

1 Department of Human Rights

2

3 Adopted Rules Relating to Certificates of Compliance for Public
4 Contractors

5

6 Rules as Adopted

7

CERTIFICATES OF COMPLIANCE FOR PUBLIC

8

STATE CONTRACTS

9 5000.3400 DEFINITIONS.

10 Subpart 1. Scope. For the purposes of parts 5000.3400 to
11 5000.3600 the following terms have the meanings given them.

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

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

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

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

35 A. at work during the reference week; or

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

1 week.

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

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

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

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

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

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

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

35 Subp. 10. Covered state contract. "Covered state
36 contract" means a state contract for goods or services in excess

1 of \$50,000.

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

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

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

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

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

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

30 Subp. 17. Minorities and women with requisite
31 skills. "Minorities and women with requisite skills" means
32 minorities and women who have demonstrated that they possess the
33 skills for the job in question. For example, through
34 performance on another job, those who have completed training or
35 educational programs designed to provide skills for the job in
36 question, and those who could reasonably be expected to acquire

1 the skills within a relatively short time after placement.

2 Subp. 18. Minority. "Minority" includes:

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

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

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

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

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

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

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

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

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

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

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

11 5000.3410 GENERAL PROVISIONS.

12 Subpart 1. Purpose. The purpose of parts 5000.3400 to
13 5000.3600 is to increase employment opportunities for women,
14 minorities, and disabled individuals by requiring contractors to
15 adopt and implement affirmative action programs approved by the
16 commissioner.

17 Subp. 2. Persons regulated. Parts 5000.3400 to 5000.3600
18 apply to contractors:

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

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

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

26 5000.3420 CRITERIA FOR APPROVAL AND IMPLEMENTATION OF
27 AFFIRMATIVE ACTION PLANS FOR CONTRACTORS.

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

35 A. hiring, upgrading, demotion, or transfer;

- 1 B. recruitment or recruitment advertising;
- 2 C. layoff or termination;
- 3 D. rates of pay or other forms of compensation; and
- 4 E. selection for training, including apprenticeship.

5 Subp. 2. Proper consideration of qualifications.

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

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

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

31 Subp. 5. Identify plan coverage. The contractor shall
32 invite all applicants and employees who believe themselves
33 covered by Minnesota Statutes, section 363.073 and who wish to
34 benefit under the affirmative action plan to identify themselves
35 to the contractor. The invitation must state that the
36 information is voluntarily provided, that it will be kept

1 confidential, that refusal to provide it will not subject the
2 applicant or employee to any adverse treatment, and that it will
3 be used only in accordance with the Human Rights Act and rules
4 adopted under the act. If a disabled applicant or employee
5 identifies himself or herself, the contractor shall also seek
6 ~~their~~ his or her advice regarding proper placement and
7 appropriate accommodation.

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

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

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

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

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

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

35 The equal employment opportunity policy statement must
36 indicate that the contractor is committed to the principles of

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

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

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

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

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

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

24 NONCONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

25 5000.3430 ASSIGNMENT OF RESPONSIBILITY FOR PROGRAM TO EXECUTIVE
 26 OR TOP-MANAGEMENT OFFICIAL.

27 Subpart 1. Director. An executive of the contractor shall
 28 be appointed as director or manager of the company equal
 29 opportunity program. Depending upon the size and geographical
 30 alignment of the company, this may be his or her sole
 31 responsibility. The director shall be given the necessary top
 32 management support and staffing to execute the assignment. The
 33 identity of the director or manager must appear on all internal
 34 and external communications on the company's equal opportunity
 35 programs. The minimum responsibilities of the director shall be
 36 the following:

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- 1 A. developing policy statements, affirmative action
2 programs, and internal and external communication techniques;
- 3 B. assisting in the identification of problem areas;
- 4 C. assisting line management in arriving at solutions
5 to problems;
- 6 D. designing and implementing audit and reporting
7 systems that will:
- 8 (1) measure effectiveness of the contractor's
9 programs;
- 10 (2) indicate need for remedial action; and
- 11 (3) determine the degree to which the
12 contractor's goals and objectives have been attained;
- 13 E. serving as liaison between the contractor and
14 enforcement agencies;
- 15 F. serving as liaison between the contractor and
16 minority organizations, women's organizations, and community
17 action groups concerned with employment opportunities of
18 minorities and women; and
- 19 G. keeping management informed of the latest
20 developments in the entire equal opportunity area.

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

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

- 27 A. assistance in the identification of problem areas
28 and establishment of local and unit goals and objectives;
- 29 B. active involvement with local minority
30 organizations, women's organizations, community action groups,
31 and community service programs;
- 32 C. periodic audit of training programs, hiring, and
33 promotion patterns to remove impediments to the attainment of
34 goals and objectives;
- 35 D. regular discussions with local managers,
36 supervisors, and employees to be certain the contractor's

1 policies are being followed;

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

5 F. career counseling for all employees;

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

8 (1) Posters must be properly displayed.

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

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

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

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

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

29 5000.3440 PROCEDURES FOR DISSEMINATING POLICY INTERNALLY AND
30 EXTERNALLY.

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

33 A. Include it in contractor's policy manual.

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

36 C. Conduct special meetings with executive,

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1 management, and supervisory personnel to explain intent of
2 policy and individual responsibility for effective
3 implementation, making clear the chief executive officer's
4 attitude.

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

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

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

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

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

18 I. Post the policy on company bulletin boards.

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

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

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

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

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

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

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

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

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

11 5000.3450 WORKFORCE ANALYSIS, INCLUDING AVAILABILITY AND
12 UTILIZATION ANALYSES.

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

34 Subp. 2. Underutilization. An analysis of all major job
35 groups at the facility, with explanation if minorities or women
36 are currently being underutilized in any one or more job

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1 groups. "Job groups" means one or a group of jobs having
2 similar content, wage rates, and opportunities.

3 "Underutilization" means having fewer minorities or women in a
4 particular job group than would reasonably be expected by their
5 availability. In making the utilization analysis, the
6 contractor shall conduct such analysis separately for minorities
7 and women.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 5000.3460 GOALS AND OBJECTIVES ESTABLISHED BY ORGANIZATIONAL
13 UNITS AND JOB GROUPS INCLUDING TIMETABLES FOR COMPLETION.

14 Subpart 1. Factors. The goals and timetables developed by
15 the contractor must be attainable in terms of the contractor's
16 analysis of its deficiencies and its entire affirmative action
17 program. In establishing the size of its goals and the length
18 of its timetables, the contractor shall consider the results
19 which could reasonably be expected from its putting forth every
20 good faith effort to make its overall affirmative action program
21 work. In determining levels of goals, the contractor shall
22 consider at least the factors listed in part 5000.3430,--subpart
23 2,--item-C 5000.3450.

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

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

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

1 and in the workforce.

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

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

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

14 Subp. 8. Factor analysis. Where the contractor has not
15 established a goal, its written affirmative action program must
16 specifically analyze each of the factors listed in part
17 5000.3450 and must detail its reason for a lack of a goal.

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

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

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

1 responsibilities under the act.

2 5000.3470 IDENTIFICATION OF PROBLEM AREAS OR DEFICIENCIES BY
3 ORGANIZATIONAL UNITS AND JOB GROUPS.

4 Subpart 1. Analysis. Paying particular attention to
5 trainees and those categories listed in part 5000.3450, subpart
6 2, an in-depth analysis of the following shall be made:

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

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

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

16 D. transfer and promotion practices;

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

20 F. seniority practices and seniority provisions of
21 union contracts;

22 G. apprenticeship programs;

23 H. all company training programs, formal and informal;

24 I. work force attitude; and

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

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

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

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

36 C. the selection process which eliminates a

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1 significantly higher percentage of minorities or women than
2 nonminorities or men;

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

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

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

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

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

15 I. de facto segregation exists at some facilities;

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

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

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

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

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

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

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

32 Q. posters not on display.

33 5000.3480 MEASURES TO FACILITATE IMPLEMENTATION OF EQUAL
34 EMPLOYMENT OPPORTUNITY POLICY AND AFFIRMATIVE ACTION PROGRAMS.

35 Subpart 1. Consistent positions. The contractor shall
36 conduct detailed analyses of position descriptions to ensure

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1 that they accurately reflect position functions, and are
2 consistent for the same position from one location to another.

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

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

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

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

30 Selection techniques other than tests may also be
31 improperly used so as to have the effect of discriminating
32 against minority groups and women. Such techniques include, but
33 are not limited to, unscored interviews, unscored or casual
34 application forms, arrest records, credit checks, considerations
35 of marital status or dependency or minor children. Where data
36 exists suggesting that there is unfair discrimination or

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1 exclusion of minorities or women, the contractor shall analyze
2 its unscored procedures and eliminate them if they are not
3 objectively valid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 A. Post or otherwise announce promotional
36 opportunities.

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

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

6 D. Develop and implement formal employee evaluation
7 programs.

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

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

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

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

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

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

27 5000.3490 INTERNAL AUDIT AND REPORTING SYSTEMS.

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

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

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

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

4 5000.3500 NONCONSTRUCTION CONTRACTOR'S DISABLED INDIVIDUALS
5 PLAN.

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

10 ~~5000.3510-ADDITIONAL-REQUIRED-CONTENT-OF-AFFIRMATIVE-ACTION~~
11 ~~PLANS.~~

12 ~~Affirmative-action-plans-must-contain-the-following~~
13 ~~additional-requirements:~~

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

16 ~~B.--formal-internal-and-external-dissemination-of-the~~
17 ~~contractor's-policy;~~

18 ~~C.--establishment-of-responsibilities-for~~
19 ~~implementation-of-the-contractor's-affirmative-action-program;~~

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

22 ~~E.--establishment-of-goals-and-objectives-by~~
23 ~~organizational-units-and-job-groups,-including-timetables-for~~
24 ~~completion;~~

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

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

30 ~~H.--active-support-of-local-and-national-community~~
31 ~~action-programs-and-community-service-programs,-designed-to~~
32 ~~improve-the-employment-opportunities-of-minorities-and-women;~~
33 ~~and~~

34 ~~I.--consideration-of-minorities-and-women-not~~
35 ~~currently-in-the-workforce-having-requisite-skills-who-can-be~~

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1 ~~recruited-through-affirmative-action-measures.~~

2 CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

3 5000.3520 COMMISSIONER SETS GOALS AND TIMETABLES.

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

15 5000.3530 NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO
 16 ENSURE EQUAL EMPLOYMENT OPPORTUNITY.

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

21 The notice requirements shall take the following form:

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

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

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

30	Goals for minority	Goals for female
31	Timetables	participation in
32		each trade
33	Insert the timetables	Insert the goals as
34	as determined under	determined under
35	part 5000-3500	part 5000-3500

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1 5000.3520. 5000.3520. 5000.3520.

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

5 The contractor's compliance with Minnesota Statutes,
6 section 363.073 and part 5000.3520 shall be based on its
7 implementation of the equal opportunity clause, specific
8 affirmative action obligations required by the specifications in
9 part 5000.3540, and its efforts to meet the goals established
10 for the geographical area where the contract resulting from this
11 solicitation is to be performed. The hours of minority and
12 female employment and training must be substantially uniform
13 throughout the length of the contract, and in each trade, and
14 the contractor shall make a good faith effort to employ
15 minorities and women evenly on each of its projects. The
16 transfer of minority or female employees or trainees from
17 contractor to contractor or from project to project for the sole
18 purpose of meeting the contractor's goals shall be a violation
19 of the contract, Minnesota Statutes, section 363.073 and part
20 5000.3520. Compliance with the goals will be measured against
21 the total work hours performed.

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

32 4. As used in this notice, and in the contract resulting
33 from this solicitation, the "covered area" is the geographical
34 area where the contract is to be performed. The contracting
35 state agency shall insert the description of the geographical
36 areas where the contract is to be performed describing the

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

4 5000.3535 STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY
 5 CONSTRUCTION CONTRACT SPECIFICATIONS.

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

11 "STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY
 12 CONSTRUCTION CONTRACT SPECIFICATIONS

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

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

30 3. In order for the nonworking training hours of
 31 apprentices and trainees to be counted in meeting the goals,
 32 such apprentices and trainees shall be employed by the
 33 contractor during the training period, and the contractor must
 34 have made a commitment to employ the apprentices and trainees at
 35 the completion of their training, subject to the availability of
 36 employment opportunities. Trainees shall be trained according

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1 to training programs approved by the Minnesota Department of
2 Human Rights, the Minnesota Department of Labor and Industry, or
3 the United States Department of Labor.

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

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

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

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

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1 actions the contractor may have taken.

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

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

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

28 (g) Review, at least annually, the company's equal
29 employment opportunity policy and affirmative action obligations
30 under these specifications with all employees having any
31 responsibility for hiring, assignment, layoff, termination, or
32 other employment decisions including specific review of these
33 items with on-site supervisory personnel such as
34 superintendents, general foremen, etc., prior to the initiation
35 first day of construction work at any job site. A written
36 record shall be made and maintained identifying the time and

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1 place of these meetings, persons attending, subject matter
2 discussed, and disposition of the subject matter.

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

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

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

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

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

35 (m) Ensure that all facilities and company activities are
36 nonsegregated except that separate or single-user toilet and

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1 necessary changing facilities shall be provided to assure
2 privacy between the sexes.

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

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

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

31 6. A single goal for minorities and a separate single goal
32 for women have been established. The contractor, however, is
33 required to provide equal employment opportunity and to take
34 affirmative action for all minority groups, both male and
35 female, and all women, both minority and nonminority.
36 Consequently, the contractor may be in violation of part

1 5000.3520 if a particular group is employed in a substantially
2 disparate manner (for example, even though the contractor has
3 achieved its goals for women generally, the contractor may be in
4 violation of part 5000.3520 if a specific minority group is
5 underutilized).

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

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

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

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

33 11. The contractor shall designate a responsible official
34 to monitor all employment related activity to ensure that the
35 company equal employment opportunity policy is being carried
36 out, to submit reports relating to the provisions hereof as may

1 be required by the Minnesota Department of Human Rights, and to
 2 keep records. Records shall at least include for each employee
 3 the name, address, telephone numbers, construction trade, union
 4 affiliation if any, employee identification number when
 5 assigned, social security number, race, sex, status (for
 6 example, mechanic, apprentice trainee, helper, or laborer),
 7 dates of changes in status, hours worked per week in the
 8 indicated trade, rate of pay, and locations at which the work
 9 was performed. Records shall be maintained in an easily
 10 understandable and retrievable form; however, to the degree that
 11 existing records satisfy this requirement, contractors shall not
 12 be required to maintain separate records.

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

18 5000.3540 CONSTRUCTION CONTRACTOR AFFIRMATIVE-ACTION-PLANS
 19 DISABLED INDIVIDUALS PLAN.

20 Construction contractors shall also have affirmative action
 21 plans for disabled individuals in accordance with ~~part~~ parts
 22 5000.3550 to 5000.3559.

23 ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR
 24 DISABLED INDIVIDUALS

25 5000.3550 ~~ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR~~ DISABLED
 26 INDIVIDUALS AFFIRMATIVE ACTION CLAUSE.

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

31 "AFFIRMATIVE ACTION FOR DISABLED WORKERS

32 ~~1. Contractor duties.~~

33 (a) The contractor shall not discriminate against any
 34 employee or applicant for employment because of physical or
 35 mental disability in regard to any position for which the

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1 employee or applicant for employment is qualified. The
2 contractor agrees to take affirmative action to employ, advance
3 in employment, and otherwise treat qualified disabled
4 individuals without discrimination based upon their physical or
5 mental disability in all employment practices such as the
6 following: employment, upgrading, demotion or transfer,
7 recruitment, advertising, layoff or termination, rates of pay or
8 other forms of compensation, and selection for training,
9 including apprenticeship.

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

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

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

26 (e) The contractor shall notify each labor union or
27 representative of workers with which it has a collective
28 bargaining agreement or other contract understanding, that the
29 contractor is bound by the terms of Minnesota Statutes, section
30 363.073 of the Minnesota Human Rights Act and is committed to
31 take affirmative action to employ and advance in employment
32 physically and mentally disabled individuals."

33 ~~2-~~ 5000.3552 PHYSICAL AND MENTAL QUALIFICATIONS.

34 Subpart 1. Schedule for review. (a) The contractor shall
35 provide in its affirmative action program, and shall adhere to,
36 a schedule for the review of all physical or mental job

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1 qualification requirements to ensure that, to the extent
 2 qualification requirements tend to screen out qualified disabled
 3 individuals, they are job related and are consistent with
 4 business necessity and the safe performance of the job.

5 **(b) Subp. 2.** Relating qualification requirements to job.
 6 Whenever a contractor applies physical or mental job
 7 qualification requirements in the selection of applicants or
 8 employees for employment or other change in employment status
 9 such as promotion, demotion, or training, ~~to-the-extent-that~~
 10 ~~qualification-requirements-in-the-selection-of-applicants-or~~
 11 ~~employees-for-employment-or-other-change-in-employment-status~~
 12 ~~such-as-promotion,-demotion,-or-training,~~ to the extent that
 13 qualification requirements tend to screen out qualified disabled
 14 individuals, the requirements shall be related to the specific
 15 job or jobs for which the individual is being considered and
 16 shall be consistent with business necessity and the safe
 17 performance of the job. The contractor shall have the burden to
 18 demonstrate that it has complied with the requirements of this
 19 paragraph.

20 **(e) Subp. 3.** Pre-employment medical exam. Nothing in this
 21 ~~section part~~ shall prohibit a contractor from requiring a
 22 comprehensive medical examination prior to employment provided
 23 that the results of such an examination shall be used only in
 24 accordance with the requirements of ~~this-section~~ parts 5000.3550
 25 to 5000.3559. Whenever a contractor inquires into an
 26 applicant's or employee's physical or mental condition or
 27 conducts a medical examination prior to employment or change in
 28 employment status, information obtained in response to such
 29 inquiries or examination shall be kept confidential except that:

30 **(i) A.** supervisors and managers may be informed
 31 regarding restrictions on the work or duties of disabled
 32 individuals and regarding accommodations;

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

36 **(iii) C.** officials, employees, representatives, or

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

4 ~~3-~~ Subp. 4. Accommodation to physical and mental
5 limitations of employees. A contractor shall make a reasonable
6 accommodation to the physical and mental limitations of an
7 employee or applicant unless the contractor can demonstrate that
8 such an accommodation would impose an undue hardship on the
9 conduct of the contractor's business. In determining the extent
10 of a contractor's accommodation obligations, the following
11 factors among others may be considered: (1) business necessity
12 and (2) financial cost and expenses.

13 ~~4-~~ Subp. 5. Compensation. In offering employment or
14 promotions to disabled individuals, the contractor shall not
15 reduce the amount of compensation offered because of any
16 disability income, pension, or other benefit the applicant or
17 employee receives from another source.

18 ~~5-~~ Subp. 6. Outreach, positive recruitment, and external
19 dissemination of policy. Contractors shall review their
20 employment practices to determine whether their personnel
21 programs provide the required affirmative action for employment
22 and advancement of qualified disabled individuals. Based upon
23 the findings of such reviews, contractors shall undertake
24 appropriate outreach and positive recruitment activities, such
25 as those listed below. It is not contemplated that contractors
26 will necessarily undertake all the listed activities or that
27 their activities will be limited to those listed. The scope of
28 a contractor's efforts shall depend upon all the circumstances,
29 including the contractor's size and resources and the extent to
30 which existing employment practices are adequate.

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

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1 the contractor in meeting this obligation.

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

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

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

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

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

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

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

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

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

10 (j) J. Take positive steps to attract qualified
11 disabled persons not currently in the work force who have
12 requisite skills and can be recruited through affirmative action
13 measures. These persons may be located through the local
14 chapters of organizations of and for disabled individuals
15 described in part 5000.3480 5000.3552, subpart 6.

16 6- Subp. 7. Internal dissemination of policy. A strong
17 outreach program shall be ineffective without adequate internal
18 support from supervisory and management personnel and other
19 employees, who may have had limited contact with disabled
20 persons in the past. In order to assure greater employee
21 cooperation and participation in the contractor's efforts, the
22 contractor shall adopt, implement, and disseminate this policy
23 internally as follows:

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

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

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

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

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

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

1 the contractor's policy, and request their cooperation.

2 {g} G. Include nondiscrimination clauses in all union
3 agreements, and review all contractual provisions to ensure they
4 are nondiscriminatory.

5 {h} H. Include articles on accomplishments of
6 disabled workers in company publications.

7 {i} I. Post the policy on company bulletin boards,
8 including a statement that employees and applicants are
9 protected from coercion, intimidation, interference, or
10 discrimination for filing a complaint or assisting in an
11 investigation under the Minnesota Human Rights Act.

12 {j} J. When employees are featured in employee
13 handbooks or similar publications for employees, include
14 disabled employees.

15 7. Subp. 8. Responsibility for implementation. An
16 executive of the contractor shall be designated as director or
17 manager of company affirmative action activities under these
18 regulations. His or her identity shall appear on all internal
19 and external communications regarding the company's affirmative
20 action programs. This executive shall be given necessary top
21 management support and staff to manage the implementation of
22 this program, including the following activities:

23 {a} A. Develop policy statements, affirmative action
24 programs, and internal and external communication techniques.
25 The latter techniques shall include regular discussions with
26 local managers, supervisors, and employees to be certain the
27 contractor's policies are being followed. In addition,
28 supervisors shall be advised that:

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

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

35 {b} B. Identify problem areas in conjunction with
36 line management and known disabled employees, in the

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

4 (e) C. Design and implement audit and reporting
5 systems that will:

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

8 (2) indicate need for remedial action;

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

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

14 (5) ensure that each location is in compliance
15 with the Minnesota Human Rights Act and ~~part-5000.3500~~ parts
16 5000.3550 to 5000.3559.

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

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

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

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

27 8. Subp. 9. Development and execution of affirmative
28 action programs. The affirmative action programs shall be
29 developed and executed as follows:

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

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

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

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

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

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

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

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

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

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

28 9. Subp. 10. Sheltered workshops. Contracts with
29 sheltered workshops do not constitute affirmative action in lieu
30 of employment and advancement of qualified disabled individuals
31 in the contractor's own workforce. Contracts with sheltered
32 workshops may be included within an affirmative action program
33 if the sheltered workshop trains employees for the contractor
34 and the contractor is obligated to hire trainees at full
35 compensation when such trainees become qualified as "qualified
36 disabled individual" as defined in part 5000.3500 5000.3400,

1 subpart 21.

2 ~~10-~~ 5000.3555 DETERMINATION OF DISABILITY.

3 (a) Subpart 1. Requiring medical determination of
4 disability. Any contractor requiring a determination of an
5 applicant's or employee's disability may require the applicant
6 or employee to provide medical documentation of the impairment
7 or, in the alternative, may require the applicant or employee to
8 undergo a medical examination at the contractor's expense.

9 (b) Subp. 2. Application of determination. Any
10 determination of disability required pursuant to subpart 1 of
11 this section must meet the requirements of part
12 ~~5000-3500~~ 5000.3552, subpart 3, and must be for the purpose of
13 affirmative action and proper job placement. Information
14 obtained therefrom shall not be used to exclude or otherwise
15 limit the employment opportunities of qualified disabled
16 individuals.

17 (c) Subp. 3. Medical documentation. All medical
18 documentation required under this section part shall be based
19 upon the American-Medical-Association Guides to the Evaluation
20 of Permanent Impairment (1984) published by the American Medical
21 Association, provided that the guides shall be used only to
22 determine the existence of impairment without regard to the
23 degree of impairment. The guides are incorporated by
24 reference. The guides are available for inspection at Ford Law
25 Library, 117 University Avenue, Saint Paul, Minnesota 55155.
26 They are not subject to frequent change.

27 ~~11-~~ 5000.3557 LISTING OF EMPLOYMENT OPENINGS.

28 Contractors shall request the Minnesota Department of
29 Economic Security to refer qualified disabled individuals for
30 consideration under their affirmative action programs.

31 ~~12-~~ 5000.3559 AVAILABILITY AND UTILIZATION ANALYSIS.

32 The requirements contained in ~~part-5000-3500~~ parts
33 5000.3450 and 5000.3460 regarding the performance of
34 availability and utilization analyses and the establishment of
35 goals and timetables do not apply to disabled applicants and

1 employees.

2 5000.3560 PROCEDURES FOR ISSUING CERTIFICATES OF COMPLIANCE.

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

6 A. an affirmative action plan in compliance with
7 parts 5000.3400 to 5000.3600; or

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

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

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

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

26 5000.3570 DETERMINATION OF COMPLIANCE STATUS.

27 Subpart 1. General criteria for review. A contractor's
28 compliance status shall not be based solely upon whether or not
29 it reaches its goals or meets its timetables. A contractor's
30 compliance status shall be determined by reviewing its
31 compliance with Minnesota Statutes, section 363.073 and parts
32 5000.3400 to 5000.3600, the contents of its affirmative action
33 plan, the extent of its adherence to the plan or the equal
34 opportunity clauses contained in its state contracts, and its
35 employment practices and their effects. In determining a

1 contractor's status, the department shall also consider the
2 extent to which a contractor has made good faith efforts to
3 implement its affirmative action plan or the equal opportunity
4 clauses contained in its state contracts.

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

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

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

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

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

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

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

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

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

25 I. segregation still exists at some facilities;

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

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

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

32 M. techniques for evaluating effectiveness of its
33 equal employment opportunity programs have not been established;
34 and

35 N. inadequate display of equal employment opportunity
36 posters.

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1 Subp. 3. Additional factors regarding good faith efforts.

2 Good faith efforts shall also be determined by:

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

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

7 C. whether a contractor makes available records or
8 other information as required by parts 5000.3400 to 5000.3600;
9 or

10 D. whether a contractor implements conciliation
11 agreements.

12 Subp. 4. Analysis of good faith efforts. Good faith
13 efforts shall be analyzed by:

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

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

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

21 D. the results of an assessment of the contractor's
22 compliance with Minnesota Statutes, section 363.073 and parts
23 5000.3400 to 5000.3600.

24 Subp. 5. Notification of deficiencies. If the department
25 determines that a contractor has failed to adhere to its
26 affirmative action plan or the equal opportunity clauses
27 contained in its state contracts, that the contractor has failed
28 to exercise good faith efforts to implement the plan or the
29 equal opportunity clauses, or has failed to comply with
30 Minnesota Statutes, section 363.073 and parts 5000.3400 to
31 5000.3600, it shall notify the contractor by first-class mail
32 identifying the nature of the deficiency and stating
33 specifically the corrective measures necessary for eliminating
34 the deficiency. The contractor shall have 15 days to reply to
35 the notice of deficiency.

36 Where deficiencies are found to exist, the department shall

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

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

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

32 A. If a timely request for a hearing is filed, the
33 commissioner shall issue and serve upon the contractor by
34 certified mail a notice and order directing the contractor to
35 appear at the hearing, at a time and place specified in the
36 notice, and show cause why the sanctions determined by the

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1 department shall not be imposed.

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

7 C. The administrative law judge shall make and file
8 with the commissioner a report stating the findings of fact,
9 conclusions, and recommendations. The commissioner shall serve
10 each party with a copy of the report by mail. Within 20 days
11 after service of the report, any party including the department,
12 may file with the commissioner and serve exceptions to the
13 report and reasons in support of their exceptions.

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

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

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

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

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

31 Subp. 7. Recertification. A contractor whose certificate
32 of compliance has been suspended or revoked or who has been
33 declared ineligible for further certificates of compliance
34 pursuant to Minnesota Statutes, section 363.073, subdivision 2,
35 may request reinstatement in a letter to the commissioner. The
36 commissioner may grant the request if, based upon the

1 contractor's showing, the department's file regarding the
 2 contractor's past performance, a compliance review, the
 3 recommendations of the department or a conciliation agreement
 4 the ~~emmission~~ commissioner determines that the contractor has
 5 established and will carry out employment policies and practices
 6 that are in compliance with Minnesota Statutes, section 363.073
 7 and with parts 5000.3400 to 5000.3600.

8 Subp. 8. Evidence of discrimination. If a compliance
 9 review indicates a violation of Minnesota Statutes, section
 10 363.03, the commissioner may proceed to file a charge and
 11 process the matter under Minnesota Statutes, section 363.06 or
 12 this part.

13 5000.3580 SUBMISSION OF COMPLIANCE REPORTS.

14 Subpart 1. Construction contractors; monthly reports.

15 Each construction contractor shall submit a monthly utilization
 16 report. The report must state for each state project during the
 17 month in question:

- 18 A. total hours of employment on the project;
- 19 B. total hours of employment of women;
- 20 C. total hours of employment of minorities;
- 21 D. total hours of training;
- 22 E. total hours of training provided to women; and
- 23 F. total hours of training provided to minorities.

24 Subp. 2. Construction contractors; semiannual reports.

25 Construction contractors shall also submit semiannual compliance
 26 reports of their affirmative action programs for nonconstruction
 27 personnel. These compliance reports must contain the same
 28 information, and be submitted at the same time,~~and contain the~~
 29 ~~same documents as~~ as the reports required for nonconstruction
 30 contractors in part ~~5000.3520~~ 5000.3580, subpart 3.

31 Subp. 3. Nonconstruction contractors; semiannual reports.

32 Nonconstruction contractors shall submit semiannual compliance
 33 reports. The report must include the following data, by job,
 34 group, race, sex, and disability:

- 35 A. total number of employment applicants;
- 36 B. total number of applicants interviewed;

- 1 C. total number of applicants tested;
 2 D. total number of applicants hired;
 3 E. total number of employees promoted;
 4 F. total number of employees demoted;
 5 G. total number of employees transferred;
 6 H. total number of employees laid off;
 7 I. total number of employees recalled from layoff;
 8 J. total number of employees terminated;
 9 K. total number of employees receiving company
 10 sponsored training; and
 11 L. total number of people employed by company.

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

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

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

21 C. minimizing duplication of programs and procedures.

22 5000.3590 PROCEDURES FOR COMPLIANCE REVIEW.

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

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

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

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

36 Subp. 2. Desk audit. The department shall routinely

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

27 Subp. 3. Exceptions to desk audit requirements. For
28 preaward reviews, the desk audit need not be carried out or an
29 abbreviated desk audit may be performed and an immediate on-site
30 review performed. Special reports that meet the criteria in
31 subpart 4, item C may be requested from contractors as required,
32 for submission to the department for complaint investigations
33 and follow-up reviews performed within one year of a full
34 compliance review. The commissioner shall approve other special
35 compliance reviews that effectuate the purposes of, and are
36 consistent with the other compliance reviews described in parts

1 ~~-----to-----~~ part 5000.3590 when exigent circumstances require
2 an immediate on-site review.

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

5 A. Each contractor shall permit access during normal
6 business hours to its premises for the purpose of conducting
7 on-site compliance reviews and inspecting and copying books,
8 records, accounts, and other materials as may be relevant to
9 compliance with Minnesota Statutes, section 363.073 and parts
10 5000.3400 to 5000.3600. Information obtained in this manner
11 must be used only in connection with the administration or
12 enforcement of the Minnesota Human Rights Act and in the
13 furtherance of the act's objectives.

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

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

35 (1) information necessary to conduct an in-depth
36 analysis of apparent deficiencies in the contractors'

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1 utilization of women or minorities;

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

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

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

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

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

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

21 F. Where necessary, the compliance officer may take
22 information made available during the on-site review off-site
23 for further analysis. An off-site analysis shall be conducted
24 where issues have arisen concerning deficiencies or an apparent
25 violation which is only capable of being more thoroughly
26 analyzed off-site before a determination of compliance is made.

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

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

34 The contractor shall provide all data determined by the
35 compliance officer to be necessary for off-site analysis
36 pursuant to subpart 4, item F. The data may only be coded if

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1 the contractor makes the code available to the compliance
2 officer. If the contractor believes that particular information
3 which is to be taken off-site is not relevant to compliance, the
4 contractor may request a ruling by the supervisor of the
5 department's compliance division who shall issue a ruling within
6 ten days. The contractor may appeal that ruling to the
7 commissioner within ten days. The commissioner or his or her
8 designee shall issue a final ruling within ten days. The
9 information in question may be withheld pending a ruling by the
10 supervisor or if appealed, a final ruling by the commissioner
11 ~~and shall be considered a part of the investigatory file.~~ Data
12 determined to be relevant to the investigation must be submitted
13 to the compliance officer within five days of the ruling by the
14 supervisor, or if appealed, within five days of the final ruling
15 of the commissioner.

16 Subp. 6. Employee interviews. The compliance officer
17 shall contact, where appropriate, a reasonable number of
18 employees for interviews as part of the on-site review of the
19 contractor's employment practices. The number, scope, and
20 manner of conducting the interviews must be discussed in advance
21 with the contractor.

22 5000.3600 DUTIES OF CONTRACTING STATE AGENCY.

23 Subpart 1. Cooperation with commissioner. Each state
24 agency shall cooperate with the commissioner in the performance
25 of his or her responsibilities under Minnesota Statutes, section
26 363.073 and parts 5000.3400 to 5000.3600. Cooperation includes
27 the responsibility to ensure that contractors are cognizant of
28 their obligations under Minnesota Statutes, section 363.073 and
29 parts 5000.3400 to 5000.3600.

30 Subp. 2. Information provided to contractors. Each state
31 agency shall include in each contract the contractor's
32 obligation and requirements to comply with Minnesota Statutes,
33 section 363.073 and parts 5000.3400 to 5000.3600, and provide
34 documentation describing the law and rules pertaining to the law
35 and the specific criteria by which the affirmative action plan
36 will be approved or rejected.

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

6 Subp. 4. Contract clause required. Each covered contract
7 must contain an affirmative action clause which states the
8 intention of the agency to carry out its responsibility for
9 requiring affirmative action by its contractors and specific
10 language outlining consequences for failure to implement the
11 contractor's affirmative action plan or make a good faith effort
12 to do so.

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

17 Subp. 6. List of contractors from department. Every 60
18 days the department shall furnish state agencies with a list of
19 currently certified contractors and contractors whose
20 certificates of compliance have been suspended or revoked or who
21 have been deemed ineligible according to Minnesota Statutes,
22 section 363.073.

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

28 Subp. 8. Copy of statute and rules to be furnished made
29 available. Each contracting agency shall provide make available
30 to each bidder with a copy of Minnesota Statutes, section
31 363.073 and the rules adopted pursuant to it.

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

36 "It is hereby agreed between the parties that Minnesota

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1 Statutes, section 363.073 and Minnesota Rules, parts 5000.3400
2 to 5000.3600 are incorporated into any contract between these
3 parties based upon this specification or any modification of
4 it. ~~The-bidder-acknowledges-receipt-of~~ A copy of Minnesota
5 Statutes, section 363.073 and Minnesota Rules, parts 5000.3400
6 to 5000.3600 are available upon request from the contracting
7 agency."

8

9 REPEALER. Minnesota Rules, parts 5000.0100, 5000.2500,
10 5000.2600, 5000.2700, 5000.2800, 5000.2900, 5000.3000, and
11 5000.3100 are repealed.

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