

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Provisions Concerning The <i>Americans With Disabilities Act</i>	Number: 215.12 Amended
Date: October 14, 2011	By Direction of:  Sheri Phillips, Secretary of General Services  Charles B. Zogby, Secretary of the Budget
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This directive establishes policy, responsibilities, and procedures for ensuring contracts and grant agreements include provisions concerning the *Americans with Disabilities Act*. This amendment adds an objective, definitions, and procedures and clarifies the roles of agency chief counsels and the General Counsel. Marginal dots are excluded due to major changes.

- 1. PURPOSE.** To establish policy, responsibilities, and procedures for ensuring contracts and grant agreements include provisions concerning the *Americans with Disabilities Act*, 42 U.S.C. §12101, et seq.
- 2. SCOPE.** This directive applies to all departments, boards, commissions, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction and independent agencies.
- 3. OBJECTIVE.** To ensure contracts and grant agreements include provisions requiring contractors to comply with the provisions of the *Americans with Disabilities Act*.

4. DEFINITIONS.

- a. **Americans with Disabilities Act.** The federal law (42 U.S.C. §12101, *et seq.*) that makes it illegal to discriminate against people with disabilities in the areas of 1) employment; 2) state and local government services and public transportation; 3) public accommodations; and 4) telecommunications.
- b. **Commonwealth Agency.** An executive or independent agency as defined by the *Commonwealth Procurement Code, 62 Pa.C.S. §103*.
- c. **Contract.** A legal binding agreement between a contractor and a commonwealth agency for the procurement of supplies, services, or construction.
- d. **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.
- e. **Grant Agreement.** A legally binding agreement between grantor and grantee which delineates all terms and conditions of a particular grant.
- f. **Grantee.** The entity that contracts with the commonwealth agency to receive grant funding to implement the grant purpose.
- g. **Waiver.** A written document justifying an exception to the policy requirement to include provisions concerning the *Americans with Disabilities Act* in a contract. The exception may include approved variations of provisions concerning the *Americans with Disabilities Act* or complete removal of the provisions.

5. POLICY.

- a. All contracts and grant agreements must include provisions concerning the *Americans with Disabilities Act* (Enclosure 1, Provisions Concerning the *Americans with Disabilities Act*).
- b. A waiver may be granted after written approval by the General Counsel or designee.

6. RESPONSIBILITIES.

- a. **Agencies** shall include provisions concerning the *Americans with Disabilities Act* in all contracts and grant agreements unless a waiver is granted.
- b. **Agency Chief Counsels** shall:
 - (1) Ensure that provisions concerning the *Americans with Disabilities Act* are included in all contracts and grant agreements unless a waiver is granted.

- (2) Prepare waivers, submit waiver requests to the General Counsel or designee for review and approval, and include approved waivers with the contract or grant agreement.
- c. **General Counsel or Designee** shall provide written approval to the agency chief counsel for approved waivers.

7. PROCEDURES.

a. Action By: Agency.

- (1) Includes provisions concerning the *Americans with Disabilities Act* in all contracts and grant agreements unless waived in accordance with this directive.
- (2) Seeks advice of the agency chief counsel if the agency believes that a waiver is needed.

b. Action By: Agency Chief Counsel.

- (1) Ensures that provisions concerning the *Americans with Disabilities Act* are included in all contracts and grant agreements or determines if a waiver is required in order to enter into a contract or grant agreement.
- (2) If a waiver is required, prepares a waiver request including justification.
- (3) Submits the waiver request to the General Counsel or designee.

c. **Action By: General Counsel or Designee.** Provides written approval to agency chief counsel for approved waivers.

d. **Action By: Agency Chief Counsel.** If a waiver is granted, includes the approved written waiver with the contract. If a waiver is not granted, ensures that provisions concerning the *Americans with Disabilities Act* are included.

e. **Action By: Agency.** If a waiver is granted, includes the waiver in the contract file.

Enclosure 1 – Provisions Concerning the *Americans with Disabilities Act*

This directive replaces, in its entirety, *Management Directive 215.12*, dated January 16, 2001.

PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the *Americans with Disabilities Act*, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "*General Prohibitions Against Discrimination*," 28 C. F. R. § 35.130, and all other regulations promulgated under *Title II* of the *Americans with Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.