

ORDINANCE NUMBER O- 18154 (NEW SERIES)
ADOPTED ON JAN 23 1995

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 2,
OF THE SAN DIEGO MUNICIPAL CODE BY ADDING
DIVISION 27 RELATING TO EQUAL EMPLOYMENT
PROGRAM.

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

Section 1. That Chapter II, Article 2, of the San Diego
Municipal Code be and the same is hereby amended by adding
Division 27, Sections 22.2701 through 22.2715 to read as follows.

DIVISION 27

EQUAL EMPLOYMENT PROGRAM

SEC. 22.2701 PURPOSE AND INTENT

The overall objective of the City's Equal
Employment Opportunity ("EEO") Program is to assure
that contractors doing business with or receiving funds
from the City will not engage in unlawful
discriminatory employment practices against any
employee or applicant for employment because of race,
religion, color, gender, ancestry, disability, medical
condition, age or national origin. Such employment
practices include, but are not limited to, the
following: employment, promotion or upgrading,
demotion or transfer, recruitment or recruitment
advertising, layoff or termination, rate of pay or
other forms of compensation, and selection for

training, including apprenticeship.

SEC. 22.2702 DEFINITIONS

Unless stated otherwise, the following definitions apply to this Division:

"City" means The City of San Diego and those agencies, boards, commissions and corporations authorized to act on behalf of, or as an agent for, the City of San Diego.

"Contract" means an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded by or on behalf of the City.

"Contractor" means any person, firm, partnership, corporation, or combination thereof, who submits a bid or enters into a contract with department heads and officers empowered by law to enter into contracts on behalf of the City for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of, or collected by, the City.

"County Labor Force Availability Data" means data provided by the county where the Contractor's business is domiciled which describes the availability of minorities and females in a designated labor area having requisite skills in specific occupational categories.

"Deficient Work Force" means the work force of a Contractor determined by the City to have a statistically significant under utilization of ethnic or gender groups in any occupational category.

"Equal Employment Opportunity Plan" means a document prepared by a Contractor in accordance with a form and format supplied by the City which describes the Contractor's plan of action to correct a Deficient Work Force.

"Gender" means the character of being male or female.

"Program Manager" means the Program Manager for the City's Equal Employment Opportunity Program or his or her designee.

"Work Force Analysis" means a comparison of a Contractor's Work Force Report with applicable County Labor Force Availability Data.

"Work Force Report" means a report, in a format supplied by the City but compiled by the Contractor, of the Contractor's total administrative work force which indicates the number of males and females in each identified ethnic group by occupational category.

SEC. 22.2703 SCOPE

This Division applies to all Contractors except:

(a) Contractors who do less than a total of \$10,000 worth of business with the City during the preceding twelve (12) months or who have less than a

total of fifteen (15) employees.

(b) Contracts to which any city (other than The City of San Diego), county, district or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is a party.

(c) Nonprofit charitable, educational, or religious associations or corporations, as evidenced by records on file with the City to be compiled for purposes of this Division in accordance with procedures established by the City Manager.

(d) Emergency contracts, if a written partial or full waiver is granted by the City Manager. The City Manager may grant a partial or full waiver from the requirements of this Division for an emergency contract only to the limited extent necessary in order to expedite the award of such Contract. For purposes of this Section, the term "emergency" has the same meaning as in San Diego City Charter section 94.

SEC. 22.2704 Mandatory Nondiscrimination Contract Clause

Every Contract shall contain a nondiscrimination clause which shall read as follows:

Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability, medical condition, age, or national origin. Contractor shall ensure that applicants are employed and employees are

treated equally during employment, without regard to their race, color, religion, ancestry, gender, disability, medical condition, age or national origin.

SEC. 22.2705 DUTY TO SUBMIT WORK FORCE REPORTS

(a) If a Contract is competitively solicited, a Contractor shall submit a Work Force Report to the City concurrent with the submittal of the Contract bid documents, response to Request for Proposal ("RFP") or response to Request for Qualifications ("RFQ").

(b) If a Contract is not competitively solicited, the Contractor shall submit a Work Force Report before tendering the signed Contract documents to the City for signature.

SEC. 22.2706 NOTICE AND ORDER OF DEFICIENT WORK FORCE

(a) Within five (5) working days of the City's receipt of a Work Force Report from a Contractor, the Program Manager shall conduct a Work Force Analysis in order to determine whether the Contractor's total work force exhibits a statistically significant under utilization of any identified ethnic or gender groups in any occupational category. If, after conducting a Work Force Analysis, the Program Manager has reasonable cause to believe that a Contractor has a Deficient Work Force, the Program Manager shall have five (5) additional working days to issue and serve a Notice and Order of Deficient Work Force ("Deficient Work Force Notice") to the Contractor by any one of the methods of service listed in Section 11.0301 of Chapter I of this

Code.

(b) The Deficient Work Force Notice shall contain the Program Manager's determination that the Contractor has a Deficient Work Force, shall describe the nature of the statistically significant under utilization in the Contractor's work force giving rise to that determination and shall negotiate a plan to correct the deficiency.

SEC. 22.2707 DUTY TO SUBMIT EQUAL OPPORTUNITY PLAN

A Contractor shall submit an Equal Employment Opportunity Plan to the City within thirty (30) working days of being properly served with a Deficient Work Force Notice.

SEC. 22.2708 RIGHT TO APPEAL DEFICIENT WORK FORCE NOTICE

(a) A Contractor may appeal a decision to issue a Deficient Work Force Notice to the Citizens Equal Opportunity Commission ("Commission") by filing a Notice of Appeal with the Program Manager within ten (10) working days of being properly served with a Deficient Work Force Notice.

(b) If a Contractor does not file a Notice of Appeal within ten (10) working days of proper service of the Deficient Work Force Notice, the Contractor shall be deemed to have waived the right to appeal the Deficient Work Force Notice and the Deficient Work Force Notice shall ripen into a final administrative order of the City.

SEC. 22.2709 PROCEDURES FOR APPEAL OF DEFICIENT WORK FORCE NOTICE

(a) No earlier than five (5) working days and no later than twenty (20) working days after receipt of a Notice of Appeal, the Program Manager shall calendar a hearing before the Commission where the Program Manager and the Contractor may present evidence to assist the Commission in making the following recommendations to the City Manager:

(1) Whether the Contractor has a Deficient Work Force; and,

(2) If the Contractor has a Deficient Work Force, whether the Deficiency was caused by discriminatory hiring practices of the Contractor; and,

(3) Whether extenuating circumstances or a compelling reason exists to excuse the Contractor from the requirement to submit an Equal Employment Opportunity Plan to the City.

(b) The Commission shall make a formal recommendation to the City Manager regarding whether to affirm, rescind or modify the Deficient Work Force Notice issued by the Program Manager.

(c) No later than ten (10) working days after the City Manager receives a recommendation from the Commission, the City Manager shall issue and serve upon the Contractor an administrative order affirming, rescinding or modifying the Deficient Work Force Notice issued by the Program Manager.

(d) The decision of the City Manager shall be the final administrative decision of the City, judicially reviewable only in accordance with California Code of Civil Procedure Section 1094.6.

SEC. 22.2710 DUTY TO COMPLY WITH EQUAL EMPLOYMENT OPPORTUNITY PLAN

A Contractor who has submitted an Equal Employment Opportunity Plan to the City shall use best efforts to comply with the Equal Employment Opportunity Plan and remedy the condition which has caused the Deficient Work Force.

SEC. 22.2711 FAILURE TO COMPLY WITH EQUAL EMPLOYMENT OPPORTUNITY PLAN

(a) If the City has reasonable cause to believe that a Contractor has failed to comply in good faith with an Equal Employment Opportunity Plan, the Program Manager shall issue and serve a Notice and Order of Employment Plan Violation ("Plan Violation Notice") to the Contractor by any one of the methods of service listed in Section 11.0301 of Chapter I of this Code.

(b) The Plan Violation Notice shall describe how the Equal Employment Opportunity Plan has been violated.

(c) The Plan Violation Notice shall describe all remedial actions required to permanently correct the violation and establish time frames for completion.

(d) The Plan Violation Notice may contain an administrative penalty, if appropriate, and shall identify the factors used by the Program Manager in

determining the amount of the administrative penalty.

SEC. 22.2712 RIGHT TO APPEAL PLAN VIOLATION NOTICE

(a) A Contractor may appeal a decision to issue a Plan Violation Notice to the Commission by filing a Notice of Appeal with the Program Manager within ten (10) working days of being properly served with a Plan Violation Notice.

(b) If a Contractor does not file a Notice of Appeal within ten (10) working days of proper service of the Plan Violation Notice, the Contractor shall be deemed to have waived the right to appeal the Plan Violation Notice and the Plan Violation Notice shall ripen into a final administrative order of the City.

SEC. 22.2713 PROCEDURES FOR APPEAL OF PLAN VIOLATION NOTICE

(a) No earlier than five (5) working days and no later than twenty (20) working days after receipt of a Notice of Appeal, the Program Manager shall calendar a hearing before the Commission where the Program Manager and the Contractor may present evidence to assist the Commission in making the following recommendations to the City Manager:

(1) Whether the Contractor has failed to comply in good faith with a previously submitted Equal Employment Opportunity Plan.

(2) Whether the administrative penalty or corrective actions ordered by the Program Manager are reasonable.

(b) The Commission shall make a formal recommendation to the City Manager regarding whether to affirm, rescind or modify the Plan Violation Notice issued by the Program Manager.

(c) No later than ten (10) working days after the City Manager receives a recommendation from the Commission, the City Manager shall issue and serve upon the Contractor an administrative order affirming, rescinding or modifying the Plan Violation Notice issued by the Program Manager.

(d) The decision of the City Manager shall be the final administrative decision of the City, judicially reviewable only in accordance with California Code of Civil Procedure section 1094.6.

SEC. 22.2714 PENALTIES

(a) The City Manager may assess and use any legally available means to collect an administrative penalty of five hundred dollars (\$500) per day from any Contractor who willfully fails to timely submit an Equal Employment Opportunity Plan to the City after the time to appeal a Deficient Work Force Notice has run. Penalties shall continue to accrue on a daily basis until such time that the Contractor submits the Equal Employment Opportunity Plan to the City. However, the City Manager shall not assess any administrative penalties for any period during which a legal challenge to the Deficient Work Force Notice is pending in a court of law.

(b) The City Manager may assess and use any legally available means to collect an administrative penalty of up to One Thousand Dollars (\$1,000) for each and every day a Contractor is in violation of the Equal Employment Opportunity Plan. In determining the amount of an administrative penalty to be assessed in a Plan Violation Notice, if any, the Program Manager, the Commission and the City Manager may consider some or all of the following factors:

- (1) The duration of the violation.
- (2) The frequency or recurrence of the violation.
- (3) The seriousness of the violation.
- (4) The history of the violation.
- (5) The Contractor's conduct after issuance of the Plan Violation Notice.
- (6) Any other factors that justice may require.

(c) A violation of the mandatory nondiscrimination clause required pursuant to Section 22.2704 shall be considered a material breach of any Contract and nothing contained in the Contract or this Division shall be construed in any manner so as to prevent the City from pursuing any other remedies or collateral action that may be available by law, including termination of the contract or initiation of debarment proceedings.

SEC. 22.2715 ADMINISTRATIVE REGULATIONS

The City Manager shall promulgate rules and regulations necessary for the implementation of the Equal Employment Opportunity Program set forth in this Division.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



Sharon A. Marshall
Deputy City Attorney

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