

363A.36 CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS.

Subdivision 1. **Scope of application.** (a) For all contracts for goods and services in excess of \$100,000, no department or agency of the state shall accept any bid or proposal for a contract or agreement from any business having more than 40 full-time employees within this state on a single working day during the previous 12 months, unless the commissioner is in receipt of the business' affirmative action plan for the employment of minority persons, women, and qualified disabled individuals. No department or agency of the state shall execute any such contract or agreement until the affirmative action plan has been approved by the commissioner. Receipt of a certificate of compliance issued by the commissioner shall signify that a firm or business has an affirmative action plan that has been approved by the commissioner. A certificate shall be valid for a period of four years. A municipality as defined in section 466.01, subdivision 1, that receives state money for any reason is encouraged to prepare and implement an affirmative action plan for the employment of minority persons, women, and the qualified disabled and submit the plan to the commissioner.

(b) This paragraph applies to a contract for goods or services in excess of \$100,000 to be entered into between a department or agency of the state and a business that is not subject to paragraph (a), but that has more than 40 full-time employees on a single working day during the previous 12 months in the state where the business has its primary place of business. A department or agency of the state may not execute a contract or agreement with a business covered by this paragraph unless the business has a certificate of compliance issued by the commissioner under paragraph (a) or the business certifies that it is in compliance with federal affirmative action requirements.

(c) This section does not apply to contracts entered into by the State Board of Investment for investment options under section 356.645.

(d) The commissioner shall issue a certificate of compliance or notice of denial within 15 days of the application submitted by the business or firm.

Subd. 1a. **Scope of application; state capital funding.** (a) An agency that uses state money to pay for part or all of a capital project is subject to and must comply with the restrictions in subdivision 1, for contracts exceeding \$100,000. A political subdivision that uses state money to pay for part or all of a capital project is subject to and must comply with the restrictions in subdivision 1, for contracts exceeding \$250,000.

(b) For the purposes of this subdivision, the following terms have the meanings given them:

(1) "agency" means a state board, commission, authority, department, or other agency of the executive branch of state government; the Metropolitan Council; the Minnesota Historical Society; the Minnesota State Colleges and Universities; or the University of Minnesota;

(2) "capital project" means the acquisition and betterment of land and buildings and other public improvements in the state, including acquisition of real property or an interest in real property, predesign, design, engineering, site preparation and related environmental work, renovation, construction, furnishing, and equipping;

(3) "political subdivision" means a county, home rule charter or statutory city, town, school district, metropolitan or regional agency other than the Metropolitan Council, public corporation established in law, or other special or limited purpose district created or authorized by law; and

(4) "state money" means the proceeds of state general obligation bonds issued under article XI, section 5, clause (a), of the Minnesota Constitution.

(c) This subdivision applies to a capital project or discrete phase of a capital project for which state money has been appropriated on or after January 1, 2022.

Subd. 2. Filing fee; account; appropriation. The commissioner shall collect a \$150 fee for each certificate of compliance issued by the commissioner or the commissioner's designated agent. The proceeds of the fee must be deposited in a human rights fee special revenue account. Money in the account is appropriated to the commissioner to fund the cost of issuing certificates and investigating grievances.

Subd. 3. Revocation of certificate. Certificates of compliance may be suspended or revoked by the commissioner if a holder of a certificate has not made a good faith effort to implement an affirmative action plan that has been approved by the commissioner. If a contractor does not effectively implement an affirmative action plan approved by the commissioner pursuant to subdivision 1, or fails to make a good faith effort to do so, the commissioner may refuse to approve subsequent plans submitted by that firm or business.

Subd. 4. Revocation of contract. A contract awarded by a department or agency of the state may be terminated or abridged by the department or agency because of suspension or revocation of a certificate based upon a contractor's failure to implement or make a good faith effort to implement an affirmative action plan approved by the commissioner under this section. If a contract is awarded to a person who does not have a contract compliance certificate required under subdivision 1, the commissioner may void the contract on behalf of the state.

Subd. 5. Technical assistance. In the case of a contractor whose certificate of compliance has been suspended, the commissioner shall provide technical assistance that may enable the contractor to be recertified within 90 days after the contractor's certificate has been suspended.

History: 1969 c 975 s 19; 1974 c 527 s 1; 1981 c 326 s 1; 1981 c 356 s 377; 1Sp1981 c 4 art 3 s 14; art 4 s 33; 1988 c 660 s 8,9; 1989 c 280 s 16; 1989 c 329 art 9 s 27; 1989 c 335 art 1 s 244; 1991 c 19 s 1; 1997 c 202 art 2 s 47; 1997 c 239 art 12 s 3; 1998 c 386 art 1 s 33; 2001 c 186 s 3; 1Sp2003 c 2 art 2 s 5; 2008 c 349 art 11 s 9; 2013 c 72 s 1; 2013 c 86 art 3 s 7,8; 2014 c 296 art 13 s 24; 5Sp2020 c 3 art 5 s 18