

State Procurement Manual

DOA-3449 N(R06/94) Formerly AD-P-12

		Number PRO-D-3
		Effective 4-24-13
Section GENERAL POLICIES	Agencies Affected ALL	Replaces 3-15-12
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AUTHORITY: [Wis. Stats. 16.765](#)
[Wis. Adm. Code Chapter Adm 50](#)

SCOPE:

- to establish definitions related to contract compliance
- to establish policies and procedures for the administration of Wisconsin's Contract Compliance Law
- to establish sample letters to contractors, a sample affirmative action policy statement, and forms to be used in the administration of Wisconsin's Contract Compliance Law

DEFINITIONS:

I. The following definitions apply to contract compliance:

A. "Affirmative action plan (AAP)" is a written document committing the contractor to a program designed to achieve a balanced work force within a reasonable period of time. It contains, at a minimum, a policy statement, work force analysis, program goals, internal monitoring system, and dissemination of the plan. An acceptable plan is one which satisfies s. 16.765, Wis. Stats., and Adm 50, Wisconsin Administrative Code.

B. "Balanced work force" means an equitable representation of persons with disabilities, minorities and women available for jobs at any particular level from the relevant labor market.

C. "Contract Compliance Program" (CCP) means the organization within the State of Wisconsin responsible for overall administration of Wisconsin's Contract Compliance Law (s. 16.765, Wis. Stats.). The CCP is a part of the Wisconsin Department of Administration.

D. "Contracting state agency" means any department, commission, board, or other agency of Wisconsin State Government with authority to purchase or contract for contractual services (defined in s. 16.70(3), Wis. Stats.), equipment, construction work, materials or supplies.

E. "Contractor" means any person or entity providing equipment, construction work, materials, supplies, contractual services, or leasing real property to a contracting agency of the state.

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- F. "Developmental disability", Wis. Stats. s. 51.01 (5)(a), means a disability attributable to brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, intellectual disability, or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include dementia that is primarily caused by degenerative brain disorder.
- G. "Employee" means anyone who has received any wages for work performed by the contractor.
- H. "Federal Employer Identification Number (FEIN)" is the number assigned by the IRS to employers for tax reporting purposes or the Social Security Number (SSN) if the contractor is a sole proprietorship with no FEIN.
- I. "Foreign entity" means an organization which is headquartered in a country other than the United States.
- J. "Individual with a disability" means a person who:
1. Has a physical or mental impairment that substantially limits one or more major life activities;
 2. Has a record of such an impairment; or
 3. Is regarded as having such an impairment.
 - a. "Has a record of such impairment" means has a history of, or has been classified as having, a mental or physical impairment which substantially limits one or more life activity. A "record" refers to any form of documentation of a past or current disability.
 - b. "Major life activities" include, but are not limited to, caring for oneself, performing manual tasks, walking, standing, seeing, hearing, eating, sleeping, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

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c. "Is regarded as having such an impairment" means:

- (1) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient as constituting such a limitation;
- (2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairment; or
- (3) Has none of the impairments defined in this section but is treated by a recipient as having such an impairment.

K. "Job category" means a broad-based group of employees with comparable job responsibilities who are located at comparable levels of responsibility within an organization. Job categories are located on the U.S. Equal Employment Opportunity Commission Web site:
<http://www.eeoc.gov/employers/eo1survey/jobclassguide.cfm>.

L. "Labor market" means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

M. "Minorities" means persons whose race or ethnic group is either:

1. American Indian or Alaskan Native: persons with origins in any of the original peoples of North America who maintain cultural identifications through tribal affiliation or community recognition;
2. Asian or Pacific Islander: persons having origins in the Far East, Southeast Asia, the India Subcontinent or the Pacific Islands;
3. Black: persons not of Hispanic culture having origins in any of the Black racial groups of Africa; or
4. Hispanic: individuals of Mexican, Puerto Rican, Caribbean, Central or South American or other Spanish culture or origin, regardless of race.

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- N. "Municipality" means a Wisconsin county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district or any other public or quasi-public corporation officer, board or other body having the authority to award public contracts.
- O. "Reasonable accommodation" means changes and modifications that could be made in the structure of a job or employment and training program which are done to make possible the employment of a person with a disability, unless such changes would impose undue hardship on the operation of the contractor's business. Such a change is made to employ or to continue employment of a person with a disability. Note: reasonable accommodation may include making facilities used by the employees, including hallways, restrooms, cafeterias and lounges, accessible to persons with disabilities. It also may include job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters or other similar actions.
- P. "Sexual orientation" means having preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference.
- Q. "Subcontractor" means a person or company that assumes by secondary contract some or all of the obligations of an original contractor.
- R. "Total number of employees" means 1) for purposes of determining whether the contractor needs to submit an Affirmative Action Plan, the number of employees on the contractor's payroll as of the date that the contractor receives a State of Wisconsin contract; and 2) for purposes of submitting a work force analysis, the number of employees on the contractor's payroll as of any date within one year of receiving its State of Wisconsin contract.
- S. "Underrepresentation" means the contractor's work force does not approximate the percentage of women, minorities or persons with disabilities available for jobs in any particular job category from the relevant labor market in which the contractor recruits.
- T. "Work force" means the composite number of employees without regard to job categories of the contractor. The contractor may designate its work force, for the purposes of satisfying the Wisconsin Contract Compliance Law, either as that part of the entity (division, company, subsidiary) primarily responsible for satisfying the State of Wisconsin contract or as the work force of the entire entity, with the concurrence of the CCP.

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- CONTENT:
- I. Agencies with authority to purchase have responsibility to administer Wisconsin's contract compliance program as it relates to any of their contracts, including grants and leases in accordance with policies and procedures established by the Department of Administration. If the State Bureau of Procurement assists a state agency in developing a bid or request for proposal and the state agency is responsible for completing the bid or proposal process, the state agency is also responsible for obtaining the contractor compliance, as it is the contracting state agency. Contracting state agency staff may direct questions regarding the administration of the Wisconsin contract compliance program via e-mail to: [Contract Compliance Program](#).
 - II. General equal opportunity/affirmative action requirements
 - A. Every contractor who receives a state contract over \$50,000 must:
 1. Agree to equal employment and affirmative action policies and practices in its employment programs; and
 2. Post a notice concerning "Wisconsin's Contract Compliance Law" in a conspicuous place for employees and applicants for employment to read. The contracting state agency will provide the contractor with this notice to post. The notice (form [DOA-3031P](#), Wisconsin's Contract Compliance Law poster) for posting can be sent electronically to the contractor.
 3. Submit an affirmative action plan (form [DOA-3021P](#), Instructions for Contractors Affirmative Action Requirements Booklet) if the contractor has a work force of fifty (50) or more employees as of the award date, unless the contractor is exempt by criteria listed below. The plan is due to the contracting state agency within fifteen (15) working days of the award date of the state contract. The plan must have been prepared or revised not more than one year prior to the award date of the contract.

Universities, other states, and local governments, except those of the State of Wisconsin, who receive state contracts over \$50,000 must submit affirmative action plans in the same manner as other contractors.

Note: The recipient of a grant or lease, while exempt from public purchasing requirements, is not exempt from contract compliance requirements because a contractual agreement results.

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- B. A contractor is exempt from submitting an affirmative action plan when:
1. A contractor receives a state contract for \$50,000 or less.
 2. The contractor has less than fifty (50) employees.
 3. The contractor is a foreign company with a work force of less than fifty (50) employees in the United States.
 4. The contractor is a federal government agency or a Wisconsin municipality.
 5. The contractor has a balanced work force. ([See definition.](#))
 6. A rare situation exists for an emergency or to meet special contracting requirements. The Coordinator of the Contract Compliance Program, on the recommendation of the contracting state agency, may exempt a contractor from affirmative action plan requirements. If the contractor believes that such a situation exists, the contractor should discuss it with the contracting state agency.

When a contractor is exempt from submitting an affirmative action plan based on criteria 2. through 4. above, the contractor still must submit:

- a. Contractor Request for Exemption from Submitting Affirmative Action Plan (form [DOA-3024](#)); and
- b. Contractor's Subcontractor List (form [DOA-3023](#)).

If the contractor is exempt from submitting an affirmative action plan because it has a balanced work force (criteria 5. above), the contractor must submit:

- a. Contractor Request for Exemption from Submitting Affirmative Action Plan (form [DOA-3024](#));
- b. Contractor Work Force Analysis (form [DOA-3022](#));
- c. Contractor's Subcontractor List (form [DOA-3023](#));

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- d. Supporting labor market information; and
 - Its affirmative action policy statement or a letter to confirm they comply with s. 16.765, Wis. Stats.; and
 - Its Contractor's Subcontractor List (form DOA-3023).

7. The U.S. Office of Federal Contract Compliance (OFCC) has audited the contractor's affirmative action program within the last year. To obtain an exemption on this basis the contractor must send the contracting state agency:

- a. A copy of OFCC's Acceptance/Compliance Letter;
- b. The contractor's equal opportunity/affirmative action policy statement or a letter to confirm they comply with s. 16.765, Wis. Stats. The contractor's policy statement must satisfy s. 16.765, Wis. Stats., and Adm 50, Wisconsin Administrative Code (Wis. Adm. Code); and
- c. Contractor's Subcontractor List (form [DOA-3023](#)).

III. Submittal of an affirmative action plan

- A. After awarding a contract, the contracting state agency should review the Contractor Directory to determine whether the contractor has compliance eligibility. The Contractor Directory is available on the Bureau of Procurement Web site: <http://vendornet.state.wi.us>. The contracting agency must login to view the ineligible and eligible vendor directories.
- B. If the Contractor Directory notes that a contractor has compliance eligibility, the contracting state agency need not require anything of the contractor but should update the contractor file with the date of eligibility expiration. If eligibility expires during the contract period, the contracting state agency will send a [letter](#) to the contractor via postal mail or attached to an e-mail which requires the contractor to respond whether or not they are still in compliance with s. 16.765, Wis. Stats.
- C. If the contractor does not have current compliance eligibility, the contracting state agency follows the time table below for obtaining an affirmative action plan.

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Timetable for Obtaining an Affirmative Action Plan	
	Activity
On the contract award date the contracting state agency must:	Send an e-mail requesting an affirmative action plan/exemption statement within fifteen (15) working days of commencement date. The agency should direct the e-mail to the name and title for affirmative action indicated on the Vendor Information form (DOA-3477 , if available) in the bid/proposal response. Otherwise a letter should be mailed to the postal address listed on the Request for Bid form (DOA-3070) or Request for Proposal form (DOA-3261) to the President/CEO of the company if no other appropriate individual within the contractor's organization is known.
If the contracting state agency has not received any response within 15 days, the state agency must:	Send a letter to the President/CEO of the company, referencing the first request or the standard terms and conditions, as is appropriate, and request an affirmative action plan/exemption statement within five (5) working days and noting the ability to identify the contractor as "ineligible" and to withhold payment on the unpaid balance of the contract or to terminate the contract.
If after 30 days of first notification, the contracting state agency has not received proper documentation, the state agency should:	Recommend identifying the contractor as "ineligible" and consider withholding payment if an acceptable affirmative action plan/exemption statement is not received. Send: <ul style="list-style-type: none"> • A Contractor Directory Recommendation (form DOA-3001); and • Copies of: <ul style="list-style-type: none"> ○ Correspondence with the contractor; ○ The purchase order; and ○ The unacceptable affirmative action plan and the review guide, if a plan was submitted, to the Contract Compliance Program.

At any step in the above timetable that the contractor submits an affirmative action plan, the contracting state agency proceeds to "Review of the Affirmative Action Plan".

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IV. Review of the affirmative action plan

- A. The following timetable applies for the contracting state agency's reviewing the plan and obtaining additional information if necessary.

Timetable for Review of an Affirmative Action Plan	
	Activity
Within ten (10) working days of an affirmative action plan being received, the contracting state agency must:	Review the affirmative action plan using the Affirmative Action Plan Review Guide (form DOA-3724). If the state agency is unable to review within ten working days, the state agency must send notification within five (5) working days (from the date the plan is received) to the contractor indicating the plan has been received and will be reviewed within 10 working days from date of notification.
After reviewing the affirmative action plan the contracting state agency will determine:	If the plan is acceptable , then: Notify CCP with the Contractor Directory Recommendation (form DOA-3001) and send an acceptance letter to the contractor.
	If the plan is not acceptable , then: Send an e-mail or first letter to the person responsible for submitting the affirmative action plan specifying the information necessary for an acceptable plan and a due date within fifteen (15) working days of date of notification.
If the contracting state agency has not received requested information within fifteen (15) working days:	Send a letter to the President or CEO of the organization with a copy of the first e-mail or letter which specifies missing information. Also indicate the ability to identify the contractor as "ineligible" and to withhold payment or to terminate the contract, if the requested information is not received within five (5) working days.
If the contracting state agency has not received the requested information within the requested five (5) working days, the state agency will:	Contact the company via telephone and speak to the President or CEO to request the needed information and indicate the previous dates the information was requested. Also inform the President or CEO, they will have five (5) working days to comply or a recommendation will be made to designate as an ineligible vendor. Document the date of the conversation for reference.
If five (5) working days have passed after speaking with the President or CEO of the company, and the contracting state agency has not received the requested information:	Recommend designating the contractor as "ineligible" (form DOA-3001) and send copies to the Contract Compliance Program of the following: <ul style="list-style-type: none"> • Contractor Directory Recommendation (DOA-3001); • All correspondence; • The affirmative action plan; and • The review guide (DOA-3724).

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B. All affirmative action plans submitted must have been prepared or revised within one year of the contract award date and must comply with the affirmative action requirements of the state as listed on the Affirmative Action Plan Review Guide (form DOA-3724) which include:

1. Policy statement;
2. Work force analysis;
3. Program goals;
4. Plan dissemination; and
5. Internal monitoring method.

For further information regarding the five sections, please review the Instructions for Contractors Affirmative Action Requirements Booklet (form [DOA-3021P](#)).

C. Public record access/confidentiality

1. A contractor's affirmative action plan is available for public review in accordance with Wisconsin Statutes Subchapter II, Public Records and Property, and Wis. Adm. Code Chapter 50.07.
2. When a contractor alleges that part or all of its affirmative action plan is confidential, the contractor must identify clearly to the contracting state agency those pages or sections which it believes contain confidential information. This identification of any confidential information must be given both:
 - a. In a letter to the contracting state agency; and
 - b. On each page that the contractor affirms contains confidential information.
3. If a contractor asserts that all or part of its affirmative action plan is confidential, the contractor is responsible for defending its confidentiality under Wisconsin Statutes (s. 19.31 and s. 19.81). The contractor must agree in advance in writing to hold the State of Wisconsin harmless and to provide for any necessary defense of the confidentiality of the contractor's records, if a challenge occurs.
4. Generally, the State of Wisconsin's open records and meeting law (s. 19.31 and s. 19.81, Wis. Stats.) permits confidentiality to a very

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limited number of documents, for example, records which constitute a trade secret. Usually affirmative action plans required by the State of Wisconsin are not considered confidential documents.

V. Use of subcontractors

- A. The contracting state agency reviews any subcontractors identified on the Contractor's Subcontractor List for a subcontract over \$50,000 with the current CCP Contractors Directory:
1. If a subcontractor has compliance eligibility, the contracting state agency notifies the contractor that no further information is necessary.
 2. If a subcontractor is designated as "ineligible", the contracting state agency notifies the contractor that it must terminate its subcontractor.
 3. If a subcontractor is not on either list, the contracting state agency notifies the contractor that it must request the subcontractor to submit an affirmative action plan or exemption statement to the contractor by completing the appropriate sections in the Instructions for Contractors Affirmative Action Requirements Booklet (form DOA-3021P).
- B. Subcontractors are subject to the same contract provisions as the prime contractor and are required to comply with Wisconsin State Statutes regarding contract compliance. The prime contractor is responsible for collecting affirmative action plans/exemption statements from subcontractors who hold subcontracts for more than \$50,000 and forwarding those plans/statements to the contracting agency within 15 days after award of each subcontract.

VI. Contractor compliance directory listings

A. Eligible contractor directory

The Contract Compliance Program updates this Directory weekly based on form DOA-3001 (Contractor Directory Recommendation) received from state agencies. This form must be forwarded to the CCP.

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1. An eligible contractor remains in the Contractor Directory, i.e., has compliance eligibility, for three (3) years from the contract effective date.
2. If questions develop concerning a contractor's compliance, the inquirer should contact the [Contract Compliance Program](#).

B. Ineligible contractor directory

The Contract Compliance Program updates this Directory based on form DOA-3001 (Contractor Directory Recommendation) received from state agencies.

1. The coordinator of the Contract Compliance Program makes an additional contact with the contractor to attempt to obtain an acceptable plan. The coordinator reviews the information, determines the status of the contractor, and notifies both the contractor and the contracting state agency of the determination. Designation as an "ineligible contractor" in the Contractor Directory means that:
 - a. The contracting state agency may terminate the contract at any time without liability and, may withhold payment of any unpaid balance for failure to satisfy significant requirements of the contract. The contracting state agency may not extend a contract with an ineligible contractor.
 - b. All agencies will remove the contractor from their agency bidder lists. Ineligible contractors are not inactivated in VendorNet. It would be the contracting state agency's responsibility to review the bid/proposal responses received for any ineligible contractors.
 - c. The contractor may not participate in any State of Wisconsin bidding. The State of Wisconsin may not purchase any goods, services, or capital equipment from an ineligible contractor, either directly or through a supplier or other means.

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2. An ineligible contractor may become eligible after submitting an affirmative action plan to the coordinator of the Contract Compliance Program which satisfies s. 16.765, Wis. Stats., and Adm 50, Wis. Adm. Code. Otherwise, an ineligible contractor remains so designated indefinitely.

VII. Investigation of complaints

- A. The contracting state agency may receive complaints concerning alleged employment discrimination. These generally fall into one of two categories: individual employee complaints; or general contract compliance complaints.

1. Employee complaints:

- a. An employee of a contractor doing business with the State of Wisconsin may allege discrimination in employment decisions based on age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation, or national origin.
- b. Since the contracting state agency has no legal basis for resolving such allegations under the Wisconsin Contract Compliance Law, it should refer the employee of a Wisconsin contractor directly to the Wisconsin Department of Workforce Development, Equal Rights Division, 201 East Washington Avenue, Room A300, P.O. Box 8928, Madison, Wisconsin 53708-8928, telephone 608/266-6860. This agency does have the legal responsibility for investigating allegations of employees and applicants for employment concerning discrimination in employment in Wisconsin.
- c. An employee of a non-Wisconsin contractor should contact the comparable agency within their state.

2. General compliance complaints:

- a. The contracting state agency should refer any written complaint concerning allegations of violations of Wisconsin's Contract Compliance Law to the coordinator of the Contract Compliance Program with the Wisconsin Department of Administration.

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b. The Contract Compliance Program:

- (1) Investigates the complaint provided the complainant identifies the issues and themselves.
- (2) Keeps the complainant and the contractor informed of the status of the matter.
- (3) Prepares an investigative report or letter to the contractor containing a narrative of the facts and a listing of the actions, if necessary, to bring the contractor into compliance. The contractor, if not in compliance, has thirty (30) working days to obtain compliance.
- (4) Provides a copy of the investigative report and notice of final disposition to the complainant, the contractor, and the purchasing director of the state contracting agency.
- (5) During the investigation the identity and statement of any person interviewed shall be confidential unless the individual authorizes in writing releasing his/her name.

VIII. Management reviews of state agency

The State Bureau of Procurement will conduct periodic management reviews of contract compliance procedures to assure that the contracting state agency satisfies the policies and procedures specified in this Manual. See [PRO-A-6](#), Management Reviews.

IX. Sample correspondence and forms (All documents are available in electronic format.)

- Booklet—Instructions for Contractors Affirmative Action Requirements (form [DOA-3021P](#)) which includes these forms:
 - Wis. Affirmative Action Plan Contractor Data (form [DOA-3784](#))
 - Contractor Work Force Analysis (form [DOA-3022](#))
 - Contractor's Subcontractor List (form [DOA-3023](#))

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- Contractor Request for Exemption from Submitting Affirmative Action Plan (form [DOA-3024](#))
- [Sample](#) Affirmative Action Policy Statement
- Wisconsin's Contract Compliance Law poster (form [DOA-3031P](#))
- [First e-mail notification/letter](#) for contracts over \$50,000 noting need for affirmative action information
- [Second letter](#) requesting affirmative action plan
- [First e-mail notification/letter to contractor](#) requesting additional information for an affirmative action plan
- [Second letter](#) requesting additional information for an affirmative action plan
- [E-mail/Letter notification](#) accepting affirmative action plan
- Affirmative Action Plan Review Guide (form [DOA-3724](#))
- Contractor Directory Recommendation (form [DOA-3001](#))
- [Compliance letter](#) for contractors whose plan expires prior to the contract end date

Other forms and the sample letters for administering this program may be adapted for agencies' use.

Authorized:



Rick S. Hughes, Director
State Bureau of Procurement