ARTICLE III. PROCUREMENT

CHAPTER 68. CONTRACT COMPLIANCE

GENERAL PROVISIONS

Sec.
68.1. Summary of controlling law and regulations.
68.2. Imposition of sanctions.
68.3. Hearing and appeal procedures.

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. [Reserved].
68.102. Contract compliance—construction contracts—statement of policy.

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(362757) No. 455 Oct. 12
§ 68.102. Contract compliance—construction contracts—statement of policy.

(a) The Department of General Services (DGS) is strongly committed to establishing, maintaining and ensuring that open and equitable contracting practices are utilized in construction activities. Contractors may not discriminate against Minority Business Enterprises (MBEs), Woman Business Enterprises (WBEs), Veteran Business Enterprises (VBEs) or Service-Disabled Veteran Business Enterprises (SDVBEs) (together referred to as Small Diverse Businesses) in their solicitation and utilization of subcontractors, manufacturers or suppliers.

(b) DGS will establish a minimum participation level (MPL) for Small Diverse Businesses for each contract in the bid documents. The specific MPL set will be based on factors such as geographical locations, contract size, contract type and the availability of Small Diverse Businesses.

(c) Throughout the duration of the contract, DGS will require contractors to use reasonable and good faith efforts to identify, solicit and secure commitments with Small Diverse Businesses as subcontractors, manufacturers and suppliers.

(d) If awarded the contract, unless the contractor chooses to “opt-in” as stated in subsection (e), the contractor is required, during the term of the contract, to document its reasonable and good faith efforts to identify, solicit and secure commitments with Small Diverse Businesses for each subcontract and purchase order exceeding $10,000. DGS may require the contractor to submit the Good Faith Effort Documentation.

(e) If awarded the contract, rather than having to prepare, and possibly submit, the Good Faith Effort Documentation for each subcontract and purchase order exceeding $10,000, a contractor has the option of simply committing to meet or exceed the MPL.

(f) Contractors either selecting the “opt-in” option or the Good Faith Effort Documentation option shall submit a report on Small Diverse Business utilization as part of every application for payment that documents commitments and payments made to Small Diverse Businesses during the contract term. The report must include the name of the company, description of work and amount paid.

(g) Contractors will be credited for Small Diverse Business participation in accordance with the following chart:
<table>
<thead>
<tr>
<th><strong>Small Diverse Business Category</strong></th>
<th><strong>% of Credit</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subcontractors</strong>: The Small Diverse Business subcontractor, through its own employees, shall perform at least 60% of the amount of the subcontract.</td>
<td>Count 100% of the subcontract amount as well as 100% of any subcontract from the subcontractor to another Small Diverse Business subcontractor.</td>
</tr>
<tr>
<td><strong>Manufacturers</strong>: A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications.</td>
<td>Count 100% of the total cost of the materials or supplies purchased from the Small Diverse Business manufacturer.</td>
</tr>
<tr>
<td><strong>Stocking suppliers</strong>: A stocking supplier is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.</td>
<td>Count 60% of the total cost of the materials or supplies purchased from the Small Diverse Business stocking supplier.</td>
</tr>
<tr>
<td><strong>Nonstocking suppliers</strong>: A nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer’s representative or a stocking supplier. For a nonstocking supplier to receive credit, the nonstocking supplier shall perform a useful business function by engaging in meaningful work (that is, negotiating price; determining quality and quantity; ordering materials; and paying for the materials). Industry practices and other relevant factors will be considered.</td>
<td>Count only the amount of the fee or commission charged by the Small Diverse Business nonstocking supplier for assistance in the procurement of the materials and supplies provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.</td>
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</tbody>
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Source

The provisions of this § 68.102 adopted August 11, 2012, effective immediately. 42 Pa.B. 5242.

Subchapter C. [Reserved]

Source


APPENDIX A

(Editor’s Note: 1 Pa. Code § 3.13(b) (relating to contents of Bulletin) gives the Legislative Refer-ence 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).)


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