

ARTICLE III. PROCUREMENT

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CHAPTER 68. CONTRACT COMPLIANCE

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Source

The provisions of this Chapter 68 adopted August 3, 1979, effective August 4, 1979, 9 Pa.B. 2523, unless otherwise noted.

**Subchapter A. CONTRACT COMPLIANCE—
PREQUALIFICATION OF VENDORS AND
NONCONSTRUCTION CONTRACTORS**

GENERAL PROVISIONS

- Sec. 68.1. Summary of controlling law and regulations.
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NONDISCRIMINATION CLAUSE

- 68.61. Nondiscrimination clause; compliance prequalification.

§ 68.1. Summary of controlling law and regulations.

(a) A Director of Contract Compliance operating within the Human Relations Commission, assisted by a Contract Compliance Officer functioning in the Department of General Services, will assemble relevant employment information and review compliance procedures of entities holding State contracts with a view toward determining whether contractors are in compliance with the law, Executive Orders and regulations.

(b) In a case where a contractor is found not to be in compliance, he shall, after consultation with the Department of General Services Contract Compliance

Officer, make a specific commitment in writing, which may include adoption of an affirmative action program as described in 16 Pa. Code §§ 49.51—49.52 (relating to affirmative action program), to correct deficiencies as are found. Reference should be made to 16 Pa. Code § 49.37 (relating to notifying contractor).

(c) When an Affirmative Action Program exists, no contractor's compliance status shall be judged solely by whether or not he reaches his goals or meets his timetables. Rather, a contractor's compliance posture can be determined by reviewing the contents of his program, the extent of his adherence to the program and his good faith efforts to make the program work toward a realization of goals within the timetables set for completion. Reference should be made to 16 Pa. Code § 49.61 (relating to compliance status).

Source

The provisions of this § 68.1 adopted August 3, 1979, effective August 4, 1979, 9 Pa.B. 2523.

§ 68.2. Imposition of sanctions.

In cases where efforts of the Department of General Services Contract Compliance Officer are unsuccessful in producing amicable and voluntary compliance, the officer may issue an order giving the contractor 30 days to show cause why sanctions as defined by 16 Pa. Code § 49.71 (relating to generally) may not be imposed. The sanctions may include one or more of the following:

- (1) Publication of names of noncomplying contractors, and, also, labor unions if the latter are a cause of noncompliance.
- (2) Recommendation to the Attorney General for enforcement action by injunction and otherwise.
- (3) Recommendation to the appropriate law enforcement agency for enforcement by institution of criminal proceedings.
- (4) Ordering the fixed-period suspension or termination of the contract agreement, with noncompliance for the fixed period—not less than 30 days—to be considered a material breach giving a right to damage actions against the contractor or surety, or both.
- (5) Providing that Commonwealth departments, agencies and commissions shall refrain from entering into further State contracts or modifying existing contracts with any noncomplying contractor and that the prequalification of a prequalified noncomplying contractor be revoked until the contractor has satisfied the agency or Human Relations Commission that it will carry out policies complying with 16 Pa. Code Chapter 49 (relating to contract compliance). Reference should be made to 16 Pa. Code § 49.71.

Source

The provisions of this § 68.2 adopted August 3, 1979, effective August 4, 1979, 9 Pa.B. 2523.

Cross References

This section cited in 4 Pa. Code § 68.3 (relating to hearing and appeal procedures).

§ 68.3. Hearing and appeal procedures.

Upon issuance of the 30-day show cause notice as set forth in § 68.2 (relating to imposition of sanctions), the contractor may request a hearing, as provided by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) before the Department of General Services Hearing Examiner certified by the General Counsel and Human Relations Commission. If a request for hearing is not made within the time provided by law, the sanctions described in the 30-day show cause notice will be imposed immediately. Rights of the contractor as to the hearing and appeals shall be as provided by 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 68.3 adopted August 3, 1979, effective August 4, 1979, 9 Pa.B. 2523.

NONDISCRIMINATION CLAUSE**§ 68.61. Nondiscrimination clause; compliance prequalification.**

Title 16 *Pennsylvania Code* § 49.101 (relating to nondiscrimination clause) requires that a “Nondiscrimination Clause,” as contained in that section, be incorporated in and made a part of Department contract documents. It is the policy of the Department of General Services that the regulations themselves and guidelines issued in connection therewith by the Human Relations Commission be considered inherent in Department contracting procedures. It is also the policy of the Department that each bidder-contractor seeking award of a Department contract shall prequalify for such award. For contract compliance purposes, the contractor shall submit annually an executed document evidencing the bidder-contractor’s agreement to conform to the provisions of the nondiscrimination clause. The contractor will be required to furnish certain information and reports applicable to contract compliance procedures. The form of document is set forth in Exhibit A to Chapter 63 (relating to general conditions of the contract), and separate copies of the document will be made available to bidder-contractors in order to facilitate compliance with this section.

Source

The provisions of this § 68.61 adopted August 3, 1979, effective August 4, 1979, 9 Pa.B. 2523.

**Subchapter B. CONTRACT COMPLIANCE—
CONSTRUCTION CONTRACTS**

Sec.

68.101. Contract compliance—construction contracts—statement of policy.

§ 68.101. Contract compliance—construction contracts—statement of policy.

(a) The Department of General Services (DGS) is strongly committed to establishing, maintaining and insuring that open and equitable contracting practices are utilized in construction activities. Under Chapter 1 Subchapter LL (relating to minority and women business enterprise) a bidder may not discriminate against a Minority Business Enterprise (MBE) or Women Business Enterprise (WBE) in the solicitation and utilization of subcontractors, manufacturers or suppliers. Bidders are required to submit documentation showing MBE/WBE participation levels. The Commonwealth will presume that discrimination has not occurred if a bidder has achieved the Commonwealth’s prescribed levels of MBE/WBE participation on the specific job being bid, and no further review will be undertaken.

(b) The general MBE/WBE participation objectives on a district-by-district basis are as follows:

	<i>MBE</i>	<i>WBE</i>
DGS Construction District # 1	15-25%	5-10%
DGS Construction District # 2	10-20%	2-5 %
DGS Construction District # 3	10-20%	2-5 %
DGS Construction District # 4	15-25%	5-10%

(c) The specific minimum levels of MBE/WBE participation will be stated for each contract in the bid documents. The specific levels set will be based on factors such as geographical location, contract size, contract type and availability of MBE/WBE firms.

(d) DGS will perform an initial review of construction contract bid submittals to insure that required MBE/WBE documentation has been submitted. Failure to submit the required information on MBE/WBE participation will result in rejection of the bid as being nonresponsive.

(e) Upon receipt of bids for a construction contract, the submittal of each bidder will be subject to review by DGS to determine whether the bidder has discriminated in the selection of manufacturers, subcontractors and suppliers. If a bidder has met the prescribed minimum levels for MBE/WBE participation, the contractor will be presumed not to have discriminated in its selections. If the minimum levels are not met, DGS will determine whether discrimination has occurred. If, after review, the Department finds that discrimination has occurred, the bidder will be deemed not responsible and its bid will be rejected.

(f) A bidder will be credited for MBE/WBE participation in accordance with the following chart. The MBE/WBE firms shall be certified by DGS or certifiable for the specific subcontractor, manufacturer and supplier categories for the bidder to receive the following credits:

<i>MBE/WBE Category</i>	<i>% of Credit</i>
Subcontractors	100%
Manufacturers	100%
Stocking Suppliers (additional supporting documentation may be required)	100%
Nonstocking Suppliers	
—if the suppliers are commonly and ordinarily the custom in the industry and a part of the industry's trade practice	100%
—if the suppliers are not commonly and ordinarily the custom in the industry nor a part of the industry's trade practice	0%

Source

The provisions of this § 68.101 adopted October 28, 1988, effective immediately and applies retroactively to February 16, 1988, 18 Pa.B. 4870.

Cross References

This section cited in 4 Pa. Code § 68.201 (relating to policy).

Subchapter C. [Reserved]**Source**

The provisions of this Subchapter C adopted July 6, 1990, effective July 7, 1990, 20 Pa.B. 3692; amended February 1, 2002, effective February 2, 2002, 32 Pa.B. 615; reserved September 16, 2005, effective September 17, 2005, 35 Pa.B. 5129. Immediately preceding text appears at serial pages (286817) to (286828).

APPENDIX A

(Editor's Note: 1 Pa. Code § 3.13(b) (relating to contents of Bulletin) gives the Legislative Reference Bureau discretion to exclude from publication in the Pennsylvania Bulletin classes of documents which are voluminous and applicable only to Commonwealth property or contracts or agency organization, management or personnel. Section 3.13(c) requires the Bureau to publish and codify a summary table of documents filed under § 3.13(b).)

- (1) Administrative Circular No. 91-47, Dated December 30, 1991. Commodity Contract Status.
- (2) Administrative Circular No. 92-1, Dated January 3, 1992. Standard Blue Back Contracts for Automated Technology Resources Procurements.
- (3) Administrative Circular No. 92-20, Dated May 7, 1992. Commodity Contract States.

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