

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1163

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5-24-85
DATE FOR REVIEW 6-2-85
DATE DUE 6-7-85

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

Approved 6-7-85 Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 6-10-85 Revisor approved 5/28/85
disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 5.24.85 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 11.26.84
+ Affidavit of Service, 11.21.84

✓ 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 not in usual form but appears ok
12.7.84 At least 30 days prior to hearing/adoption

✓ Mailing list Certificate

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

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

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

? Notice of Submission to the Attorney General
misstates comment period to Atty Gen. + address of A.G, Admin Div.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS
500 BREMER TOWER
7TH PLACE AND MINNESOTA STREET • SAINT PAUL, MINNESOTA 55101
(612) 296-5663

June 7, 1985

Martha J. Casserly
Special Assistant Attorney General
Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: **Adopted Rules Relating to Certificates of Compliance for Public Contractors**

Dear Ms. Casserly:

I, hereby, withdraw the above-referenced rules for the purpose of resubmitting them to the Attorney General's Office for approval with the changes you recommended. Those changes are set forth in the enclosed Findings of Fact and Conclusions.

Very truly yours,

Linda C. Johnson 6.24

LINDA C. JOHNSON
Commissioner

To: Marty.
Date: 6/4/85
Re: Dept. of Human Rights — Certificates of Compliance

Rules as Adopted.

p. 6 line 26 — .3420, subp. 4.
Requires annual update of affirmative action plan. This appears unnecessary since the Certificates of Compliance are good for two years. policy - OK

p. 7 line 6 grammar — .3420, subp. 5
I think it is grammatically correct to say "his or her" rather than "their" since the subject of the sentence is singular — "a disabled applicant or employee..."

p. 12 line 31. — .3450, subp. 1.
It would seem preferable to use the same terms for the various minorities as are given in the definition section.

p. 16 line 29 — .3470, subp. 2.
If certain identified situations exist, this rule states "corrective action shall be appropriate." This language is ambiguous, combining the mandatory "shall" with wishy-washy "appropriate."

p. 17 lines 26-29 — .3470, subp. 2, N + O.
Both sections identify problems — lack of housing and lack of transportation — which would seem to be outside the employee's scope for corrective action (however "appropriate" that action might be!).

p. 18 lines 30-35; p. 19, lines 4-24; p. 20 line 6 — .3480, subp. 4; subp. 5. A. + F.
These sentences are statements of fact and not a rule.

p. 20 line 12. — .3480, subp. 5. H
Requires recruiting at "all" schools. Question — all schools where?

p. 35. lines 17-21 — .3552, subp. 6. D.
Statement of fact - non-rule

p. 49 lines 23, 24 — .3590, subp. 2.
Preferable to use terms as are given in definition.

encourage own

1st third Sabka & include rules subK

legal

1. pg 12, line 9 - send notif stating "appropriate action" w-at appro-op action imposed on SK?

~~2. pg 15, line 23 - "appropriate~~

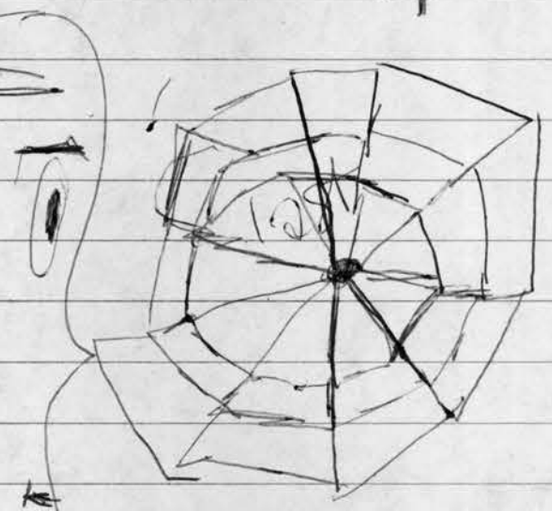
3. pg 15, line 30 - delete - "but not limited to"

~~4. pg 16, line 6 - depth? what is~~

Gul- 5. pg 16, line 29 - ~~special~~ corrective action shall be appropriate -



Gul 6. pg 17, line 26 → 29



~~7. pg 20, line~~

~~8. pg 26, line 9~~

~~9. pg 30, line 26~~

~~10. pg 30~~

pg 50, line ~~to~~ 50

11. pg 53, line 2 - copies being provided?

w/ deaval

mzka

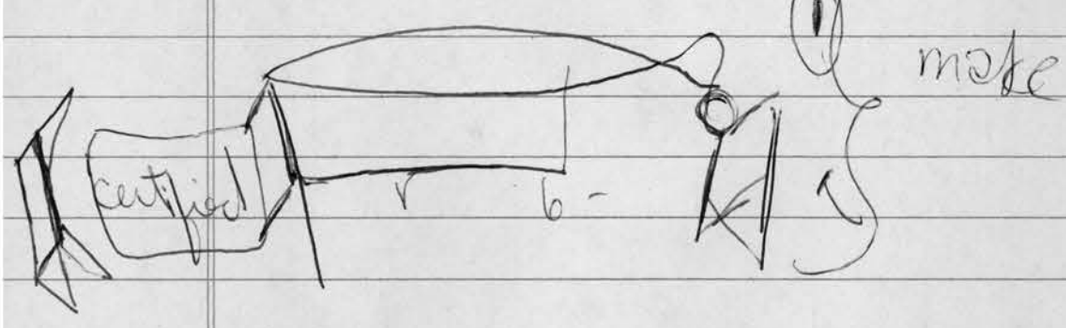
nonlegal

pg 7, line 6 - grammer

pg 12, line 31 -
pg 49, line 23, 24 } why not use same dynasdepn?

pg 14, line 22 - wrong cite

pg 30, line 26 least



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

May 24, 1985

RECEIVED
MAY 24 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Michael J. Miles
Assistant Attorney General
Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Re: The proposed adoption of rules of the State of Minnesota Department of Human Rights Governing Certificate of Compliance for Public State Contracts

Dear Mr. Miles:

Enclosed are the above-referenced rules and supporting documentation which are being submitted for review pursuant to Minn. Stat. Section 14.26 (1984) and Minn. Rule 2000.0400 (1983). These rules were submitted in essentially the same form for review as proposed emergency rules last October, 1985. They were rejected. I have enclosed a copy of Larry Starns memo regarding that action. You will also note that more than 25 requests for hearing were received. Subsequently, however, a sufficient number of the requests were withdrawn to bring the number below 25.

No one has requested notification of the date of submission of the proposed rule to the Attorney General for you. Nonetheless, the Department has sent notice to certain individuals who have expressed concern about the rules.

The Department has made several changes in the rules since publication which it considers to be non-substantial. Please notify me as soon as possible if you should consider any of these changes to be substantial so that we may consider ways to correct the problem.

Very truly yours,

CARL WARREN
Special Assistant
Attorney General

CW:vg

Enclosure

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

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: LINDA C. JOHNSON, Commissioner
Department of Human Rights

DATE: 6-10-85

ATTN: CARL M. WARREN
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: 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.

The above-referenced rule has been approved as to its legality by the Attorney General on June 7, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:sz

Enclosures

cc: Executive Director
Legislative Commission to Review
Administrative Rules

Chief Administrative Law Judge
Office of Administrative Hearings

Department of Human Rights

Adopted Rules Relating to Certificates of Compliance for Public Contractors

Rules as Adopted

CERTIFICATES OF COMPLIANCE FOR PUBLIC STATE CONTRACTS

5000.3400 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5000.3400 to 5000.3600 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 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

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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

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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 question, and those who could reasonably be expected to acquire

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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 shall be considered substantially limited.

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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 GENERAL PROVISIONS.

Subpart 1. **Purpose.** The purpose of parts 5000.3400 to 5000.3600 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 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 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;

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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 at each establishment an affirmative action plan which sets 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

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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~~ his or her 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

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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 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 on the company's equal opportunity programs. The minimum responsibilities of the director shall be the following:

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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.

Additional responsibility in furtherance of the purposes of parts 5000.3400 to 5000.3600, beyond those enumerated herein shall be at the option of the contractor, but encouraged by the department.

Subp. 2. **Director responsibilities.** The minimum line responsibilities of the director or manager shall be:

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

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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.

Additional responsibility in furtherance of the purposes of parts 5000.3400 to 5000.3600, beyond those enumerated herein shall be at the option of the contractor, but encouraged by the department.

5000.3440 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,

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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 shall 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.

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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 pictured.

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

5000.3450 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 shall 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.

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

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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 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;

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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 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, subpart 2, item C~~ 5000.3450.

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

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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 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.

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

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responsibilities under the act.

5000.3470 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, 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~~ taken:

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

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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;

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 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

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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 shall 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

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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~~ black 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 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.

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

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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 shall 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.

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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 shall 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 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.

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

5000.3500 NONCONSTRUCTION CONTRACTOR'S DISABLED INDIVIDUALS PLAN.

An Nonconstruction contractors shall also have affirmative action ~~plan shall be made~~ plans for disabled individuals in accordance with ~~12 MCAR S 1.053 D. (Temporary)~~ parts 5000.3550 to 5000.3559.

~~5000.3510 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~~

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~~recruited through affirmative action measures.~~

CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

5000.3520 COMMISSIONER SETS GOALS AND TIMETABLES.

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.

5000.3530 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 under part ~~5000.3500~~	Insert the goals as determined under part ~~5000.3500~~	Insert the goals as determined under part ~~5000.3500~~

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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 shall be based on its implementation of the equal opportunity clause, specific affirmative action obligations required by the specifications in part 5000.3540, 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. 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 geographical area where the contract is to be performed. The contracting state agency shall insert the description of the geographical areas where the contract is to be performed describing the

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state, county, city, town, or municipality of the geographic area in the notice, and in the contract resulting from this solicitation.

5000.3535 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 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

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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~~ Make a good faith effort to 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 individual. If the 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

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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~~ first day of construction work at any job site. A written record shall be made and maintained identifying the time and

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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

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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

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5000.3520 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 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 ~~lease~~ 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.

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

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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 CONSTRUCTION CONTRACTOR ~~AFFIRMATIVE-ACTION-PLANS~~ DISABLED INDIVIDUALS PLAN.

Construction contractors shall also have affirmative action plans for disabled individuals in accordance with ~~part~~ parts 5000.3550 to 5000.3559.

ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR DISABLED INDIVIDUALS

5000.3550 ~~ALL-CONTRACTORS;-AFFIRMATIVE-ACTION-PLANS-FOR~~ DISABLED INDIVIDUALS AFFIRMATIVE ACTION CLAUSE.

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

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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.~~ 5000.3552 PHYSICAL AND MENTAL QUALIFICATIONS.

Subpart 1. **Schedule for review.** ~~(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

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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)~~ Subp. 2. **Relating qualification requirements to job.** 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)~~ Subp. 3. **Pre-employment medical exam.** Nothing in this ~~section~~ part shall prohibit a contractor from requiring 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~~ parts 5000.3550 to 5000.3559. 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)~~ A. supervisors and managers may be informed regarding restrictions on the work or duties of disabled individuals and regarding accommodations;

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

~~(iii)~~ C. officials, employees, representatives, or

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agents of the department ~~of~~ or local human rights agencies investigating compliance with the act or local human rights ordinances shall be informed if they request such information.

~~3.~~ Subp. 4. **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.~~ Subp. 5. **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.~~ Subp. 6. **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)~~ 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

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the contractor in meeting this obligation.

~~(b)~~ 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)~~ 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)~~ 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)~~ 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)~~ 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~~ of affirmative action programs.

~~(g)~~ G. Review employment records to determine the availability of promotable and transferable qualified known

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disabled individuals presently employed, and to determine whether their present and potential skills are being fully utilized or developed.

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

~~(i)~~ I. Send written notification of company policy to all subcontractors, vendors and suppliers, requesting that they act in a manner consistent with the contractor's policy on affirmative action.

~~(j)~~ 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~~ 5000.3552, subpart 6.

~~6.~~ Subp. 7. **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)~~ A. Include it in the contractor's policy manual.

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

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

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

~~(f)~~ F. Meet with union officials to inform them of

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the contractor's policy, and request their cooperation.

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

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

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

~~7.~~ Subp. 8. **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)~~ A. Develop policy statements, affirmative action programs, and internal and external communication techniques. The latter techniques shall 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)~~ B. Identify problem areas in conjunction with line management and known disabled employees, in the

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implementation of the affirmative action plan, and develop solutions. This is particularly important for the accommodations requirements.

~~(c)~~ 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 ~~part 5000.3500~~ parts 5000.3550 to 5000.3559.

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

~~(e)~~ 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)~~ F. Keep management informed of the latest developments in the entire affirmative action area.

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

~~8.~~ Subp. 9. **Development and execution of affirmative action programs.** The affirmative action programs shall be developed and executed as follows:

~~(a)~~ A. Job qualification requirements reviewed under part ~~5000.3500~~ 5000.3552, subparts 1 and 2 shall be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

~~(b)~~ B. The contractor shall evaluate the total selection process including training and promotion to ensure freedom from stereotyping disabled persons in a manner which

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limits their access to all jobs for which they are qualified.

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

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

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

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

~~9.~~ Subp. 10. **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 part ~~5000.3500~~ 5000.3400,

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subpart 21.

~~10.~~ 5000.3555 DETERMINATION OF DISABILITY.

~~(a)~~ Subpart 1. **Requiring medical determination of disability.** 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)~~ Subp. 2. **Application of determination.** Any determination of disability required pursuant to subpart 1 ~~of this section~~ must meet the requirements of part ~~5000.3500~~ 5000.3552, subpart 3, 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)~~ Subp. 3. **Medical documentation.** All medical documentation required under this ~~section~~ part shall be based upon the ~~American Medical Association~~ Guides to the Evaluation of Permanent Impairment (1984) published by the American Medical Association, provided that the guides shall be used only to determine the existence of impairment without regard to the degree of impairment. The guides are incorporated by reference. The guides are available for inspection at Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155. They are not subject to frequent change.

~~11.~~ 5000.3557 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.~~ 5000.3559 AVAILABILITY AND UTILIZATION ANALYSIS.

The requirements ~~contained~~ in ~~part 5000.3500~~ parts 5000.3450 and 5000.3460 regarding the performance of availability and utilization analyses and the establishment of goals and timetables do not apply to disabled applicants and

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employees.

5000.3560 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; 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 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 5000.3400 to 5000.3600, 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

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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 shall 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.

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

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

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; or

D. whether a contractor implements conciliation agreements.

Subp. 4. **Analysis of good faith efforts.** Good faith efforts shall 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;

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

D. the results of an assessment of the contractor's compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600.

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, 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

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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

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department shall 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 administrative law judge 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.

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F. Within 20 days from the date of the mailing by the commissioner of ~~the~~ his or her 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 shall 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 commissioner may grant the request if, based upon the

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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~~ commissioner 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.

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 this part.

5000.3580 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 information, and be submitted at the same time~~,-and-contain-the same-documents-as~~ as the reports required for nonconstruction contractors in part ~~5000.3520~~ 5000.3580, subpart 3.

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;

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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 used 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; and

C. minimizing duplication of programs and procedures.

5000.3590 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

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request from 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 shall 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 or 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 shall approve other special compliance reviews that effectuate the purposes of, and are consistent with the other compliance reviews described in parts

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~~.....to.....~~ part 5000.3590 when exigent 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. 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 examination 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 the on-site review need not be carried out and the enforcement procedures specified in Minnesota Statutes, section 363.073 and part 5000.3570 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'

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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, 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 shall be conducted where issues have arisen concerning deficiencies or an apparent violation which is only capable of being 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

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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. The information in question may be withheld pending a ruling by the supervisor or if appealed, a final ruling by the commissioner ~~and shall be considered a part of the investigatory file~~. Data determined to be relevant to the investigation must be submitted to the compliance officer within five days of the ruling by the supervisor, or if appealed, within five days of the final ruling of the commissioner.

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 contractor's employment practices. The number, scope, and manner of conducting the interviews must be discussed in advance with the contractor.

5000.3600 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. 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.

Subp. 2. **Information provided to contractors.** Each state agency shall include in each contract the contractor's obligation and requirements to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, 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.

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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 covered contract must contain an affirmative action clause which states 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 contractor's affirmative action plan or make a good faith effort to do so.

Subp. 5. **Submission of list of bidders.** 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. **List of contractors 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 deemed ineligible according to Minnesota Statutes, section 363.073.

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~~ made available.** Each contracting agency shall ~~provide~~ make available to 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

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 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 are available upon request from the contracting agency."

REPEALER. Minnesota Rules, parts 5000.0100, 5000.2500, 5000.2600, 5000.2700, 5000.2800, 5000.2900, 5000.3000, and 5000.3100 are repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 10 1985
Joan Anderson Growe
Secretary of State
9:35 AM

APPROVED AS TO FORM AND LEGALITY
June 7 19 85
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY M.J. Carsely
SPECIAL ASSISTANT ATTORNEY GENERAL

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 NONCONTROVERSIAL RULES

The above-entitled matter was published in the State Register on December 10, 1984, as proposed rules pursuant to Minn. Stat. § 14.22 (1984). After affording interested and affected persons an opportunity to submit written data and views within 30 days of the publication date, and after reviewing and considering the data and views, making certain amendments and determining that, as amended, the above-captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that these rules identified as rules governing Certificates of Compliance for Public State Contracts, are adopted this 24th day of May, 1985, pursuant to authority vested in my by Minn. Stat. § 363.074 (1984).

STATE OF MINNESOTA

Linda C. Johnson by JZ

LINDA C. JOHNSON, Commissioner
Department of Human Rights

SUMMARY

90. Volunteer services by a state officeholder on behalf of legislative candidates need not be allocated to or reported by any candidate.

The full text of the opinion is available upon request from the office of the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155-1289, (612) 296-5148.

Department of Human Rights

Outside Opinion Sought Concerning Proposed Rules Governing Certificates of Compliance and Public Contracts

Notice is hereby given that the Department of Human Rights is seeking information or opinions from persons or groups in preparing and amending rules governing Certificates of Compliance and Public Contracts.

The promulgation of these rules is authorized by Minnesota Statutes 363.74 (1984) which authorizes the commissioner to adopt suitable rules and regulations for effectuating the purposes of Chapter 363.073.

The Department of Human Rights requests information and comments concerning the subject matter of these rules, including comment on the issue of whether or not these rules and amendments are likely to have a qualitative or quantitive impact upon small business as defined by Minn. Stat. § 15.115. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

James Robinson, Supervisor
Compliance Unit
Minnesota Department of Human Rights
500 Bremer Tower—7th and Minnesota Streets
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-5683.

All statements of information and comment shall be accepted until December 10, 1984. Any written material received by the Department of Human Rights shall become part of the record.

Department of Human Services Health Care Programs

Notice of Hospital Cost Index

Pursuant to 12 MCAR § 2.05401, D. 1. (Temporary) hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subjected to a Health Cost Index (HCI) that is to be used in the calculation of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 7.0 percent according to an independent source, Data Resources, Inc. for Health Care Costs. However, pursuant to Senate File 1234, Article 5, Section 9 (1983), the HCI is subjected to the legislatively imposed limit of 5 percent. Consequently the HCI is 5 percent for hospitals whose fiscal years begin during the calendar quarter beginning January 1, 1985.

Leonard W. Levine, Commissioner
Department of Human Services

Department of Human Services Income Maintenance Bureau Assistance Payments Division

Outside Opinion Sought Concerning Proposed Rules Governing the General Assistance Program Including Assistance Standards, Certain Exemptions from Registration Requirements, and Interim Assistance Reimbursement

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources

Mary Hartle/dmr

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

Denise M. Romero, being first duly sworn,

hereby deposes and says:

That at the City of St. Paul, county and state aforesaid, on the 21st day of November, 1984, (s)he served the attached

Notice soliciting outside opinion on proposed rules on Certificate of Compliance

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

To the rule making list.

Denise M. Romero

Subscribed and sworn to before me

this 21 day of November, 1984.

Karen Ferguson

KAREN FERGUSON
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires 11-20-89

HR00016-01 (DHR-30)

DEPARTMENT OF HUMAN RIGHTS

Outside Opinion is Sought Concerning Proposed Rules Governing Certificates of Compliance and Public Contracts

NOTICE IS HEREBY GIVEN that the Department of Human Rights is seeking information or opinions from persons or groups in preparing and amending rules governing Certificates of Compliance and Public Contracts.

The promulgation of these rules is authorized by Minnesota Statutes 363.74(1984) which authorizes the commissioner to adopt suitable rules and regulations for effectuating the purposes of Chapter 363.073.

The Department of Human Rights requests information and comments concerning the subject matter of these rules, including comment on the issue of whether or not these rules and amendments are likely to have a qualitative or quantitive impact upon small business as defined by Minn. Stat. §15.115. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

James Robinson, Supervisor

Compliance Unit

Minnesota Department of Human Rights

500 Bremer Tower - 7th and Minnesota Streets

St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612)296-5683.

All statements of information and comment shall be accepted until December 10, 1984. Any written material received by the Department of Human Rights shall become part of the record.

NOTICE OF INTENT TO ADOPT RULE WITHOUT PUBLIC HEARING

STATE OF MINNESOTA

DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Rules of the State Department of Human Rights Governing Certificates of Compliance for Public Contractors

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 26th day of November, 1984 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Human Rights for that purpose and be published in the State Register.

STATE OF MINNESOTA

Walter C. Barwick

Dr. Walter C. Barwick
Assistant Commissioner
Department of Human Rights

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

Karen Ferguson, being first duly sworn,

hereby deposes and says:

That at the City of St. Paul, county and state aforesaid, on the 7th day of December, 1984, (s)he served the attached

Proposed Rules Relating to Certificates of Compliance for Public Contractors

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 Interoffice Mail

and addressed to

Persons on the Rule Making Mailing List

Karen Ferguson

Subscribed and sworn to before me
this 7th day of December, 1984.

Thelma M. Tomczak

THELMA M. TOMCZAK
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES SEPTEMER 27, 1989

HR00016-01 (DHR-30)

DEPARTMENT OF HUMAN RIGHTS

PROPOSED RULES RELATING TO CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTORS

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Human Rights proposes to adopt the above-entitled rules without a public hearing unless twenty-five or more persons submit written requests for a public hearing. The Department has determined that the proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21-14.28.

Persons interested in these rules have thirty (30) days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. If twenty-five or more persons submit a written request for a public hearing within the thirty day comment period, a public hearing will be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. The proposed rule may be modified if the modifications are supported by the data and views submitted. If a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14 to 14.18 and Laws 1984, Chapter 640, Sections 7-11.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

James Robinson, Supervisor
Contract Compliance Services
Minnesota Department of Human Rights
500 Bremer Tower
Seventh and Minnesota Streets
St. Paul, Minnesota 55101
Telephone (612) 296-5683

The statutory authority of the Department to make the proposed rule is contained in Minnesota Statutes, section 363.074.

If adopted, the proposed rules will have an impact on small businesses within the meaning of Minnesota Statutes, section 14.115 in that they would implement the requirement contained in Minnesota Statutes, section 363.073 that any business having more than 20 full-time employees in Minnesota at any time during the previous 12 months must have an approved affirmative action plan for the employment of minority persons, women and disabled individuals to bid on or execute a contract with a state agency for goods or services in excess of $50,000. The proposed rules specify criteria which will be used to review affirmative action plans and standards and requirements which businesses must meet in the development, submission and implementation of such plans. All expenses which businesses incur in complying with the proposed rules will be born by those businesses. Additional quantitative and qualitative impacts may result from these proposed rules which the Department is not aware of at this time. Persons are encouraged to submit comments regarding the probable impact of these proposed rules upon small businesses.

One free copy of the proposed rules is available from the Department upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is also available from the Department upon request.

If a hearing is not required, the proposed rules, the notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted by the Department will be delivered to the Attorney General for review as to form and legality. Persons who wish to be advised of the date of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to James Robinson.

Dated: December 7, 1984.

DEPARTMENT OF HUMAN RIGHTS

Linda C. Johnson /BSm
LINDA C. JOHNSON, Commissioner

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Permanent Rules Governing Certificates of Compliance Issued by the Department of Human Rights

---

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 6th day of December, 1984.

Mary A Hartle

Subscribed and sworn to before me

this 7 day of December, 1984.

Karen Ferguson

KAREN FERGUSON
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires 11-20-84

DEPARTMENT OF HUMAN RIGHTS

PROPOSED RULES RELATING TO CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTORS

Notice of Intent to Adopt Rules Without a Public Hearing

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Persons interested in these rules have thirty (30) days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. If twenty-five or more persons submit a written request for a public hearing within the thirty day comment period, a public hearing will be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. The proposed rule may be modified if the modifications are supported by the data and views submitted. If a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14 to 14.18 and Laws 1984, Chapter 640, Sections 7-11.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

James Robinson, Supervisor
Contract Compliance Services
Minnesota Department of Human Rights
500 Bremer Tower
Seventh and Minnesota Streets
St. Paul, Minnesota 55101
Telephone (612) 296-5683

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If adopted, the proposed rules will have an impact on small businesses within the meaning of Minnesota Statutes, section 14.115 in that they would implement the requirement contained in Minnesota Statutes, section 363.073 that any business having more than 20 full-time employees in Minnesota at any time during the previous 12 months must have an approved affirmative action plan for the employment of minority persons, women and disabled individuals to bid on or execute a contract with a state agency for goods or services in excess of $50,000. The proposed rules specify criteria which will be used to review affirmative action plans and standards and requirements which businesses must meet in the development, submission and implementation of such plans. All expenses which businesses incur in complying with the proposed rules will be born by those businesses. Additional quantitative and qualitative impacts may result from these proposed rules which the Department is not aware of at this time. Persons are encouraged to submit comments regarding the probable impact of these proposed rules upon small businesses.

One free copy of the proposed rules is available from the Department upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is also available from the Department upon request.

If a hearing is not required, the proposed rules, the notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted by the Department will be delivered to the Attorney General for review as to form and legality. Persons who wish to be advised of the date of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to James Robinson.

Dated: December 7, 1984.

DEPARTMENT OF HUMAN RIGHTS

Linda C. Johnson /BSm

LINDA C. JOHNSON, Commissioner

B. A maximum of 25 percent of an agency's weatherization grant, received pursuant to part 3300.1100, may be spent on major weatherization repair.

C. An agency may make a one-time maximum expenditure on a dwelling unit of $3,000 for major weatherization repair.

D. Unspent major weatherization repair funds may be spent on the weatherization activities listed in part 3300.1200.

Subp. 2. Eligible dwelling units. Dwelling units scheduled to be weatherized pursuant to parts 3300.0800 to 3300.1900. Dwelling units must satisfy the following requirements:

A. The property must contain no more than two dwelling units, and at least one dwelling unit must be occupied by an owner who is eligible under part 3300.1000, subpart 21.

B. Major weatherization repair must begin prior to the expiration date on an agency's contract with the department, and must end within 30 calendar days of the contract expiration date.

C. Major weatherization repair to mobile homes is allowable if the mobile home is the applicant's primary residence, and if the applicant is the owner of the mobile home.

Subp. 3. Eligible major weatherization repair. Major weatherization repair must be permanent, be to an existing structure, and comply with all applicable health, fire prevention, building and house codes, and standards. The term includes:

A. tune-up, repair, and cleaning of furnaces and space heaters by a licensed contractor;

B. replacement of inoperable furnaces and space heaters by a licensed contractor;

C. oil burner retrofits by a licensed contractor;

D. chimney construction or improvement;

E. roof repair or replacement;

F. other structural repairs for the protection of weatherization materials listed in part 3300.1200; and

G. correction of health or safety hazards.

Subp. 4. Procedural requirements. The following apply to all major weatherization repairs:

A. During an energy audit, the energy auditor must inspect a dwelling unit to determine if major weatherization repair is needed, and complete a major weatherization repair identification form.

B. Prior to commencing any major weatherization repair, an agency must verify that an applicant is eligible under part 3300.1000, subpart 21.

C. Contracted major weatherization repair must be completed through a written competitive bid process. Bids must relate solely to improvements specified in the major weatherization repair identification form. Each bid must be a detailed and itemized description of the proposed major weatherization repair. Each bid must be signed and dated by the contractor. An inspector and the owner of the dwelling unit shall sign a completion certificate upon completion of work and prior to final payment to the contractor.

D. An agency may perform major weatherization repair. If an agency performs major weatherization repair, the agency is liable on the warranty of workmanship and materials in item E, but the department is not liable on the warranty of workmanship and materials.

E. The contractor, the agency, and the owner of the eligible dwelling unit must sign, and comply with, a warranty of workmanship and materials. A copy of the warranty of workmanship and materials must remain in the client file maintained by the agency.

REPEALER. Minnesota Rules, parts 3300.1000, subparts 17, 26, and 27; and 3300.1100, subpart 2, are repealed.

Department of Human Rights

Proposed Rules Relating to Certificates of Compliance for Public Contractors

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Human Rights proposes to adopt the above-entitled rules without a public hearing unless twenty-five or more persons submit written requests for a public hearing. The Department has determined that the proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21-14.28.

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James Robinson, Supervisor
Contract Compliance Services
Minnesota Department of Human Rights
500 Bremer Tower
Seventh and Minnesota Streets
St. Paul, Minnesota 55101
Telephone (612) 296-5683

The statutory authority of the Department to make the proposed rule is contained in Minnesota Statutes, section 363.074.

If adopted, the proposed rules will have an impact on small businesses within the meaning of Minnesota Statutes, section 14.115 in that they would implement the requirement contained in Minnesota Statutes, section 363.073 that any business having more than 20 full-time employees in Minnesota at any time during the previous 12 months must have an approved affirmative action plan for the employment of minority persons, women and disabled individuals to bid on or execute a contract with a state agency for goods or services in excess of $50,000. The proposed rules specify criteria which will be used to review affirmative action plans and standards and requirements which businesses must meet in the development, submission and implementation of such plans. All expenses which businesses incur in complying with the proposed rules will be born by those businesses. Additional quantitative and qualitative impacts may result from these proposed rules which the Department is not aware of at this time. Persons are encouraged to submit comments regarding the probable impact of these proposed rules upon small businesses.

A copy of the proposed rules is attached to this notice. One additional, free copy is available from the Department upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is also available from the Department upon request.

If a hearing is not required, the proposed rules, the notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted by the Department will be delivered to the Attorney General for review as to form and legality. Persons who wish to be advised of the date of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to James Robinson.

November 26, 1984

Department of Human Rights
Linda C. Johnson, Commissioner

Rules as Proposed (all new material)

CERTIFICATES OF COMPLIANCE FOR PUBLIC STATE CONTRACTS

5000.3400 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 5000.3400 to 5000.3600 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

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

employment opportunity that are not based on specific job requirements. It refers also to the identification of 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.

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 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 extension.

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 shall 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 GENERAL PROVISIONS.

Subpart 1. Purpose. The purpose of parts 5000.3400 to 5000.3600 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 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 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,

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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 at each establishment an affirmative action plan which sets 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;

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 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 on the company's equal opportunity programs. The minimum responsibilities of the director shall be the following:

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.

Additional responsibility in furtherance of the purposes of parts 5000.3400 to 5000.3600, beyond those enumerated herein shall be at the option of the contractor, but encouraged by the department.

Subp. 2. Director responsibilities. The minimum line responsibilities of the director or manager shall be:

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 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.

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(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.

Additional responsibility in furtherance of the purposes of parts 5000.3400 to 5000.3600, beyond those enumerated herein shall be at the option of the contractor, but encouraged by the department.

5000.3440 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 shall 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 pictured.

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

5000.3450 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 shall 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.

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 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 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, 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

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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 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.

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 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, 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;

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 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 shall 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

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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 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.

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 shall 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 shall 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 program.

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 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 DISABLED INDIVIDUALS PLAN.

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

5000.3510 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.

CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

5000.3520 COMMISSIONER SETS GOALS AND TIMETABLES.

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.

5000.3530 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.

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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 under part 5000.3500.	Insert the goals as determined under part 5000.3500.	Insert the goals as determined under part 5000.3500.

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 shall be based on its implementation of the equal opportunity clause, specific affirmative action obligations required by the specifications in part 5000.3540, 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. 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 geographical area where the contract is to be performed. The contracting state agency shall insert the description of the geographical areas where the contract is to be performed describing the state, county, city, town, or municipality of the geographic area in the notice, and in the contract resulting from this solicitation.

5000.3535 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 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 harasssment, 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 individual. If the 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) Directs 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

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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 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 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.

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 CONSTRUCTION CONTRACTOR AFFIRMATIVE ACTION PLANS.

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

5000.3550 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.

(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. Phsyical 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 requiring 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 requrie emergency treatment; and

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(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 recruitments, 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 underake 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, 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 progarms.

(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 that they act in a manner consistent with the contractor's policy on affirmative action.

(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.

6. Internal dissemination of policy. A strong outreach program shall be ineffective without adequate internal support from supervisory and mangement 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 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 shall 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 part 5000.3500.

(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 under part 5000.3500 shall be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

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(b) The contractor shall evaluate the total section 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 part 5000.3500.

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 part 5000.3500 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 deteremine 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 part 5000.3500 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 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; 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 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 5000.3400 to 5000.3600, 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 shall 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 shall also be determined by:

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

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; or

D. whether a contractor implements conciliation agreements.

Subp. 4. Analysis of good faith efforts. Good faith efforts shall 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;

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

D. the results of an assessment of the contractor's compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600.

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, it shall notify the contractor by first-class mail identifying the nature of the

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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 shall 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 administrative law judge 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 shall 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. subdivsion 2, may 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.

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 this part.

5000.3580 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.

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;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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; and

C. minimizing duplication of programs and procedures.

5000.3590 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 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 shall 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 or 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 shall approve other special compliance reviews that effectuate the purposes of, and are consistent with the other compliance reviews described in parts . . . . . to . . . . . when exigent circumstances require an immediate on-site reivew.

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. 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 examination 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 the on-site review need not be carried out and the enforcement procedures specified in Minnesota Statutes, section 363.073 and part 5000.3570 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, 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 shall be conducted where issues have arisen concerning deficiencies or an apparent violation which is only capable of being 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 unit 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. The information in question may be withheld pending a ruling by the supervisor or if appealed, a final ruling by the commissioner and shall be considered a part of the investigatory file. Data determined to be relevant to the investigation must be submitted to the compliance officer within five days of the ruling by the supervisor, or if appealed, within five days of the final ruling of the commissioner.

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 contractor's employment practices. The number, scope, and manner of conducting the interviews must be discussed in advance with the contractor.

5000.3600 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. 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.

Subp. 2. Information provided to contractors. Each state agency shall include in each contract the contractor's obligation and requirements to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, 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 the statute.

Subp. 4. Contract clause required. Each covered contract must contain an affirmative action clause which states 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 contractor's affirmative action plan or make a good faith effort to do so.

Subp. 5. Submission of list of bidders. 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.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 6. List of contractors 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 deemed ineligible according to Minnesota Statutes, section 363.073.

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 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."

Department of Natural Resources

Proposed Rules Relating to Fees for Water Appropriation and Gas Storage Permits

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 14.14 in the above-entitled matter in Room 716, Federal Court Building, 316 North Robert (between Kellogg and Fourth), St. Paul, Minnesota, on January 10, 1985, commencing at 9:00 a.m., and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements or arguments. Statements and briefs may be submitted without appearing at the hearing by sending them to Allan Klein, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone: (612) 341-7609. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 to 14.56 and Minn. Rules pts. 1400.0200 to 1400.1200. Questions regarding procedure may be directed to the administrative law judge at the above-listed address.

The proposed amendments are to Minnesota Rules parts 6115.0010-6115.0100. They implement Laws of Minnesota 1977, Chapter 446, Section 13 by establishing a schedule of permit application fees which are in addition to the basic $30 fee. The additional fees apply to applications required under Minn. Stat. sections 105.41 (water appropriation), 105.42 (changes in protected waters), 105.535 (dams), 105.391 (waterbank), and 105.64 (uses of water in connection with mining). The additional fees are keyed to the cost of the project, the amount of shoreline affected, and the amount of fill or excavation. The minimum additional fee is $20. Examples: The additional fee for a $10,000 permanent dock would be $100; for a million dollar project the fee would be $1,250; the additional fee for placing 1,000 cubic yards of fill in a lake could be $300. The maximum additional fee for local public agencies is $500. Additional fees are doubled for after-the-fact permit applications. The proposed amendments contain many additional details. The amendments also create a separate section for fees for underground storage; this new section contains no substantive changes from the existing rules.

Interested persons should bear in mind that the proposed additional fees may be significantly adjusted if evidence presented at the hearing warrants such changes.

Minn. Stat. ch. 10A requires each lobbyist to register with the Minnesota Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1982) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5148.

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

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS

These Findings of Fact and Conclusions supplement my Findings of Fact and Conclusions in the above-referenced matter dated May 24, 1985.

FINDINGS OF FACT

1. Minn. Rule pt. 5000.3420, subp. 5 on page 7 at line 6 contains a grammatical error. The term "their" should be deleted and replaced with the phrase "his or her".

2. Minn. Rule pt. 5000.3440, subp. 2F on page 12 at line 9 should be clarified by substituting the term "cooperative" for the term "appropriate".

3. Minn. Rule pt. 5000.3460, subp. 1 on page 14 at lines 22-23 contains an incorrect citation. The reference to "pt. 5000.3450, subp. 2, item C." should be a reference to "pt. 5000.3450". The citation as amended is the only citation in this context which makes sense.

4. The second sentence in Minn. Rule pt. 5000.3460, subp. 10 on page 15 at lines 29-32 should be amended as follows: "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." The purpose of this amendment is to clarify the obligation which is being

imposed on the contractor.

5. Minn. Rule pt. 5000.3470, subp. 2 should be amended as follows: "If any of the following items are found in the analysis, ~~special~~ corrective action shall be ~~appropriate~~ taken ...." The purpose of this amendment is to clarify the obligation which is being imposed upon the contractor.

6. Minn. Rule pt. 5000.3535 10 on page 30 at line 26 contains a typographical error. The term "lease" should be deleted and replaced with the term "least".

7. Minn. Rule pt. 5000.3600, subp. 8 on page 53 at lines 28-31 should be amended as follows: **"Copy of statute and rules to be ~~furnished~~ made available.** Each contracting agency shall ~~provide~~ make available to each bidder ~~with~~ a copy of Minnesota Statutes, section 363.073 and the rules adopted pursuant to it." The purpose of this amendment is to reduce the burden placed upon state agencies under this rule.

8. Minn. Rule pt. 5000.3600, subp. 9 on page 54 at lines 4-6 should be amended as follows: "~~The bidder acknowledges receipt of a~~ A copy of Minnesota Statutes, section 363.073 and Minnesota Rules pts. 5000.3400 to 5000.3600 are available upon request from the contracting agency." The purpose of this amendment is to make this subpart consistent with the amended subpart 8 of part 5000.3600.

9. In paragraph 29 on page 14 of my May 24, 1985 Findings of Fact and Conclusions I amended the above-referenced rules by adding a repealer on page 54 at lines 6-7. The purpose of the repealer is to essentially remove the rules which implemented the old certificate of compliance statute. For the most part, the

old rules would be inconsistent and/or be a source of confusion once the new rules go into effect. In making the May 24, 1985 amendment, the Department inadvertently failed to include four other existing rules which pertain to the old certificate of compliance statute, i.e., 5000.2800, 5000.2900, 5000.3000 and 5000.3100. These also should be repealed. The first three directly implement the old certificate of compliance statute. The last, 5000.3100, pertains indirectly to the old certificate of compliance provisions in that it provides that the violation of certain specified rules, including the old certificate of compliance rules, may be deemed a violation of the Minnesota Human Rights Act. Examining these rules, however, it is apparent that the old certificate of compliance rules were the only rules which would have triggered this provision. The repealer should appear as follows: "REPEALER. Minnesota Rules pts. 5000.0100, 5000.2500, 5000.2600, 5000.2700, 5000.2800, 5000.2900, 5000.3000 and 5000.3100 are repealed."

Based upon these Findings of Fact, I make the following:

CONCLUSIONS

1. The proposed rules should be amended as indicated in the Findings of Fact above and the Findings of Fact dated May 24, 1985.

2. These amendments do not constitute substantial change of the rules as proposed.

3. With the amendments set forth in the Findings of Fact above and the Findings of Fact dated May 24, 1985, the above-captioned proposed rules should be adopted.

Dated: June 7, 1985.

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 Certificates of Compliance for Public State Contracts.

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter was published in the State Register on December 10, 1984, as proposed rules pursuant to Minn. Stat. § 14.22 (1984). After affording interested and affected persons an opportunity to submit written data and views within thirty (30) days of the publication date and after reviewing and considering this matter, I find the following:

FINDINGS OF FACT

1. Minn. Rules Part 5000.3400, subp. 7 on page 2 at lines 17 and 18 contains a typographical error in that a line is repeated. The first sentence should be corrected as follows: "'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." p. 2

2. Part 5000.3480, subp. 5A. on page 19 at line 18 should be amended as follows: "Association of University Women, ~~Negro~~ black Womens Sororities . . . . " In this context, the words "Negro" and "black" are synonymous. However, the latter term reflects current usage. p. 19

3. The title of Part 5000.3500 on page 22 at line 4 should be amended as follows: "NONCONSTRUCTION CONTRACTORS DISABLED INDIVIDUALS PLAN." The purpose of this amendment is to clarify the fact that this provision is a part of the section which pertains specifically to nonconstruction contracts. p.22

4. Part 5000.3500 on p. 22 at lines 6-9 should be amended as follows: "~~An~~ Nonconstruction contractors shall also have affirmative action ~~plan shall be~~ plans ~~made~~ for disabled individuals in accordance with ~~12 MCAR § 1.053D. (Temporary)~~ Parts 5000.3550 to 5000.3559." The purpose of the amendment is to clarify that this part is included in the section which pertains specifically to nonconstruction contractors, to change the citation form to that which is currently used, and to reflect format changes which have been made with regard to Part 5000.3550, See infra at p. 5, para. 11. p.22

5. Part 5000.3510 should be withdrawn. It is redundant with regard to requirements that are contained in other parts of the proposed rules and, as a result, would create confusion. Part 5000.3510, Paragraphs A and B duplicate Part 5000.3440, subpts. 1 and 2. Paragraph C duplicates 5000.3430, subpts. 1 and 2. Paragraph D duplicates Parts 5000.3450 and 5000.3460, subpts. 1 and 2. Pargraph E duplicates Parts 5000.3460 and 5000.3470. Paragraph F duplicates 5000.3470, subp. 2. Paragraph G duplicates 5000.3490. Paragraphs H and I duplicate 5000.3480, subp. 5.

6. The citations in paragraph 2 of Part 5000.3530 on page 23 at line 35 and page 24 at line 1 should be corrected as follows: "~~5000.3500~~ 5000.3520." The original citation was incorrect. The citation as amended is the only citation in this context which makes sense.

7. The first sentence of Part 5000.3535, para. 4(a) on page 26 at lines 11-14 should be amended as follows: ~~ensure and~~ Make good faith effort to 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 purpose of this rule is to identify measures which a contractor can take that will promote a working environment free of harassment, intimidation and coercion. The use of the term "ensure", however, suggests that a contractor must guarantee that harassment, intimidation and coercion will not occur. This is not the intent of this rule and if adopted it would be inconsistent with the "good faith" standard contained in the rules, see Part 5000.3570, and in the statute, see Minn. Stat. § 363.073, subd. 2 (1984). The amendment clarifies that the burden upon the contractor is the "good faith" standard.

8. The second sentence of Part 5000.3535, para. 4(a) on page 26 at lines 14-16, i.e., "[t]he contractor, where possible, shall assign two or more women to each construction project," should be withdrawn. The intent of this provision was to minimize the opportunity for harassment by requiring a contractor to assign more

than one woman to a job site when more than one woman is available to be so assigned. There is a strong possibility, however, that it will be perceived as imposing a strict quota. Such application would be inconsistent with Part 5000.3520 which provides that the Commissioner will set goals and timetables for female utilization based upon appropriate work force, demographic, or other relevant data. Thus, this provision must be withdrawn to avoid confusion. p.26

9. Part 5000.3535, para. 4(g) on page 27 at lines 28-35 should be amended as follows: "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, lay off, termination or other employment decisions including specific review of these items with on-site supervisory personnel such superintendents, general foremen, etc., prior to the ~~initiation~~ first day of construction work at any job site." The purpose of this provision is to require the review of a company's equal employment opportunity policy and affirmative action obligations at the beginning of a construction project. The use of the term "initiation", however, leaves unclear whether this process is meant to occur at the beginning of project or at the beginning of work each day on the project. The amendment clarifies the intent of the provision. p.27

10. For the purpose of clarifying the format and application of the proposed rules, the title of Part 5000.3540 on p. 31 at lines 18-19 should be changed as follows: "CONSTRUCTION

CONTRACTOR ~~AFFIRMATIVE-ACTION-PLANS~~ DISABLED INDIVIDUALS PLAN." The title of Part 5000.3550, i.e., "ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR DISABLED INDIVIDUALS" on lines 23-26 should remain in its present location and form, but should be converted into a major heading by deleting the part number as follows: "~~5000.3550~~ ALL CONTRACTORS: AFFIRMATIVE ACTION PLANS FOR DISABLED INDIVIDUALS." Part 5000.3550 should then follow the major heading with the following new title: "5000.3550 DISABLED INDIVIDUALS AFFIRMATIVE ACTION CLAUSE." p.31

11. The format of Part 5000.3550 should be revised. The provisions set forth on lines 23 on page 31 through line 35 on page 40 concern affirmative action plans for disabled individuals. Through inadvertence, the format of these provisions was designed so that all of them, beginning on line 31 of page 31 will be contained in an affirmative action clause which state agencies and contractors will be required to include in covered state contracts. This is not the intent of the Department and it would result in unnecessary expenses and hardship to state agencies and contractors. The affirmative action clause should only include lines 31-35 on page 31 and lines 1-32 on page 32. It should not include the provisions set forth between lines 33 on page 32 and line 35 on page 40. These provisions should be set forth in the rules, not in each contract. This format would be consistent with the federal rules after which these rules are modeled. See 41 C.F.R. §§ 60-741.6 - 60-741.8. Thus, the following amendments should be made to achieve this result:

a. The title "1. Contractor duties." On line 32 of page 31 should be deleted.

b. Line 32 on page 32 should be amended by adding a quotation mark at the end of the line.

c. The title on line 33 of page 32 should be amended as follows: "~~2.~~ 5000.3552 ~~Physical and mental qualifications.~~ PHYSICAL AND MENTAL QUALIFICATIONS."

d. Line 34 on page 32 should be amended as follows: "Subp. 1. Schedule for review. ~~(a)~~ The . . . . "

e. Line 5-6 on page 33 should be amended as follows: ~~(b)~~ Subp. 2. Relating qualifications: requirements to job.

f. Lines 20-25 on page 33 should be amended as follows: "~~(c)~~ Subp. 3. Pre-employment medical exam. Nothing in this ~~section~~ part shall prohibit a contractor from requiring 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~~ parts 5000.3550 to 5000.3559."

g. The paragraph reference numbers (i), (ii) and (iii) which appear respectively on lines 30, 33 and 36 on page 33 should be deleted and replaced with A, B. and C. respectively.

h. Line 4 on page 34 should be amended as follows: "~~3.~~ Supb. 4. Accommodation to physical and mental . . . . "

i. Line 13 on page 34 should be amended as follows: "~~4.~~ Subp. 5. Compensation. In offering employment or . . . . "

j. Line 18 on page 34 should be amended as follows: "~~5.~~ Subp. 6. Outreach, positive recruitment, and external . . . . "

k. The paragraph referenced letters (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) which appear respectively on lines 31 of page 34, lines 2, 6, 10, 22, 25 and 35 of page 35 and lines 4, 6, and 10 on page 36 should be deleted and replaced with A., B., C., D., E., F., G., H., I., and J. respectively.

l. Line 16 on page 36 should be amended as follows: "~~6.~~ Subp. 7. Internal dissemination of policy. A strong . . . . "

m. The paragraph reference letters (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j), which appear respectively on lines 24, 25, 27, 32, 34 and 36 of page 36 and lines 2, 5, 7 and 12 on page 37 should be deleted and with A., B., C., D., E., F., G., H., I. and J. respectively.

n. Line 15 on page 37 should be amended as follows: "~~7.~~ Subp. 8. Responsibility for implementation. An . . . . "

o. The paragraph letter references (a), (b), (d), (e), (f) and (g) which appear respectively on lines 23 and 35 on page 37 and lines 4, 17, 19, 23 and 25 on page 38 should be deleted and replaced with A., B., C., D., E., F. and G. respectively.

p. Lines 14-16 on page 38 should be amended as follows: "(5) ensure that each location is in compliance with the Minnesota Human Rights Act and ~~5000.3500~~ parts 5000.3550 to 5000.3559.

q. Lines 27-29 on page 38 should be amended as follows: ~~8.~~ Subp. 9. Development and execution of affirmative action programs. The affirmative action programs shall be developed and executed as follows:"

r. The paragraph letter indications (a), (b), (c), (d), (e), (f), (g), (h) and (i) which appear respectively on lines 30 and 34 on page 38 and lines 1, 7, 16, 18, 21, 23, and 26 on page 39 should be deleted and replaced with A., B., C., D., E., F., G., H. and I. respectively.

s. Line 28 on page 39 should be amended as follows:

"~~9.~~ Subp. 10. Sheltered workshops. Contracts with . . . . "

t. Line 2 on page 40 should be amended as follows: "~~10.~~ 5000.3555 DETERMINATION OF DISABILITY."

u. Lines 3 and 4 on page 40 should be amended as follows: "~~(a)~~ Subpart 1. Requiring medical determination of disability. Any contractor requiring a determination of an . . . . "

v. Lines 9-11 on page 40 should be amended as follows: "~~(b)~~ Subp. 2. Application of determination. Any determination disability required pursuant to subpart 1 this ~~of this section~~ must meet the requirements of part . . . . "

w. Lines 17-18 on page 40 should be amended as follows: "~~(c)~~ Subp. 3. Medical documentation. All medical documentation required under this ~~section~~ part shall be based . . . . "

x. Line 26 on page 40 should be amended as follows: "~~11.~~ 5000.3557 LISTING OF EMPLOYMENT OPENINGS."

y. Line 30 on page 40 should be amended as follows: "~~12.~~ 5000.3559 AVAILABILITY AND UTILIZATION ANALYSIS."

z. Line 35 on page 40 should be amended by deleting the quotation mark at the end of the line.

12. Part 5000.3552, subp. 2 on page 33 at lines 6 through 12 contain a typographical error in that a line is repeated. It should be amended as follows: "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 of employment status such as promotion, demotion, or training,~~ to the extent that . . . . "

13. Part 5000.3552, subp. 3C on line 36 page 33 and lines 1-3 on page 34 should be amended as follows: "officials, employees, representatives, or agents of the department ~~of~~ or local human rights agencies investigating compliance with the act or local human rights ordinances shall be informed if they request such information." The purpose of this amendment would be to correct the typographical error "of" by substituting "or." Adding the qualification "if they request such information" is necessary to ensure that this provision will be applied within a manner

consistent with common sense. Without it, it is possible to interpret the provision as requiring a contractor to provide confidential pre-employment medical exam information to state and local human rights officials whenever they are investigating compliance with the Minnesota Human Rights Act or local human rights ordinances regardless of whether the particular information is relevant or sought.

14. Part 5000.3552, subp. 6F. on page 35 at line 34 contains a typographical error. The word "to" should be replaced with the word "of."

15. Part 5000.3552, subp. 6J. contains an incorrect citation. The reference on page 36 at line 15 to part "5000.3480" should be to "5000.3552, subp. 6." The corrected citation is the only one which makes sense in this context.

16. Part 5000.3552, subp. 8C.(5) contains an incorrect citation the reference on page 38 at line 15 to "part 5000.3500" should be corrected to refer to "part 5000.3550 to 5000.3559." The original citation was incorrect. The corrected citation is the only one which makes sense in this context.

17. Part 5000.3552, subp. 9A. contains an incorrect citation. The reference on page 38 at line 31 to "part 5000.3500" should be corrected to be a reference to "part 5000.3552, subps. 1 and 2." The original citation was incorrect. The corrected citation is the only one which makes sense in this context.

18. Part 5000.3552, subp. 10 contains an incorrect citation. The reference on page 39 at line 36 to "part 5000.3500" should be corrected to be referenced to "part 5000.3400, subp. 21." The original citation was incorrect. The corrected citation is the only one which makes sense in this context.

19. Part 5000.3555, subp. 2 contain an incorrect citation. The reference on page 40 at lines 11-12 to "part 5000.3500" should be corrected to be a reference to "part 5000.3552, subp. 3." The original citation is incorrect. The corrected citation is the only one which makes sense in this context.

20. Part 5000.3555, subd. 3 on p. 40 at lines 17-26 should be amended as follows: "All medical documentation required under this ~~section~~ part shall be based upon the ~~American Medical Association~~ Guides to the Evaluation of Permanent Impairment (1984) published by the American Medical Association, provided that the guides shall be used only to determine the existence of impairment without regard to the degree of impairment. The guides are incorporated by reference. The guides are available for inspection at Ford Law Library, 117 University Avenue, St. Paul, Minnesota 55155. They are not subject to frequent change. The purpose of this amendment is to notify the contractor that a copy of the American Medical Association guides which are referred to in subpart 3 is being maintained by the state and is available for inspection at the Ford Law Library."

21. Part 5000.3559 contains an incorrect citation. The reference on page 40 at line 31 to "part 5000.3500" should be corrected to be a reference to "parts 5000.3450 and 5000.3460." The original citation is incorrect. The corrected citations are the only ones which make sense in this context.

22. Part 5000.3570, subp. 6F on p. 45 at line 36 and page 46 at line 1 should be amended as follows: "Within 20 days fromt he date of the mailing by the Commissioner of ~~the~~ his or her final decision or order. . . ." The purpose of this amendment is to clarify that the final decision issued at this stage is a decision of the Commissioner of Human Rights. This fact is implicit in subpart 6.

23. Part 5000.3570, subp. 7 contains a typographical error. The term "commission" which appears on page 47 at line 3 should be "commissioner."

24. Part 5000.3580, subp. 2 on p. 47 at lines 27-29 should be clarified and corrected. The last sentence should be amended as follows: "These compliance reports must contain the same information and be submitted at the same time ~~,-and-contain-the same-documents~~ as the reports required for nonconstruction contractors in Part ~~5000.3520~~ 5000.3580, subp. 3." The purpose of this amendment is to clarify the rule by inserting the term "information" which apparently had been inadvertently omitted. It is also intended to avoid confusion by deleting the reference to "documents" since the provision referred to does not require the submission of supplementary documents. Finally, it corrects the incorrect citation "Part 5000.3520." The corrected citation, "Part 5000.3580, subp. 3," is the only citation which makes sense in this context.

25. Part 5000.3580, subp. 4A on p. 48 at line 16 should be corrected as follows: "Utilizing forms and standards similar to those used by federal equal employment opportunity programs;". The term "used" was inadvertently omitted.

26. Part 5000.3590, subp. 2 on page 48 at lines 35-36 and on page 49 at lines 1 and 2 should be amended as follows: "The Department shall routinely request from ~~state~~ contractors ~~within their jurisdiction~~ affirmative action programs and supporting documentation, including work force analysis and support data for audit." The terms "state" and "within their jurisdiction" do not add anything to the meaning of the rule, since the term "contractors" is defined. See Part 5000.3400, subp. 9. The deletion of these terms would avoid possible confusion.

27. Part 5000.3590, subp. 3 on p. 49 at line 36 has a missing citation. The last sentence should be amended as follows: "The commissioner shall approve other special compliance reviews that effectuate the purposes of, and are consistent with the other compliance reviews described in ~~Parts . . . . . to . . . . . .~~ part 5000.3590 when exigent circumstances require an immediate on-site review." The corrected citation is the only one which makes sense in this context.

28. Part 5000.3590, subp. 5 on p. 52 at lines 7-10 contains a segment of a sentence which the Department failed to delete while making an earlier correction. The sentence should be corrected as follows: "The information in question may be withheld

pending a ruling by the supervisor or if appealed, a final ruling by the Commissioner ~~and shall be considered a part of the investigatory file.~~" Without this amendment, the rule does not make sense.

29. The rules should be amended by adding the following repealer on page 54 at lines 6-7: "REPEALER". Minn. R. Part 5000.0100, 5000.2500, 5000.2600, and 5000.2700 are repealed." This provision clarifies the status of the old certificate of compliance rules once the new rules go into affect. Since the statute upon which the old rules are based will no longer be in effect, this does not constitute substantial change.

Based upon these Findings of Fact, I make the following:

CONCLUSIONS

1. The proposed rules should be amended as indicated in the Findings of Fact above.

2. These amendments do not constitute substantial change of the rules as porposed.

3. With the amendments set forth in the Findings of Fact above, the above-captioned proposed rules should be adopted.

Dated: May 24, 1985.

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 Department of Human Rights Governing Certificates of Compliance for Public Contractors

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

In 1981, the legislature amended Minn. Stat. § 363.073 so as to require businesses having more than 20 full-time employees in Minnesota at any time during the previous 12 months to have an approved affirmative action plan in order to bid for or execute a contract for goods and services in excess of $50,000 with a state agency. At the same time the legislature passed Minn. Stat. § 363.074 which directs the Minnesota Department of Human Rights to adopt rules to implement section 363.073 "specifying the criteria used to review affirmative action plans and the standards used to review implementation of affirmative action plans." Several drafts of the rules have been prepared since 1981, and on two occasions, May 16, 1983 and July 30, 1984 versions of these rules were published in the State Registar in connection with the Department's efforts to promulgate emergency rules. The Department has prepared this Statement of Need and Reasonableness in support of its effort to promulgate permanent rules.

In drafting these rules, the Department has relied heavily upon the rules and regulations of the U.S. Department of Labor, Office of Federal Contract Compliance program set forth in 41 C.F.R. chapter 60. These rules have been in effect since at least October 20, 1978. The Department, in some instances, has incorporated sections of the federal rules word-for-word. In other instances, the Department has revised sections of the federal rules or drafted its own rules to fit its specific circumstances. The fact that many of the proposed rules have as their source federal rules which have been in effect for several years and have been administered by the federal government to accomplish the same objective on the federal level supports a conclusion that they are reasonable.

Part 5000.3400/Definitions.

This section provides definitions of terms which are used in the proposed rules. In general, the definitions are needed to provide uniformity of meaning and shorter forms of reference. They are also needed to avoid unnecessary repitition of explanations, minimize ambiguity, and simplify and make easier the use of these rules. They are reasonable in that they comprise rational explanations of the terms and phrases defined. More detailed statements of necessity and/or reasonableness with regard to specific definitions are set forth below.

Subpart 1. Scope. This subpart is necessary to specify the applicability of the definitions. It is reasonable in that it applies the definitions to all parts and subparts of the rules.

Subparts 2 and 3. The definitions of "affirmative action policy" and "affirmative action program" are reasonable in that they reflect the legislative intent which underlies Minn. Stat. § 363.073 that covered contractors must establish and implement objectives and procedures which are designed to remove all non-job related barriers to employment opportunity and to enhance employment opportunities for women, minorities, and qualified disabled individuals.

Subpart 4. The definition of the term "availability" is reasonable in that it provides a rational explanation regarding which minorities and women must be considered to be available during the term of an affirmative action program.

Subpart 5. The definitions of the phrases "civilian labor force", "at work" and "with a job but not at work" are necessary to provide uniform meaning to the rules which concern or make reference to the availability of individuals in the "civilian labor force". They are reasonable in that they provide rational explanations of these phrases.

Subpart 6. The term "Commissioner" is defined to eliminate repitition throughout these rules of the phrase "of the Department of Human Rights." It is reasonable in that it is essentially the same definition as that set forth in Minn. Stat. § 363.01, subd. 14 and other rules which have been promulgated by the department.

Subpart 7. The definition of the phrase "construction work" is the same as the definition of that phrase contained in the rules of the Federal Department of Labor, Office of Federal Contract Compliance Program. See 41 CFR § 60-1.3. As such it is reasonable in that it is a rational explanation of the phrase.

Subpart 8. The definition of the term "contract" is needed in order to identify which transactions are within the ambit of the rules. It is reasonable in that it is a rational explanation of the term.

Subpart 9. The definition of the term "contractor" is needed in order to identify which firms and businesses are within the ambit of the rules. It is reasonable in that it reflects the same criteria that is set forth in Minn. Stat. § 363.073.

Subpart 10. The definition of the phrase "covered state contract" is needed in order to identify which state contracts are within the ambit of the rules. It is reasonable in that it reflects the same criteria that is set forth in Minn. Stat. § 363.073.

Subpart 11. "Department" is defined to eliminate repitition throughout these rules of the phrase "Department of Human Rights." It is reasonable in that it is the same definition set forth in Minn. Stat. § 363.01, subd. 26.

Subpart 12. The definition of the term "deficiency" is needed in order to identify the precise circumstances to which the term refers. It is reasonable in that it is a rational explanation of the term.

Subpart 13. The definition of the phrase "disabled individual" is needed in order to identify which individuals are included within the ambit of the phrase. It is reasonable in that it constitutes one of the three criteria included in the definition of the term "disability" which is set forth in Minn. Stat. § 363.01, subd. 25. The Department determined that to include the other two criteria set forth in Minn. Stat. § 363.01, subd. 25, i.e., "any person who . . . has a record of such an impairment; or . . . is regarded as having such an impairment . . . .", would dilute efforts to achieve affirmative action for disabled individuals by allowing contractors to count as disabled, persons who are perceived as being disabled but who do not have a functional limitation. The definition of "disabled individual" also excludes an "alcoholic or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others." This limitation is necessary to reflect a similar limitation contained in Minn. Stat. § 363.01, subd. 25a, and, as such, it is a reasonable explanation of the phrase.

Subpart 14. The definition of the phrase "good faith effort" is necessary to eliminate repitition of the explanation throughout these rules. It is reasonable in that it is a rational explanation of the phrase.

Subpart 15. The definition of the phrase "immediate labor area" is necessary to enable persons to determine the precise geographic area which is being affected when the rules which

contain this phrase are applied to specific circumstances. It is reasonable in that it is a rational explanation of the phrase.

Subpart 16. The definition of the phrase "life activity" is necessary in order to enable persons to identify individuals who are disabled individuals within the meaning of Part 5000.3400, subp. 13. It is reasonable in that it is a rational explanation of the phrase.

Subpart 17. The definition of the phrase "minorities and women with requisite skills" is necessary to clarify what is meant by "requisite skills." It is reasonable in that it is a rational explanation of the phrase.

Subpart 18. The definition of the term "minority" is necessary to eliminate repitition. It is the same definition as that set forth in 41 CFR § 60-4.3, and, as such, is a reasonable explanation of the term.

Subpart 19. The definition of the term "modification" is necessary to eliminate repitition of the explanation throughout the rules. It is the same definition as that set forth in 41 CFR § 60-741.2, and, as such, is a reasonable explanation of the term.

Subpart 20. The definition of the phrase "promotable or transferable" is necessary to enable individuals to determine which persons are within the ambit of the phrase. It is reasonable in that it is a rational explanation of the phrase.

Subpart 21. The definition of the phrase "qualified disabled individual" is necessary to enable persons to identify which individuals are within the ambit of the phrase. It is reasonable in that it is the same definition as that contained in Minn. Stat. § 363.01, subd. 25a(1).

Subpart 22. The definition of the phrase "relevant recruitment area" is necessary in order to enable individuals to determine the geographic area which is affected when the rules which contain this phrase are applied to specific circumstances. It is reasonable in that it is a rational explanation of the phrase.

Subpart 23. The definition of the phrase "substantially limited" is necessary in order to enable persons to identify individuals who are "disabled individuals" within the meaning of Part 5000.3400, subp. 13. It is reasonable in that it is a rational explanation of the phrase.

Subpart 24. he definition of the phrase "utilization analysis" is necessary to eliminate repitition of the explanation throughout the rules and to identify the functions which are included within the ambit of the phrase. It is reasonable in that it is a rational explanation of the phrase.

Subpart 25. The definition of the phrase "workforce analysis" is necessary to eliminate repitition of the explanation throughout the rules and to identify the functions that are within the ambit of the phrase. It is reasonable in that it is a rational explanation of the phrase.

Part 5000.3410/General Provisions.

Subpart 1. Purpose. This rule is necessary to clarify the purpose of the proposed rules. It is reasonable in that it reflects the legislative intent which underlies Minn. Stat. § 363.073.

Subpart 2. Persons regulated. This rule is necessary to enable individuals to identify which contractors are subject to the rules. It is reasonable in that it reflects the criteria set forth in Minn. Stat. § 363.073, subd. 1.

Part 5000.3420/Criteria for Approval and Implementation of Affirmative Action Plans for Contractors.

Subpart 1. General requirements. This rule is needed to clarify the objectives of the proposed rules and the areas in which contractors must implement affirmative action. It is reasonable in that it reflects the legislative intent underlying Minn. Stat. § 363.073.

Subpart 2. Proper consideration of qualifications. This rule is necessary to insure that covered contractors will examine their existing personnel processes to determine whether or not they will facilitate the implementation of the affirmative action plan required under the rules and, if not, to require the contractor to modify such processes so that they would facilitate such a plan. This rule is reasonable in that it simply requires the contractor to examine their existing personnel processes and make modifications where the criteria established in the subpart is not met.

Subpart 3. Affirmative action plan. This rule is needed to clarify the point in time at which a contractor must prepare an affirmative action plan, and that, if the contractor has more than one establishment, it must prepare and maintain such a plan at each establishment. The point in time established in this rule at which a contractor must prepare an affirmative action plan is reasonable in that it reflects the point in time inferred in Minn. Stat. § 363.073. With regard to the requirement that an affirmative action plan be maintained at each establishment when the contractor has more than one establishment, the rule is based upon the rational premise that, despite common ownership, different establishments may have different practices and policies. In addition, maintaining a copy of the affirmative action plan at each establishment will enhance the opportunities for employees and applicants to view the plan.

Subpart 4. Plan review. This rule is needed to clarify how often affirmative action plans must be reviewed and updated, and, under what circumstances changes in such plans must be communicated to employees, applicants and the Department. This rule is reasonable in that requiring reviews on an annual basis does not impose an undue burden upon the contractor. Furthermore, the criteria for determining which changes are significant enough to require communication to employees, applicants and the Department focus upon areas in which changes would have a significant impact upon the rights of individuals and the compliance status of the contractor.

Subpart 5. Identify plan coverage. This rule is needed to insure that contractors will apprise individuals of the affirmative action plans, their right to seek benefits under the plans and that exercising such rights is voluntary and will be kept confidential. It is also needed to insure that information regarding the exercise of rights under the plan will be used only for purposes under the Human Rights Act, and that refusing to participate will not result in adverse treatment. Furthermore, the rule clarifies the extent to which a contractor must go in determining whether or not an individual is "disabled" within the meaning of the rules and indicates that compliance with the certificate of compliance rules will not relieve a contractor of liability for discrimination. This rule is reasonable in that its provisions are consistent with common sense and the burden which it imposes upon the contractor, employee and applicant is not undue.

Subpart 6. Notice. This rule is necessary to establish a means for notifying employees and applicants that a contractor has an affirmative action plan under which they may benefit. It is reasonable in that it does not impose an undue burden upon the contractor and establishes a means which is commonly and successfully used to communicate such information to employees and applicants.

Subpart 7. Employee access to plan. This rule is needed to insure that employees and applicants will have access to the entire affirmative action plan and that they must be apprised regarding when and where they can obtain such access. This rule is reasonable in that it does not impose an undue burden upon the contractor and it is consistent with a common sense approach to requiring a contractor to internally disseminate an affirmative action plan.

Subpart 8. Equal opportunity policy statement. This rule is necessary to require contractors to state in writing its commitment to the principles of equal employment opportunity. This requirement is designed to insure that a contractor fully understands the nature and extent of their commitment and that by including this statement in the their affirmative action plan, the nature and extent of their commitment will be

communicated to employees and applicants. This rule is reasonable in that it does not impose an undue burden upon the contractor and reflects the principles underlying the Minnesota Human Rights Act, specifically Minn. Stat. § 363.073.

Part 5000.3430/Assignment of Responsibility for Program to Executive or Top-Management Official.

This rule is necessary to insure that a contractor has identified a person for whom the maintenance, and operation of the equal opportunity program is a major, if not the only responsibility. This will facilitate the operation of the program, and will provide the Compliance Division with the name of the responsible official, thereby making communication with the contractor more efficient and effective.

It is reasonable to expect that the contractor would name an EXECUTIVE level person to this position so that the designated official will have sufficient, broad-based authority to effectively monitor, and correct if needed, the contractors compliance efforts.

Subpart 1. Director. This section of the rules spells out those start-up and structural steps that must be undertaken by the Director to insure that an effective equal opportunity program is established and maintained. Items A-G specifically detail the minimum duties that would be carried out by the Director, in his role as the overall director of the program. These duties are reasonable, in that each of them is demonstrably necessary to insure that the program developed by the contractor is carried out.

Subpart 2. Director responsibilities. This section specifies additional line responsibilities that will be performed by the Director on a continuous basis to insure, by a continual review and evaluation process, that the program is being effectuated. Items A-I provide details about these continuing responsibilities so that the need and the actions that must be taken to insure compliance will be clear. These duties are reasonable in that they represent relatively standard methods used to insure compliance with a program. These duties are the minimum that must be done by by the director.

Part. 5000.3440/Procedures for Disseminating Policy Internally and Externally.

This rule provides specific instructions concerning the internal and external dissemination of the contractors Equal Opportunity/Affirmative Action Program (EO/AAP).

Subpart 1. Internal. This subpart provides detailed direction to the contractor concerning the nature of the contractor's efforts to disseminate the program internally: the items labeled A-F identify the measures that the Department will

examine to determine if the contractor has made a good faith effort to comply with the internal dissemination requirement. This is needed to eliminate inconsistency in approach by all contractors, and to remove any ambiguity about the requirement. The directions given about dissemination are reasonable in that they represent a standard methodology already used by companies to inform their employees about changes in company policy. This is vital to the success of the program, and it would be unreasonable for the Department to fail to specify the needed components of an effective internal dissemination program.

Subpart 2. External. This subpart, which details the external dissemination required under these rules, is similar to, and is as necessary, as Subpart 1; that is, it specifies those steps that the Deparment will expect all participating contractors to carry out to be in full compliance with this subpart. The items labeled A-F of this subpart provide the needed information that will eliminate any ambiguity about the expectations of the Department, and they will insure that all participating contractors will be consistent in their approach to the external dissemination of their plan. The measures are reasonable, in that they identify standard measures long used in industry to inform others about their operation, particularly for personnel and recruitment purposes.

Part 5000.3450/Workforce Analysis, Including Availability and Utilization Analyses.

Subpart 1. Workforce analysis. This rule, which requires that a workforce analysis be included in all plans submitted pursuant to these rules, is necessary in order to enable the contractor, and the Department, to determine if any deficiencies exist in the contractor's work force. (See 5000.3450, subp. 2.) This subpart specifies the type of analysis that must be done, and describes the required divisions of the contractors report. These divisions are standard work force breakdowns used for years by Federal Contract Compliance agencies, and they have been accepted by the courts as valid indicators of an organization's EO/AAP impact. It is reasonable, therefore, to use these standard and familiar categories and methods in these rules.

Subpart 2. Underutilization. This subpart requires that an analysis be done of all major job groups to determine if minorities or women are being underutilized. This subpart directs the contractor to use the analysis called for in Subpart 1, and to then, separately for minorities and females, find out any work groups that have fewer minorities, or women, than would be expected by the contractors analysis. (See Subpart 3.)

Subparts 3 and 4. Minority/Women analysis. Both of these subparts are necessary to insure that all contractors are informed of precisely what will be expected by the Department,

at a minimum, in the contractor's underutilization analysis. The measures are reasonable since they represent standard indicia used by Federal regulatory agencies which have been accepted by the courts.

There is a need for different indicia for women, since availability rates are computed differently for women. This factor is added to be in conformity with generally accepted practice in assessing female underutilization.

Part 5000.3460/Goals and Objectives Established by Organizational Units and Job Groups Including Timetables for Completion.

This rule is necessary to insure that all contractors develop meaningful goals, including timetables. The need for goals and timetables is at the heart of these rules, since it is the establishment of goals, and good faith efforts to meet them, that will determine if a contractor is in compliance with these rules. Subparts 1-11 provide detailed information about what will be expected of participating contractors in setting their goals and timetables. These are reasonable steps since they involve standard methods used nationwide in developing effective goals and timetables. This is necessary to eliminate the possibility of a badly developed set of goals, that could become quotas, which would be improper. By following the steps and procedures listed in these subparts a contractor can be certain that all appropriate steps have been taken, and that the Department will accept them.

Part 5000.3470/Identification of Problem Areas or Deficiencies by Organizational Units and Job Groups.

Subpart 1. Analysis. This subpart details the need for an analysis that must be done by all participating contractors. This is necessary in order for the contractor to have clear instructions concerning what the Department expects in the area of analysis of an on-going EO/AAP to insure that the organization is making a good faith effort to attain the goals and timetables established pursuant to these rules.

The required areas of analysis listed in Items A-J are reasonable in that they represent the standard steps needed to identify areas where compliance may be a problem. The areas are consistent with the expectations of these rules, and are similar to the areas examined by Federal agencies and the courts.

Subpart 2. Problem areas. This subpart specifies what indicia will indicate the need for corrective action on the part of the contractor; Items A-Q contain specific information concerning those items that would reveal a problem. These are needed to insure that all participating contractors use the same techniques to determine deficiencies. The items listed are reasonable since they are standard indicia used by Federal agencies and have been accepted by the courts.

Part 5000.3480/Measures to Facilitate Implementation of Equal Employment Opportunity Policy and Affirmative Action Programs.

Subparts 1, 2 and 3. These sections of the rule specify certain measures to assist the contractor in evaluating the structure of the company, with regard to position descriptions and worker specifications, in order to determine if any barriers exist to the employment of minorities and females. These are necessary to provide the contractor with a method of determining whether any of the contractor's practices have a disproportionate adverse impact on women and minorities. This requirement is reasonable since all contractors need to be aware of those factors that may act to make the contractor's EO/APP ineffective. It is also reasonable to use the type of analysis called for in these subparts, since they are consistent with the methods used by Federal regulatory agencies, and have been accepted by the courts.

Subpart 4. Selection process evaluation. This subpart mandates that the contractor evaluate the selection process used by the company to insure freedom from adverse impact on minorities and females. This is necessary to provide the contractor with clear instructions about this vital part of the selection process. The contractor needs to know about the potential for adverse impact in the selection process.

The specifics of the subpart call for reasonable attempts to discover any unintentional bias, or adverse impact. These measures are standard measures used to determine the effects of a particular selection process, and are therefore reasonable and necessary for the full implementation of the contractors EO/AAP.

Subpart 5. Recruitment techniques. This subpart provides suggestions about, and sources for the recruitment of minorities and women. This is necessary in order to provide the contractor with needed information that will assist in meeting the goals and timetables established as part of the contractor's EO/AAP. The sources listed are reasonable in that they are standard sources for the recruitment of women and minorities. Items B-J provide the contractor with additional ideas about methods for making the selection/recruitment process effective. This is necessary to insure that a failure to effectively recruit does not lead to the use of quotas to meet the contractor's timetables.

Subpart 6. Promotion. This subpart is the logical extension of Subpart 5, which dealt with selection. This subpart provides that the contractor must ensure that minorities and women are given equal opportunity for promotion. This is necessary, in that for an EO/AAP to be effective it must provide for upward mobility for those persons recruited and hired pursuant to the contractor's goals and timetables. The Items labeled A-J are suggested measures that the contractor

can use to assist in insuring the availability of promotional opportunities. The measures listed are reasonable, in that they represent those methods used by federal authorities, they are clear and unambiguous, and, if followed, would provide a demonstration of the contractor's good-faith efforts to meet the goals and timetables established pursuant to these rules.

Part 5000.3490/Internal Audit and Reporting Systems.

This rule requires that a contractor set up a regular monitoring process to provide the contractor with on-going information regarding the operation of the contractor's EO/AAP progress.

The required reports are necessary, since the contractor must be able to discover problems in the program, and the reports called for in this rule will provide the data needed to determine that. The required reports are reasonable, in that any program, to be effective, would require a similar reporting and monitoring program. Contractors routinely receive such reports about the progress being made on projects, and this report structure is essentially similar, and should impose no real burden on any contractor.

Part 5000.3500/Disabled Individuals Plan.

This rule requires nonconstruction contractors to develop affirmative action plans for the employment of and advancement of disabled individuals. This rule is necessary and reasonable because section 363.073 of the Minnesota Human Rights Act requires public contractors to take affirmative action for disabled individuals. Section 363.074 requires the Commissioner to issue rules specifying the criteria to be used to review affirmative action plans submitted by contractors.

Part 5000.3510/Additional Required Content of Affirmative Action Plans.

The Department has determined that this rule is redundant of requirements contained in Parts 5000.3430, subparts 1 and 2, 5000.3440, subparts 1 and 2, 5000.3450, subparts 1 and 2, 5000.3460, subparts 1 and 2, 5000.3470, subpart 2, 5000.3480, subpart 5 and 5000.3490. Therefore, in order to avoid confusion, it shall be withdrawn.

Part 5000.3520/Construction Contractor's Affirmative Action Plans.

Goals and timetables for minority and female utilization in specific geographical areas are to be issued by the Commissioner. This is reasonable in that ultimately it is the Commissioner of Human Rights who will review contractors' affirmative action plans to determine compliance. The notice of the goals and timetables in the State Register is necessary to apprise contractors of the actual availability of minorities

and females in the contractor's particular geographical area and to assist him/her in preparation of an affirmative action plan. It will be necessary to periodically revise the goals and timetables to reflect the changing availability of minorities and females in the covered area.

Part 5000.3530/Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity.

This rule is needed to apprise contractors submitting bids or offers on state and state-assisted projects of state requirements for affirmative action to ensure equal opportunity, and to ensure the contractors' compliance with the Minnesota Human Rights Act.

Item 2 deals with goals and timetables in the notice requirements issued by contracting state agencies in the solicitation for bids by those agencies. These goals and timetables are realistic and reasonable in that they reflect the actual availability of females and minorities on all construction work in the contractor's covered area.

It is reasonable to require that contractors not transfer minority or female employees or trainees from contractor to contractor or from project to project for the purpose of meeting the contractor's goals. The requirement is necessary to ensure that contractors maintain representation of females and minorities in all phases of a project. It is reasonable, therefore, to state that compliance with goals will be measured against total work hours performed by females and minorities.

Item 3 provides that the prime contractor submit notification to the department of any subcontracts awarded, including names and addresses of subcontractors and dollar amounts of those subcontracts. While the department currently has no legal authority to require subcontractors to adhere to rules regarding compliance for state contracts, this requirement enables the Department to maintain statistics which may necessitate future legislation requiring subcontractors to be subject to the same rules as prime contractors.

Item 4 defines "covered area" as the geographical area where the contract is to be performed. It requires that specifics be provided by the contracting agency to prospective bidders. This information is needed by contractors bidding on projects to assist them in setting and achieving their affirmative action goals.

Part 5000.3535/Standard State Equal Employment Opportunity Construction Contract Specifications.

This rule requires that the equal opportunity clause be included by state contracting agencies and contractors on state and state assisted construction contracts. It is needed to

provide contractors with the specific steps they must follow to ensure equal employment opportunity. It is reasonable to expect contractors to implement the specific affirmative action standards stated in the rule to ensure employment and training opportunities for women and minorities.

Item 1 reasonably requires contractors to make progress toward the goals expressed in the contract solicitation.

Item 2 reasonably requires that a contractor shall not be excused from his/her affirmative action obligations because of any collective bargaining agreement or a union's failure to refer minorities and women. This is needed to ensure that contractors fulfill the affirmative action goals set forth in the contract solicitation.

Item 3 is needed to ensure that minority and female apprentices and trainees are not only be utilized in meeting training goals but that these apprentices/trainees receive the commitment of the contractor to employ them during the training period and upon completion of their training.

It is reasonable to expect that the contractor hire the apprentices/trainees in a good faith effort to achieve all goals in employment as well as in training.

Item 4, steps (a) through (o) define the minimal affirmative action steps a contractor is reasonably expected to take and are necessary to ensure the implementation of the contractor's affirmative action policy. The requirement to document efforts is necessary for the purposes of evaluating the contractor's compliance with obligations outlined under this rule.

Item 4(a). Maintaining a harassment-free working environment is a vital and necessary part of the contractor's affirmative action policy and it is reasonable to expect on-site supervisory personnel to maintain such an environment.

Item 4(b). Maintaining ongoing contact with minority and female recruitment sources is necessary to provide the contractor with a source of employment possibilities which may have been ignored in the past to aid in his/her attainment of affirmative action goals. This is necessary to attract minorities and women to jobs where a self-analysis has indicated underrepresentation.

Item 4(c). For the purposes of filing required reports with the Department, it is reasonable and necessary for the contractor to maintain records of female and minority applicants and referrals and action taken on each.

Item 4(d). Unions are subject to the Human Rights Act prohibition of discrimination in the area of employment referral based on sex and race. It is reasonable, therefore,

to expect contractors to report to the Commissioner a union's failure to refer minority persons or women.

Item 4(e). This step encourages contractors to identify barriers in employment opportunities and training programs and take necessary steps to eliminate such barriers. It is reasonable in that it equalizes opportunities for those who in the past may have been denied opportunity for training and advancement because of their minority standing or sex.

Item 4(f). Communicating the company's equal employment policy to employees, unions and management personnel is essential to the effectiveness of the affirmative action program. This communication assures parties of the contractor's commitment to the principles of affirmative action.

Item 4(g). An annual self-review and self-analysis of the company's policy is necessary to measure progress made on affirmative action goals.

Item 4(h). External dissemination of the contractor's equal employment opportunity policy is necessary to ensure that recruiting is conducted on a nondiscriminatory basis and that action is being taken to attract women and minorities to jobs in the company and make the community at large aware of the company's affirmative action efforts.

Item 4(i). The affirmative action commitment includes efforts to make use of the services of referral agencies which specialize in recruiting women and minorities. Directing recruitment efforts to such organizations and to schools in the contractor's geographical area which may have large numbers of minorities is a necessary component of the affirmative action plan. Notifying training and apprenticeship programs in the area of openings in the company is a reasonable requirement which will aid in breaking what may have been a past pattern of recruitment through referrals from the current workforce.

Item 4(j). Using present minority and female employees to recruit other qualified minorities and females is necessary to eliminate recruitment barriers and will lead to the desired change in the composition of the workforce.

Item 4(k). An annual survey of current minority and female personnel and a program of training and upgrading is necessary to alleviate disparities which may exist in areas of administrative, technical, managerial and professional jobs and is a reasonable way to achieve affirmative action goals.

Item 4(l). A continuous monitoring of personnel and employment-related activities is necessary to ensure that the equal employment opportunity policies and obligations of the contractors in those areas are being carried out and that personnel practices do not have discriminatory effects on protected class employees.

Item 4(m). Nonsegregated activities and facilities reinforce the contractors' commitment to equal opportunity in all phases of employment. It is, of course, reasonable to expect contractors to provide separate toilet and changing facilities to males and females to assure privacy.

Item 4(n). Since the Human Rights Act has no authority to monitor subcontractors' activities, it is necessary for contractors to demonstrate their commitment to the overall concept of affirmative action by circulating solicitations for subcontracts to minority and female companies and contractor associations and to record all solicitations of offers for subcontractors from minority and female construction contractors and suppliers.

Item 4(o). It is reasonable to expect a company to evaluate supervisors' performance on equal employment opportunity to determine progress of the established goals. Such evaluations also serve to reaffirm to supervisors the company's commitment to affirmative action.

Item 5 encourages voluntary participation by the contractors in associations which make a positive impact on the employment of women and minorities. The statement that failure of these groups to fulfill the contractor's commitment to affirmative action goals is not a defense for noncompliance by the contractor because the ultimate responsibility for compliance lies with the contractor.

Item 6 requires that although separate goals for minorities and women have been established, the contractor is reasonably required to provide equal employment opportunity for <u>all</u> minority groups (male and female), and <u>all</u> women (minority and nonminority). This is necessary to ensure that employment opportunities are not provided in a disparate manner.

Item 7. It is illegal to discriminate in the area of employment based on the factors cited and it is reasonable to expect that in pursuit of achieving goals and timetables, a contractor will not violate the law prohibiting discrimination.

Items 8 and 9. These items are needed to make clear to the contractor his/her obligation to not enter into subcontracts with debarred firms or firms whose compliance certificates have been revoked or suspended and to reaffirm that doing so shall be a violation of the law. Since the Department does not have jurisdiction over subcontractors, this obligation is reasonably placed on the contractors to ensure that they carry out the principles of affirmative action to which they are committed.

Item 10. It is reasonable to expect the contractor to follow the specific affirmative action steps outlined in order to make a good faith effort to implement the affirmative action plan. Determination of a contractor's failure to comply with these

requirements will necessitate the Commissioner's notifying the contractor of deficiencies.

Item 11. It is necessary to appoint an official to the task of monitoring the affirmative action policy to ensure that all personnel matters, including monitoring, reporting and recordkeeping are performed in accordance with the affirmative action plan. The information required on each employee need not be specifically prepared for purposes of fulfilling this requirement if the employer currently has such information in existing records which are easily retrievable.

Item 12. This item makes clear that contractors need to comply not only with the rules set forth in this document but, where applicable, with other state and federal compliance laws and requirements as well.

Part 5000.3540/Construction Contractor Affirmative Action Plans.

This rule requires construction contractors to prepare affirmative action plans for the employment of and advancement of disabled individuals. This rule is necessary and reasonable because section 363.073 of the Minnesota Human Rights Act requires public contractors to prepare affirmative action plans for the employment of disabled individuals. Section 363.074 requires the Commissioner to issue rules specifying the criteria to be used in reviewing contractors' affirmative action plans.

Part 5000.3550/All Contractors; Affirmative Action Plans for Disabled Individuals.

This rule sets forth an affirmative action clause which must be included in each state contract. This clause lists the specific responsibilities of contractors and the criteria which will be used by the Commissioner to evaluate affirmative action plans for disabled individuals submitted by the contractors.

Item 1(a) sets forth the contractors' duty to provide equal opportunity for disabled individuals. This statement is necessary and reasonable in order to make it clear that the contractor has responsibility to provide equal employment opportunity and affirmative action for disabled individuals. The inclusion of this statement in the contract also makes it clear that the contractor has agreed to do so. This statement forms the basis of the contractor's affirmative action plan for disabled individuals.

Item 1(b). The contractor must comply with the rules and relevant orders of the Department of Human Rights. The Department is provided general authority to adopt rules under section 363.05 of the Human Rights Act and is granted specific rulemaking authority under sections 363.074 and 363.075 relating to affirmative action plans for public contractors.

The Department is also authorized to issue orders under section 363.071 in individual cases of alleged discrimination arising under the Human Rights Act. Since rules have the effect of law and since rules must be complied with in order to have effective enforcement of the law, it is necessary and reasonable to require contractors to comply with the Department's rules. It is also necessary and reasonable to the effective enforcement of the law to require contractors to comply with orders issued by the Department.

Item 1(c) explains that action may be taken by the Department if contractors fail to comply with the rules and orders of the Department. It is necessary and reasonable to include a statement indicating that action may be taken for noncompliance with the affirmative action clause. This statement is necessary and reasonable to make clear the consequences that may follow for noncompliance. Section 363.073 provides for revocation or suspension of the contract in the event the contractor fails to implement an affirmative action plan.

Item 1(d). Contractors are required to post notices in conspicuous places frequented by employees. These notices must state the contractor's obligation to take affirmative action to employ and advance in employment qualified disabled individuals. Notices must also state the rights available to employees. It is necessary and reasonable for contractors to post notices in order for employees and applicants to know that the contractor is taking affirmative action for disabled individuals. Employees and applicants must first know that the contractor has an affirmative action program before they can exercise their rights under it.

Item 1(e). The contractor must inform labor organizations with whom they have collective bargaining agreements that they are taking affirmative action. It is necessary and reasonable for the contractor to inform labor organizations of the contractor's duty to take affirmative action in order to gain the labor organization's voluntary cooperation in implementing affirmative action. It is hoped that the contractor and labor organization will be able to work together to insure that collective bargaining agreements do not contain provisions which will hinder affirmative action efforts.

Item 2(a). Under this requirement, contractors must establish a schedule for reviewing all job descriptions to insure that, to the extent that the physical or mental qualifications preclude a person with a particular disability from performing the duties of the position, they are job-related, and are consistent with business necessity and the safe performance of the job. The establishment of a schedule for the review of physical and mental job qualifications is necessary and reasonable in order to insure that the contractor will set time aside to develop qualifications which meet the criteria listed in Item 1(a). The criteria of job relatedness, business

necessity and the safe performance of the job are necessary and reasonable because these three criteria are the factors used by courts in determining whether discrimination has occurred. These standards are also used in the Office of Federal Contract Compliance Programs rules implementing section 503 of the Rehabilitation Act of 1973, as amended.

Item 2(b) requires contractors to establish physical and mental job qualifications. It is necessary and reasonable to require that the physical and mental job qualifications be related to the specific duties of the job in question in order that such qualifications will not tend to automatically screen out disabled individuals. Much discrimination against disabled persons occurs because employers set up health standards to be met by applicants which have not been proven to be required for the satisfactory and safe performance of the duties of the job. Many employers have made assumptions without gathering supporting evidence that persons with particular conditions or disabilities could not perform the job in question. Item 2(b) requires contractors to base their criteria on evidence rather than myths and misconceptions about disabled persons.

Item 2(c). The contractor may conduct a comprehensive medical examination prior to employment provided and the results of the examination shall be used only in accordance with the requirements of this section. Information obtained during the comprehensive medical examination shall be kept confidential except that supervisors may be informed of worker restrictions and accommodations, first aid personnel may be informed if the condition might require emergency treatment and officials of the Department of Human Rights and representatives of local human rights commissions shall be informed when they are investigating compliance with the Minnesota Human Rights Act or a local ordinance. It is necessary and reasonable to permit the contractor to conduct a comprehensive medical examination in order to determine an applicant's physical and mental ability to perform the job. It is necessary and reasonable to require that the results of the examination be used only in accordance with the requirements of this section in order to insure that its physical and mental job qualifications are job related for entry level jobs, promotions, demotions and training.

It is necessary and reasonable to require contractors to keep medical information confidential in order to protect the privacy interests of applicants and employees. On the other hand, it is necessary and reasonable to inform supervisors and managers of a disabled individual's work restrictions and need for accommodation in order to insure that the individual will be placed in a job assignment which is not hazardous to the individual or to others. It is necessary and reasonable to inform first aid and safety personnel of an individual's medical condition if an individual has a medical condition which might require emergency treatment, so that first aid and

safety personnel can make necessary plans to insure that the individual will be given prompt and appropriate medical care in the event of an emergency. It is necessary and reasonable to inform officials of the Minnesota Department of Human Rights or local human rights agencies of an individual's medical condition when the Department or a local agency is investigating compliance with the Act so that accurate information will be obtained during the investigation.

Item 3 requires contractors to make reasonable accommodation to the known physical or mental limitations of an employee or applicant unless the contractor can demonstrate that making such an accommodation would impose an undue hardship on the conduct of the contractor's business. In addition to the requirement contained in section 363.073, subdivision 1 that a contractor must engage in affirmative action with regard to the employment of disabled individuals, section 363.03, subdivision 1(6) requires employers of 50 or more full-time employees to make reasonable accommodation to the known full-time disability of a qualified disabled person where the accommodation would not pose an undue burden. It is necessary and reasonable to require contractors to make reasonable accommodation to the known physical or mental limitations of an individual since without these accommodations disabled individuals often cannot perform the essential functions of the job. Reasonable accommodations give disabled individual an equal chance to perform the job in question on an equal basis with nondisabled persons. Accommodations are necessary and reasonable since work environments are generally set up with the assumption that only nondisabled persons will be assigned to them. It is necessary and reasonable to require the contractor to provide the accommodation since the accommodation may consist of providing a piece of equipment or modifying tools or work schedules.

The rules adopted pursuant to section 503 require federal contractors to make reasonable accommodation. The U.S. Department of Labor commissioned a study of federal contractors to learn their experiences in making accommodations. The study found that of the accommodations made by federal contractors about half cost the employer nothing and another 30% involved expenses ranging between $1 and $500. See Appendix A.

Item 3 also provides that the contractor need not make accommodations if it can demonstrate that making the accommodation would impose an indue hardship on the conduct of its business. It is necessary and reasonable to excuse the contractor from this obligation if an undue hardship can be demonstrated since some accommodations would be too expensive or disruptive to the contractor's business. This section provides that business necessity or financial expenditures would be considered as examples of factors that might be used in determining undue hardship.

Item 4 prohibits contractors from reducing a disabled individual's rate of pay because that individual receives income from another source such as social security disability benefits, supplemental security income, etc. This section is necessary and reasonable to make it clear that contractors are expected to pay disabled individuals on a basis equal to nondisabled individuals and that simply because a disabled individual receives income from another source due to the individual's disability, the contractor's obligation to pay the individual the same rate as paid to nondisabled persons is not lessened. This provision is again drawing from the Office of Federal Contract Compliance Programs rules. This rule was included in the OFCCP's rules because it received comments from interested persons pointing out that some employers had different pay rates for disabled employees.

Item 5 requires contractors to conduct a review of their personnel policies to determine whether they are conducting recruitment efforts such as those listed in item 5. Contractors need not undertake all of the listed activities.

Affirmative action is directed towards eliminating the present effects of past discrimination. Since the present effects of past discrimination against disabled persons are that disabled persons are not adequately and proportionally represented in the workforce in accordance with their availability in the population, it is necessary and reasonable to require contractors to conduct outreach and recruitment efforts to seek out and attract disabled applicants. The activities listed in Item 5 are examples drawn from the OFCCP's rules. These examples give guidance to contractors on the steps to be taken when conducting an effective outreach and recruitment program. Item 5 provides flexibility rather than rigidity by allowing the contractor to choose from a variety of options when designing its outreach program. Thus, contractors may select recruitment techniques which would best suit their particular business needs.

Item 6 sets forth requirements for internal dissemination by the contractor. The contractor must undertake the ten specific activities outlined in this item. This rule is necessary to insure that all employees are notified of the contractors' policies and their rights under those policies. It is reasonable in that the methods of dissemination identified are common, proven methods for accomplishing dissemination of information within businesses.

Item 6(a). The contractor is required to include its affirmative action policy in its policy manual in order that all employees will have a clear understanding that the contractor has a policy on affirmative action and the nature of the policy.

Item 6(b). The contractor must publish the policy in its newsletter, magazine, annual report and other publications in order to inform all employees and others who do business with the contractor.

Item 6(c). The contractor must hold special meetings with its managerial and supervisory staff to inform them of the policy and of their responsibiltiies to implement it. This requirement is necessary in order to insure implementation of the policy by all levels of the organization.

Item 6(d). The contractor must hold meetings with all employees to inform them of the policy and to explain to employees their individual responsibilities. This activity is necessary and reasonable to insure that all employees fully understand both the policy and their responsibilities under the policy. Such meetings will provide an opportunity for employees to raise questions and to gain further detailed information about the contractor's affirmative action program.

Item 6(e). The contractor must discuss the policy during new employee orientation meetings and training sessions for managers. This requirement is necessary and reasonable to insure that new employees and managers will be informed of the policy and their responsibilities under it.

Item 6(f). The contractor must meet with union officials to inform them of the contractor's policy and to request the union's cooperation. This activity is necessary and reasonable because the union's cooperation is essential to effective implementation of affirmative action. Union cooperation is essential for insuring that labor contracts will incorporate affirmative action and nondiscrimination policies.

Item 6(g). The contractor is required to include a nondiscrimination clause in labor contracts and to insure that all provisions of the contract are nondiscriminatory. This requirement is necessary and reasonable in order to state clearly that the contractor will not discriminate on the basis of disability and to insure that discrimination will not occur as a result of language contained in labor contracts.

Item 6(h). The contractor must include articles about the accomplishments of disabled persons in company publications. This activity is necessary and reasonable in order to help publicize the accomplishments of disabled individuals. Publicity about the accomplishments of disabled individuals will aid in breaking down societal stereotypes and negative attitudes which may have been held by contractors' employees. As more and more company employees at all levels come to know the capabilities and accomplishments of disabled individuals, they will come to have greater acceptance of disabled individuals as their subordinates, co-workers or superiors. Employment opportunities will be enhanced as a result of the publication of articles about disabled individuals.

Item 6(i). It is necessary and reasonable to require the contractor to post its policy on bulletin boards in order to remind employees that the contractor is taking affirmative action and that employees and applicants will be protected from coercion, intimidation, interference, or discrimination, when filing complaints or assisting in investigations.

Item 6(j). The contractor must include photographs of disabled employees if they feature other employees in employee handbooks or other publications. The inclusion of photographs of disabled individuals will help enhance opportunities for disabled individuals by illustrating that disabled persons are employed in various positions within the company.

Item 7 requires the contractor to designate an executive level individual to implement the affirmative action program. Item 7 further delineates the responsibilities of this executive. The individual responsible for affirmative action shall develop affirmative action policies and internal as well as external communication approaches. This item simply indicates who is responsible for developing and implementing the affirmative action requirements cited in the other items contained in this rule. The affirmative action officer executive must identify problem areas in the implementation of the affirmative action plan and seek solutions to those problems. This requirement is necessary and reasonable in order to insure the effective implementation of the contractor's affirmative action program. The responsible executive must implement auditing and reporting methods. Five specific areas must be audited to insure proper implementation of the contractor's affirmative action plan. It is necessary and reasonable to require the contractor to audit and report on its affirmative action efforts in order to assist both the contractor and the Department in knowing whether the contractor is effectively implementing its affirmative action program. The responsible executive must serve as the liaison between the contractor and the Department of Human Rights. It is necessary and reasonable to have the responsible executive serve as a liaison in order for the Department to know who to contact within the contractor's company to discuss questions of compliance with the Minnesota Human Rights Act and the rules adopted pursuant to the Act.

The responsible executive must also serve as a liaison between the contractor and organizations of and for disabled individuals. It is necessary and reasonable to rquire the responsible executive to serve as a liaison so that meaningful relationships can be developed and maintained between the contractor and organizations of and for disabled individuals. These organizations are an important source of job applicants and expertise relating to the area of disability. The responsible executive must also arrange for involvement of company representatives in the community. It is necessary and reasonable to require the responsible executive to obtain the involvement of company representatives in the community since the community is an important source of recruitment.

The responsible executive must keep management informed of developments in the affirmative action field. This requirement is necessary and reasonable in order to insure that the contractor is in compliance with all relevant state and federal laws and rules related to affirmative action. The responsible executive must arrange for career counseling for known disabled individuals. This requirement is necessary and reasonable in order to help eliminate the present effects of past discrimination. Since many disabled individuals have become locked into entry-level or deadend positions, because of past discriminatory policies and practices, they may develop career options and learn of employment opportunities within the company through career counseling.

Item 8 relates to the development and execution of the contractor's affirmative action plan.

Item 8(a) requires the contractor to make available to managers and others involved in the personnel selection process the physical and mental job qualifications developed pursuant to Part 5000.3550, Item 2. This requirement is necessary and reasonable since personnel involved in all phases of the selection process must know the physical and mental qualifications which applicants must meet prior to recruiting, interviewing and selecting candidates. Without this information, personnel involved in selection might employ individuals who do not meet the established job qualifications. This could have the effect of continuing to screen out qualified disabled individuals.

Item 8(b) requires the contractor to review all aspects of the selection process to insure that the process is free from stereotyping. This requirement is necessary and reasonable since disabled individuals historically have been stereotyped and, as a result, have been denied employment opportunities commensurate with their skills and abilities.

Item 8(c) requires all personnel involved in the selection process to be carefully selected and trained to insure that the contractor's commitment to affirmative action is implemented. This requirement is necessary and reasonable to insure that personnel involved in personnel decisions are free from discriminatory attitudes and that they are committed to taking affirmative action. Because negative attitudes toward disabled persons have so insidiously permeated our society, persons in a position to select personnel may have lower expectations for disabled applicants and may have doubts about their abilities to function effectively, competently, and on the basis of equality.

Item 8(d) outlines the requirement that the contractor hold briefing sessions with recruiting sources. It is necessary and reasonable to require briefing sessions with recruiting sources to provide information to recruiting sources which they must

have in order to refer appropriate applicants to the contractor. These briefing sessions are an efficient way for contractors to initiate and build relationships with recruiting sources for the purpose of obtaining applicant referrals. A formal referral process must be implemented. This requirement is necessary and reasonable to insure that the contractor will have a pool of qualified disabled applicants and to insure that both the contractor and the recruiting source will have individuals with whom liaison may be maintained.

Item 8(e) requires contractors to make a special effort to include disabled individuals in the personnel relations staff. This requirement is necessary and reasonable to illustrate to both recruiting sources and applicants that the contractor is serious about affirmative action and that it does employ disabled individuals.

Item 8(f) requires contractors to make disabled employees available for career days and other related activities in the community. This requirement is necessary and reasonable to assist in educating the broader community about the abilities and accomplishments of disabled individuals and also in breaking down stereotyped attitudes toward disabled individuals. As a result of the participation of disabled persons in these activities the public will learn that the contractor employs disabled persons and will be encouraged to do the same.

Item 8(g) requires contractors to make special efforts to reach disabled students as part of their recruiting efforts at schools. This requirement is necessary and reasonable because recruitment efforts are a key aspect of the contractor's affirmative action program. Without effective recruitment the contractor would not have a pool of qualified disabled persons from which to select employees.

Item 8(h) requires contractors to make efforts to participate in work-study and on the job training programs in cooperation with rehabilitation facilities and schools which train disabled individuals. This requirement is necessary and reasonable since work-study and on the job training programs are an important means of giving disabled individuals work experience. Participation in these programs often leads to permanent jobs within the company or to other employment opportunities. In addition, disabled individuals do not often have the same opportunities that non-disabled individuals have. In addition, they have not enjoyed the same opportunities for other kinds of work experience such as summer jobs, which non-disabled persons have had. The lack of work experience severely hinders the efforts of disabled persons who seek employment at the conclusion of educational or other training programs.

Item 9 states that contracts with sheltered workshops do not constitute affirmative action for contractors unless sheltered workshops train employees for employment in the contractor's workforce at full compensation. This provision is necessary and reasonable to prevent contractors from claiming that they have met their affirmative action obligations through subcontracts to sheltered workshops. Since sheltered workshops employ disabled persons on a non-competitive basis at wages usually below the minimum standard required by law, employment in a workshop is not equal to employment in the contractor's company. This provision is drawn from the OFCCP's rules under section 503.

Item 10(a) permits the contractor to require medical documentation of an individual's disability. This may be accomplished by requiring the individual to provide medical documentation or to undergo a medical examination at the contractor's expense. It is necessary and reasonable to permit the contractor to require documentation of an individual's disability since some disabilities are invisible and since participation in the contractor's affirmative action program by persons who are not truly disabled would be unfair to disabled persons.

Item 10(b) requires that any determination of disability must meet the requirements of part 5000.3550, Item 2(c), be used for the purposes of affirmative action and proper job placement, and not be usedfor the purpose of excluding or limiting the employment opportunities of qualified disabled individuals.

Item 10(c) requires the contractor to use the American Medical Association's Guide to the Evaluation of Permanent Impairment as a basis for requiring medical documentation. This requirement is similar to a requirement contained in the rules of the OFCCP.

Item 11 requires the contractor to request the Minnesota Department of Economic Security to refer qualified job applicants to the contractor. This provision is necessary and reasonable since the Minnesota Department of Economic Security has contact with a wide variety of disabled individuals through its Job Service and through the Division of Vocational Rehabilitation. The Job Service provides job openings to any Minnesotan wishing to seek employment. The Division of Vocational Rehabilitation extends rehabilitation and placement services to disabled Minnesotans. It is necessary and reasonable to require contractors to request the Minnesota Department of Economic Security to refer qualified disabled individuals in order to insure that qualified disabled persons will be made aware of openings and will have an opportunity to submit applications.

Item 12 indicates that a contractor is not required to conduct a utilization study or to establish goals and timetables for the employment of disabled individuals as is required for minorities and women. This provision is necessary and reasonable because statistical data on the distribution of disabled individuals in job classifications in the workforce is not available. Thus, it would not be possible for the contractor to determine how many disabled individuals are available in a particular job classification. This data is crucial in the establishment of goals. The first step in establishing goals is to conduct a utilization study of the contractor's internal workforce. The second phase is to research the utilization of disabled individuals in the larger labor force. As a result, of the research conducted during the second phase, the contractor determines how many disabled individuals should be employed in each particular job category. However, since the data is not available for phase two, it is, of course, impossible for the contractor to determine how many disabled individuals should be employed. The OFCCP's rules do not include goals and timetables for disabled individuals for the same reason.

Part 5000.3560/Procedures for Issuing Certificates of Compliance.

Subpart 1. Information required. This rule is needed to reflect in the proposed rules the requirement contained in Minn. Stat. §§ 363.073 and 363.074 that a contractor must submit an affirmative action plan to the Department for approval unless it is certified to be in compliance with the affirmative action requirement of the local human rights agency or the federal government. The rule identifies the documents must be submitted to establish the manner of compliance with this requirement. It is reasonable in that it reflects the requirements contained in Minn. Stat. §§ 363.073, subd. 1 and 363.074.

Subpart 2. Certificates issued. This rule is needed to establish a time period in which the Department must respond to applications for certificates of compliance. It is reasonable in that the time period established is consistent with time periods in comparable administrative contexts.

Subpart 3. Insufficient information. This rule is needed to identify the procedure which will be followed in the event that there are deficiencies in the information submitted by an applicant for a certificate of compliance. Pursuant to this procedure, the Department will be required to notify the applicant within fifteen days and state specifically the nature of the deficiency. The rule also establishes a time period in which the Department must issue a certificate of compliance once a corrected submission has been received. This rule is reasonable in that the procedure established is calculated to accomplish the purpose of the rule and the time periods which are established are consistent with time periods in comparable administrative contexts.

Subpart 4. Duration of certificates. This rule is needed to reflect the requirement contained in Minn. Stat. § 363.073, subd. 1 that a certificate shall be valid for two years. Furthermore, it clarifies the fact that certificates shall expire after the second year. This rule is reasonable in that it reflects the requirement contained in Minn. Stat. § 363.073, subd. 1.

Part 5000.3570/Determination of Compliance Status.

Subpart 1. General criteria for review. This section is needed to identify the factors to be evaluated in determining compliance status. It is reasonable to evaluate not only the contractor's affirmative action plan and adherence to it, but also implementation of its equal opportunity clauses and its employment practices. All of these factors must be evaluated in order to provide a complete and balanced view of the contractor's performance with respect to women and minorities. The Department will consider not only the current conditions or achievements but also whether the contractor has made efforts in good faith to address identified problems. The Department will evaluate not just the contractor's numbers but rather the efforts made to achieve goals.

Subpart 2. Determination of good faith efforts. Since the contractor's efforts will be the primary focus of evaluation, it is reasonable and necessary to define what areas of a contractor's operation will be examined to determine whether good faith efforts are being made. All of the conditions described in this section are standard ways of determining whether discriminatory practices exist. It is reasonable to expect that contractors take prompt and effective actions to correct discriminatory practices once known.

Items A. through D., G., and J. state that the Department will look at the overall, statistical picture of the experience of women and minorities employed by the contractor in the areas of hiring, promotions, transfers, and terminations. Patterns may emerge which would show whether employment opportunities are being limited by discrimination or whether the contractor is taking steps to enhance employment opportunities for women and minorities. This kind of examination is needed to compare the employment experience of women and minorities to that of others.

Items H., I., K., and L. address aspects of a business operation which are indicative of the degree to which equal opportunity is actively practiced in all phases of the contractor's operations. If women, minorities, and disabled individuals are segregated from others or are not participating in company-sponsored activities, it may be indicative of an atmosphere of intolerance which will result in less than equal employment opportunities. While the overall numbers may be impressive, the employment experience may not be equal in important respects.

Item M. requires the contractor at least to have techniques for evaluating the success of its affirmative action program. Otherwise, the contractor would not know whether it was successful and could not improve in the areas where unsuccessful. The Department expects the contractor to be engaged in an ongoing effort to monitor its own affirmative action efforts. The contractor must have its own internal self-evaluation process so that it is fully responsible for its own affirmative action program, rather than waiting for the Department to detect deficiencies.

Item N. states that a determination of good faith efforts will include whether equal employment opportunity posters are adequately displayed. It is important that a contractor communicate its commitment to all employees. Posters are a public, concrete representation of the employer's commitment to equal employment opportunity, making information easily accessible. Employees need to have easy access to information about who to contact for complaints, both internally and with state, federal, or local agencies.

Subpart 3. Additional factors regarding good faith efforts. This subpart lists additional factors which may be used to determine good faith efforts. The previous list in subp. 2 identified factors related to the internal operations of the contractor. This list of additional factors addresses the relationship of the contractor with the Department. This second list is necessary because it allows the Department to assess the contractor's compliance with the procedures set out in these rules. It is reasonable to expect compliance with these rules because a lack of cooperation with the Department inhibits a valid assessment of the contractor's performance.

Subpart 4. Analysis of good faith efforts. Contractors are notified in this section of the methods that may be used by the Department to determine whether good faith efforts are being made.

Item A. An investigation of a charge of discrimination may reasonably be used because evidence that the contractor has discriminated is clearly relevant to adherence to equal employment opportunity principles. An investigation might uncover discriminatory practices which would help a contractor know what problems it needs to work on.

Items B. and C. of subp. 4 notify the contractor that the Department will gather information for analysis of good faith efforts by analyzing their affirmative action plan and by conducting an on-site review. Analysis of the affirmative action plan is necessary to know what the contractor's plan or strategy is. The on-site is necessary to assess the degree to which the plan has actually been implemented.

Finally, Item D. notifies the contractor that the entire file of relevant information gathered from the sources listed in the previous subparts will be analyzed to determine good faith efforts. This part is necessary to make it clear that the Department will examine the overall body of evidence gathered from all sources, so that the Department is not limited to a narrowly-defined source or process for determining good faith efforts.

Subpart 5. Notification of deficiencies. Notification is necessary in order to assure that the contractor knows of a deficiency. Suggesting corrective measures to correct the deficiency is reasonable so that the contractor will know exactly what needs to be done. The principles of due process give the contractor an opportunity to respond.

Requiring the Department to attempt to secure compliance through conciliation and persuasion is necessary and reasonable in order to avoid the costs of protracted litigation. The contractor's commitment to correct a deficiency is necessary in order to carry out the role given to the Department or the Human Rights Act. The Department must assure that a violation does not continue.

Establishing a timetable for correction of deficiencies assures that the process is not prolonged and is necessary so that both the Department and the contractor will be able to assess whether the agreement is being carried out.

Subpart 6. Notice of sanctions and hearing. This section outlines a procedure which would allow the contractor to dispute the fact that a deficiency exists or that sanctions should be imposed. The Department clearly has authority to impose sanctions in Minn. Stat. § 363.073, subd. 2. This section of the rules clearly states how the Department must notify the contractor and when the sanctions take effect.

The contractor must follow the procedure outlined in this section to request a hearing. The time period of 20 days to file the request is reasonable and comparable to the time allowed for civil proceedings.

Item A. It is necessary and reasonable to give the Commisioner responsibility for notification of the time and place of hearing.

Item B. It is a standard practice to stay sanctions until the results of an appeal have been determined. It is reasonable to allow dismissal if the contractor fails to appear at the hearing.

Item C. It is standard practice for the administrative law judge's office to send decisions or reports to the Commissioner, who has responsibility for notifying the parties.

The 20-day time period for filing exceptions is reasonable and is comparable to that allowed by other administrative proceedings when exceptions to a decision are allowed.

Item D. specifies how the written exception to the administrative law judge's report must be organized. These guidelines are needed for clarity, consistency and ease of understanding the nature of the exceptions.

Item E. describes the circumstances in which oral argument may be permitted or denied by the Commissioner. A party may request an opportunity for oral argument at the time an exception is filed. The Commissioner may deny such a request if the Commissioner determined that the facts and legal arguments are adequately presented by the briefs and records and the descisional process would not be significantly aided by oral argument. If oral arguments are presented, it is reasonable to define and limit the scope of the argument.

It is necessary to give the Commissioner the authority to deny oral arguments for the purpose of being efficient and avoiding unnecessary costs. This discretion regarding oral argument is practiced by both the Minnesota Supreme Court and the Court of Appeals and is typical of appellate procedures in general.

Item F. provides that after a final decision or order, any party may petition for rehearing, for amendment or vacation of findings of fact, decision or order or for reconsideration or reargument. This provision is comparable to the rules of other administrative agencies. It is reasonable to provide an opportunity for a party to bring to the Commissioner's attention new evidence or a mistake. The final decision, however, is the Commissioner's who may grant or deny the petition or set a hearing.

It is necessary and reasonable to give the Commissioner the final decision since the Human Rights Act explicitly gives the Commissioner the authority to suspend or revoke a certificate of compliance (Minn. Stat. § 363.073, subd. 2).

Item G. A second petition is prohibited if it is based on the same grounds as a former petition which has been denied. This prohibition is necessary to prevent time-consuming and useless appeals based on the same grounds.

Once the process of appealing a Department decision to suspend or revoke a certificate of compliance has been completed, the Department is responsible for making the necessary notification to the state agency which holds contracts with the affected contractor. The Department also makes appropriate recommendations regarding whether the contracts should be terminated. This responsibility is assigned to the Department by Minn. Stat. § 363.073, subd. 3.

Subpart 7. Recertification. The contractor may be recertified upon showing that the past deficiency has been corrected to the commfssioner's satisfaction. This provision is necessary to provide incentive to the contractor to address the problem identified and is a reasonable exercise of the Commissioner's responsibility to certify compliance with Minn. Stat. § 363.073 and with Parts 5000.3400 to 5000.3600.

Subpart 8. Evidence of discrimination. Under this section the Commissioner is clearly given responsibility to exercise jurisdiction over any discriminatory practice which s/he becomes aware of, as required in Minn. Stat. § 363.06.

Part 5000.3580/Submission of Compliance Reports.

Subparts 1, 2 and 3. Construction contractors; monthly reports/construction contractors; semi-annual reports/nonconstruction contractors; semi-annual reports.

These rules are necessary so that covered contractors will provide the Department with the information needed to determine whether women and minorities are being under-utilized and whether specific contractors are accomplishing the goals set forth in their affirmative action plans. These rules are reasonable in that the information required is precisely that needed to determine whether or not women and minorities are being under-utilized. The frequency of the reports is rationally gauged to provide contemporary feedback regarding progress without imposing an undue burden upon the contractors. Construction contractors are required to submit more frequent reports regarding their construction personnel than they are required to submit regarding their non-construction personnel, i.e. monthly regard as opposed to semi-annual, because of the transitory nature of construction work.

Subpart 4. Minimizing duplication of reports. This rule is necessary to state that it is the objective of the Department to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies. Furthermore, it is needed in order to identify methods for accomplishing this objective. This rule is reasonable in that the methods identified are rationally calculated to accomplish the objective of the rule.

Part 5000.3590/Procedures for Compliance Review.

Subpart 1. This rule notifies contractors how an evaluation will be conducted. As many as three steps may be involved, depending upon the thoroughness of the relevant information obtained in each part. Each step is designed to be as complete and unobtrusive as possible without sacrificing the integrity of the contractor's evaluation. It is necessary to identify how the Department will evaluate the contractor and it is reasonable to provide for both desk audits and on-site reviews to verify or augment information supplied in writing.

Subpart 2. Desk audit. This section is necessary to define what will be examined in a desk audit. The organization of documents to be examined are described clearly, so that the Department will be able to assess the work forces of various contractors in a consistent manner. Workforce analysis is clearly defined so that contractors will know exactly what they must provide for a desk audit.

Subpart 3. Exceptions to desk audit requirements. This rule is designed to allow some flexibility by not always requiring a full desk audit. The Department may then respond to special situations while still carrying out the responsibilities of certifying contract compliance.

Subpart 4. On-site review. This rule gives clear notice of exactly how and when an on-site review will be conducted. It is necessary so that both the Department and the contractor have a common understanding of the scope and limits of the review and the rights and responsibilities of each.

Item A. makes it clear that the Department shall have access to the premises and further defines what the Department may do. This part also informs the contractor how the information will be used, in keeping with the principles established by the Minnesota Government Data Practices Act. This part is reasonable because it gives the Department access to the information it needs in order to determine the contractor's compliance status.

Item B. describes the possible results of a desk audit, defining situations in which the on-site review need not be carried out. The Department is given reasonable flexibility in taking action which is appropriate given the results of the desk audit, without requiring an on-site review when it is not needed.

Items C. and D. notify the contractor of the information which should be ready for the on-site review. This notice is necessary so that the contractor will know what to expect and also so that the Department can examine the information in the most efficient way possible. This rule is reasonable because only information which is relevant to the contractor's compliance status will be examined.

Items E. and F. give the Department the authority to seek additional information even though it has not been previously identified or to take data off-site for further analysis. This authority is necessary because the need for certain information may not be known until documents are reviewed on-site. Furthermore, it is reasonable to provide for further analysis of data off-site in order to allow for adequate attention to what may be large quantities of data. This further analysis will benefit both parties so that a valid assessment is made.

Subpart 5. Review of contractor data. This part guarantees that the Department will have access to all data relevant to assessing contractor compliance status and addresses any possible concerns of confidentiality. If the contractor is concerned about data being taken off-site, this section provides a process for appealing the relevance of the information.

Subpart 6. Employee interviews. The on-site review reasonably includes employee interviews as a means of verifying the written data supplied by the contractor. It is a reasonable and good investigative technique to use more than one source of data. The details of the interviews will be discussed in advance with the contractor.

Part 5000.3600/Duties of Contracting State Agency.

Subpart 1. Cooperation with Commissioner. This section clearly notifies each state agency of its responsibility to notify contractors of their obligations under Minn. Stat. § 363.073 and Parts 5000.3400 to 5000.3600. In order to implement these rules it is necessary to be clear about assigning responsibility, especially with respect to who will notify the contractors of their responsibility to comply with Minn. Stat. § 363.073 and Parts 5000.3400 to 5000.3600. It is reasonable and efficient to assign that responsibility to each state agency because it will be in touch with state contractors.

Subpart 2. This subpart specifies what the state agency will be expected to do to fulfill its obligation under subpart 1. It is reasonable to require the state agency to insert information about the contractor's obligation to comply with Minn. Stat. § 363.073 directly into the contract to make sure that the contractor has an opportunity to read it and also to provide a legal basis for affirmative action compliance as a term of the contract. It is also reasonable for the state agency to supply a copy of the law and rules pertaining to it so that the contractor does not need to go to great lengths to find information relevant to certification of compliance.

Subpart 3. This part makes it clear that the contracting state agency must convey to the Commissioner information relevant to a contractor's compliance. If the state agency were not required to do so, it would be in the position of allowing a possible violation of its own contract to persist.

Subpart 4. This part specifically requires each contract of a state agency to contain provisions notifying the contractor of its obligation to carry out an affirmative action plan or make good faith efforts to do so. The contract will also clearly establish the consequences of failing to implement the contractor's affirmative action plan or make good faith efforts to do so. This provision is necessary to assure that the

affirmative action aspect of the contract is known and what will happen if it is not achieved.

Subpart 5. Submission of bidders' list. It is reasonable to require a list of prospective bidders prior to the opening of a contractor's bid so that the Department can identify contractors who have not been in compliance in the past or who are known to have discriminatory practices from other information sources.

Subpart 6. Contractors' list from Department. This part establishes a system of communication between the Department and state agencies. It is necessary that state agencies know which contractors have currently valid certificates of compliance so that the agency will not unknowingly enter into a contract with an ineligibile contractor.

Subpart 7. This section further requires the state agency to cooperate by providing any information needed by the Department to seek compliance with Minn. Stat. § 363.073 and rules adopted under it. It is reasonable to ask the assistance of other state agencies in carrying out the policy of the state.

Subpart 8. A potential contractor needs to know what needs to be done in order to comply with the law regarding contract compliance and rules implementing it. It is reasonable to assign the state agency responsibility for giving the bidder a copy of the law and rules since the agency will be in touch with the bidder from the very early stages of doing business with the state. Thus, the bidder will have everything needed all at once without having to go to several sources for contract information.

Subpart 9. Bid specifications, modifications; incorporation of statutory and rule requirements. This part specifies that language regarding compliance with Minn. Stat. § 363.073 be inserted into the contract. The language makes the statutory language and the rules a part of the contract. This provision places the language regarding affirmative action on an equal level with any other term of the contract and is an important tool for enforcement.

SMALL BUSINESS CONSIDERATIONS IN RULEMAKING.

Minn. Stat. § 14.115 (Supp. 1983) requires state agencies, when proposing rules, to consider whether the rules will impact "small businesses". A small business is defined as "a business entity, including its affiliates, which (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than fifty full-time employees or has gross annual sales of less than $4 million." The rules which the Department proposes implement Minn. Stat. § 363.073 which applies to businesses having more than twenty full-time employees in Minnesota at any time during the previous

twelve months. Thus, Minn. Stat. § 363.073 and the proposed rules will not apply to all firms which are "small businesses" within the meaning of Minn. Stat. § 14.115. The Department has determined that the rules will have an impact upon those small businesses which are within the ambit of Minn. Stat. § 363.073. As a result, in drafting the rules, it has considered the following methods set forth in Minn. Stat. § 14.115, subd 2 for reducing the impact of the rules on small business:

(a) The establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

The Department finds, however, that to incorporate any of the above methods into the proposed rules would be contrary to the statutory objectives of Minn. Stat. § 363.073. In that statute, the legislature has required that all businesses which have more than twenty full-time employees in Minnesota at any time during the previous twelve months must have an approved affirmative action plan for the employment of minority persons, women, and the disabled in order to bid on or execute any contract for goods or services in excess of $50,000 with a state agency. The clear intent of the legislature is to require all businesses within the ambit of the statute to adopt and achieve the principles of affirmative action and equal opportunity, and to equip the state with the means to facilitate, monitor, and insure compliance. These objectives are not ones which can be accomplished by imposing different levels of requirements upon businesses based upon their size. In view of the dominant role of small businesses in providing employment, to impose less stringent requirements upon them would impede the ability of the state to accomplish the objective of Minn. Stat. § 363.073. Therefore, the means which the Department has employed to implement section 363.073 is by necessity generic.

The Department has sought ways to lessen the burden with regard to all businesses which are within the ambit of the rules. For example, Part 5000.3560, subp. 1 excuses businesses which have complied with federal or local agency certificate of compliance rules from submitting an affirmative action plan under the Department's rules. It provides that they may comply with the Department's rules by simply submitting letters or documentation establishing their compliance with the federal or local agency's rules together with an affirmative action program for disabled individuals. Part 5000.3580 provides that 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 utilizing forms and standards similar to those [used] by federal equal employment opportunity programs, accepting forms and reports prepared for federal or local agencies where the information contained therein is sufficient for [the Department's rules]; and minimizing duplication of programs and procedures."

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

Pursuant to Minn. Stat. § 14.11, subd. 1 (1982), the Department must consider the fiscal impact of the proposed rules on local public bodies. The rules place no additional financial burden on local public bodies.

IMPACT ON AGRICULTURAL LANDS.

Minn. Stat. § 14.11, subd. 2 requires the Department to consider whether the rules will have an impact upon agricultural land in the state. The rules will not have direct impact upon agricultural land.

CONCLUSION.

Based on the foregoing, the proposed rules, Parts 5000.3400 to 5000.3600 are both needed and reasonable.

Dated: December 7, 1984. DEPARTMENT OF HUMAN RIGHTS

Linda C. Johnson / BSm

LINDA C. JOHNSON, Commissioner

IN THE MAINSTREAM

VOLUME 7, NUMBER 5 SEPTEMBER-OCTOBER 1982

First National Survey Finds Accommodations Are "No Big Deal"

How The Survey Was Conducted

• Two thousand federal contractors in private industries (manufacturing, services, finance, insurance and real estate) were sent mail surveys. Questionnaires were analyzed for 367 responding firms, representing 512,000 workers of whom 19,200 were known to be handicapped.

In statistical analyses of respondents and phone interviews with 47 nonrespondents, there appeared to be no strong response bias in terms of size or type of firm, or extent of experience with handicapped workers and accommodations.

Each employer was asked to document the extent, nature and costs of the accommodations provided. Also, the survey sought information on the relationship between a company's attitudes and actions in regard to making modifications for disabled employees.

• Eighty-five firms from the survey respondents were interviewed by telephone. Those companies were chosen because they had indicated in their questionnaire that they had made "at least one significant accommodation."

• One hundred and forty-five disabled employees' responses to a mail su / were analyzed.

• Tr mpanies were visited by researchers. These firms were chosen because of their exemplary accommodation practices as identified in their survey and/or telephone responses.

Federal contractors that employ handicapped people say making accommodations for them is "no big deal." Firms believe that such accommodations are a sensible business practice. It secures reliable employees with needed skills just like providing tools or other aids to nondisabled workers increases their productivity. Of the accommodations made for handicapped workers, about half cost employers nothing; another 30 percent involved expenses ranging between $1 and $500.

These are some of the general conclusions drawn by Berkeley Planning Associates (BPA) from its 20-month national survey ("A Study of Accommodations Provided to Handicapped Employees by Federal Contractors")—the first of its kind—of 2,000 federal contractors in the private sector. BPA, with its subcontractor Harold Russell Associates, performed the study for the Labor Department's Employment Standards Administration. Besides interviewing federal contractors, the research group also surveyed 145 disabled employees.

The DOL-commissioned study had three primary objectives. First, to find out how many federal contractors are actively making accommmodations. Second, to learn the range and costs of modifications employers are making. Finally, to understand the decision-making process used by companies for determining if an accommodation is "reasonable."

Costs of Accommodation

• Fifty-one percent of the accommodations were made at no cost.

• Another thirty percent cost less than $500.



• Eight percent cost over $2,000.

• Seventy-nine percent of the companies did not think accommodations are prohibitively costly.

Accommodation Needs, Met and Unmet

• Of the 145 disabled employees surveyed, 87 reported accommodations had been made for them by their employers.

• Twenty-one percent reported unmet accommodation needs.

• At least half of those who had made their accommodation needs known to management had received an encouraging response.

Effectiveness of Accommodation

• Most firms felt the accommodations needs were successful in helping their disabled employees be effective in their jobs.

• Twenty-two percent of the telephone interviewees reported that not all the accommodations they had made were successful.

(See First, p. 2, col. 1)

First National Survey on Accommodations (from p. 1, col. 3)

• Seven percent of the companies responding by mail denied that accommodations had improved productivity or asserted that costs had exceeded benefits.

• In half of the telephone interviews, employers said the accommodations would benefit the employee if promoted to a new position.

• Twenty-nine percent reported that nondisabled workers also benefitted from the accommodation.

• Overall, companies as well as handicapped employees did not think there is a strong relationship between accommodation and upward mobility, either in terms of providing advantage or limiting potential.

Types of Accommodations

• The range of accommodations made by employers included structural modifications in the plant affecting all workers and specific accommodations which were undertaken for particular workers in their jobs.

• Of firms reporting the extent of physical accessibility in their workplace, 62 percent said there is now general access throughout the facility.

• Thirty-seven percent of responding firms did not answer this part of the questionnaire.

• The most frequent modifications made were in parking spaces, curb cuts, ramped entrances, and wheelchair access to office and other areas.

• Individual accommodations take many forms:

— Adapting the work environment and location of the job.

— Retraining or selectively placing the worker in a job needing no accommodation.

— Providing transportation or special equipment or aides.

— Redesigning the job to be performed by the disabled worker.

— Reorienting or providing special training to supervisors and co-workers.

• Of the above groupings, no particular type of accommodation dominates; each constitutes between 15-21 percent of the accommodations provided to all workers.

Employee Patterns Relating to Accommodations

• Once an individual is hired, he or she is likely to be accommodated regardless of occupation or seniority.

• Two-thirds of the handicapped persons who required an accommodation received it some time after their hiring, presumably because of the development or worsening of their disability.

Higher skilled workers were more often provided environmental adaptations or special equipment.

• One-third needed an accommodation at the time of their hiring.

• Ten percent of the employees were accommodated due to work-related injuries.

• Higher skilled workers were more often provided environmental adaptations of the workplace or special equipment than lower skilled workers.

• Lower skilled workers were more likely to receive job redesign accommodations or accommodations involving retraining or selective placement.

• The telephone interviews showed that 63 percent of the accommodated workers had received a promotion and/or raise since their accommodation.

Employer Patterns Relating to Accommodations

• Overall, 14 percent of the companies reported more than 5 percent of their labor force is handicapped.

• Sixteen percent of companies with more than 200 employees reported that more than 5 percent of their labor force is handicapped.

• Nine percent of companies with fewer than 200 employees reported that more than 5 percent of their labor force is handicapped.

Impact of Section 503 on Accommodations

• Twenty-eight percent agreed that Section 503 had prompted them to make accommodations; 45 percent dissented.

• Given a choice of over 15 factors, 22 percent of the companies (both employers hiring many and those hiring few) said compliance with the law was a major reason for making accommodation.

• The great majority of companies who have made their facilities accessible have done so since the Rehabilitation Act became law.

• However, the phone survey and case studies indicate that much of the legislative and regulatory impact of the law has come in the form of a "moral suasion." That is, the passage of the Rehabilitation Act of 1973 and the resulting publicity it gave to handicapped Americans raised the consciousness of management, super- (See First, p. 3, col. 1)

Reference Guide

• Section 503 of the Rehabilitation Act of 1973 says any government contractor receiving a federal contract of more than $2,500 cannot deny employment to applicants because of a disability and must take steps to recruit, hire and promote qualified handicapped workers through affirmative action.

• Likewise, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 requires government contractors who receive $10,000 or more in federal contracts to bring qualified disabled and Vietnam veterans into the workforce.

• These affirmative action laws are enforced by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (DOL).

• Other acronyms commonly used in this newsletter are: ESA—Employment Standards Administration; DOJ—Department of Justice; ALJ—administrative law judge.

First National Survey on Accommodations (from p. 2, col. 3)

visors and disabled workers concerning the need for accommodation.

• Company affirmative action and personnel officers have often cited the law and regulations in justifying making accommodations, even when the regulations did not strictly require the specific actions they were recommending to management.

A major factor encouraging accommodation is the affirmative action commitment of top management.

• Most of the accommodations reported by the telephone respondents went far beyond the requirements of the regulations, and were in response to the acceptance by management of the legitimacy and appropriateness of accommodations, given societal needs, and company interests in hiring handicapped persons having skills the firm needs. Therefore, a major factor encouraging accommodation is the affirmative action commitment of top management.

Other Incentives For Making Accommodation

• The mail survey indicated that none of several "practices and policy changes" cited was a "strong" incentive for making accommodations.

• The ranking of options in terms of providing "some" incentives were:

— Tax credits, 65 percent

— More placement by vocational rehabilitation agencies, 64 percent

— Free technical assistance in making accommodations, 56 percent

— More technical training and work experience for disabled people, 54 percent

— Increased enforcement of affirmative action regulations, 48 percent

— More information about the advantages of hiring handicapped persons, 36 percent

— Wage subsidies, 34 percent.

Company Practices That Encourage Accommodation

• Publicizing within the company top management's commitment to accommodating disabled workers. This often sets the tone throughout the whole firm.

• Assigning a specialist within the EEO/Affirmative Action Office specifically for carrying out affirmative action and EEO policies for handicapped persons.

• Establishing special procedures for reviewing and tracking applications of handicapped applicants.

• Centralizing recruiting, intake and monitoring of hiring decisions for handicapped workers. This practice increases the probability that disabled applicant's capacity for doing a job will be considered by all units in the organization.

• Providing a "central special budget" for accommodations above the budget limits of individual departments or divisions.

• Encouraging managers and supervisors to devise task assignments in which the limits of an employee's handicap (and thus the need for changes in the physical environment or in the job's design) are minimized.

• Developing a procedure for orienting the handicapped worker to the workplace; holding pre-employment discussions with supervisors and co-workers to help them understand the special needs of the newly-hired disabled individual.

• Informing company employees about successful experiences in accommodation. This practice appears to increase receptivity to later appeals for accommodation by handicapped workers.

• Training by the firm of personnel staff, line managers, supervisors, and co-workers about the affirmative action policies of the firm and dispelling common myths about disabled workers.

• Developing strong relationships with organizations who can refer disabled job applicants, and subsequent use of such outside recruitment resources for advice and expertise concerning the disabled applicant's qualifications and the kinds of accommodations that might be appropriate.

• Sharing information and experiences about handicapped employees and applicants with other firms.

• Participating in the direct training of potential future job applicants through programs like Projects With Industry (PWI).

Findings Will Be Disseminated

The final report, which fills two volumes and includes a set of recommendations from Berkeley Planning Associates and Harold Russell Associates to DOL, was due out in September. How will this information be used? "It will be disseminated widely throughout DOL in order to help government officials make good, informed and rational policy decisions" in regard to contractors making accommodations under Section 503, according to DOL Labor Economist Tom Hodges, who was the project officer for the study. He felt the information will be especially beneficial to employment opportunity specialists (EOS), who are responsible for enforcing government policies under 503.

The report, or its executive summary, will also be distributed "as much as possible" to companies, organizations and invididuals.

To request a copy of the report, "A Study of Accommodations Provided To Handicapped Employees By Federal Contractors," or its executive summary, contact:

Tom Hodges
Development and Research
Employment Standards Administration
Department of Labor
Room C-3313
200 Constitution Avenue, NW
Washington,DC 20210
(202) 523-9145

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

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Carl M. Warren, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act and the rules of the Attorney General have been followed. Any exceptions are noted below.

Dated: May 24, 1985.

CARL M. WARREN
Special Assistant
Attorney General

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE BY MAIL

Jean McCarthy, being duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on the 24th day of May, 1985, she served Ms. Elsa Carpenter

by depositing in the United States mail at said City of St. Paul, a true and correct copy of said Notice of Submission to the Attorney General,

properly enveloped, with postage prepaid, and addressed to:

Ms. Elsa Carpenter
Director of Legislative Affairs
Employers Association
9400 Golden Valley Road
Golden Valley, MN 55427

Jean McCarthy

Subscribed and sworn to before me this 24th day of May, 1985

Kim K. Wagner
NOTARY PUBLIC

KIM K. WAGNER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 29, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS
500 BREMER TOWER
7TH PLACE AND MINNESOTA STREET • SAINT PAUL, MINNESOTA 55101
(612) 296-5663

May 24, 1985

Ms. Elsa Carpenter
Director of Legislative Affairs
Employers Association
9400 Golden Valley Road
Golden Valley, MN 55427

Re: The proposed adoption of rules of the Minnesota Department of Human Rights Governing Certificates of Compliance for Public State Contracts

Dear Ms. Carpenter:

The Department has received a sufficient number of requests that requests for hearing be withdrawn that the outstanding number of requests for hearing are now below 25. As a result, the Department shall proceed to seek review of the above-referenced proposed rules from the Attorney General's office in accordance with the non-controversial rule making procedure set forth in Minn. Stat. Section 14.26 (1984) and Minn. Rule 2000.0400 (1983). Although you have not requested notice of the date of submission of the proposed rule to the Attorney General for review, we are providing you such notice as a matter of courtesy.

Very truly yours,

Linda C. Johnson by V.S.

LINDA C. JOHNSON
Commissioner Department of
Human Rights

CW:vg

Enclosure

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

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. §§ 14.05 to 14.36:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date May 24, 1985 for review as to form and legality. Pursuant to pt. 2000.1000, the Attorney General will not approve the rules for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, Telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the

State Register and before submission to the Attorney General, you may contact Alice Vega, Contract Compliance Services, Minnesota Department of Human Rights, 500 Bremer Tower, Seventh and Minnesota Streets, St. Paul, Minnesota 55101, Telephone: (612) 297-1898.

STATE OF MINNESOTA

Linda C. Johnson

LINDA C. JOHNSON, Commissioner
Department of Human Rights

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE BY MAIL

Jean McCarthy, being duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on the 24th day of May, 1985, she served Mr. Matthew P. Winkel

by depositing in the United States mail at said City of St. Paul, a true and correct copy of said Notice of Submission to the Attorney General, properly enveloped, with postage prepaid, and addressed to:

Mr. Matthew P. Winkel
Executive Director
Regional Congress of
Construction Employers
768 Transfer Road
St. Paul, MN 55114

Jean McCarthy

Subscribed and sworn to before me this 24th day of May, 1985.

Kim K. Wagner
NOTARY PUBLIC

KIM K. WAGNER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 29, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS
500 BREMER TOWER
7TH PLACE AND MINNESOTA STREET • SAINT PAUL, MINNESOTA 55101
(612) 296-5663

May 24, 1985

Mr. Matthew P. Winkel
Executive Director
Regional Congress of Construction Employers
768 Transfer Road
St. Paul, MN 55114

Re: The proposed adoption of rules of the Minnesota Department of Human Rights Governing Certificates of Compliance for Public State Contracts

Dear Ms. Winkel:

The Department has received a sufficient number of requests that requests for hearing be withdrawn that the outstanding number of requests for hearing are now below 25. As a result, the Department shall proceed to seek review of the above-referenced proposed rules from the Attorney General's office in accordance with the non-controversial rule making procedure set forth in Minn. Stat. Section 14.26 (1984) and Minn. Rule 2000.0400 (1983). Although you have not requested notice of the date of submission of the proposed rule to the Attorney General for review, we are providing you such notice as a matter of courtesy.

Very truly yours,

Linda C. Johnson by CW

LINDA C. JOHNSON
Commissioner Department of
Human Rights

CW:vg

Enclosure

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

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STATE OF MINNESOTA

Linda C. Johnson

LINDA C. JOHNSON, Commissioner
Department of Human Rights