

Chapter 3.18

EQUAL EMPLOYMENT OPPORTUNITIES FOR PUBLIC WORKS CONTRACTS

Sections:

- 3.18.010** Mandatory provisions pertaining to nondiscrimination in employment and affirmative action in hiring employees in the performance of work on City public works contracts--Ineligibility of award to contractors not complying with this section.
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Section 3.18.010 Mandatory provisions pertaining to nondiscrimination in employment and affirmative action in hiring employees in the performance of work on City public works contracts--Ineligibility of award to contractors not complying with this section.

Every City public works contract ("public works contract" includes "public utilities contracts" for the purposes of this section) involving an expenditure in excess of twenty-five thousand dollars, except in cases of urgent necessity for the preservation of life, health or property as provided by Section 1109 of the Charter of the City, shall contain an affirmative action plan substantially as follows and which by the contractor's signature affixed thereto, shall constitute and be established as his affirmative action plan. No contractor or subcontractor will be eligible for an award of a City public works contract in excess of twenty-five thousand dollars, unless such contractor or subcontractor has submitted an affirmative action plan. The affirmative action plan shall be substantially as follows:

A. Public Works Contracts Included. To be eligible for an award of a City public works contract in excess of twenty-five thousand dollars, every contractor and subcontractor must submit a written affirmative action plan embodying both: (1) Goals and timetables of minority manpower utilization; and (2) Specific affirmative action steps directed at increasing minority manpower utilization by means of applying good faith efforts to carry out such steps or is deemed to have submitted such a program pursuant to subsection (C) of this section. ("Minority" is defined as a person of the following ethnic groups: Spanish surnamed American, American Negro (Black), Oriental/Asian American and American Indian.) Both the goals and timetables and the affirmative action steps must be taken in good faith to attempt to meet the requirements of this section and as set forth below for all positions which are to be utilized on the project, whether subcontracted or not.

B. Goals and Timetables. The plan must set forth as minimum ranges of goals for minority manpower utilization by the bidder and all contractors and subcontractors on each project constructed by the City in each work class and at all levels in terms of man-hours:

Until 6/30/73	5% - 8%
From 7/1/73 until 6/30/74	8% - 11%
From 7/1/74 until 6/30/75	11% - 14%
From 7/1/75 until 6/30/76	14% - 17%
From 7/1/76 until 6/30/77	17% - 20%

It is in no way intended that the goals as set forth above are to be construed as quotas; rather, they will be used as a means of measuring the progress of the affirmative action plan.

In the event that under a contract which is subject to these bid conditions any work is performed in a year later than the latest year for which acceptable ranges of minority manpower utilization have been determined herein, the ranges for 1976 -- 1977 shall be applicable to such work. In no event may a contractor or subcontractor utilize the goals, timetables or affirmative action steps required by this subsection in such a manner as to cause or result in discrimination against any person on account of race, color, religion, sex or national origin.

C. An Affirmative Action Plan. The contractor certifies and agrees that he shall immediately make a good faith effort to include within his employ the minorities in numbers proportionate with the minority composition of the population of the City as set forth hereinabove, including but not limited to the following affirmative actions:

1. He shall recruit and make efforts to obtain minorities through:
 - a. Advertising employment opportunities in minority community news media,
 - b. Notifying minority community organizations of employment opportunities,
 - c. Maintaining contact with schools with minority students to notify them of employment opportunities,
 - d. Encouraging present minority employees to refer their friends and relatives,
 - e. Promoting after school and vacation employment opportunities for minority youth,
 - f. Maintaining a file of the names and addresses of each minority worker referred to him and what action he took concerning such worker,
 - g. Notifying the affirmative action officer of the City in writing within five working days when a union with whom he has a collective bargaining agreement has failed to refer minority workers to him;
2. He shall continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfer, demotions and layoffs are made to achieve and maintain an ethnically balanced work force;
3. He shall utilize training programs and assist minority employees in locating, qualifying for and engaging in such training programs to enhance their skills and advancement;
4. He shall secure cooperation or compliance from the labor referral agency to his contractual affirmative action obligations;
5. He shall establish a person at the management level of the contracting entity to be his equal employment opportunity officer, such individual to have the authority to disseminate and enforce the company's equal employment and affirmative action policies;
6. He shall maintain such records as are necessary to determine compliance with equal employment and affirmative action obligations, and make such records available to City, state and federal authorities upon request.

D. The contractor shall make a good faith effort to contract with the minority contractors, subcontractors and vendors for services and supplies by taking affirmative actions which include but are not limited to the following:

1. He shall advertise invitations for subcontractor bids in minority community news media;
2. He shall contact minority contractor organizations for referral of prospective subcontractors;
3. He shall contact any other source likely to yield qualified minority contractors and vendors;
4. He shall purchase supplies from qualified minority vendors where practical.

E. The contractor and each subcontractor shall make a good faith effort with respect to apprenticeship and training programs to:

1. Recruit and refer minority employees to such programs;
2. Establish training programs within his company and/or his association that will prepare minority employees for advancement opportunities;
3. Abide by the requirements of the Labor Code of the State with respect to the

provision of apprenticeship job opportunities.

F. The contractor and each subcontractor shall establish written company policies, rules and procedures which shall be encompassed in a company-wide affirmative action plan for all his operations and contracts. The policies shall be provided to all his employees, subcontractors, vendors, unions and all others with whom he may become involved in fulfilling any of his contracts. The company's affirmative action plan shall encompass the requirements contained herein as a minimum, and shall be submitted to the Purchasing Division.

G. Where problems are experienced by the contractor or the subcontractor in complying with his affirmative action obligations, the contractor or subcontractor shall document his good faith effort to comply with the requirements and notify the City's affirmative action officer immediately. The affirmative action officer shall report to the City Manager and make this information available to the community relations commission. The information provided by the contractor or subcontractor shall include the following:

1. He shall state what he attempted to do, how and on what date;
2. He shall state to whom his efforts were directed;
3. He shall state the response received and date;
4. He shall state what other steps he has taken or will take to comply and when;
5. He shall state why he has been or will be unable to comply.

H. The contractor and each of his known subcontractors shall complete and file an acceptable affirmative action plan.

I. The contractor and each of his subcontractors shall submit an ethnic composition of the company's total work force (by employees).

J. No contract or subcontract shall be executed until the appropriate awarding authority of the City, and the federal funding agency (if federal funds are involved), has determined that such contractor or subcontractor has executed and filed with the City his affirmative action plan.

K. It shall be no excuse that the union with which the contractor or the subcontractor has a collective bargaining agreement providing for referral, exclusive or otherwise, failed to refer minority employees.

L. Subject to this subsection the contractor and subcontractor shall submit manpower utilization reports as required by the City, to be specified in the notice inviting bids.

M. Where the contractor or his subcontractor has failed to comply with the affirmative action requirements contained in this section, any and all sanctions allowed by law may be imposed upon the contractor or any subcontractor.

N. Where the contractor or his subcontractor has failed to comply with the affirmative action requirements contained in this section, the City Manager shall notify the contractor or his subcontractor that the contractor or subcontractor shall not be eligible to bid on any future City public works contracts unless and until the contractor or subcontractor can show cause to the City Manager that he can comply with the affirmative action requirements contained in this section. Any contractor or subcontractor aggrieved by a determination by the City Manager may, within ten days after the date of mailing of the notice of noneligibility to the contractor by the City Manager, appeal to the City Manager for a reconsideration by the City Manager of his determination. Any contractor or subcontractor who so appeals and remains unsatisfied with the City Manager's determination may, within five days after the decision is made by the City Manager, appeal to the City Council for a modification or reversal of the City Manager's determination. The City Council may affirm, reverse or modify the decision of the City Manager and its decision shall be final. (Ord. 6393 §§ 17, 18, 1997; Ord. 4727 § 1, 1979; Ord. 4089 §§ 1, 2, 1974; Ord. 3978 § 1 (part), 1972)

Section 3.18.020 Administrative rules and regulations.

The City Manager may establish administrative rules and regulations to implement

Section 3.18.010, which rules and regulations shall be approved by the City Council and be on file with the City Clerk's office and the City Manager's office. (Ord. 3978 § 1 (part), 1972)

Section 3.18.030 Severability.

If any section, subsection, sentence, clause or other phrase of this chapter is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the validity or constitutionality of the remaining portions of this chapter.

The City Council declares that it would have passed this chapter, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more of these sections, subsections, sentences, clauses or phrases thereof are declared unconstitutional or invalid. (Ord. 3978 § 1 (part), 1972).