

Compilation of Codes, Rules and Regulations of the State of New York Currentness  
Title 9. Executive Department  
Subtitle A. Governor's Office  
Chapter I. Executive Orders  
Part 3. Executive Orders (Hugh L. Carey) (Refs & Annos)

9 NYCRR 3.45

Section 3.45. Executive Order No. 45: [Establishing Office of State Contract Compliance]

WHEREAS, it is the established policy of the State of New York to provide equal opportunity in employment and training for all persons without discrimination on account of race, creed, color, national origin, sex, age, disability or marital status, and to promote the full realization of such equal opportunity through affirmative, continuing programs by contractors and their subcontractors in the performance of contracts with or for the State of New York, and

WHEREAS, discrimination in employment by public contractors tends to decrease the pool of available labor and leads to labor strife, thereby adversely affecting the cost and progress of public contracts, and

WHEREAS, in order to insure that the State of New York continue its leadership role in maximizing equal opportunity in employment for all its citizens, and

WHEREAS, it is necessary and desirable that the State of New York provide an affirmative action program to implement and enforce such policies through contractual provisions of State contracts,

NOW, THEREFORE, I, Hugh L. Carey, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

*Article I—Administration*

1.1 There is hereby established in the Executive Department, Division of Human Rights, an Office of State Contract Compliance (OSCC) which, under the overall direction of the Commissioner of Human Rights, shall administer these provisions and coordinate implementation and enforcement of this Executive Order.

1.2 The Commissioner of Human Rights shall adopt such rules, regulations, guidelines, procedures, directives and affirmative action programs, and shall issue such orders, as he or she deems necessary and appropriate to effectuate the purposes hereof.

1.3 The OSCC shall have primary responsibility for enforcing the provisions of this Order.

(a) The OSCC may delegate to State agencies any portion of its enforcement duties or functions whenever such delegation is deemed appropriate for proper administration of this Executive Order.

(b) The OSCC may promulgate contract provisions consistent with the purposes and intent of this Order, for inclusion in every contract and agreement subject hereto.

(c) The OSCC will prepare standardized forms to be utilized by contractors and by State agencies for notices and compliance reports relating to the operation and implementation of the Order.

(d) The OSCC shall examine the employment practices of any State contractor or subcontractor, or direct such examination by the appropriate State agency, to assure the effectuation of the policies and purposes of this Executive Order. Where such examination is initiated by a State agency, it shall be conducted in accordance with procedures established by the OSCC and the agency shall report to the OSCC any action taken or recommended.

(e) The OSCC shall use its best efforts, directly and through contracting agencies, other governmental agencies, contractors, and all other available instrumentalities, to cause any labor union whose members are engaged in work under State contracts, or any agency or body referring such workers or providing apprenticeship or training for or in the course of such work, to cooperate in the implementation of this Executive Order.

(f) The OSCC shall, in appropriate cases, notify the concerned State agencies, the Equal Employment Opportunity Commission, the United States Secretary of Labor, the State Attorney General, the United States Department of Justice, or other appropriate Federal, State or local agency whenever it has reason to believe the practices of any such labor organization or agency or body violate the State Human Rights Law, Title VI or Title VII of the Civil Rights Act of 1964, or other provisions of related Federal, State or local laws.

(g) The OSCC may hold such public hearings for informational or educational purposes as the Commissioner of Human Rights may direct, related to the purposes of this Executive Order.

(h) The OSCC shall hold or cause to be held hearings, in accordance with rules, regulations or orders to be adopted by the Commissioner of Human Rights, prior to the Commissioner imposing, ordering, or directing the imposition of the sanctions authorized under Section 7.1 of this Executive Order.

(i) The OSCC shall periodically review the practices and procedures of State agencies with respect to compliance by them with the provisions of this Executive Order, and shall require them to file performance reports.

(j) The OSCC may direct withdrawal of approval or funding granted by any State agency to any affirmative action or training program which interferes with or impedes the implementation of this Order, or which fails to comply with this Order or with the rules and regulations hereunder.

## *Article II—Definitions*

2.1 Contract—any written agreement, purchase order, lease or other instrument by which the State or a State agency is either committed to expend its funds in return for property, equipment, supplies, merchandise, goods, materials, work, labor or services, or to provide State assistance through which such a contract may be aided in whole or in part. The term “contract” shall not include (a) employment by the State or a State agency of officers and employees, and (b) contracts,

resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award and sale of bonds, certificates of indebtedness, notes or other fiscal obligations of the State or a State agency, or consisting thereof.

2.2 Construction contract—any contract as defined in Section 2.1 of this Article for the erection, construction, reconstruction, rehabilitation, alteration, conversion, extension, repair, landscaping, improvement, demolition of buildings, highways, or other real property.

2.3 Subcontract—any agreement between a contractor and any person under which any portion of the contractor's obligation is performed, undertaken or assumed.

State-assistance—includes but is not limited to the following forms of assistance accorded to contractors or applicants directly or indirectly by the State of New York or any State agency: loans; financial guarantees; subsidies; grants; insurance; tax abatements; tax exemptions; air rights; and the sale, lease, disposition or lease-back of property.

State agency—all agencies of the State, and all public benefit corporations, authorities, bureaus, departments, boards, commissions or other bodies authorized or created by the State which operate wholly within the State.

2.6 Contracting agency—any State agency which awards or administers a State or State-assisted contract.

2.7 Contractor—any bidder for or awardee of a contract, as defined above, obtained through competitive bidding procedures or otherwise.

2.8 Applicant—any entity which applies for State assistance, and includes such applicant after it becomes a recipient of such State assistance.

2.9 Affirmative action programs—programs approved or adopted by the Commissioner of Human Rights to assure equal employment opportunity for minority group persons and women by State and State-assisted contractors. Such programs shall include, at a minimum, provisions requiring contractors to achieve goals and time tables designed to reflect adequate utilization of minority group persons and women.

### *Article III—Contract Provisions: State Contracts*

3.1 Except for contracts exempted in accordance with Article V hereof, all State contracting agencies shall include in every contract hereafter entered into, and the bid documents therefor, the following provisions:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(b) If the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC), the contractor shall request each employment agency, labor union, or authorized representative of workers with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations hereunder and the purposes of Executive Order 45 (1977).

(c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The contractor will comply with all the provisions of Executive Order 45 (1977) and of rules, regulations and orders issued pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

(e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order 45 (1977), or with such rules, regulations or orders, this contract or any portion thereof, may be cancelled, terminated, or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order 45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

(f) The contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3(b) of Executive Order 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its workforce within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

3.2 Every State contract hereafter entered into, and the bidding documents therefor, unless exempted from the provisions of this Executive Order pursuant to Article V hereof, shall provide that prospective contractors must submit to the contracting agency, prior to the award of such contract, and prospective subcontractors prior to their approval by the agency, a program of affirmative action to provide for equal employment opportunity in accordance with the intent and purpose of this Executive Order, in such form and substance as may be required by rule, regulation or order of the Commissioner of Human Rights.

3.3 No contracting agency shall enter into any contract with or award any contract to any bidder or prospective contractor subject to the foregoing requirement unless the program of affirmative action submitted pursuant to Section

3.2 is acceptable to the OSCC, or if the Commissioner of Human Rights so authorizes by rule, regulation or order, to the contracting agency.

3.4 The affirmative action programs referred to in this Article shall apply to the entire workforce of the contractor within the State of New York during the performance of the State or State-assisted contract.

3.5 The provisions referred to in Sections 1.3(b) and 3.1 shall be deemed supplementary to, and not in lieu of the non-discrimination provisions required by the New York State Labor Law or other applicable Federal, State or local law to be included in State or State-assisted contracts.

*Article IV—Contract Provisions: State Assisted Contracts*

4.1 Each State agency which administers a program involving State assistance as defined in Section 2.4, shall include in any contract entered into with an applicant for State Assistance provisions that said applicant undertake and agree to incorporate or cause to be incorporated in all contracts entered into by the applicant pursuant to the purposes for which the assistance is granted, the provisions prescribed in Section 3.1 together with the provisions prescribed in Section 3.2 for prospective contractors.

4.2 Each such contract shall also require the applicant to undertake and agree: (1) to assist and cooperate actively with the contracting agency and the OSCC in obtaining the compliance of contractors and subcontractors with such provisions; (2) to obtain and to furnish to the contracting agency and to OSCC such information as they may require for the supervision of such compliance; (3) to carry out sanctions for violation of such obligations, imposed upon contractors and subcontractors by the Commissioner of Human Rights or the contracting agency pursuant to Article VII of this Executive Order; and (4) to refrain from entering into any contract subject to this Executive Order with a contractor debarred from State contracts under Article VII of this Executive Order.

4.3 In the event that an applicant fails or refuses to comply with such undertakings, the agency, after consultation with the OSCC, and after giving notice and opportunity for hearing before the agency or the OSCC, may take any or all of the following actions:

- (1) subject to approval of the State Attorney General, cancel, terminate or suspend in whole or in part the contract with such applicant with respect to which the failure or refusal occurred;
- (2) refrain from extending further assistance under the program or condition further assistance upon satisfactory assurances of future compliance; and
- (3) refer the matter to the State Attorney General for appropriate legal proceedings.

*Article V—Exemptions*

5.1 The OSCC may, when it deems that special circumstances in the public interest so require, exempt a contracting agency from including any or all of the provisions required pursuant to Articles III and IV hereof in any specific contract

and may also exempt those facilities of a contractor which are separate and distinct in all respects from activities of the contractor related to the subject of the contract.

5.2(a) The Commissioner of Human Rights, by rule or regulation, may exempt designated classes of contracts, including contracts (1) for standard commercial supplies or raw materials; (2) involving less than specified amounts of money or numbers of workers; or (3) to the extent that they involve subcontracts below a specified tier.

5.2(b) Such rule or regulation may also provide for the exemption of construction contractors who are participating in an area-wide negotiated plan of affirmative action which has been approved by the Commissioner.

*Article VI—Duties of State Contracting Agencies*

6.1 Each State contracting agency shall be primarily responsible for monitoring its contracts, including State-assisted contracts, and obtaining compliance with this Executive Order, the rules, regulations, and orders of the Commissioner of Human Rights issued hereunder and the contractual provisions required pursuant to Articles III and IV hereof. All State agencies shall comply with the rules and regulations of the OSCC and are directed to cooperate with the OSCC and to furnish to that office such information and assistance as it may require in the performance of its functions under this Executive Order. Each State contracting agency is further directed to appoint or designate, from among the agency's executive personnel, a compliance officer who shall report to the OSCC in matters pertaining to the implementation of this Executive Order.

6.2 All State agencies shall require every contractor working on a State or State-assisted contract to file, and to cause each of its subcontractors to file, such periodic compliance reports as the Commissioner of Human Rights may prescribe by rule or regulation. State agencies shall require each such contractor to keep and maintain such records pertaining to its employment practices as the Commissioner of Human Rights may prescribe by rule or regulation, and shall cause its subcontractors to keep and maintain such records.

6.3 Under rules and regulations prescribed by the Commissioner of Human Rights, each agency compliance officer shall make every effort to secure compliance with the contract provisions required pursuant to Articles III and IV of this Executive Order within a reasonable time by methods of conference, conciliation, mediation, and persuasion before proceedings shall be commenced under Section 7.1 of this Executive Order.

6.4(a) Whenever a State agency has reasonable grounds to believe that a proceeding under Article VII should be commenced, it shall promptly notify the OSCC of its recommendation and the reasons therefor.

6.4(b) Whenever the OSCC makes a determination provided for in this Executive Order which may affect the award or performance of an agency's contracts, the OSCC shall promptly notify the agency of that determination and its recommendation or direction for action, if any, to be taken by such agency. The agency shall take the prescribed action and shall report the results thereof to the OSCC within such time as that office shall specify.

*Article VII—Sanctions and Other Remedies*

7.1 In accordance with the hearing provisions of Section 1.3(h) hereof and with such rules, regulations, procedures or orders as the Commissioner of Human Rights may issue or adopt hereunder, the Commissioner may:

(a) Direct the State contracting agency concerned to withhold payments, cancel, terminate, suspend, or cause to be cancelled, terminated, suspended, or have payments withheld on any contract, or any portion thereof, for failure of the contractor or its subcontractor to comply with the equal employment opportunity provisions of the contract or the affirmative action program. Such contracts may be cancelled, terminated or suspended absolutely, or continuance thereof may be conditioned upon a program for future compliance approved by the Commissioner of Human Rights.

(b) Declare a contractor or subcontractor ineligible for future contracts for a period not to exceed two years and direct that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any such contractor or subcontractor for said period.

(c) Publish or cause to be published the names of contractors who have been found to be in non-compliance with the contract provisions or affirmative action requirements of this Executive Order or rules, regulations or orders issued hereunder.

(d) Rescind any sanctions or remedies set forth in paragraphs (a), (b) and (c) of this article.

(e) Whenever a State contracting agency cancels or terminates a contract or whenever the award of further State or State-assisted contracts has been withheld, or such sanctions have been rescinded, the OSCC or the contracting agency involved shall promptly notify the Comptroller of the State of New York and the agency's fiscal officer.

7.2 The Commissioner of Human Rights in addition to or in place of the foregoing and without a hearing, may:

(a) Publish or cause to be published the names of unions or other bodies and organizations which the Commissioner has concluded have interfered with or impeded compliance with the contract provisions or affirmative action requirements of this Executive Order or rules, regulations or orders issued hereunder.

(b) Recommend to the State Attorney General, local human rights agencies, the Equal Employment Opportunity Commission, the U.S. Secretary of Labor, State Labor Department, or the U.S. Department of Justice that appropriate legal proceedings be instituted.

(c) Recommend that criminal proceedings be brought against any individual or organization furnishing false information to any contracting agency or to the OSCC.

(d) Recommend to the State Attorney General that, in any case of willful interference or the threat of willful interference with a contractor's ability to comply with the contractual provisions entered into pursuant to this Executive Order or with other obligations assumed pursuant hereto, appropriate proceedings be brought to obtain injunctive or other necessary relief against organizations, individuals, or groups who prevent or seek to prevent, directly or indirectly, compliance with such provisions and obligations.



(e) Recommend to the State Industrial Commissioner that deregistration proceedings be initiated against any apprenticeship or training program registered under Article 23 of the Labor Law whenever the failure of said programs to comply with affirmative action requirements under said law interferes with or impedes the effectuation of this Executive Order.

*Article VIII—Functions of State Department of Labor*

8.1 The State Department of Labor shall cooperate with the OSCC and with each State contracting agency by providing assistance to contractors seeking referrals of, or training programs for, minority group employees.

8.2 The State Department of Labor shall provide the OSCC with information and reports relating to equal opportunity in apprenticeship and other training programs, as requested by the OSCC.

8.3 Upon receipt of a recommendation made pursuant to Section 7.2(e) the State Industrial Commissioner shall immediately investigate and take action either to obtain compliance or to initiate deregistration proceedings, as the circumstances warrant.

*Article IX—Municipalities and Public Agencies*

Any local government, and any board, authority, commission, district or other public agency, not part of the State government, whose field of operations and jurisdiction lies wholly or in part within the State of New York, may, by agreement with the Commissioner of Human Rights, elect to comply with the program established by this Executive Order and with the rules, regulations and orders promulgated hereunder, as to its contract activities within the State of New York.

*Article X—Separability Clause*

If any part of this Order or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Executive Order or the application thereof to other persons or circumstances.

*Article XI—Revocation of Prior Executive Order and Effective Date*

Executive Order No. 43, dated January 21, 1971, and continued by Executive Order No. 1, dated January 1, 1975, is hereby revoked and superseded by this Executive Order, which shall become effective thirty (30) days after its date.

Signed: Hugh L. Carey

Dated: January 4, 1977

**Credits**

Order dated Jan. 4, 1977, filed Jan. 12, 1977.

Current with amendments included in the New York State Register, Volume XXXIX, Issue 34, dated August 23, 2017,



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