION PROGRAMS.

Subpart 1. Consistent positions. The contractor shall conduct detailed analyses of position descriptions to ensure that they accurately reflect position functions, and are consistent for the same position from one location to another.

Subp. 2. Worker specifications. The contractor shall validate worker specifications by division, department, location, or other organizational unit and by job title using job performance criteria. Special attention must be given to academic, experience, and skill requirements to ensure that the requirements in themselves do not constitute inadvertent discrimination. Specifications must be consistent for the same job title in all locations and should be free from bias as regards to race, color, creed, religion, sex, national origin, marital status, status regarding public assistance, age, and disability except where such status is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women, the requirements must be professionally validated to job performance.

Subp. 3. Position descriptions. Approved position descriptions and worker specifications, when used by the contractor, must be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies must also be distributed to all recruiting sources.

Subp. 4. Selection process evaluation. The contractor shall evaluate the total selection process to ensure freedom from bias and, thus, aid the attainment of goals and objectives.

All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes must be carefully selected and trained to ensure elimination of bias in all personnel action.

Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include, but are not limited to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where data exists suggesting that there is unfair discrimination or exclusion of minorities or women, the contractor shall analyze its unscored procedures and eliminate them if they are not objectively valid.

Subp. 5. Recruitment techniques. Suggested techniques to improve recruitment and increase the flow of minority or female applicants are as follows:

A. Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., concentrated employment programs, Neighborhood Youth Corps, secondary schools, colleges, and city colleges with high minority enrollment, the state employment services, specialized employment agencies are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, welfare rights organizations, Women's Equity Action League, Talent Bank for Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish women's groups, Catholic women's groups, Protestant women's groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

B. Formal briefing sessions shall be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting

literature should be an integral part of the briefings. Formal arrangements shall be made for referral of applicants, follow-up with sources, and feedback on disposition of applicants.

C. Minority and female employees, using procedures similar to item B, shall be actively encouraged to refer applicants.

D. A special effort shall be made to include minorities and women on the personnel relations staff.

E. Minority and female employees shall be made available for participation in career days, youth motivation programs, and related activities in their communities.

F. Active participation in "job fairs" is desirable. Company representatives participating shall be given authority to make on-the-spot commitments.

G. Active recruiting programs shall be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

H. Recruiting efforts at all schools shall be undertaken whenever possible. Some possible programs are:

(1) technical and nontechnical co-op programs at predominantly black and women's colleges;

(2) "after school" or work-study jobs for minority youths, male and female;

(3) summer jobs for underprivileged youth, male and female;

(4) summer work-study programs for male and female faculty members of the predominantly minority schools and colleges; and

(5) motivation, training, and employment programs for the hardcore unemployed, male and female.

I. When recruiting brochures pictorially present work situations, the minority and female members of the workforce must be included, especially when brochures are used in school and career programs.

J. Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

Subp. 6. Promotion. The contractor shall ensure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

A. Post or otherwise announce promotional opportunities.

B. Make an inventory of current minority and female employees to determine academic, skill, and experience level of individual employees.

C. Initiate necessary remedial, job training, and workstudy programs.

D. Develop and implement formal employee evaluation programs.

E. Make certain "worker specifications" have been validated on job performance related criteria. Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.

F. When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

G. Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system, and similar programs.

H. Review seniority practices and seniority clauses in union contracts to ensure the practices or clauses are nondiscriminatory and do not have a discriminatory effect.

I. Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

J. Encourage child care, housing, and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

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5000.3490 [Emergency] INTERNAL AUDIT AND REPORTING SYSTEMS.

The contractor shall monitor records of referrals, placements, transfers, promotions and terminations at all levels to ensure that its equal employment opportunity and affirmative action policies are carried out.

The contractor shall require formal reports from the unit managers on a scheduled basis regarding the degree to which corporate or unit goals are attained and timetables are met.

The contractor shall review report results with all levels of management.

The contractor shall advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

5000.3500 [Emergency] DISABLED INDIVIDUALS PLAN.

An affirmative action plan shall be made for disabled individuals in accordance with 12 MCAR § 1.053 D. (Temporary).

5000.3510 [Emergency] ADDITIONAL REQUIRED CONTENT OF AFFIRMATIVE ACTION PLANS.

Affirmative action plans must contain the following additional requirements:

A. development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions;

B. formal internal and external dissemination of the contractor's policy;

C. establishment of responsibilities for implementation of the contractor's affirmative action program;

D. identification of problem areas (deficiencies) by organizational units and job group;

E. establishment of goals and objectives by organizational units and job groups, including timetables for completion;

F. development and execution of an action-oriented program designed to eliminate problems and further designed to attain established goals and objectives;

G. design and implementation of internal audit and reporting systems to measure effectiveness of the total program;

H. active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women; and

I. consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

5000.3520 [Emergency] CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS.

The commissioner, from time to time, shall issue goals and timetables for minority and female utilization which must be based on appropriate workforce, demographic, or other relevant data and which shall cover construction projects, or construction contracts performed in specific geographical areas. The goals must be applicable to each construction trade in an area covered by the contractor's entire workforce which is working in the area covered by the goals and timetables. Goals must be published as notices in the *State Register*, and must be inserted by contracting state agencies and applicants, as applicable, in the notice required by part 5000.3530 [Emergency].

5000.3530 [Emergency] NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY.

Contracting state agencies shall include the following notice in all solicitations for offers and bids on all state and state assisted construction contracts in excess of $50,000 to be performed in geographical areas designed by the commissioner.

The notice requirements shall take the following form:

"NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The offeror's or bidder's attention is called to the "equal opportunity clause" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Timetables	Goals for minority participation in each trade	Goals for female participation in each trade
Insert the timetables as determined pursuant to 12 MCAR § 1.053 C.1. [Temporary].	Insert the goals as determined pursuant to 12 MCAR § 1.053 C.1. [Temporary].	Insert the goals as determined pursuant to 12 MCAR § 1.053 C.1. [Temporary].

These goals are applicable to all the contractor's construction work (whether or not it is state or state assisted) performed in the covered area.

The contractor's compliance with Minnesota Statutes, section 363.073 and part 5000.3520 [Emergency] shall be based on its implementation of the equal opportunity clause, specific affirmative action obligations required by the specifications in part 5000.3540 [Emergency], and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, Minnesota Statutes, section 363.073 and part 5000.3520 [Emergency]. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Compliance Division of the Minnesota Department of Human Rights within ten working days of award of any construction subcontract at any tier for construction work under the contract resulting from the solicitation. The notification must list the name, address, and telephone number of the subcontractor; employer identification number, estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is the contracting state agency shall insert the description of the geographical areas where the contract is to be performed giving the state, county, city, town, or municipality if any."

5000.3535 [Emergency] STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS.

Each contracting state agency and each contractor shall include the following equal opportunity clause in each of its covered state and state assisted construction contracts (and modifications, renewals, or extensions thereof if not included in the original contract):

"STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS

1. The contractor shall implement the specific affirmative action standards provided in paragraphs 4(a) to (o) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor shall reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor shall make substantially uniform progress toward its goals in each craft during the period specified.

2. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Minnesota Statutes, section 363.073 of the Minnesota Human Rights Act, or the rules adopted under the act.

3. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained according to training programs approved by the Minnesota Department of Human Rights, the Minnesota Department of Labor and Industry, or the United States Department of Labor.

4. The contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications must be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, shall assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

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(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

(d) Provide immediate written notification to the commissioner of the Minnesota Department of Human Rights when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the state of Minnesota. The contractor shall provide notice of these programs to the sources compiled under (b).

(f) Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its equal employment opportunity obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company equal employment opportunity policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's equal employment opportunity policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the contractor's equal employment opportunity policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's equal employment opportunity policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

(k) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, such opportunities.

(l) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.

(m) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(n) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(o) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's equal employment opportunity policies and affirmative action obligations.

5. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (4(a) to (o)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 4(a) to (o) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be defense for the contractor's noncompliance.

6. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the contractor may be in violation of part 5000.3520 [Emergency] if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of part 5000.3520 [Emergency] if a specific minority group is underutilized).

7. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age.

8. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts under the federal Executive Order 11246 or a local human rights ordinance, or whose certificate of compliance has been suspended or revoked pursuant to Minnesota Statutes, section 363.073.

9. The contractor shall carry out such sanctions for violation of these specifications and of the equal opportunity clause, including suspension, termination, and cancellation of existing contracts as may be imposed or ordered pursuant to Minnesota Statutes, section 363.073, and its implementing rules. Any contractor who fails to carry out such sanctions shall be in violation of these specifications and Minnesota Statutes, section 363.073.

10. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 4, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of Minnesota Statutes, section 363.073, its implementing rules, or these specifications, the commissioner shall proceed in accordance with part 5000.3570 [Emergency].

11. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Minnesota Department of Human Rights, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (for example, mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

12. Nothing provided in this part shall be construed as a limitation upon the application of other state or federal laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents."

5000.3540 [Emergency] CONSTRUCTION CONTRACTOR AFFIRMATIVE ACTION PLANS.

Construction contractors shall also have affirmative action plans for disabled individuals in accordance with part 5000.3550 [Emergency].

5000.3550 [Emergency] ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR DISABLED INDIVIDUALS.

Each state agency and each contractor shall include the following affirmative action clause in each of its covered state contracts and modifications, renewals, or extensions thereof if not included in the original contract.

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"AFFIRMATIVE ACTION FOR DISABLED WORKERS

1. Contractor duties.

(a) The contractor shall not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363.073 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes, section 363.073 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

2. Physical and mental qualifications.

(a) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical or mental job qualification requirements to ensure that, to the extent qualification requirements tend to screen out qualified disabled individuals, they are job related and are consistent with business necessity and the safe performance of the job.

(b) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification requirements tend to screen out qualified disabled individuals, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(c) Nothing in this section shall prohibit a contractor from conducting a comprehensive medical examination prior to employment provided that the results of such an examination shall be used only in accordance with the requirements of this section. Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment or change in employment status, information obtained in response to such inquiries or examination shall be kept confidential except that:

(i) supervisors and managers may be informed regarding restrictions on the work or duties of disabled individuals and regarding accommodations;

(ii) first aid and safety personnel may be informed, where and to the extent appropriate, if the condition might require emergency treatment; and

(iii) officials, employees, representatives, or agents of the department of local human rights agencies investigating compliance with the act or local human rights ordinances shall be informed.

3. Accommodation to physical and mental limitations of employees. A contractor shall make a reasonable accommodation to the physical and mental limitations of an employee or applicant unless the contractor can demonstrate that such an accommodation would impose an undue hardship on the conduct of the contractor's business. In determining the extent of a contractor's accommodation obligations, the following factors among others may be considered: (1) business necessity and (2) financial cost and expenses.

4. Compensation. In offering employment or promotions to disabled individuals, the contractor shall not reduce the amount of compensation offered because of any disability income, pension, or other benefit the applicant or employee receives from another source.

5. Outreach, positive recruitment, and external dissemination of policy. Contractors shall review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified disabled individuals. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below. It is not contemplated that contractors will necessarily undertake all the listed activities or that their activities will be limited to those listed. The scope of a contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(a) Develop internal communication of its obligation to engage in affirmative action efforts to employ qualified disabled individuals in such a manner as to foster understanding, acceptance, and support among the contractor's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the contractor in meeting this obligation.

(b) Develop reasonable internal procedures to ensure that its obligation to engage in affirmative action to employ and promote qualified disabled individuals is being fully implemented.

(c) Periodically inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified disabled individuals.

(d) Enlist the assistance and support of recruiting sources (including state employment security agencies, state vocational rehabilitation agencies or facilities, sheltered workshops, college placement officers, state education agencies, labor organizations and organizations of or for disabled individuals) for the contractor's commitment to provide meaningful employment opportunities to qualified disabled individuals. (A list of numerous national organizations serving the disabled, many of which have state or local affiliates, is found in the "Directory of Organizations Interested in the Handicapped" published by the Committee for the Handicapped People-to-People Program, Washington, D.C.)

(e) Engage in recruitment activities at educational institutions which participate in training of the disabled, such as schools for the blind, deaf, and retarded.

(f) Establish meaningful contracts with appropriate social service agencies, organizations of and for disabled individuals, vocational rehabilitation agencies or facilities, for such purposes as advice, technical assistance, and referral to potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training, and accommodations contractors may undertake, but no such resource providing technical assistance shall have the authority to approve or disapprove the acceptability to affirmative action programs.

(g) Review employment records to determine the availability of promotable and transferable qualified known disabled individuals presently employed, and to determine whether their present and potential skills are being fully utilized or developed.

(h) Include disabled workers when employees are pictured in consumer, promotional, or help wanted advertising.

(i) Send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(j) Take positive steps to attract qualified disabled persons not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for disabled individuals described in part 5000.3480 [Emergency].

6. Internal dissemination of policy. A strong outreach program shall be ineffective without adequate internal support from supervisory and management personnel and other employees, who may have had limited contact with disabled persons in the past. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall adopt, implement, and disseminate this policy internally as follows:

(a) Include it in the contractor's policy manual.

(b) Publicize it in the company newspaper, magazine, annual report, and other media.

(c) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(d) Schedule meetings with all employees to discuss policy and explain individual employee responsibilities.

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(e) Discuss the policy thoroughly in both employee orientation and management training programs.

(f) Meet with union officials to inform them of the contractor's policy, and request their cooperation.

(g) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(h) Include articles on accomplishments of disabled workers in company publications.

(i) Post the policy on company bulletin boards, including a statement that employees and applicants are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under the Minnesota Human Rights Act.

(j) When employees are featured in employee handbooks or similar publications for employees, include disabled employees.

7. Responsibility for implementation. An executive of the contractor shall be designated as director or manager of company affirmative action activities under these regulations. His or her identity shall appear on all internal and external communications regarding the company's affirmative action programs. This executive shall be given necessary top management support and staff to manage the implementation of this program, including the following activities:

(a) Develop policy statements, affirmative action programs, and internal and external communication techniques. The latter techniques should include regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed. In addition, supervisors shall be advised that:

(1) their work performance is being evaluated on the basis of their affirmative action efforts and results, as well as other criteria; and

(2) the contractor is obligated to prevent harassment of employees placed through affirmative action efforts.

(b) Identify problem areas in conjunction with line management and known disabled employees, in the implementation of the affirmative action plan, and develop solutions. This is particularly important for the accommodations requirements.

(c) Design and implement audit and reporting systems that will:

(1) measure effectiveness of the contractor's plan;

(2) indicate need for remedial action;

(3) determine the degree to which the contractor's objectives have been attained;

(4) determine whether known disabled employees have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities; and

(5) ensure that each location is in compliance with the Minnesota Human Rights Act and 12 MCAR § 1.053 D. [Temporary].

(d) Serve as liaison between the contractor and the Minnesota Department of Human Rights.

(e) Serve as liaison between the contractor and organizations of and for disabled persons, and arrange for the active involvement by company representatives in the community service programs of local organizations of and for the disabled.

(f) Keep management informed of the latest developments in the entire affirmative action area.

(g) Arrange for career counseling for known disabled employees.

8. Development and execution of affirmative action programs.

(a) Job qualification requirements reviewed pursuant to 12 MCAR § 1.053 D.2 [Temporary] shall be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

(b) The contractor shall evaluate the total selection process including training and promotion to ensure freedom from stereotyping disabled persons in a manner which limits their access to all jobs for which they are qualified.

(c) All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be carefully selected and trained to ensure that the commitments in its affirmative action program are implemented.

(d) Formal briefing sessions shall be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature shall be an integral part of the briefings. Formal arrangements shall be made for referral of applicants, follow up with sources and feedback on disposition of applicants.

(e) A special effort shall be made to include qualified disabled persons on the personnel relations staff.

(f) Disabled employees shall be made available for participation in career days, youth motivation programs, and related activities in their communities.

(g) Recruiting efforts at all schools shall include special efforts to reach disabled students.

(h) An effort shall be made to participate in work study programs with rehabilitation facilities and schools which specialize in training or educating disabled individuals.

(i) The contractor shall use all available resources to continue or establish on-the-job training programs.

9. Sheltered workshops. Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the contractor's own workforce. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become qualified as "qualified disabled individual" as defined in 12 MCAR § 1.051 Q. [Temporary].

10. Determination of disability.

(a) Any contractor requiring a determination of an applicant's or employee's disability may require the applicant or employee to provide medical documentation of the impairment or, in the alternative, may require the applicant or employee to undergo a medical examination at the contractor's expense.

(b) Any determination of disability required pursuant to subpart 1 of this section must meet the requirements of 12 MCAR § 1.053 D.2(c) [Temporary] and must be for the purpose of affirmative action and proper job placement. Information obtained therefrom shall not be used to exclude or otherwise limit the employment opportunities of qualified disabled individuals.

(c) All medical documentation required under this section shall be based upon the American Medical Association Guides to the Evaluation of Permanent Impairment, provided that the guides shall be used only to determine the existence of impairment without regard to the degree of impairment.

11. Listing of employment openings. Contractors shall request the Minnesota Department of Economic Security to refer qualified disabled individuals for consideration under their affirmative action programs.

12. The requirements contained in 12 MCAR § 1.053 B. and C. regarding the performance of availability and utilization analyses and the establishment of goals and timetables do not apply to disabled applicants and employees.

5000.3560 [Emergency] PROCEDURES FOR ISSUING CERTIFICATES OF COMPLIANCE.

Subpart 1. Information required. All businesses or firms desiring a certificate of compliance shall submit to the department one of the following:

A. an affirmative action plan in compliance with parts 5000.3400 to 5000.3600 [Emergency]; or

B. letters or documentation establishing their compliance with federal or local agency rules together with an affirmative action program for disabled individuals.

Subp. 2. Certificates issued. Except as provided in subpart 3, certificates of compliance shall be issued within 30 days after the department has received the information required in subpart 1.

Subp. 3. Insufficient information. A business or firm whose submission does not meet the requirements of subpart 1 shall be notified within 15 days that its submission must be revised. The notification shall state specifically how the submission fails to meet the requirements of subpart 1. Certificates of compliance shall be issued 15 days after the department has received a revised submission which complies with subpart 1.

Subp. 4. Duration of certificates. Certificates of compliance are effective for two years and shall expire after the second year has elapsed.

5000.3570 [Emergency] DETERMINATION OF COMPLIANCE STATUS.

Subpart 1. General criteria for review. A contractor's compliance status shall not be based solely upon whether or not it reaches its goals or meets its timetables. A contractor's compliance status shall be determined by reviewing its compliance with

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Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], the contents of its affirmative action plan, the extent of its adherence to the plan or the equal opportunity clauses contained in its state contracts, and its employment practices and their effects. In determining a contractor's status, the department shall also consider the extent to which a contractor has made good faith efforts to implement its affirmative action plan or the equal opportunity clauses contained in its state contracts.

Subp. 2. Determination of good faith efforts. A contractor's good faith efforts may be determined by whether it takes prompt corrective action when it becomes aware that any of the following conditions exist with regard to its workforce:

A. underutilization of women or minorities in any job group;

B. minority or female employees move laterally, vertically, at a lesser rate than nonminority or male employees;

C. a selection process eliminates minorities or women at higher rate than nonminority or male employees;

D. preemployment inquiries and application forms do not satisfy state law requirements;

E. descriptions of jobs do not accurately reflect functions involved;

F. selection procedures are not valid predictors of job performance;

G. disproportionately high rejection of women or minorities by hiring supervisors;

H. women, minorities, and disabled individuals who are not participating in company sponsored activities;

I. segregation still exists at some facilities;

J. disparities by minority group status or sex in terms of length of service and type of job held;

K. managers, supervisors, or employees lack interest in company equal employment opportunity policies;

L. underrepresentation of women or minorities in training or career improvement programs;

M. techniques for evaluating effectiveness of its equal employment opportunity programs have not been established; and

N. inadequate display of equal employment opportunity posters.

Subp. 3. Additional factors regarding good faith efforts. Good faith efforts may also be determined by:

A. whether a contractor submits timely compliance review reports as required by part 5000.3580 [Emergency];

B. whether a contractor permits an on-site compliance review to be conducted;

C. whether a contractor makes available records or other information as required by parts 5000.3400 to 5000.3600 [Emergency]; or

D. whether a contractor implements conciliation agreements.

Subp. 4. Analysis of good faith efforts. Good faith efforts may be analyzed by:

A. the results of an investigation of a charge of discrimination;

B. the results of an analysis of the contractor's affirmative action plan; or

C. the results of an on-site review of the contractor's compliance with its affirmative action plan or equal opportunity clause.

Subp. 5. Notification of deficiencies. If the department determines that a contractor has fialed to adhere to its affirmative action plan or the equal opportunity clauses contained in its state contracts, that the contractor has failed to exercise good faith efforts to implement the plan or the equal opportunity clauses, or has failed to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], it shall notify the contractor by first-class mail identifying the nature of the deficiency and stating specifically the corrective measures necessary for eliminating the deficiency. The contractor shall have 15 days to reply to the notice of deficiency.

Where deficiencies are found to exist, the department shall attempt to secure compliance through conciliation and persuasion unless it determines that such efforts would be unsuccessful or unproductive. Before the contractor can be found to be in compliance, the contractor shall make a specific commitment in writing to correct the deficiencies set forth in the notice. The commitment must include the precise action to be taken and dates for completion. The time period allotted must be no longer than the minimum period necessary to effect such changes. Upon approval of the commitment by the commissioner, the contractor may be considered in compliance, on condition that the commitment is faithfully kept. The contractor shall be notified that making such a commitment does not preclude future determinations of noncompliance based on a finding that the commitment is not sufficient to achieve compliance.

Subp. 6. Notification of sanctions and hearing. Where a contractor fails to respond to a notice of deficiency within 15 days or the department determines that attempts to correct the deficiencies through conciliation and persuasion have been or would be unsuccessful or unproductive, the department may impose one or more of the sanctions set forth in Minnesota Statutes, section 363.073, subdivision 2. The department shall serve the contractor with notice of the sanctions by mailing a copy thereof to the contractor by first-class mail. The sanctions shall become effective 20 days after the notice is served.

A contractor may obtain a hearing regarding the department's determination of deficiencies or any sanctions which it has imposed by filing a written request for a hearing with the department within 20 days after service of the notice of sanction. The hearing shall be a contested case proceeding pursuant to the Administrative Procedure Act, Minnesota Statutes, sections 14.57 to 14.70.

A. If a timely request for a hearing is filed, the commissioner shall issue and serve upon the contractor by certified mail a notice and order directing the contractor to appear at the hearing, at a time and place specified in the notice, and show cause why the sanctions determined by the department should not be imposed.

B. The filing of a timely request for a hearing shall stay the enforcement of the sanctions in question until a final decision is issued or the request for a hearing is withdrawn or dismissed with prejudice. The failure of a contractor to appear at the hearing may be grounds for dismissal with prejudice.

C. The hearing examiner shall make and file with the commissioner a report stating the findings of fact, conclusions, and recommendations. The commissioner shall serve each party with a copy of the report by mail. Within 20 days after service of the report, any party including the department, may file with the commissioner and serve exceptions to the report and reasons in support of their exceptions.

D. Exceptions with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. When exception is taken to a statement of fact, a corrected statement must be incorporated. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. A reply to exceptions is not required, but may be filed by any party including the department within ten days after service of the exceptions to which reply is made along with proof of service thereof on all parties of record.

E. Exceptions and replies shall contain written arguments in support of the position taken by the party filing such exceptions or reply. An opportunity for oral argument before the commissioner or his or her designee shall be permitted if requested by a party at the time that they file their exceptions or reply, unless the commissioner in the exercise of his or her discretion, determines that oral argument is unnecessary because the facts and legal arguments could be adequately presented by the briefs and records and the decisional process would not be significantly aided by oral argument. Oral arguments shall be limited to a discussion of legal questions and a restatement of facts in evidence. No new evidence shall be received at oral arguments.

F. Within 20 days from the date of the mailing by the commissioner of the final decision or order, any party including the department, may petition for a rehearing, or for an amendment or vacation of the findings of fact, decision or order, or for reconsideration or reargument. If the petition is for a rehearing, vacation, reconsideration, or reargument, the grounds relied upon shall be specifically set forth and the claimed errors clearly stated. If the petition is for an amendment of the findings of fact, decision, or order, it shall contain the desired proposed amendments, and the reasons for it shall be clearly stated. The petition shall be served upon all parties to the proceeding. An adverse party shall have ten days from the date of the service of the petition to answer and no reply will be permitted. The commissioner may grant or deny the petition without a hearing, or in his or her discretion set a hearing thereon. Pending the decision of the commissioner on the petition, the commissioner may vacate and set aside the decision or order. No petition will extend the time of appeal from the decision or order.

G. A second petition for rehearing, amendment, or vacation of any finding of fact, decision, or order, reconsideration or reargument by the same party or parties and upon the same grounds as a former petition which has been considered and denied, will not be entertained.

Within ten days after the date that sanctions become effective, the department shall notify the state agency or state agencies which hold contracts with the affected contractor about the sanctions and make recommendations regarding whether such contracts should be terminated pursuant to Minnesota Statutes, section 363.073, subdivision 3.

Subp. 7. Recertification. A contractor whose certificate of compliance has been suspended or revoked or who has been declared ineligible for further certificates of compliance pursuant to Minnesota Statutes, section 363.073, subdivision 2, may

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request reinstatement in a letter to the commissioner. The commissioner may grant the request if, based upon the contractor's showing, the department's file regarding the contractor's past performance, a compliance review, the recommendations of the department or a conciliation agreement the commission determines that the contractor has established and will carry out employment policies and practices that are in compliance with Minnesota Statutes, section 363.073 and with parts 5000.3400 to 5000.3600 [Emergency].

Subp. 8. Evidence of discrimination. If a compliance review indicates a violation of Minnesota Statutes, section 363.03, the commissioner may proceed to file a charge and process the matter under Minnesota Statutes, section 363.06, or part 5000.3570 [Emergency].

5000.3580 [Emergency] SUBMISSION OF COMPLIANCE REPORTS.

Subpart 1. Construction contractors; monthly reports. Each construction contractor shall submit a monthly utilization report. The report must state for each state project during the month in question:

A. total hours of employment on the project;

B. total hours of employment of women;

C. total hours of employment of minorities;

D. total hours of training;

E. total hours of training provided to women; and

F. total hours of training provided to minorities.

Subp. 2. Construction contractors; semiannual reports. Construction contractors shall also submit semiannual compliance reports of their affirmative action programs for nonconstruction personnel. These compliance reports must contain the same, be submitted at the same time, and contain the same documents as required for nonconstruction contractors in part 5000.3520 [Emergency].

Subp. 3. Nonconstruction contractors; semiannual reports. Nonconstruction contractors shall submit semiannual compliance reports. The report must include the following data, by job, group, race, sex, and disability:

A. total number of employment applicants;

B. total number of applicants interviewed;

C. total number of applicants tested;

D. total number of applicants hired;

E. total number of employees promoted;

F. total number of employees demoted;

G. total number of employees transferred;

H. total number of employees laid off;

I. total number of employees recalled from layoff;

J. total number of employees terminated;

K. total number of employees receiving company sponsored training; and

L. total number of people employed by company.

Subp. 4. Minimizing duplication of reports. The department shall attempt to the fullest extent possible to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies by:

A. utilizing forms and standards similar to those by federal equal employment opportunity programs;

B. accepting forms and reports prepared for federal or local agencies where the information contained therein is sufficient for parts 5000.3400 to 5000.3600 [Emergency]; and

C. minimizing duplication of programs and procedures.

5000.3590 [Emergency] PROCEDURES FOR COMPLIANCE REVIEW.

Subpart 1. Procedures for contractor evaluation. A contractor evaluation shall proceed as follows:

A. a desk audit of the contractor's affirmative action plan with special attention directed to the included workforce analysis;

B. an on-site review of those matters which still are not fully or satisfactorily addressed in the affirmative action plan and workforce analysis; and

C. where necessary, an off-site analysis of information supplied by the contractor during or pursuant to the on-site review. Contractors may reach agreement with the department on nationwide Affirmative Action Plan formats or on frequency of updating statistics.

Subp. 2. Desk audit. The department shall routinely request from among the state contractors within their jurisdiction affirmative action programs and supporting documentation, including the workforce analysis and support data for audit. As used throughout this part, the term "Affirmative Action Plan and supporting documentation" means the required contents of affirmative action plans, and methods of implementing those requirements set forth in part 5000.3420. "Workforce analysis" is defined as a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job groups) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job family, or discipline, in order of wage rates or salary ranges. For each job title, the total number of incumbents, the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate of salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

Subp. 3. Exceptions to desk audit requirements. For preaward reviews, the desk audit need not be carried out or an abbreviated desk audit may be performed and an immediate on-site review performed. Special reports that meet the criteria in subpart 4, item C may be requested from contractors as required, for submission to the department for complaint investigations and follow-up reviews performed within one year of a full compliance review. The commissioner may approve other special compliance reviews when the circumstances require an immediate on-site review.

Subp. 4. On-site review. On-site reviews must be conducted as follows:

A. Each contractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews and inspecting and copying books, records, accounts, and other materials as may be relevant to compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency]. Information obtained in this manner must be used only in connection with the administration or enforcement of the Minnesota Human Rights Act and in the furtherance of the act's objectives.

B. If upon selection of an affirmative action plan and included workforce analysis for desk audit, the department finds that the material submitted does not demonstrate a reasonable effort by the contractor to meet all the requirements which are applicable under parts 5000.3420 to 5000.3600 [Emergency] the on-site review need not be carried out and the enforcement procedures specified in Minnesota Statutes, section 363.073 and part 5000.3570 [Emergency] shall be applicable. Otherwise following a desk audit of the affirmative action plan and supporting documentation the department shall schedule an on-site review of the establishment, provided that an on-site review need not be carried out when the department can determine that the contractor's affirmative action plan is acceptable. This determination must be based on the current desk audit and an on-site review conducted within the preceding 24 months and also must include an affirmative determination that the circumstances of the previous on-site review have not substantially changed.

C. The department shall request contractors who are scheduled for on-site reviews to have the information necessary to perform the review available on-site. Specifically, this includes:

(1) information necessary to conduct an in-depth analysis of apparent deficiencies in the contractors' utilization of women or minorities;

(2) information required for a complete and thorough understanding of data contained in or offered as support for the affirmative action plan; and

(3) information concerning matters relevant to a determination of compliance with the requirements of Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], but not adequately addressed in the affirmative action plan.

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D. The contractor shall be requested to furnish only the specific items of information which the compliance officer determines are:

(1) necessary for conducting the review and completing the standard compliance review report; and

(2) not contained in or able to be derived from the material submitted by the contractor.

E. In order to pursue certain issues uncovered in the compliance review, it may be necessary for the compliance officer to request certain additional information on-site even though such data have not been previously identified. The additional information must also meet the criteria in this part.

F. Where necessary, the compliance officer may take information made available during the on-site review off-site for further analysis. An off-site analysis should be conducted where issues have arisen concerning deficiencies or an apparent violation which, in the judgment of the compliance officer, should be more thoroughly analyzed off-site before a determination of compliance is made.

Subp. 5. Review of contractor data. If the contractor is concerned with the confidentiality of information such as lists of employees, employee names, reasons for termination, and pay data then alphabetic or numeric coding or the use of an index of pay and pay ranges is acceptable for desk audit purposes.

The contractor shall provide full access to all relevant data on-site as required by subpart 4, item A.

The contractor shall provide all data determined by the compliance officer to be necessary for off-site analysis pursuant to subpart 4, item F. The data may only be coded if the contractor makes the code available to the compliance officer. If the contractor believes that particular information which is to be taken off-site is not relevant to compliance, the contractor may request a ruling by the supervisor of the department's compliance division who shall issue a ruling within ten days. The contractor may appeal that ruling to the commissioner within ten days. The commissioner or his or her designee shall issue a final ruling within ten days. Pending a final ruling, the information in question must be made available to the compliance officer off-site, and shall be considered a part of the investigatory file. Data determined to be not relevant to the investigation must be returned to the contractor immediately.

Subp. 6. Employee interviews. The compliance officer shall contact, where appropriate, a reasonable number of employees for interviews as part of the on-site review of the contractors employment practices. The number, scope, and manner of conducting the interviews must be discussed in advance with the contractor.

5000.3600 [Emergency] DUTIES OF CONTRACTING STATE AGENCY.

Subpart 1. Cooperation with commissioner. Each state agency shall cooperate with the commissioner in the performance of his or her responsibilities under Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency]. Cooperation includes the responsibility to ensure that contractors are cognizant of their obligations under Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency].

Subp. 2. Information provided to contractors. Each state agency shall include in all and each contract the contractor's obligation and requirements to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], and provide documentation describing the law and rules pertaining to the law and the specific criteria by which the affirmative action plan will be approved or rejected.

Subp. 3. Information provided to department. Each contracting state agency shall provide any information which comes to its attention which indicates that a contractor is not in compliance with Minnesota Statutes, section 363.073 or any rule relating to that statute.

Subp. 4. Contract clause required. Each contract must contain an affirmative action clause which should state the intention of the agency to carry out its responsibility for requiring affirmative action by its contractors and specific language outlining consequences for failure to implement the contractors' affirmative action plan or make a good faith effort to do so.

Subp. 5. Submission of bidders list. The contracting agency shall submit to the department a list of prospective bidders prior to the opening of a contractor's bid to ensure compliance with Minnesota Statutes, section 363.073.

Subp. 6. Contractors list from department. Every 60 days the department shall furnish state agencies with a list of currently certified contractors and contractors whose certificates of compliance have been suspended or revoked or who have been ineligible with Minnesota Statutes, section 363.073, subdivision 2.

Subp. 7. State agency's duty to provide information to department. Each contracting state agency shall provide the department with any information or assistance the department deems necessary to seek compliance with Minnesota Statutes, section 363.073 and the rules adopted under it.

Subp. 8. Copy of statute and rules to be furnished. Each contracting agency shall provide each bidder with a copy of Minnesota Statutes, section 363.073 and the rules adopted pursuant to it.

Subp. 9. Bid specifications, modifications; incorporation of statutory and rule requirements. Each contracting state agency shall include the following paragraph in all bid specifications and modifications:

"It is hereby agreed between the parties that Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 [Emergency] are incorporated into any contract between these parties based upon this specification or any modification of it. The bidder acknowledges receipt of a copy of Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 [Emergency]."

APPLICATION. During the period that parts 5000.3400 to 5000.3600 [Emergency] are effective they supercede parts 5000.0100, 5000.2500 to 5000.2700.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

State Department of Education
Management Assistance Division

57/x

Incorporation Into MCAR/Minnesota Rules Governing Method of Determining Training and Experience Index

Pursuant to Minnesota Statute section 124A.02, subdivision 4, the Department of Education shall incorporate into the Minnesota Code of Agency Rules (now called Minnesota Rules) the method by which the training and experience index is determined. This method is not subject to the provisions of Chapter 14, Administrative Procedure Act.

3550.0100 METHOD OF DETERMINING THE TRAINING AND EXPERIENCE INDEX COMPONENT OF THE SCHOOL FOUNDATION AID FORMULA.

Subpart 1. Teachers only. To determine the training and experience index, only the annual salary of teachers covered by the negotiated teacher salary schedule are included. Administrators and other support staff whose salaries are not covered by the negotiated teacher salary schedule are not included.

Subpart 2. Submission of teacher personnel records. By October 1 of each year, a school district shall submit to the Department of Education a school personnel record for each currently employed teacher. Data from these records shall include: annual base salary, level of training received in accredited institutions of higher education, and total years of teaching experience.

Subpart 3. Matrix. The Department of Education shall construct a matrix that classifies teachers by the level of training received in accredited institutions of higher education and by the total years of professional teaching experience.

A. The matrix shall contain 12 lanes representing different levels of training. The lanes are:

(1) bachelor's degree;

(2) bachelor's degree, plus 15 quarter hours;

(3) bachelor's degree, plus 30 quarter hours;

(4) bachelor's degree, plus 45 quarter hours;

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STATE OF MINNESOTA

DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Human Rights Governing Certificates of Compliance for Public State Contracts

ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the State Register on July 30, 1984, as proposed emergency rule pursuant to Minnesota Statutes Section 15,0412, Subdivision 5. After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, and an additional 25 days from September 4, 1984, and after reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that these rules identified as emergency rules governing Certificates of Compliance for Public State Contracts, are adopted this 4th day of October, 1984, pursuant to authority vested in me by the Minnesota Statutes Section 363.075.

STATE OF MINNESOTA

Linda C. Johnson

Dr. Linda C. Johnson
Commissioner of Human Rights

DEPARTMENT OF HUMAN RIGHTS

Proposed Emergency Rules Governing Certificates of Compliance and Public Contracts

Request for Public Comment

The Department of Human Rights is re-opening the period for public comment on the proposed emergency rules governing certificates of compliance and public contracts since the original notice incorrectly stated that comments would be accepted for 20 days rather than for 25 days following publication of the notice in the State Register. The proposed emergency rules were published in the State Register Vol. 9, No. 5, on July 30, 1984, at pages 228-250. All interested persons are afforded the opportunity to submit their comments on the proposed emergency rules for 25 days beginning September 4, 1984.

All submissions must be in writing and addressed to:

Mr. James Robinson, Supervisor
Compliance Unit
Minnesota Department of Human Rights
500 Bremer Tower
7th and Minnesota Streets
St. Paul, Minnesota 55101
612/296-5683

August 27, 1984

Linda C. Johnson
Dr. Linda C. Johnson
Commissioner of Human Rights

matter came on for hearing pursuant to the appellee's motion for summary judgment on July 26, 1984 in Grand Rapids, Minnesota. LeRoy C. Gielen appeared pro se. Neil F. Scott, Special Assistant Attorney General appeared for the Appellee.

Syllabus

The issue in this appeal is whether wages received by the appellant in payment for his personal labor is subject to income tax.

Findings of Fact

1. Appellant is a cash basis calendar year taxpayer who resided in Minnesota during the years 1979 through 1981.

2. The appellant was employed by Blandin Paper Company in Grand Rapids, Minnesota during 1979 through 1981 earning wages as follows:

1979	$21,562.90
1980	$27,979.40
1981	$29,479.21

3. The appellant failed to file state income tax returns for each of the years 1979 through 1981.

4. The Commissioner of Revenue demanded the appellant file tax returns and when the appellant failed to do so tax returns were prepared on his behalf under Minn. Stat. 290.47 on or about March 1, 1983.

5. On or about March 3, 1984 the appellant was notified of the assessment and appealed to Tax Court.

6. The assessment is based on the wages earned by the appellant at Blandin Paper Company for the years 1979 through 1981. Credit was allowed for income tax withheld by Blandin Paper Company and for eight dependents. Additionally, the Appellant was allowed the standard deduction.

7. The tax assessed by the Commissioner of Revenue is as follows:

Year	Tax	Penalty	Interest	Total
1979	321.94	80.49	140.15	542.58
1980	2465.70	616.44	827.53	3909.67
1981	1658.71	414.68	341.96	2414.46

8. At the hearing the appellant presented no facts to dispute the returns as prepared by the Commissioner of Revenue.

Conclusions of Law

1. The wages paid to the appellant by Blandin Paper Company for his labor is includable in Minnesota gross income under Minn. Stat. 290.01, subd. 20 and subject to income tax.

2. The tax returns prepared by the Commissioner of Revenue for the appellant for 1979 through 1981 are correct and proper and affirmed in all respects.

3. The assessment of tax, penalty and interest stated in Findings of Fact #7 is hereby affirmed together with additional interest at the statutory rate from February 25, 1983.

Let judgment be entered accordingly,

August 21, 1984

John Knapp
Judge of Tax Court

ERRATA

Department of Human Rights

Correction and Addendum to Proposed Emergency Rules Governing Certificates of Compliance and Public Contracts

Request for Public Comment

The Department of Human Rights is re-opening the period for public comment on the proposed emergency rules governing certificates of compliance and public contracts since the original notice incorrectly stated that comments would be accepted

for 20 days rather than for 25 days following publication of the notice in the *State Register*. The proposed emergency rules were published in the *State Register* Vol. 9, No. 5, on July 30, 1984, at pages 228-250. All submissions must be in writing and addressed to:

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St. Paul, Minnesota 55101
612/296-5683

All interested persons are afforded the opportunity to submit their comments on the proposed emergency rules for 25 days immediately following publication of this notice in the *State Register*.

August 27, 1984

Dr. Linda C. Johnson
Commissioner of Human Rights

Department of Labor and Industry Prevailing Wage Division

Correction to Certified Prevailing Wage Rates for Electricians in Highway and Heavy and Commercial Construction and New Rates Established for Electricians in Highway and Heavy Construction

The Highway and Heavy prevailing wage rates published in the *State Register* in June of 1984 for electricians in Anoka, Blue Earth, Chisago, Dakota, Hennepin, Isanti, LeSueur, Nicollet, Ramsey, Scott, Sherburne, Washington, Watonwan and Wright counties were in error. Prevailing wage rates for electricians have been certified in Faribault, Martin and Waseca counties for Highway and Heavy construction.

The commercial prevailing wage rates published in the *State Register* in July of 1984 for electricians in Ramsey and Pine were in error.

Copies of the above-named prevailing wage certifications are now available at the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155.

Steve Keefe, Commissioner
Department of Labor & Industry

STATE OF MINNESOTA

DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Temporary Rules of the State of Minnesota Department of Human Rights Governing Certificates of Compliance for Public State Contracts

ORDER FOR PUBLICATION OF TEMPORARY RULES

IT IS ORDERED this 16th day of July 1984, that the proposed temporary rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

Kathleen Roberts

COMMISSIONER OF HUMAN RIGHTS

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

Alice Vega , being first duly sworn,

hereby deposes and says:

That at the City of St. Paul, county and state aforesaid, on the 30th day of August , 1984, (s)he served the attached

Notice of Proposed Temporary Rules

by depositing in the United States mail at said City of St. Paul a true and correct copy thereof, properly enveloped, with postage prepaid, by Regular Mail

and addressed to

Rule Making List

Alice Vega

Subscribed and sworn to before me

this 30th day of August , 1984.

Eleanore D. Morgan

ELEANORE D. MORGAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Oct. 20, 1985

DEPARTMENT OF HUMAN RIGHTS

Proposed Emergency Rules Governing Certificates of Compliance and Public Contracts

Request for Public Comment

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All submissions must be in writing and addressed to:

Mr. James Robinson, Supervisor
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August 27, 1984

Linda C. Johnson

Dr. Linda C. Johnson
Commissioner of Human Rights

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Emergency Rules Governing Certificates of Compliance Issued by the Department of Human Rights

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I, Mary Hartle, hereby certify that the attached notice was sent to all interested parties on the Department of Human Rights rulemaking list. I also certify that the mailing list was up to date on the 30th day of August, 1984.

Mary L Hartle

Subscribed and sworn to before me

this 23 day of October, 1984.

Karen Ferguson

KAREN FERGUSON
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires 11-20-89

DEPARTMENT OF HUMAN RIGHTS

Proposed Emergency Rules Governing Certificates of Compliance and Public Contracts

Request for Public Comment

The Department of Human Rights is re-opening the period for public comment on the proposed emergency rules governing certificates of compliance and public contracts since the original notice incorrectly stated that comments would be accepted for 20 days rather than for 25 days following publication of the notice in the State Register. The proposed emergency rules were published in the State Register Vol. 9, No. 5, on July 30, 1984, at pages 228-250. All interested persons are afforded the opportunity to submit their comments on the proposed emergency rules for 25 days beginning September 4, 1984.

All submissions must be in writing and addressed to:

Mr. James Robinson, Supervisor
Compliance Unit
Minnesota Department of Human Rights
500 Bremer Tower
7th and Minnesota Streets
St. Paul, Minnesota 55101
612/296-5683

August 27, 1984

Linda C. Johnson
Dr. Linda C. Johnson
Commissioner of Human Rights

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Human Rights Governing Certificates of Compliance for Public State Contracts

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter was published in the State Register on July 30, 1984, as proposed emergency rules pursuant to Minnesota Statutes Section 14.30. After affording interested and affected persons an opportunity to submit written data and views within twenty days of the publication date and an additional twenty-five days from a subsequent notice on September 4, 1984 and after reviewing and considering this matter, I find the following:

FINDINGS OF FACT

1. Minn. Rules pts. 5000.3430, subp. 1 and 5000.3450, subp. 2, as proposed, contain typographical errors. The fourth sentence of pt. 5000.3430, subp. 1 should be corrected as follows: "The identity of the director or manager must appear on all internal and external communications ~~and~~ on the companies equal opportunity programs." The last sentence of pt. 5000.3450, subp. 2 should be corrected as follows: "'Underutilization' means having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In making the utilization analysis, the contractor shall conduct such analysis separately for minorities and women."

2. With the corrections set forth above, the above-captioned rules are needed and reasonable.

Based upon these Findings of Fact, I make the following:

CONCLUSIONS

1. Parts 5000.3430, subp. 1 and 5000.3450, subp. 2 should be corrected as indicated in paragraph No. 1 above.

2. With the corrections set forth in paragraph No. 1 above, the above-captioned emergency rules should be adopted.

Dated: October 4th, 1984.

STATE OF MINNESOTA

Linda C. Johnson

LINDA C. JOHNSON, Commissioner
Department of Human Rights

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Human Rights Governing Certificate of Compliance for Public State Contracts.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Carl Warren, do hereby declare that I have examined the rules and all related documents and that, based upon my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings and the rules of the Attorney General have been followed. Any exceptions are listed below.

Dated: October 4, 1984.

CARL WARREN
Special Assistant
Attorney General

The above-captioned rules were published July 30, 1984. Said publication indicated that interested and affected persons would have an opportunity to submit written data and views within twenty days of the publication date. Upon realizing that it had indicated the wrong time period for submitting written data and views, the Department published a subsequent notice on September 4, 1984 affording interested and affected persons an additional 25 days from September 4, 1984 in which to submit written data and views.