

Equity in Bonding – Workforce and Equal Pay

Statutory changes were enacted to CHAPTER 363A HUMAN RIGHTS in October 2020 and June 2021 that will impact some local agencies. Specifically, statutes 363A.36 and 363A.44 were modified so that local agency capital projects that are partially or wholly funded with general obligation (GO) bonds are subject to these requirements. Historically, GO bonds have funded projects in the Local Road Improvement Program (LRIP), Local Bridge Replacement Program (LBRP), Safe Routes to School (SRTS), and Active Transportation (AT), though these programs can also be funded with general funds. Those projects funded with general funds will not be subject to these new requirements. Note that “capital projects” include both construction and professional services contracts. These new requirements take effect on projects that are funded with appropriations enacted after January 1, 2022. **These requirements do not apply to all existing bond funds that were appropriated prior to 2022, even if contracts using these previous appropriations are executed after January 1, 2022.**

Statutory Summary

Statute [363A.36](#) deals with contractor/consultant affirmative action plans and “workforce certificates,” while Statute [363A.44](#) deals with contractor/consultant “equal pay certificates.” A [Workforce Certificate](#) is the mechanism that commits contractors to building a more diverse and inclusive workplace. An [Equal Pay Certificate](#) ensures women receive equal pay for equal work, as well as comparable compensation. Both certificates are issued through the Department of Human Rights (MDHR).

For capital projects that are wholly or partially funded with GO bonds, local agencies are prohibited from executing contracts with businesses that have 40 or more full-time employees unless the business has a workforce certificate and equal pay certificate from the commissioner of human rights.

Exemptions for businesses with less than 40 employees are determined by Commissioner of Human Rights. The workforce certificate is required for projects exceeding \$250,000, while the equal pay certificate is required for projects exceeding \$1,000,000. Note that workforce and equal pay certificate requirements have been in place for many years for Trunk Highway projects, so the majority of contractors and consultants already have these certificates. Additionally, the Association of General Contractors and MDHR are working to educate contractors on these requirements.

What you need to know

State Aid has worked with the City Engineer Association of Minnesota, Minnesota County Engineer Association, MDHR, and MnDOT Office of Civil Rights to develop an approach to help ensure local agencies comply with these new requirements, while minimizing additional work. Following is a summary of the process:

- State Aid will publish special provisions and bid forms on the [Electronic Proposal webpage](#) relative to workforce and equal pay. Contractors/consultants will be required to complete bid forms for the workforce and equal pay certificates and submit them as part of their overall proposal.

- Local agencies will need to include Equal Employment Opportunity provisions in bid packages. This will include workforce goals for (1) people of color and indigenous people, and (2) women. Goals are set by the Minnesota Department of Human Rights and can be found [here](#). Workforce goals also apply to consultant contracts that are funded with Go bond funds.
- State Aid will include language in the GO bond funding letters relative to these requirements, including links to required special provisions and bid forms, and including workforce goals.
- Local agencies will be required to verify that the selected contractor/consultant has a valid workforce certificate and equal pay certificate, if required, prior to executing a contract. See MDHR website on [Contractor Status](#) for more information.
- Local agencies will need to include the responsible apparent low bidder's workforce and equal pay bid forms as an Exhibit in the GO bond grant agreement. State Aid has modified the agreement templates and instructions accordingly.
- Upon full execution of the bond funded grant agreement, State Aid will notify MnDOT's Office of Civil Rights so they can begin the monitoring process. Monitoring occurs between MDHR and/or MnDOT Office of Civil Rights and the contractor/consultant.

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