



DEPARTMENT OF
PUBLIC WORKS

OFFICE OF THE DIRECTOR

CITY OF SACRAMENTO
CALIFORNIA

February 8, 1994

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Law Legislation Committee
Sacramento, CA

Honorable Members in Session

SUBJECT: AFFIRMATIVE ACTION REQUIREMENTS

LOCATION AND COUNCIL DISTRICT: CITY WIDE

RECOMMENDATION:

his report recommends that the Law and Legislation Committee review and recommend approval of the Affirmative Action Requirements and forward to the City Council for adoption.

CONTACT PERSON: GREGORY P. HOVIOUS, CONTRACT OFFICER, 433-6377

FOR COMMITTEE MEETING: February 15, 1994

SUMMARY:

This report was heard by the Committee on January 18, 1994. As directed by the Committee, the proposed Affirmative Action Requirements have been presented to the Commission on Equal Opportunity in Construction. A recommendation for approval and forwarding to the full Council is requested.

BACKGROUND:

The proposed Affirmative Action Requirements for City funded Public Projects (AAR) have been modified to incorporate comments received from various community based organizations, organized labor, the Commission on Equal Opportunity in Construction (CEOC) and Office of Equal Opportunity in Construction (OEOC). Attachment 1 is the product of these changes. An oral presentation of those changes will be made.

COMMITTEE ACTION

On January 20, 1994, the proposed AAR's were presented to the CEOC for future comment and input. The CEOC is considering the AAR's and will convene a special meeting on February 10, 1994 at 5:00 PM to discuss the AAR's more fully. As this report must be submitted prior to that hearing, the CEOC's full comments are not incorporated into this report. The CEOC will appear at this Committee's meeting and make comments, either orally or in writing.

FINANCIAL CONSIDERATIONS:

The City of Sacramento expended \$37,478 with SHRA (OEOC) for Affirmative Action assistance in 1993. The total funding for OEOC was \$124,928 (County of Sacramento \$62,464 and SHRA \$24,986). Negotiations for 1994 are underway. Currently, the 1994 funding request for OEOC is \$170,976. Using the same percentage breakdown, the City's portion would be \$51,292. As negotiations progress, staff will advise Council.

Construction bids will likely increase as well to cover the cost of additional administration for the AAR. Staff costs may also increase. The amount of these additional costs is unknown.

POLICY CONSIDERATIONS:

Adoption of the programs recommended herein are consistent with expressed Council direction and the Sacramento City Code, as well as established State and Federal laws.

MBE / WBE EFFORTS

The programs herein do not directly effect MBE / WBE issues. We can expect an increase in minority and women employees and Local Business Enterprises, some of which may be MBE / WBE.

Respectfully submitted,



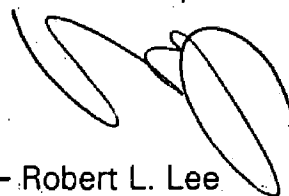
Duane Wray
Facility Manager

RECOMMENDATION APPROVED:

APPROVED



David R. Martinez
Deputy City Manager



FOR Robert L. Lee
Deputy Director Public Works

AFFIRMATIVE ACTION REQUIREMENTS

Minority employee Workforce goal is 20% Woman employee Workforce goal is 6.9%

The City of Sacramento, in conjunction with the County of Sacramento and the Sacramento Housing and Redevelopment Agency (SHRA) has established the OFFICE OF EQUAL OPPORTUNITY IN CONSTRUCTION, hereinafter referred to as OEOC. OEOC is established to assist contractors by providing technical assistance and monitoring compliance in meeting these Affirmative Action Requirements. The City requires all contractors and all subcontractors to carry out the requirements as specified in this contract. The Contractor is required to take Affirmative Action for all minority groups, both male and female, and all women, both minority and non-minority. In cases where minority women are employed by a contractor, the percentage may be credited towards the Minority employee Workforce goal or towards the Woman employee Workforce goal, but may not be credited to both. The Contractor may be in violation if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation if a specific minority group of women is underutilized)

DEFINITIONS:

As used herein:

- A. "Awarding Agency" means the agency responsible for contract enforcement.
- B. "Workforce" means the contractors aggregate working Workforce hours for Construction Trades within the County of Sacramento (Excluding clerical staff)
- C. "Minority" includes:
 - (1) Black Americans (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic Americans (all persons of Mexican, Puerto Rican, Cuban, Central or South American or of Spanish Culture or origin, regardless of race);
 - (3) Asian or Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands); and
 - (4) Native American (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

REQUIREMENTS

1. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work in a value in excess of \$10,000 involving any construction trade a copy of these Affirmative Action Requirements shall be physically attached.
2. Any Contractor or subcontractor who is not in compliance with the goals set forth above shall implement the specific Affirmative Action standards provided in paragraph's 3a through 3m herein. The goals set forth above are expressed as percentages of the total hours of employment and training attributable to minority and female utilization. The Contractor is expected to make uniform progress through a conscientious endeavor toward meeting and maintaining the goals in each craft during the period of this contract.
3. The Contractor by affixing its signature to this contract is accepting the terms of this agreement and the Affirmative Action obligations under this contract. Contractors must be able to demonstrate their participation in and compliance with the provisions of these Affirmative Action Requirements. Any Contractor who does not meet the Affirmative Action Goals shall document these efforts fully and shall implement Affirmative Action steps at least as extensive as set forth below. Each Contractor or Subcontractor is individually required to make conscientious endeavor (as defined in paragraph's 3a through 3m herein) to achieve each goal in each tr.

The evaluation of the Contractor's compliance with these specifications shall be based upon verifiable data that directly demonstrates efforts to achieve maximum results from its actions.

- a. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain Affirmative Actions, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Contact the OEOC Program Coordinator for referrals from the established pool, for all employment opportunities, before making a selection for hire. If OEOC is unable to provide an employee who has the requested skill level or trade requirement, the contractor may provide notification of job vacancy to other recruitment sources. The contractor shall maintain a record of the other recruitment sources' and responses.
- c. Continue outreach and maintain a current file of the names, addresses and telephone number of each minority and female off-the-street applicant and minority or female referral from a union or other recruitment source, and provide these referrals to the OEOC Program Coordinator as they become available. Contractor shall document what action was taken concerning each such individual. If such individual was sent to the union hiring hall for referral and was not referred to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented with the reason therefor, along with whatever additional actions the Contractor may have taken. This file shall be available for the Awarding Agency to inspect, upon request.
- d. If affiliated with a local Union Hall for a specific trade and the local hall is in compliance with these Affirmative Action Requirements, and the hall working membership is in compliance with these goals, then each signatory Contractor shall be deemed to be in compliance. If affiliated with an approved State of California, Division of Apprenticeship Standards program for training apprentices to a specific trade, and the program is in compliance with the California Apprenticeship Councils "California Plan," then each Contractor employing indentured apprentices from the program shall also be deemed to be in compliance. OEOC will maintain a quarterly reporting of ethnic and gender make-up of each trade, by each local hall and training program Apprenticeship Training Committee (ATC). If the information is not provided by the local hall or the ATC on a quarterly basis, it becomes a material provision of this contract, that the contractor agrees to provide the required report. If the local hall or ATC is found not to be in compliance, or will not provide the required documents, then each Contractor or Subcontractor shall take direct action to ensure Affirmative Action Compliance or exercise a conscientious endeavor to attain the goals. The failure of a local Union Hall, or ATC to attain these Affirmative Action Requirements, or the terms and conditions of any collective labor agreement, shall not excuse the Contractor or any Subcontractor from compliance with these requirements.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. Quarterly, the Contractor shall provide notice of participation in these programs to the Awarding Agency.
- f. Establish and implement a company Affirmative Action plan identifying such concerns as rehires, new hires, termination's, promotions, etc. If affiliated with labor union, provide notice of the plan to the signatory unions and training programs and request their cooperation in assisting in meeting the obligations required by company plan and this contract. Additionally, disseminate the plan by including it in the company policy manual. Publicize it in the company newspaper, annual report, etc.; review the plan with all management personnel and with all minority and female employees at least once a year; and by posting the company plan on bulletin boards available to all employees at each location where construction work is performed. Disseminate the plan externally by including it in all advertising, specifically minority and female media, and providing written notification to and discussing the plan with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- g. Review at least quarterly, the company's Affirmative Action plan and obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with on-site supervisory personnel including, but not limited to, Superintendents, General Foreman prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Direct recruitment efforts and requirements, both oral and written, to the OEOC Program Coordinator the earliest time possible, normally one month before the date of acceptance of applications apprenticeship or other training by any recruitment source, the Contractor shall send written notification to the OEOC Program Coordinator, describing the openings, screening procedures, and tests to be used in the selection process.
 - i. Encourage present minority and female employees to recruit other minority persons and women, refer these persons to the OEOC Program Coordinator, and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.
 - j. Validate all tests and other selection requirements for new hires, and promotions within. Provide copies of this process and each modification to the Awarding Agency for review and acceptance.
 - k. Conduct at least annually an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities.
 - l. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the plan and the Contractor's obligations under these specifications are being carried out.
 - m. Document and maintain a record of all solicitations of offers for subcontracts to minority business enterprises (MBE) and women business enterprises (WBE) construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
5. Contractors are encouraged to participate in voluntary associations which assist in fulfilling their Affirmative Action obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 3a through 3m herein, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the benefits of the program are reflected in the Contractor's minority and female work force participation, makes a conscientious endeavor to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
6. The Contractor shall not use the goals or Affirmative Action standards to discriminate against any person because of race, color, religion, sex, national origin, age, veteran's status or disability.
7. The Contractor shall not enter into any subcontract with any person or firm debarred from any city, county, state or federal government contracts pursuant to these Affirmative Action Requirements or Executive Order 11246, as amended.
8. The Contractor shall carry out such sanctions and penalties for violation of these specifications, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to these Affirmative Action Requirements or other requirements of this contract. Any Contractor or subcontractor who fails to carry out such sanctions and penalties shall be in violation and this contract may be terminated.
9. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company Affirmative Action Plan is being carried out, to submit reports relating to the provisions hereof as required by the awarding agency. This official will coordinate with OEOC for all hires and request assistance as necessary to comply with these Affirmative Action Requirements. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records. These records shall be available for inspection by the awarding agency or the OEOC Program Coordinator, upon reasonable notification.

10. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977, the Community Development Block Grant Program).

REPORTING REQUIREMENTS

1. All contracts and subcontracts are subject to the reporting requirements.
2. Contractors and subcontractors must submit a CC-257 (Monthly Employee Utilization Report) to the County of Sacramento Labor Compliance office at 3020 Explorer Drive, Suite #3, Sacramento, CA 95827. This report must arrive no later than the 15th calendar day of the following month for the month being reported.
3. Failure to report is cause to find the Contractor in non-compliance.
4. Each report is monitored by OEOC and measured against the specified goals for minorities and women.
5. Within five days of notification of award of this contract, complete and submit to the Awarding Agency for transmittal to OEOC the following documents:
 - a. Personnel Projection Worksheet (provided within this contract)
 - b. Copy of the company Affirmative Action Plan which defines the steps that the contractor will take to meet Affirmative Action hiring goals. The plan should describe practices for hiring, promotions, training, transfers and termination's. If the company does not have such a plan, OEOC will provide technical assistance to the contractor to formulate such a plan.
 - c. List of the current workforce, (provided within this contract)

COMPLIANCE AND ENFORCEMENT

1. During the performance of this contract, the city may withhold contract progress payments of a value not less than \$1,000 or more than \$10,000 for violations of the Affirmative Action Requirements. Withholdings made shall be retained until the offending contractor or subcontractor provides to the Awarding Agency, a satisfactory detailed Affirmative Action Plan that will correct the violation.
2. Every contractor or subcontractor, or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest who is found by the city manager to be in willful violation of the provisions of these Affirmative Action requirements, with the intent to defraud shall be ineligible to bid on or receive a contract paid out of moneys deposited in the city's treasury for a period of not more than five years from the date such determination is made by the city manager.