

Executive Order 2009-09

**PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS
NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND
SUBCONTRACTORS**

Superseding Executive Order 99-4 and Amending Executive Order 75-5

WHEREAS, Executive Order 99-4 was effectuated to assure that persons or entities contracting with the State of Arizona or its political subdivisions comply with the provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et. seq.) and with Arizona's Civil Rights Act (Title 41, Chapter 9, Article 4);

WHEREAS, Executive Order 99-4 correctly states that various religious organizations are exempted from Arizona's Civil Rights Act;

WHEREAS, Executive Order 99-4 does not expressly state the federal and state exemptions for Indian tribes under both the federal and State Civil Rights Acts;

WHEREAS, 42 U.S.C. § 200e(b)(1) exempts tribes from the definition of employer;

WHEREAS, A.R.S. § 41-1461 4 (b)(i) also exempts Indian tribes from the definition of employers to whom the Arizona Civil Rights Act applies;

WHEREAS, Indian tribes across the State have recently begun to experience difficulty contracting with the State, often for money or services to which they are lawfully entitled, as a result of their exclusion from specified exemptions within Executive Order 99-4;

WHEREAS, the Attorney General's Office has in some cases interpreted the existing provisions as requiring tribes to waive rights guaranteed by both federal and State law;

WHEREAS, a modification is necessary to expressly provide that the exemptions found in federal and State law continue in full force and effect;

NOW, THEREFORE, I, Janice K. Brewer, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this State, hereby order and direct as follows:

1. Executive Order 75-5 is hereby amended as follows:

PART I - Non-discrimination in employment by government contractors and subcontractors.

Unless otherwise exempted by federal or state civil rights laws, all government contracting agencies shall include in every government contract hereinafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, or national origin. The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex or national origin. Such action shall include, but is not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or

termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

A continued Executive Order No. 75-5 is hereby amended to permit government contractors and subcontractors that are exempted from compliance under Title 41, chapter 9, article 4, Arizona Revised Statutes or 42 U.S.C. § 200e(b)(1), to provide employment preferences consistently with federal and state statutes;

Therefore, Executive Order 75-5 does not apply to Indian tribes. It likewise does not apply to religious organizations with respect to the employment of individuals of a particular religion to perform work connected with the activities of the employer. It also provides that religious organizations may provide employment preferences based upon religion when dealing with a bona fide occupational qualification reasonably necessary to the operation of the religious organization. This is consistent with the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000e, et seq.). In addition, in the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193, Congress provided that religious organizations are eligible for the receipt of federal funds on the same basis as other private organizations.

Executive Order No. 75-5 prohibits all other government contractors and subcontractors from discriminating against any employee or applicant for employment because of race, age, color, religion, sex or national origin. Executive Order No. 75-5 further requires all government contractors and subcontractors to take action to insure that applicants are employed and employees are treated during employment without regard to their race, age, color, religion, sex or national origin.

- B. The contractor will in all solicitations or advertisement for employees placed by or on behalf of the contractor state that all qualified applicants will receive consideration for employment without regard of race, age, color, religion, sex or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under the Executive Order and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will furnish all information and reports required by the contracting agency and will permit access to his books, records, and accounts by the contracting agency and the Civil Rights Division for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- E. In the event of the contractor's noncompliance with the nondiscrimination clauses of the contract or with any such rules, regulations or orders of the Arizona Civil Rights Division said noncompliance will be considered a material breach of the contract and this contract may be cancelled, terminated or suspended, in whole or in part, and the contractor may be declared ineligible for future government contracts until said contractor has been found to be in compliance with the provisions of this order and the rules and regulations of the Arizona Civil Rights Division, and such sanctions may be

imposed and remedies invoked as provided in Part II of this order, and the rules and regulations of the Arizona Civil Rights Division.

- F. The contractor will include the provisions of paragraphs A through E in every subcontractor purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to the subcontract or purchase orders the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the State of Arizona to enter into such litigation to protect the interest of the State of Arizona.
- G. Each contractor having a contract containing the provisions prescribed in this section shall file and shall cause each of his subcontractors to file compliance reports with the contracting agency or the Civil Rights Division, as may be directed. Compliance reports shall be filed within such times and shall contain such information as the practices, policies, programs and employment policies, programs and employment statistics of the contractor and each subcontract and shall be in form as the Arizona Civil Rights Division may prescribe.
- H. Bidders or prospective contractors of subcontractors shall be required to state whether they have participated in any previous contract subject to the provisions of this order or any preceding similar Executive Order and in such event to submit on behalf of themselves and the proposed subcontractors compliance reports prior to, or as an initial part of negotiation of a contract.
- I. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers of providing or supervising apprenticeship or training for such workers, the compliance report shall include such information from such labor unions or agency practices and policies affecting compliance as the contracting agency or Civil Rights Division may prescribe: provided that, to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify the contracting agency as part of its compliance report and shall set forth what efforts he has made to obtain such information.
- J. The contracting agency or the Civil Rights Division shall require that the bidder or prospective contractor or subcontractor shall submit as part of his compliance report a statement in writing signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training with which the bidder or prospective contractor deals with supporting information to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions

of employment under the proposed contract shall be in accordance with the purpose and provisions of this order. In the event that the union or the agency shall refuse to execute such a statement, the compliance shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Civil Rights Division may require.

PART II - Enforcement

- A. Each contracting agency shall be primarily responsible for obtaining compliance with this Executive Order with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Civil Rights Division in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this order and the rules and regulations and orders of the Civil Rights Division issued pursuant to this order. They are directed to cooperate with the Civil Rights Division and to furnish the Division such information and assistance as it may require in the performance of the Division's functions under this order. They are further directed to appoint or designate from among the agency personnel compliance officers. It shall be the duty of such officers to first seek compliance with the objective of this order by conference, conciliation, mediation or persuasion.
- B. The Civil Rights Division may investigate the employment practices of any government contractor if subcontractor of initiate such investigation by the appropriate contracting agency or determine whether or not the contractual provisions specified in this order have been violated. Such investigations shall be conducted in accordance with the procedures established by the Civil Rights Division and the investigating agencies shall report to the Civil Rights Division any action taken or recommended. The Civil Rights Division may receive and investigate or cause to be investigated complaints by employees or prospective employees of a government contractor or subcontractor which alleges discrimination contrary to the contractual provisions specified in Part I of this order. If the investigation is conducted for the Civil Rights Division by a contracting agency, that agency shall report to the Civil Rights Division what action has been taken or it's recommendation with regard to such complaint.
- C. The Civil Rights Division shall use its best efforts directly and through contracting agencies, other interested state and local agencies, contractors and all other available instrumentalities to cause any labor union engaged in work under government contracts or any agency referring workers or providing or supervising apprenticeship or training for it in the course of such work or cooperate in the implementation of the purposes of this order.
- D. The Civil Rights Division or any agency, officer or employee in the executive branch of the government designated by rule, regulation or order of the Civil Rights Division may hold such hearings, public or private, as the Division may deem advisable for compliance, enforcement of educational purposes. The Civil Rights Division may hold or cause to be held hearings in accordance with rules and regulations issued by the Civil Rights Division prior to imposing, ordering or recommending the imposition of penalties and sanctions under this order.
- E. No order for debarment of any contractor from further government contracts under this order shall be made without affording the contractor an opportunity for a hearing.

- F. **Sanctions and Penalties.** In accordance with such rules, regulations or orders as the Civil Rights Division may issue or adopt, the Civil Rights Division or the appropriate contracting agency may publish or cause to be published the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order and with the rules, regulations and orders of the Civil Rights Division.
1. Contracts may be cancelled, in whole or in part, terminated, or suspended absolutely, or continuation of contracts may be conditioned upon a program for future compliance approved by the contracting agency or the Civil Rights Division: provided that any contracting agency shall refrain from entering into further contracts, extensions or other modifications of existing contracts with any noncomplying contractor until such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this order.
 2. Under rules and regulations prescribed by the Civil Rights Division, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation and persuasion before proceedings shall be instituted under this order or before a contract shall be cancelled or terminated in whole or in part under this order for failure of a contractor or subcontractor to comply with the contract provisions of this order.
- G. This Executive Order shall become effective immediately of its issuance.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Janice K. Brewer
GOVERNOR

DONE at the Capital in Phoenix, Arizona this 20th day of October
In the Year Two Thousand and Nine and of the Independence of
the United States of America the Two Hundred and Thirty-Third.

ATTEST:

Karen Bennett

SECRETARY OF STATE