



**POLICY STATEMENT**  
Commonwealth of Pennsylvania • Department of Corrections

<b>Policy Subject:</b>  <b>Contract Compliance</b>		<b>Policy Number:</b>  <b>1.6.3</b>
<b>Date of Issue:</b>  <b>January 25, 2011</b>	<b>Authority:</b>  <b>Signature on File</b> <b>John E. Wetzel</b>	<b>Effective Date:</b>  <b>January 28, 2011</b>

## I. AUTHORITY

The Authority of the Secretary of Corrections to direct the operation of the Department of Corrections is established by Sections 201, 206, 506, and 901-B of the Administrative Code of 1929, 71 P.S. §§61, 66, 186, and 310-1, Act of April 9, 1929, P.L. 177, No. 175, as amended.

## II. APPLICABILITY

This policy is applicable to all facilities operated under the jurisdiction of, or conducting business with the Department of Corrections.

## III. POLICY

It is the policy of the Department to ensure that agency contracting is non-discriminating in intent and effect pursuant to **Executive Order 2006-02, Contract Compliance, Management Directive 215.16, Contract Compliance Program, Act 57 of 1998, Procurement Code**, the Nondiscrimination/Sexual Harassment Clause included in every contract/grant, policy established by the Commonwealth of Pennsylvania, and state and federal law. Every agency contract and grant must contain the applicable Nondiscrimination/Sexual Harassment Clause barring discrimination in employment practices because of gender, race, creed, and color. The Contract Compliance Program is designed to ensure; nondiscrimination in the award of agency contracts and grants, nondiscrimination by those who are awarded agency contracts or grants in their award of subcontracts, and nondiscrimination by those who are awarded agency contracts or grants in the hiring and treatment of their employees.

#### **IV. PROCEDURES**

All applicable procedures are contained in the procedures manual that accompanies this policy document.

#### **V. SUSPENSION DURING AN EMERGENCY**

In an emergency or extended disruption of normal facility operation, the Secretary/designee may suspend any provision or section of this policy for a specific period.

#### **VI. RIGHTS UNDER THIS POLICY**

This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility to be consistent with law and to permit the accomplishment of the purpose(s) of the policies of the Department of Corrections.

#### **VII. RELEASE OF INFORMATION AND DISSEMINATION OF POLICY**

##### **A. Release of Information**

###### **1. Policy**

This policy document is public information and may be released upon request.

###### **2. Confidential Procedures (if applicable)**

Confidential procedures for this document, if any, are not public information and may not be released in its entirety or in part, without the approval of the Secretary of Corrections/designee. Confidential procedures may be released to any Department of Corrections employee on an as needed basis.

##### **B. Distribution of Policy**

###### **1. General Distribution**

The Department of Corrections' policy and procedures shall be distributed to the members of the Central Office Executive Staff, all Facility Managers, and Community Corrections Regional Directors on a routine basis. Distribution of confidential procedures to other individuals and/or agencies is subject to the approval of the Secretary of Corrections/designee.

###### **2. Distribution to Staff**

It is the responsibility of those individuals receiving policies and procedures, as indicated in the "General Distribution" section above, to ensure that each employee expected or required to perform the necessary procedures/duties is issued a copy of

the policy and procedures either in hard copy or via email, whichever is most appropriate.

## **VIII. SUPERSEDED POLICY AND CROSS REFERENCE**

### **A. Superseded Policy**

#### 1. Department Policy

1.6.3, Contract Compliance, issued August 14, 2007, by former Secretary Jeffrey A. Beard, Ph.D.

#### 2. Facility Policy and Procedures

This document supersedes all facility policy and procedures on this subject.

### **B. Cross Reference(s)**

#### 1. Administrative Manuals

a. Executive Order 2006-02, Contract Compliance

b. Management Directive 215.16, Contract Compliance Program

#### 2. ACA Standards

a. Administration of Correctional Agencies: None

b. Adult Correctional Institutions: None

c. Adult Community Residential Services: None

d. Correctional Training Academies: None



**PROCEDURES MANUAL**  
Commonwealth of Pennsylvania • Department of Corrections

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Release of Information:

**Policy Document:** This policy document is public information and may be released upon request.

**Procedures Manual:** The procedures manual for this policy may be released in its entirety or in part, with the prior approval of the Secretary/designee. Unless prior approval of the Secretary/designee has been obtained, this manual or parts thereof may be released to any Department employee on an as needed basis only.

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## Section 1 – General ProcedureS

### A. Responsibilities

1. The Department of General Services (DGS), Bureau of Minority and Women Business Opportunities (BMWBO), shall administer and enforce a uniform Contract Compliance Program.
2. The Secretary of Corrections shall designate a deputy secretary, or equivalent, as the Department's "Responsible Official" to administer the Department's Contract Compliance Program.
3. The Deputy Secretary for Administration is the "Responsible Official" and shall direct the Department's Contract Compliance Program, supervise contract compliance staff, issue compliance notices to contractors and grantees, and consult with DGS prior to issuing sanctions against contractors or grantees. The Deputy Secretary for Administration may designate a Department employee as the Department's Contract Compliance Officer to handle supervision of contract compliance staff and issuance of compliance notices, but remains responsible for the Department's Contract Compliance Program and consulting with DGS prior to issuing sanctions.
4. The Contract Compliance Officer shall direct the Department's Contract Compliance Program, supervise contract compliance staff, develop the Department's Contract Compliance Plan and programs, develop activities to implement the Contract Compliance Plan and programs, issue non-compliance and compliance notices to contractors and grantees, and consult with DGS prior to issuing sanctions against contractors or grantees.
5. Department Contract Compliance Staff Responsibilities
  - a. Ensure a process is established and responsibilities are assigned to initiate Form **STD-21, Initial Contract Compliance Data** to every contractor or grantee upon agency award of contracts and grants at or above the dollar thresholds and the preliminary input is entered into the DGS Contract Compliance Application.
  - b. Receive and review the completed **STD-21** submitted by contractors and grantees.
  - c. Determine contractors' or grantees' compliance status and assist contractors and grantees, as appropriate, to improve their compliance status.
  - d. Prepare reports and provide technical information to the Director of the BMWBO to implement the Contract Compliance Program.
  - e. Audit contractor and grantee documents to ensure compliance. Contract compliance staff shall attempt to minimize the burden and expense of such requirements for information by:

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- (1) using forms issued by BMWBO and receiving electronic submission of these forms and supporting documentation;
- (2) accepting forms and reports prepared for federal agencies when the information contained therein is sufficient for the Commonwealth's purposes;
- (3) minimizing duplication of programs and procedures;
- (4) inspecting and copying relevant documents contained in the Department's contractor and grantee files rather than requiring the contractor or grantee to provide them;
- (5) accepting, as in compliance with the provisions of **Management Directive 215.16, Contract Compliance Program**, EEO plans approved by the state and federal government or issued by a court order or decree; and
- (6) advise contractors and grantees to identify and mark the submitted contractor and grantee information that the contractor or grantee believes would reveal sensitive and confidential information or of a trade secret as defined by **Act 3 of 2008, the Right-to-Know Law (RTKL)**, so that it may be redacted from information provided to the public under the RTKL.

**B. Contract Awards**

The Department shall award and administer contracts, purchase orders and grants in a nondiscriminatory manner in accordance with state law and policy established by DGS. The Department shall, upon award of contracts and grants which meet or exceed program thresholds, send a **STD-21** to the contractor or grantee and enter the preliminary input into the DGS Contract Compliance Application. Refer to the DGS Contract Compliance Manual for **STD-21** process procedures.

**C. Compliance Audit**

1. Department contract compliance staff shall review information and make a determination as to whether contractors and grantees are in compliance with state law, **MD215.16**, and the Nondiscrimination/Sexual Harassment Clause.
2. The first information gathered from the contractor or grantee is the **STD-21**. If the initial compliance review indicates compliance issues or insufficient information to determine the compliance status, a full document or onsite contract compliance audit may be conducted. The purpose of a contract compliance audit is to determine if a state contractor or grantee maintains nondiscriminatory hiring and employment practices under which applicants are employed and employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to gender, race, creed, or color. If a contractor is operating under an existing EEO plan, the compliance audit will also

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seek to determine whether the contractor is making a good faith effort to comply with that plan. Refer to the DGS Contract Compliance Manual for audit procedures.

3. Underutilization is not sufficient evidence by itself to determine discrimination. In gathering evidence on whether contractors and grantees are discriminating against applicants and/or employees, the below listed factors shall be considered, where relevant:
  - a. Percentage of the employees in the contractor's or grantee's workforce by race and gender, totaled and grouped by EEO-1 Job Categories, according to the DGS Contract Compliance Application, (which contains definitions for EEO-1 Job Categories on the **STD-21** that is sent by email to the contractor or grantee), or according to the United States (US) Census Bureau's web site by EEO-1 Job Categories, EEO Occupation Groups or Occupation Codes and Industry.
  - b. Percentage of the labor force by race and gender among those having requisite skills, according to the DGS Contract Compliance Application, (which uses the most recent census EEO data in the reasonable recruitment area) or according to the US Census Bureau's web site by EEO-1 Job Categories, EEO Occupation Groups or Occupation Codes and Industry.
  - c. Determination of race group (minority or non-minority) and gender (male or female) underutilized in the contractor's or grantee's workforce when compared to the labor force in the labor area, according to the DGS Contract Compliance Application, or according to the US Census Bureau's web site by EEO-1 Job Categories, EEO Occupation Groups or Occupation Codes and Industry.
  - d. Determination of job categories where the contractor's or grantee's workforce employees are underutilized as compared to the labor force by race and gender among those having requisite skills in the labor area, according to the DGS Contract Compliance Application, or according to the US Census Bureau's web site by EEO-1 Job Categories, EEO Occupation Groups or Occupation Codes and Industry.
  - e. Percentage of the employees by race and gender among those promotable or transferable within the facility.
  - f. Percentage of the applicants or employees by race and gender among those provided training in requisite skills.
  - g. Degree of training which the contractor or grantee is reasonably able to undertake as a means of making underutilized job categories available to otherwise qualified applicants and employees from race and gender groups that have been determined to be underutilized in the said job categories.
  - h. Degree to which good faith efforts have been made by the contractor or grantee to recruit, hire, retain, and promote underutilized race and gender groups into the underutilized job categories.



4. The compliance audit shall consist of a thorough analysis of each contractor's and grantee's employment practices and the effects of such practices. Exact proportional representation of the race and gender group(s) in the EEO job categories is not required by the provisions of **MD215.16**. Good faith efforts to reduce underutilization and to implement nondiscriminatory policies, taking into account the effects of past discrimination, are required.
5. A determination by one state contracting agency that a contractor or grantee is in compliance shall create a presumption of compliance for all other state agencies using the contractor for similar work in the same area.
6. If an EEO program exists, the contractor's or grantee's compliance status shall not be judged solely by whether or not all objectives or timetables have been met. Rather, a contractor's or grantee's compliance posture may be determined by reviewing the contents of the program, the extent of adherence to the program, and good faith efforts to make the program work.

#### **D. Notifying Contractor or Grantee**

1. Department contract compliance staff, through the responsible official, shall notify the contractor or grantee indicating whether or not it has workforce underutilization or deficiencies or whether additional information is needed to determine whether it is in compliance. If deficiencies exist, reasonable efforts shall be made to secure commitments to work toward compliance through conciliation and persuasion. Commitments by contractors and grantees may include preparation and implementation of an EEO program.
2. Commitments by contractors and grantees shall include precise actions to be taken and dates for completion. The established time period shall be no longer than the minimum period necessary to effect such changes.
3. A contractor or grantee shall be considered in compliance if it makes good faith efforts to keep commitments.

#### **E. Notice of Noncompliance**

1. If efforts to secure compliance with state law, **MD215.16**, and the Nondiscrimination/Sexual Harassment Clause, through conciliation and persuasion have failed, or the Department finds that the contractor or grantee has not made the requisite good faith efforts to meet its commitments, the Department's responsible official shall issue a notice of noncompliance to such contractor or grantee to show cause why the Department should not pursue sanctions or remedies under state or federal law, the Nondiscrimination/Sexual Harassment Clause, and **MD215.16**. Such notice shall set forth the specific deficiencies that constitute the basis of the asserted noncompliance.

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2. During the show-cause period, Department contract compliance staff shall continue through conciliation, mediation, and persuasion, to resolve the deficiencies that led to the determination of noncompliance. Technical assistance may be offered to the contractor or grantee by Department contract compliance staff.
3. If the contractor or grantee is unable to show good cause for its failure to resolve the deficiencies, the Department, after consultation with DGS, shall pursue one or more of the sanctions or remedies listed below unless compliance is obtained by agreement.

**F. Sanctions/Remedies**

The Commonwealth and the Department may pursue one or more of the below listed sanctions or remedies, as appropriate, in accordance with the Contract Compliance Manual.

1. The Commonwealth and the Department may proceed with debarment or suspension of the contractor or grantee.
2. Bring appropriate legal action for noncompliance with the Nondiscrimination/Sexual Harassment Clause.
3. Terminate the contract or grant agreement for breach of the Nondiscrimination/Sexual Harassment Clause.
4. Recommend to the appropriate law enforcement official that criminal proceedings be brought for willfully furnishing false information to the Commonwealth.
5. Refrain from entering into further state contracts or extensions, or grant agreements or extensions, or other modifications of existing contracts or grant agreements with any non-complying contractor or grantee.
6. The Commonwealth and the Department may place the contractor or grantee in the Contractor Responsibility File to alert other agencies of its deficiencies.
7. Contractors or grantees can provide additional information that demonstrates that they are in compliance at any point to have sanctions reassessed.

**G. Contractor and Grantee Equal Employment Opportunity (EEO)**

1. An EEO program is a detailed set of procedures designed to achieve equality in the effects of all employment practices at all levels. The objective of these procedures and efforts is to assure equal employment opportunity. An acceptable EEO program shall include an analysis of problem areas and deficiencies regarding utilization, compliance with the Nondiscrimination/Sexual Harassment Clause and/or discrimination complaints, and objectives and timetables to which the good faith efforts of the contractor shall be directed to correct deficiencies at all levels and in all segments of its work force and in all its employment practices.

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2. Effective EEO programs should contain, but not necessarily be limited to:
  - a. development or reaffirmation of the contractor's EEO and sexual harassment policy in all personnel actions;
  - b. formal internal and external dissemination of the contractor's policy with documentation that employees were informed;
  - c. establishment of responsibilities for implementation of the contractor's EEO program;
  - d. identification of problem areas (underutilization) by organization units and job categories, including timetables for completion. Goals and objectives for correcting underutilization may not be rigid and inflexible, nor may they be quotas that must be met, but must be objectives reasonably attainable by applying good faith efforts to make all aspects of the entire EEO program work;
  - e. development and execution of action-oriented programs designed to attain established objectives;
  - f. design and implementation of internal audit and reporting systems to measure effectiveness of the total program;
  - g. marketing and recruitment through solicitation of the support and cooperation of local and national community action programs and community service programs and through presentations (e.g., career days) at middle/high/votech schools or other means designed to improve the employment opportunities of underutilized race and gender groups for filling vacancies in underutilized job categories;
  - h. consideration of applicants for underutilized race and gender groups not currently in the work force having requisite skills that may be recruited through equal employment marketing and recruitment efforts;
  - i. in establishing timetables to meet objectives and commitments, the contractor or grantee shall consider the anticipated expansion or contraction of and turnover in the work force; and
  - j. EEO commitments shall be designed to correct any identifiable deficiencies and be part of the contractor's or grantee's written EEO program.

## **H. Contract Compliance Manual**

The Contract Compliance Manual contains more detailed guidance applicable to this policy.

1. Attachment 1 – Nondiscrimination/Sexual Harassment Clause [Contracts].
2. Attachment 2 – Nondiscrimination/Sexual Harassment Clause [Grants].

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3. Attachment 3 – Nondiscrimination/Sexual Harassment Clause [Deposit of Commonwealth Funds].

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**Glossary of Terms**

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**Compliance** – Meeting the requirements and obligations imposed by Procurement Code PA Act 57 of 1998, Executive Order 2006-2, Management Directive 215.16, and the Nondiscrimination/Sexual Harassment Clause of the Contract/Grant Agreement and their implementing regulations.

**Compliance Review** – Consists of a thorough analysis of a contractor/grantee’s workforce and employment practices to determine if the contractor/grantee provides equal employment opportunity to all applicants and employees, and an analysis of the contractor/grantee’s good faith efforts in fulfilling the requirements and provisions of Procurement Code PA Act 57 of 1998, Executive Order 2006-2, Management Directive 215.16, and the Nondiscrimination/Sexual Harassment Clause of the contract/grant agreement including implementing rules, regulations and orders.

**Contract** – A type of written agreement, regardless of what it may be called, for the procurement of supplies, services, or construction and executed by all parties in accordance with the Commonwealth’s Attorney Act of October 15, 1980.

**Contract Compliance Officer** – A Department Office of Equal Employment Opportunity staff member who conducts contract or grant compliance reviews.

**Contract Compliance Program** – A program designed to ensure that Commonwealth contracting and grant funding is non-discriminating in intent and effect. The program involves three aspects:

1. Nondiscrimination in the Commonwealth’s award of contracts and grants;
2. Nondiscrimination by those who are awarded Commonwealth contracts and grants in their award of subcontracts and supply contracts for the performance under Commonwealth contracts and grants; and
3. Nondiscrimination by those who are awarded Commonwealth contracts and grants in the hiring and treatment of their employees.

**Contractor** – Any person that enters into a contract or lease with the Commonwealth.

**Department** – The Pennsylvania Department of Corrections.

**Deficiency** – Failure to fulfill any requirements of the Procurement Code PA Act 57 of 1998, Executive Order 2006-2, Management Directive 215.16, or the Nondiscrimination/Sexual Harassment Clause of the contract/grant agreement including implementing rules, regulations and orders.

**Discrimination** – Unequal treatment of a person or a class of persons. If the result of an action, policy, or practice is unequal treatment of a particular protected class, then that action, policy, or practice is discriminatory. Discrimination may involve a single act or it may involve a continuing policy or practice.

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**Employee** – An individual drawing a salary, wages, stipend, honorarium or earning a commission from a company, organization or agency, and any non-compensated individual performing services for a company, organization or agency.

**Equal Employment Opportunity (EEO)** – A system of employment practices within an employing organization generally under which individuals are not excluded from participation, advancement, or benefits because of membership in a protected class. It is an employment system in which neither intentional nor unintentional discrimination exists. This includes but is not limited to recruitment, selection, appointment, promoting, training, delegation, discipline and separation.

**Equal Employment Opportunity (EEO) Occupational Categories** – The standard job categories defined by the Equal Employment Opportunity Commission (EEOC). The categories include Officials/Managers; Professionals; Technicians; Sales Workers; Office and Clerical; Craft Workers (Skilled); Operators (Semi-Skilled); Laborers (Unskilled); and Service Workers.

**Equal Employment Opportunity (EEO) Plan** – The written document through which management ensures that all persons have equal opportunities in recruitment, selection, appointment, promotion, training, delegation, discipline, separation and all other aspects of employment. This plan is specifically tailored to the employer's work force and available skills, and contains specific actions with objectives, responsibilities, and resources to meet identified needs. An EEO Plan details the steps that will be taken to ensure equal employment opportunity.

**Grant** – A commitment of funds and programmatic authority by a Commonwealth agency serving as the grantor to an outside entity (e.g., local government, school district, individual, nonprofit organization, or service provider) for the purpose of carrying out public policy and/or implementing program service delivery. A grant differs most importantly from other agency procurements in that the grantor does not receive specific goods or services.

**Grant Agreement** – A legally binding agreement between grantor and grantee which delineates all terms and conditions of a particular grant.

**Grantee** – The entity that contracts with the state agency to receive grant funding to implement the grant purpose.

**Labor Force** – Employable civilian persons, within a reasonable recruitment area, who have particular skills and abilities, e.g., persons counted in Equal Employment Opportunity (EEO) job category or EEO occupation group or census occupation code industry census data.

**Noncompliance** – A contractor/grantee's failure to adhere to the conditions set in the contract/grant's Nondiscrimination/Sexual Harassment Clause and/or the regulations implementing that clause and/or failure to correct violations.

**Recruitment or Labor Area** – The local area within which the contractor/grantee can reasonably expect people to commute.

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**Sexual Harassment** – Any unwelcome sexual advances, requests for sexual favors, and/or other verbal, visual or physical conduct of a sexual nature where: submission or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or, submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals; or, such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Prohibited sexual harassment may include actions by members of the employee's own sex or the opposite sex. Prohibited sexual harassment may include actions which are overtly sexual or facially neutral if such actions constitute gender-based discrimination.

**Subcontract** – Any agreement or arrangement between a contractor/grantee and any person (in which the parties do not stand in the relationship of an employer and an employee):

1. for the furnishing of supplies or services or for the use of real or personal property, including lease agreements, which, in whole or in part, is necessary to the performance of any one or more Commonwealth contract/grant; or
2. under which any portion of the contractor/grantee's obligation under one or more Commonwealth contracts/grants is performed, undertaken or assumed.

**Underutilization** – Having fewer minorities or women in a particular job group than reasonably would be expected based upon their availability.

**Utilization Analysis** – The process of determining whether underutilization exists, by comparing the percent of the race/sex of those employed by a contractor or grantee in each EEO job group, with the percent of the race/sex of those in the immediate labor area available to work in each job group.

**Work Force Parity** – The equitable utilization of minorities and females in a state contractor/grantee's work force, according to the local labor market availability.