

ORDER OF THE
DEPARTMENT OF ADMINISTRATION
ADOPTING RULES

Relating to rules concerning the Contract Compliance Program.

Analysis prepared by the Department of Administration:

The contract compliance program was transferred to the Department of Administration in 1977. Prior to this date, the program remained dormant due to lack of personnel and sources allocations.

Section 16.765(5), Wis. Stats., authorizes the department to promulgate administrative rules. It has become clear that contractors need specific guidelines to comply with the equal employment and affirmative action requirements stipulated by the statutory authority. The rules determine definitions, specify the requirements, and outline the elements of an acceptable affirmative action program.

Pursuant to authority vested in the Department of Administration by ss. 16.004 and 16.765(5), Wis. Stats., the Department of Administration hereby adopts rules interpreting s. 16.765(5), Wis. Stats., as follows:

Sections Adm 50.01 through Adm 50.09 are adopted to read:

(as stated in the material attached hereto)

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

CHAPTER ADM 50

Contract Compliance

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Adm 50.01 Authority. Section 16.765(5), Stats., authorizes the department of administration to promulgate such rules as may be necessary for the department to administer a program of nondiscrimination and affirmative action for contractors who contract with state agencies.

Adm 50.02 Purpose. The purpose of this chapter is to: (1) Aid state agencies and contractors in implementing equal employment opportunity and affirmative action practices; and

(2) Encourage and foster to the fullest extent practicable the employment of all properly qualified persons regardless of their age, race, religion, color, handicap, sex, physical condition, developmental disability, or national origin.

Adm 50.03 Definitions. In this chapter: (1) "Balanced work force" means an equitable representation of qualified handicapped persons, minorities and women in each level of a work force which approximates the percentage of handicapped persons, minorities and women available for jobs at any particular level from the relevant labor market. For construction work, the relevant labor market consists of all craft journeypersons, all craft indentured apprentices and all qualified apprentice applicants available for employment for a specific project. Persons in the construction workforce shall be excluded from the labor market where the contractor can show that these persons are unwilling to make themselves available at the jobsite for employment on a regular and ongoing basis.

(2) "Contracting agency" means any department, commission, board or other agency of state government with authority to purchase or contract for equipment, construction work, materials, supplies, or contractual services as defined in s.16.70(1), Stats.

(3) "Contractor" means any person, or entity providing equipment, construction work, materials, supplies, contractual services or leasing real property to a contracting agency of the state.

(4) "Construction work" means all labor and materials used in the framing or assembling of component parts in the erection, installation, enlargement, alteration, repair, moving, conversion, razing, demolition or removal of any appliance, device, equipment, building, structure or facility as defined in s.16.87(1)(a), Stats.

(5) "Department means the department of administration.

(6) "Handicapped person" means any person who

(a) has a physical or mental impairment which substantially limits one or more major life activities;

(b) has a record of such an impairment; or

(c) is regarded as having such an impairment.

(7) "Minorities" means persons whose race or ethnic group is either:

(a) American Indian or Alaskan Native--persons with origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition;

(b) Asian or Pacific Islander--persons having origins in the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(c) Black--persons not of Hispanic culture having origins in any of the Black racial groups of Africa; or

(d) Hispanic--individuals of Mexican, Puerto Rican, Caribbean, Central or South American or other Spanish culture or origin, regardless of race.

(8) "Qualified handicapped person" means, with respect to employment, a person with a handicap who is capable of performing the essential functions of the job for which the person is being considered with reasonable accommodation to the person's handicap; and with respect to employment-related training programs, a handicapped person who meets both the eligibility requirements for participation in the program and valid job or training qualifications with reasonable accommodation.

(9) "Reasonable accommodation" means the changes and modifications that could be made in the structure of a job or employment and training program, or in the manner in which a job is performed or employment and training is conducted, unless it would impose an undue hardship on the operation of the contractor's or subcontractor's business.

NOTE: Reasonable accommodation may include making the facilities used by the employers or employees, including hallways, restrooms, cafeterias and lounges readily accessible to handicapped persons. It also may include job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar action.

(10) "Subcontractor" means a person or company that assumes by secondary contract some or all of the obligations of an original contractor.

Adm 50.04 Contract Provisions. (1) In addition to the requirement of section 16.765(2)(a), Stats., every contracting agency of the state shall include in all contracts executed by it, provisions which are in substantial conformity with the following: (a) The contractor agrees to make every reasonable effort to develop a balance in either its total workforce or in the project-related workforce that is based on a ratio of work hours performed by handicapped persons, minorities, and women except that, if the department finds that the contractor is allocating its workforce in a manner which

circumvents the intent of this chapter, the department may require the contractor to attempt to create a balance in its total workforce. The balance shall be at least proportional to the percentage of minorities and women present in the relevant labor markets based on data prepared by the department of industry, labor and human relations, the office of federal contract compliance programs or by another appropriate governmental entity. In the absence of any reliable data, the percentage for qualified handicapped persons shall be at least 2% for whom a contractor must make a reasonable accommodation.

(b) The contractor shall develop and submit to the department, within 15 working days after the commencement date set in the official notice to proceed for construction work or 15 days after the date the contract is awarded for all other contracts, one copy of the written affirmative action plan or a copy of a current plan which has been approved by an agency of the federal, state or local government.

(c) Within 15 days after awarding each subcontract, the contractor shall submit one copy of the affirmative action plan of each subcontractor to the department.

(2) The contractor shall, in all solicitations or advertisement for employes placed by it or on its behalf, state that all qualified applicants shall receive consideration for employment without regard to age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Stats., or national origin.

(3) The contractor shall furnish all information and reports required by the department and shall permit access to payroll records and accounts for purposes of investigations to ascertain compliance.

(4) In the event the contractor is found not to be in compliance with the nondiscrimination and affirmative action provisions of this contract, the contractor shall be given 30 working days from the date of notice to meet the compliance requirements. Should the contractor fail to comply within 30 working days, the department shall initiate action as provided by s.16.765, Stats, and these rules.

(5) The contractor shall regularly submit an employment report as required by the department showing the number of contractor's employees by sex and ethnic background as well as handicapped employees for each job category established by the U.S. office of federal contract compliance programs.

(6) The contractor shall invite all employees to voluntarily identify themselves if they are handicapped, to the contractor. The invitation shall state that the information is voluntarily provided, that it will be kept confidential except for the purposes of this chapter, and that refusal to provide it will not subject the employee to any adverse treatment.

(7) The contractor shall include the provisions of s. 16.765(2)(a), Stats., and Adm 50.04(1) through (6) in every subcontract so that such provisions will be binding upon each subcontractor.

(8) Upon petition of a contractor, the department may waive inclusion in an affirmative action plan of data represented to be confidential, where disclosure would disadvantage the contractor. Waiver shall not be granted when information is essential to the evaluation of affirmative action programs or the completion of a compliance review.

Adm 50.05 Affirmative Action Plan. The affirmative action plan which is required by Adm 50.04(1)(b) shall meet the following minimum requirements:

(1) Policy statement. The affirmative action plan shall include an equal employment opportunity policy for all personnel including a statement that:

(a) The contractor shall not engage in discrimination and shall take action to achieve a balanced work force.

(b) Indicates which persons are responsible for the affirmative action program.

(c) The contractor shall comply with s.16.765, Stats., state regulations and all applicable federal contract compliance laws and shall work cooperatively with the department and other interested parties in ensuring equal employment and advancement opportunities.

Note: The following is an example of an acceptable policy statement:

It is the policy of (name of firm) not to discriminate against any employe or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, or national origin. This policy shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or other compensation; and selection for training, including apprenticeship. This company further agrees to take affirmative action to ensure equal employment opportunities.

(Name of executive and title) has been appointed equal opportunity officer and is responsible for the planning, implementation and day-to-day monitoring of the affirmative action program. All personnel responsible for hiring and promotion of employes and the development and implementation of programs and activities are charged to support this program and shall provide leadership in carrying out the goals and objectives.

During the life of the contract, the (name of firm) shall comply with s. 16.765, stats., state regulations and federal law, and shall continue to work cooperatively with governmental and community organizations in ensuring equal employment and advancement opportunities.

(2) Dissemination of policy. The affirmative action plan shall include a description of the means by which the contractor proposes internal and external dissemination of the company policy regarding affirmative action. The means of dissemination shall include, as a minimum, the following: (a) Posting in conspicuous places both the provisions of company policy regarding equal employment opportunity for all persons, and the affirmative action plan;

(b) Frequently including as items on the agenda of executive and staff meetings the topics of equal employment and the progress of the affirmative action program;

(c) Making available to employes such elements of the affirmative action program as will enable them to know and avail themselves of its benefits including notification to employes that any complaints regarding the affirmative action program may be filed with the department at 101 S. Webster St., Madison, Wisconsin 53702.

(d) Informing employment sources verbally and in writing of company policy to actively recruit and refer qualified handicapped persons, minorities and women for all positions listed. All solicitations or advertisements for employes placed by or on behalf of the company shall state that qualified applicants will receive consideration for employment without regard to age, race, religion, color, handicap, sex, physical condition, developmental disability or national origin; and

(e) Communicating to prospective employes the existence of the company's affirmative action policy in sufficient detail to enable them to make use of its benefits including notification to prospective employes that any complaints regarding the company's affirmative action policy may be filed with the department at 101 S. Webster St., Madison, Wisconsin 53702.

(3) Analysis of work force. The affirmative action plan shall include an analysis of the contractor's work force by job categories and organizational units. The job categories shall be those currently in use for construction and procurement by the U. S. equal employment opportunity commission. The work force analysis shall specifically indicate for each job category the following:

- (a) Total number of employees;
- (b) Total number of males;
- (c) Total number of females;
- (d) Total number of minority males;
- (e) Total number of minority females;
- (f) Total number of handicapped.

(4) Goals and objectives. The affirmative action plan shall include goals directed toward the achievement of a balanced work force within a reasonable period of time. A reasonable period shall normally be in the range of six months to no more than two years. Previous affirmative action plans submitted to the department under other contracts shall be considered in determining a reasonable period.

(5) Monitoring. The affirmative action plan shall include a description of a planned internal system to monitor and evaluate regularly the results achieved by the company in the implementation of its affirmative action plan. This system will include evaluation of the results regarding minorities, women and handicapped persons including those actions taken to provide reasonable accommodation for qualified handicapped persons.

Adm 50.06 Compliance Review. The department shall, on its own initiative, undertake a compliance review to determine if contractors are complying with s. 16.765, Stats., this chapter and all nondiscrimination provisions of these contracts. If the department finds evidence of noncompliance, the department shall proceed as provided in Adm 50.04(4), Adm 50.09, Adm 50.10 and s. 16.765, Stats.

Adm 50.07 Records. The department shall maintain current information on contracts which are subject to this chapter. This information shall be made available for inspection and copying by any member of the general public.

Adm 50.08 Complaint Procedure. (1) Any complaint authorized by s. 16.765(6), Stats., shall be filed with the contract compliance office of the department at 101 South Webster St., Madison, Wisconsin 53702.

(2) The complaint shall be in writing and shall state the basis for the complaint. The department shall offer to assist the complainant in drafting the complaint.


(3) The complainant and the contractor shall be kept informed of the status of the matter by the department after a complaint is filed. A copy of the investigative report and notice of final disposition of the complaint shall be given to the complainant and the contractor.

Adm 50.09 Investigations. (1) The department shall, within 30 working days after receipt of a complaint or a finding of noncompliance pursuant to Adm 50.06, issue an investigative report or letter to the contractor containing a narrative of the facts and a listing of the action, if any, required to bring the contractor into compliance. The contractor, if found not to be in compliance, shall have 30 working days to obtain compliance as provided in Adm 50.04(4).

(2) During the investigation, the identity and statement of any person interviewed shall be confidential.

Adm 50.10 Hearings. Any person who is dissatisfied with the results of an investigation as provided in Adm 50.09 may request a hearing pursuant to chapter 227, Stats.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Wis. Stats.



Kenneth E. Lindner, Secretary
Department of Administration

Dated: June 5, 1981