

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 contractors 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 female and male 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 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 in items A to F.

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 363A.36 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 363A.36 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 363A.36 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 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 the commissioner's 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. 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.

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

History: *9 SR 2748; 17 SR 1279*

Published Electronically: *October 2, 2013*