

ORDINANCE NUMBER O- 18173 (NEW SERIES)

ADOPTED ON MAY 01 1995

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 2, DIVISION 27, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 22.2701 THROUGH 22.2705; AMENDING AND RETITLING SECTIONS 22.2706 THROUGH 22.2708; AND BY REPEALING SECTIONS 22.2709 THROUGH 22.2715 RESPECTIVELY, ALL RELATING TO EQUAL EMPLOYMENT OPPORTUNITY PROGRAM.

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

Section 1. That Chapter II, Article 2, Division 27, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 22.2701 through 22.2705 to read as follows:

DIVISION 27

EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM

SEC. 22.2701 PURPOSE AND INTENT

The overall objective of the City's Equal Employment Opportunity ("EEO") Program is to ensure that contractors doing business with or receiving funds from the City will not engage in unlawful discriminatory employment practices prohibited by State or Federal law. 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 is selected to enter into, or actually 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.

"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.

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

"Program Manager" means the Program Manager for the City's Equal Opportunity Contracting 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 work force which indicates the number of males and females in each identified ethnic group by occupational category.

SEC. 22.2703 SCOPE

Except as provided in Section 22.2704, this Division applies to all Contractors except:

(a) Contractors and subcontractors 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, except that Contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring.

(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 except that Contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring. 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

Notwithstanding the provisions of Section 22.2703, every Contract shall contain a nondiscrimination clause

which shall read as follows:

Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this Program. Nothing in this Section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

SEC. 22.2705 DUTY TO SUBMIT REPORTS

(a) If a Contract is competitively solicited, after the lowest responsible bidder has been determined and prior to the execution of the contract, the apparent low bidder shall submit to the Equal Opportunity Contracting Program a Work Force Report, on a City form, or an Equal Employment Opportunity Plan approved by the Program Manager.

If a Contract is not competitively solicited, the Contractor shall submit to the Equal Opportunity Contracting Program a Work Force Report or an Equal Employment Opportunity Plan approved by the Program Manager prior to tendering the signed Contract documents to the City for signature.

(b) Staff will conduct a work force analysis on all Work Force Report submittals to determine whether or not an Equal Employment Opportunity Plan is required. If an Equal Employment Opportunity Plan is required, the Contractor will

submit a plan for approval by the Program Manager.

(c) Any Equal Employment Opportunity Plan approved by the City shall not include quotas, goals or timetables for increasing women and minority employment and will not require terminating or laying off existing employees.

(d) If the apparent low bidder or Contractor does not submit either a Work Force Report or Equal Employment Opportunity Plan as required by this section, for purposes of awarding the Contract only, the City Manager will ensure an administrative hearing is conducted by an independent hearing officer to determine if the contract should be awarded in accordance with City, State, and Federal law.

Section 2. That Chapter II, Article 2, Division 27, of the San Diego Municipal Code be and the same is hereby amended by amending and retitling Sections 22.2706 through 22.2708 to read as follows:

SEC. 22.2706 DUTY TO COMPLY WITH EQUAL EMPLOYMENT OPPORTUNITY PLAN

A Contractor for whom an Equal Employment Opportunity Plan has been approved by the City shall use best efforts to comply with that Equal Employment Opportunity Plan.

SEC. 22.2707 REVIEWS

(a) The Program Manager shall conduct periodic reviews of Contractors to ensure that unlawful discrimination is not being practiced and Equal Employment Opportunity Plans are implemented.

(b) If the City Manager determines, after review, that

the Contractor has not implemented their Equal Employment Opportunity Plan and/or practices unlawful discrimination and corrective action has not occurred by the Contractor after sufficient notice, the City Manager may recommend termination of the contract and debarment to the City Council.

SEC. 22.2708 POLICIES AND PROCEDURES


The City Manager shall promulgate policies and procedures necessary to implement this Division.

Section 3. That Chapter II, Article 2, Division 27, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 22.2709 through Section 22.2715.

Section 4. 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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