


# MANAGEMENT DIRECTIVE

## Commonwealth of Pennsylvania Governor's Office

<b>Subject:</b> Contract Compliance Program	<b>Number:</b> 215.16 Amended
<b>Date:</b> August 2, 2018	<b>By Direction of:</b>  Curtis M. Topper, Secretary of General Services
<b>Contact Agency:</b> Department of General Services, Bureau of Diversity, Inclusion and Small Business Opportunities, Telephone 717.783.3119	

**This directive establishes policy, responsibilities, and procedures for the Commonwealth's Contract Compliance Program in compliance with Executive Order 2016-05 Amended, Contract Compliance and the Commonwealth Procurement Code. Changes are indicated by marginal dots.**

- 1. PURPOSE.** To establish policy, responsibilities, and procedures for the Contract Compliance Program.
- 2. SCOPE.** This directive applies to all departments, boards, commissions, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction.
- 3. OBJECTIVE.** To establish policy, responsibilities, and procedures for the administration and enforcement of the Contract Compliance Program, and to ensure that contractors understand their obligations regarding compliance with applicable state and federal labor and anti-discrimination laws and policies.
- 4. DEFINITIONS.**
  - a. Contract.** A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction or the lease of real estate.
  - b. Contract Compliance Program.** A program designed to ensure that Commonwealth contracting and grant funding is nondiscriminating 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.
  - (3) Nondiscrimination by those who are awarded commonwealth contracts and grants in the hiring and treatment of their employees and in the provision of services to their clients and service recipients.
- c. **Contractor.** Any person that enters into a contract or lease with the commonwealth.
  - d. **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.
  - e. **Gender identity.** A person's internal, deeply held sense of their gender, regardless of their biological sex and/or the sex they were assigned at birth.
  - f. **Gender expression.** The external manifestations of gender, expressed through a person's name, pronouns, clothing, haircut, behavior, voice, and/or body characteristics.
  - g. **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.
  - h. **Grant Agreement.** A legally binding agreement between grantor and grantee which delineates all terms and conditions of a particular grant.
  - i. **Grantee.** The entity that contracts with the state agency to receive grant funding to implement the grant purpose.
  - j. **Sexual orientation.** An individual's enduring physical, romantic and/or emotional attraction to members of the same or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) orientations, or lack thereof, including asexual orientation.
  - k. **Waiver.** A written document including approval of the General Counsel or designee and agency chief counsel justifying an exception to the policy requirement to include the Nondiscrimination/Sexual Harassment Clause in a contract. The exception may include approved revisions to the Nondiscrimination/Sexual Harassment Clause or complete removal of the clause.

## 5. POLICY.

- a. Pursuant to *Executive Order 2016-05 Amended, Contract Compliance*, and *Section 3701 of the Commonwealth Procurement Code*, the Department of General Services (DGS) is designated to administer and enforce the Contract Compliance Program.

- b. Every agency contract must contain Enclosure 1, Nondiscrimination/Sexual Harassment Clause [Contracts], barring discrimination in employment unless a waiver has been granted. For those contracts that involve the expenditure of federal funds, if the agency is required by federal law, regulation or policy, to include a nondiscrimination clause, the agency shall comply with the federal contract compliance program and include the required nondiscrimination clause and shall not be required to include Enclosure 1, Nondiscrimination/Sexual Harassment Clause [Contracts].
- c. Every grant agreement including; but not limited to, state loans or state guarantees of student loans, banking institutions or other organizations must contain Enclosure 2, Nondiscrimination/Sexual Harassment Clause [Grants] unless a waiver has been granted. For those grant agreements that involve the transfer of federal funds, if the agency is required by federal law, regulation or policy, to include a nondiscrimination clause, the agency shall comply with the federal Contract Compliance Program and include the required nondiscrimination clause and shall not be required to include Enclosure 2, Nondiscrimination/Sexual Harassment Clause [Grants].
- d. Every state contract for the deposit of commonwealth funds in any banking institution or trust company must contain, upon approval of the Board of Finance and Revenue, Enclosure 3, Nondiscrimination/Sexual Harassment Clause [Deposit of Commonwealth Funds] unless a waiver has been granted.
- e. Requests to waive any provision of the Nondiscrimination/Sexual Harassment Clause must be supported by compelling reasons, in writing, approved by the agency head and the chief counsel. Upon approval of a waiver by the Office of General Counsel, such documentation must be included with the contract file.

## 6. RESPONSIBILITIES.

- a. **Department of General Services, Bureau of Diversity, Inclusion and Small Business Opportunities** shall:
  - (1) Administer and enforce a uniform Contract Compliance Program.
  - (2) Ensure that contractors and grantees receiving commonwealth funds acknowledge having written Nondiscrimination and/or Sexual Harassment policies and publicly displaying these policies for employees.
  - (3) Ensure that contractors and grantees receiving commonwealth funds comply with the fair practice notices posting requirements found in *Section 5(j)* of the *Pennsylvania Human Relations Act, 43 P.S. § 955*, and the *Special Rules of Administrative Practice 16 Pa. Code §§ 43.1 through 43.22*.
  - (4) Ensure contract provisions are regularly reviewed and updated, as applicable.
  - (5) Provide assistance to contractors with complaints regarding contract compliance practices.
  - (6) Notify the Secretary of DGS and the respective contracting or granting agencies when evidence that the practices of any contractor or grantee are

not in compliance with the Nondiscrimination/Sexual Harassment Clause or related state or federal laws and policies.

b. **Agency Heads** shall designate a deputy secretary, or equivalent, as the Agency Contract Compliance Liaison with respect to the Contract Compliance Program.

c. **Agency Contract Compliance Liaison** shall:

(1) Ensure the agency's compliance with the Contract Compliance Program.

(2) Consult with DGS prior to issuing sanctions against contractors for non-compliance.

## 7. PROCEDURES.

a. **Agency Contract and Grant Awards and Deposit of Commonwealth Funds.** Each agency shall ensure all contract awards, grant agreements and state contract for the deposit of Commonwealth funds include the applicable Nondiscrimination/Sexual Harassment Clause as attached to this directive as Enclosures 1-3 unless a waiver has been granted.

b. **Notice of Noncompliance.** If a contractor or grantee is found in non-compliance with the Nondiscrimination and/or Sexual Harassment provisions of their contract, the commonwealth contracting agency, after consultation with DGS, shall pursue one or more of the sanctions or remedies listed below unless compliance is obtained by agreement.

c. **Sanctions/Remedies.** The commonwealth may pursue one or more of the following sanctions or remedies, as appropriate:

(1) Bring appropriate legal action for noncompliance with the Nondiscrimination/Sexual Harassment Clause.

(2) Find the contractor or grantee in default and provide an opportunity to cure the default.

(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. (See *Management Directive 215.9, Contractor Responsibility Program*, for procedures relevant to the following actions.)

(a) The agency may proceed with debarment or suspension of the contractor or grantee.

- (b) The agency may place the contractor or grantee in the Contractor Responsibility File to alert other agencies of its deficiencies.
- (6) Contractors or grantees can provide additional information that demonstrates that they are in compliance at any point to have sanctions reassessed.

**Enclosure 1 - Nondiscrimination/Sexual Harassment Clause [Contracts]**  
**Enclosure 2 - Nondiscrimination/Sexual Harassment Clause [Grants]**  
**Enclosure 3 - Nondiscrimination/Sexual Harassment Clause [Deposit of Commonwealth Funds]**

This directive replaces, in its entirety, *Management Directive 215.16*, dated May 11, 2017.

## **NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Contracts]**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment

Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Grants]

The Grantee agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
2. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.
3. Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the grant agreement, subgrant agreement, contract or subcontract.
4. Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement for employees with an established work site.
6. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.
7. The Grantee and each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Grantee and each subgrantee, contractor and



subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Grantee, any subgrantee, any contractor or any subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
9. The Granter's and each subgrantee's, contractor's and subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the grant agreement through the termination date thereof. Accordingly, the Grantee and each subgrantee, contractor and subcontractor shall have an obligation to inform the commonwealth if, at any time during the term of the grant agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

**NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Deposit of  
Commonwealth Funds]**

The Contractor agrees:

1. In the hiring of any employee(s) for the performance of work, or any other activity required under the contract or any subcontract, the Contractor, subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the

EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.