

**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 363A.36 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 persons 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 363A.36 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 363A.36 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 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 363A.36, subdivision 3. 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 14.69.

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 the commissioner's 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 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 a 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 the commissioner's 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 363A.36, subdivision 4.

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 363A.36, subdivision 3, 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 commissioner determines that the contractor has established and will carry out employment policies and practices that are in compliance with Minnesota Statutes, section 363A.36 and with parts 5000.3400 to 5000.3600.

Subp. 8. **Evidence of discrimination.** If a compliance review indicates a violation of Minnesota Statutes, sections 363A.08 to 363A.17 and 363A.19, the commissioner may

proceed to file a charge and process the matter under Minnesota Statutes, sections 363A.06 and 363A.28 or this part.

**Statutory Authority:** *MS s 363.074; 363A.37*

**History:** *9 SR 2748; L 1987 c 384 art 2 s 1; 17 SR 1279; 24 SR 273*

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