

RESOLUTION No. 207437

Adopted on FEB 27 1973

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the Affirmative Action Program for Contractors doing Business with The City of San Diego as approved by Resolution No. 204843 is hereby amended to read in conformance with the Program on file in the office of the City Clerk as Document No. 742793.

APPROVED: JOHN W. WITT, City Attorney

By Federico Castro  
Federico Castro, Deputy

FC:lc  
1/30/73

AFFIRMATIVE ACTION PROGRAM FOR CONTRACTORS  
DOING BUSINESS WITH THE  
CITY OF SAN DIEGO

This Affirmative Action Program is designed to require contractors awarded City contracts for construction, alteration, maintenance or demolition, their subcontractors and suppliers, to take affirmative action to improve employment of minorities in the construction industry.

The goal of this Affirmative Action Program shall be the creation of increased employment opportunities by Contractors working on City construction contracts and City-assisted construction contracts within the City of San Diego for Mexican-Americans, Blacks, Filipinos, American Indians, and Asians/Oriental in each construction and related craft so that, at the beginning of the fifth year of the program, a level of employment by minorities approximately equal to the proportion of each minority group in the population of the City of San Diego shall have been attained. In achieving this objective, it shall be proper to consider the composition of the contractor's work force within the City proper while operating under affected construction contracts, or, in lieu thereof, the contractor's entire work force utilized within the County of San Diego.

The City shall establish a minimum level goal for each of the first two years of this Program, with each level being a percentage of the minority proportion of the population for that year: the percentage shall be 20% for the first year, and 40% for the second year. Prior to the

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third year of this Program, the City shall hold hearings for the purpose of establishing the minimum level goals for the third, fourth, fifth and subsequent years in light of its findings regarding the following factors:

- The proportion of each minority group in the population of the City of San Diego.
- The racial and ethnic composition of the work force.
- The anticipated expansion, contraction and turnover of and in the work force comprising the building trades.
- The cooperation of the construction industry and building trades in programs to improve racial and ethnic minority employment in such industry and trades.

Each contractor awarded a construction contract by the City under this Affirmative Action Program, his subcontractors and suppliers, shall be required to comply with the Program.

This Program shall be incorporated by reference in all construction contracts let by the City for which bidding is required by State law. Any bidder who does not comply with the provisions of this Program shall be deemed to be a nonresponsive bidder.

Contractors, subcontractors and suppliers who do not have a work force sufficiently large to be divided into all

of the minority population percentages may be exempted by employing that portion which is reasonably possible, subject to approval by the Contract Compliance Officer. (See Exhibit A.)

(A) COMPLIANCE WITH FEDERAL AND STATE LAWS.

Each bidder shall submit, with his bid, certification that he is in compliance with the Civil Rights Act of 1964, Executive Order 11246, the California Fair Employment Practice Act, California Labor Code Section 1777.5, and any other applicable federal and state laws and regulations relating to equal opportunity employment, including laws and regulations hereinafter enacted. Such certification shall be on forms provided by the City.

(B) COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAM.

(1) Each bidder shall submit with his bid, certification that he will comply with the provisions of this Affirmative Action Program. This form, to be provided by the City, shall include an Employment Data Sheet covering the contractor's total organization within the County of San Diego; certification of the authenticity of present employment data; and, an agreement to make good faith efforts to meet the current minimum level goals of the Affirmative Action Program for the given calendar year as part of the contract.

(2) Contractors, subcontractors and suppliers shall submit through the Employment Data Sheet covering his total work force, evidence of minority employment, by craft, in his total organization.

(3) The City shall maintain a current list of contractors, subcontractors and suppliers who have been found by the City Council to be in noncompliance with this Program. Upon request, the City shall supply this list to prospective contractors.

(4) Any bidder whose work force as delineated in this Program does not meet the current minimum goals of this Program may be determined to be in noncompliance if his employment records indicate that his hiring practices subsequent to the effective date of this Program have not tended to meet the objectives established for this Program. No employer shall be required to discharge members of his work force in order to increase the number of minority workers employed and this factor shall be accorded appropriate consideration.

(C) COMPLIANCE BY SUBCONTRACTORS  
AND SUPPLIERS.

(1) Each subcontractor of and supplier to the bidder shall be required to comply with this Program as though he were the bidder or contractor, unless he is part of an exempted group. (See Exhibit A.) Each subcontractor and supplier shall submit to the bidder a certificate that he will make good faith efforts to comply with the provisions of

the Affirmative Action Program. This form, to be provided by the City, shall include an Employment Data Sheet covering the subcontractor's or supplier's total organization within the County of San Diego; certification of the authenticity of present employment data; and, an agreement to make best faith efforts to meet the current minimum level goals of the Affirmative Action Program for the given calendar year as part of the contract. The apparent successful bidder shall provide to the City these required certificates for all listed subcontractors and suppliers prior to award of the contract. The apparent successful bidder shall provide to the City these required certificates for all nonlisted subcontractors and suppliers ten (10) days prior to their participation in the work.

(2) Any subcontractor or supplier of the prime contractor awarded the bid will be required to meet the same requirements placed on the prime contractor as though such subcontractor or supplier were the prime contractor on the City construction contract. Exempted subcontractors or suppliers are not affected by this section. (See Exhibit A.)

(3) When a subcontractor is not recognized as such by the City construction contract, all workmen providing service on the construction project shall be considered employees of the prime contractor for the purpose of this Program.

(D) AFFIRMATIVE ACTION PLAN -  
MINIMUM AFFIRMATIVE ACTION  
COMPLIANCE - GOOD FAITH EFFORT.

The City of San Diego adopts the following City of San Diego Affirmative Action Plan which sets forth those minimum efforts to be undertaken by a contractor in complying with the Affirmative Action Program.

(1) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

(2) The contractor shall maintain a file of the name and address of each minority worker referred to him and what action was taken with respect to each such referred worker. If such worker was not sent to the union hiring hall for referral or if such worker was not employed by the contractor, the contractor's file should document this and the reasons therefor.

(3) The contractor shall notify the City's Contract Compliance Officer when the union or unions with whom the contractor has a collective bargaining agreement has not referred to the contractor a minority worker sent by the contractor or the contractor has other information that the union referral process has impeded him in his effort to meet his goal.

(4) The contractor shall, when possible, participate in training programs in the area, especially those funded by the Department of Labor.

(5) The contractor shall disseminate his Affirmative Action policy within his own organization by including it in any policy manual, by publicizing it in company newspapers and annual reports, by conducting staff, employee and union representatives' meetings to explain and discuss the policy, by posting the policy, and by specific review of the policy with minority employees.

(6) The contractor shall disseminate his Affirmative Action policy externally by informing and discussing it with all recruitment sources, by advertising in news media, specifically including minority news media, by notifying and discussing it with all subcontractors and suppliers.

(7) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority organizations, and minority training organizations within the contractor's recruitment area.

(8) The contractor shall make specific efforts to encourage present minority employees to recruit their friends and relatives.

(9) The contractor shall make good faith efforts to insure that all employee specifications, selection requirements, tests, and other employee recruitment or evaluation procedures do not discriminate against minorities in application or effect.



(10) Where reasonable, the contractor shall develop on-the-job training opportunities and participate and assist in any association or employer group training programs relevant to the contractor's employee needs.

(11) The contractor shall continually inventory and evaluate minority personnel for promotion opportunities and encourage minority employees to seek such opportunities.

(12) The contractor shall make sure that seniority practices, job classifications, and other employee practices and classifications do not have an unlawfully discriminatory effect in any respect.

(13) The contractor shall make certain that all facilities and company activities are nonsegregated.

(14) The contractor shall continually monitor all personnel activities to insure that the intent of this Affirmative Action Program is being carried out.

(15) The contractor shall endeavor to solicit bids for subcontracts from available minority subcontractors and suppliers.

The contractor's, subcontractor's and supplier's commitment to attain minimum level goals of minority manpower utilization as required by the Affirmative Action Program shall constitute a commitment to make a good faith effort to comply with the intent of this Affirmative Action Program. If a contractor, subcontractor, or supplier has failed therein, "good faith" compliance will be determined

in accordance with the extent of the contractor, subcontractor or supplier efforts pursuant to the guidelines of this Affirmative Action Plan, to meet the Affirmative Action Program goals and objectives.

(E) CONTRACTOR'S DUTIES.

(1) If the contractor's minority work force, and the distribution of such work force by craft, is equal to or exceeds the minimum level goals established for each year of the Program, he will not be required to demonstrate the efforts he had made under this Program, for any period during which he reaches or exceeds the minimum level goals.

(2) The contractor shall maintain and permit access to updated employment records and information with respect to all employees directly or indirectly performing work while under City construction contract. The records shall set forth the distribution of the contractor's total work force within the County of San Diego, including all racial minority groups by craft or trade classification, information relating to apprentices and trainees, and shall indicate the monthly average man-days worked by employees of each racial minority group.

(3) The contractor shall send to each labor union or employee organization representative with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the City, advising said union or representative of the contractor's commitments

under this section, and shall post copies of the notice in conspicuous places accessible to employees and applicants for employment.

(4) The inability of the contractor to recruit and hire competent foremen, journeymen, apprentices, or trainees of minority groups from labor unions shall not exempt the contractor from complying with this Affirmative Action Program but shall require a showing pursuant to section F herein. "Competent" is defined as possessing the requisite ability and skill to perform the duties and tasks required of the position.

(5) The contractor shall maintain records detailing his compliance with the requirements and objectives of this Program, and shall submit to the City a report detailing such compliance at least monthly between the award of the contract and the completion of the work thereunder. The contractor shall require similar information from his subcontractors and suppliers.

(F) FAILURE OF CONTRACTOR TO  
COMPLY WITH PROGRAM.

In the event that the contractor has failed to meet the minimum level goals or otherwise fulfill his plan for complying with the Affirmation Action Program, and desires to present evidence that failure to comply or meet such level goals was through no fault of his own, but was due to the inability to obtain competent minority employees (see section (E)(4))

after making all reasonable efforts to do so from standard sources such as public advertisements, unions, employment or other agencies capable of providing such employees, he shall submit written evidence as required by the City that he has made such efforts and the minority employees have not been available by such means.

(G) CORRECTING VIOLATIONS.

After a determination by the City that a contractor, subcontractor or supplier has failed to comply with the terms of this Program while operating under a City construction contract or has committed a violation of any applicable state or federal law concerning equal employment practices, the City shall serve written notice of such violation on the contractor or his representative. The contractor shall be responsible for notifying any subcontractors or suppliers involved in the violation, of such violation.

Upon request by the City, the contractor determined to be in violation shall meet with the City representatives in order to determine a method of correcting the violation and the time period within which such remedy shall be effected. If the remedy is not agreed upon within ten (10) days of the above notice, the City shall prescribe the method by which the violation shall be corrected and shall notify the contractor in writing of such method. The contractor shall be responsible that his subcontractors or suppliers correct their violations.

If the contractor has not corrected the violations in the manner prescribed by such second notice within seven (7) days after receipt of such notice, unless an extended period is permitted in writing by the City, the City may impose one or more of the sanctions provided in this Program.

(H) SANCTIONS.

Upon a determination by the City that a contractor, subcontractor or supplier has violated any portion of this Program the City may impose one or more of the following sanctions:

(1) Find that the contractor is not a responsible bidder for any future contracts until he has demonstrated to the satisfaction of the City that he has made good faith effort to improve minority employment and will comply with the Affirmative Action Program in effect at the time of any future bids; in no event shall he be deemed a responsible bidder on contracts advertised within one year from such finding, unless earlier approved by the City Council.

(2) Terminate the entire contract effective at a time specified by the City.

(3) Terminate any portion of the contract or work thereunder.

(4) Direct the prime contractor to terminate all or part of the contract with any subcontractor or supplier determined to be in violation of this Program.

(5) Find that any subcontractor or supplier in violation of this Program is not a responsible party to a City contract and refuse to accept bids from prime contractors who intend to use such subcontractors or suppliers in performing City contracts, until the subcontractor or supplier has demonstrated to the satisfaction of the City that he has made a good faith effort to improve minority employment and will comply with the Affirmative Action Program in effect at the time of any future bids; in no event shall said subcontractor or supplier be deemed a responsible party to any City contract advertised within one year from such finding unless earlier approved by the City Council.

(6) It is the intent of this Program to enact each provision of this Program independent of every other provision and therefore should any part or language in it be declared invalid the balance of the Program shall be of full force and effect.

Revised  
2/23/73

ADMINISTRATIVE PROCESS. The City Manager shall be responsible for the administration of the Affirmative Action Program and shall appoint a Contract Compliance Officer. In the event a contractor fails to comply with the requirements of the Affirmative Action Program, the Contract Compliance Officer shall follow the procedure provided by the Program for the correction of violations. If the contractor fails to correct the violation, the City Manager, after consultation with the City Attorney, shall recommend to the City Council the imposition of one or more of the sanctions provided for by the Program.

EXEMPTIONS. Suppliers of materials whose businesses are located outside the boundaries of San Diego County and who do not maintain an office in San Diego County are exempted from compliance with the provisions of the Affirmative Action Program. Suppliers of materials which are incidental to the performance of work and are not set forth in the specifications of the contract are also exempted from compliance.

WITHDRAWAL OF EXEMPTIONS. Exemptions set forth herein may be withdrawn pursuant to a recommendation of the Contract Compliance Officer and a finding by the City Manager that the exemption is having a substantial and adverse effect on this Affirmative Action Program.

EXHIBIT A

Passed and adopted by the Council of The City of San Diego on \_\_\_\_\_  
by the following vote:

FEB 27 1973

RECEIVED  
CITY CLERK'S OFFICE  
1973 JAN 31 PM 12:04  
SAN DIEGO, CALIF.

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Landt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Martinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Bates	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

EDWARD NIELSEN

City Clerk of The City of San Diego, California.

By Mary Ann Meuse Deputy.

Office of the City Clerk, San Diego, California

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