

RESOLUTION NO. 2340

A resolution adopting provisions regarding nondiscrimination in the performance of City construction, supply and service contracts.

SECTION I - DEFINITIONS

For the purposes of this resolution, the following definitions shall apply to the following terms:

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who submits a bid and/or enters into a contract with officers empowered by law to enter into contracts on the part of the City for public works or improvements to be performed, or for goods, supplies or services 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 or collected by the City.

"Subcontractor" means any person or persons, firm, partnership, corporation, or any combination thereof, who enters into a contract or agreement with the contractor to perform a substantial specified portion of the contract for public works, improvements, supplies, goods or services let or awarded for or on behalf of the City in accordance with the plans and specifications of such contract. Such term shall also include any contractor who enters into a contract with any subcontractor for the performance of 20 per cent or more of the subcontract.

"Supplier" means any person or persons, firm, partnership, corporation, or any combination thereof, who submits a bid or enters into a contract with the City for the supplying of goods, materials, equipment, furnishings or supplies.

SECTION II - NONDISCRIMINATORY EMPLOYMENT PROVISIONS IN CITY CONTRACTS

- A. There shall be in each franchise and in all contracts hereafter negotiated, let or awarded by the City of Menlo Park the following provision:

The contractor in the performance of this contract shall not discriminate on the ground or because of race, color, creed, national origin or ancestry against any employee of, or applicant for employment with, the contractor; such contractor shall also include a similar provision in all subcontracts let or awarded thereunder.

- B. Each bidder shall enclose with his bid a certificate stating:

That he is currently in compliance with all federal, state and city laws covering nondiscrimination; that he will pursue an affirmative course of action as required by the affirmative action guidelines as stated in Section III of the Resolution, and that if awarded the contract he will not discriminate according to those conditions stated in this section. Furthermore, that he will participate, if requested, in a preaward review of his qualifications under this section.

- C. The requirements of this section shall apply only to contracts in excess of five thousand dollars for services or for a combination of services and supplies.

SECTION III - AFFIRMATIVE ACTION GUIDELINES

- A. Preaward phase of contract:

1. Prior to the submittal of formal bids for a project to be constructed or for services to be provided all prospective bidders must submit to the City Manager's office the following:
 - A) Certificate of Nondiscrimination (described in Section IIA)
 - B) A questionnaire furnished by the City setting forth those steps already taken or to be taken by the proposed contractor to implement his affirmative action program through:
 - 1) Recruit minority persons in its location, for all levels of jobs.
 - 2) Select methods assuring equal employment opportunity for all persons.
 - 3) Establish a training program for new persons hired where necessary to assure ample opportunity for the less qualified to more fully qualify.
 - 4) Provide adequate opportunity for upgrading and further training to assure equal opportunity in advancement and promotion.
 - 5) Provide counseling service for all who may need help to advance, especially newer employees.
 - 6) Educate supervisors regarding nondiscrimination practices.
 - C) A minority employment program (M.E.P.) which shall include:
 - 1) The estimated total number by job classification of personnel who shall be used by the contractor and each

subcontractor in performance of the contract. These numbers shall include the estimated breakdown of minority persons to be used in each classification; to the extent possible, the contractor shall estimate the minority breakdown by month for the life of the contract. No estimate furnished under this subparagraph shall be construed as a hiring quota.

- 2) An agreement to take these additional steps to help assure an effective affirmative action program in the field of minority employment.
 - a) Recruiting for needed help in the local areas inhabited by minority members, including open advertising.
 - b) All company recruitment advertisements to include the phrase "AN EQUAL OPPORTUNITY EMPLOYER".
 - c) Use of government furnished Equal Employment posters in both English and Spanish to be displayed in conspicuous places so that both employees and applicants will see and have access to them.
 - d) Training those less qualified to assure adequate promotional opportunities for all.
 - e) Provide necessary counseling for upgrading, including use of outside training facilities.
 - f) Assigning a person full-time or part-time as an Equal Employment Opportunity Coordinator to assure that the proposed M.E.P. is being fulfilled, and to assure that all supervisors are aware of their responsibilities.
 - g) Notification by bidder and his subcontractors to their respective labor unions of the Notice of Nondiscrimination advising them of the contractor's commitment and obtain their concurrence in the program as well as outlining their responsibilities in the equal employment program.
 - h) Assuring that all subcontractors are in compliance with all federal and California state laws and regulations relating to nondiscrimination.
 - i) To develop apprenticeship programs with union cooperation where the contract is of sufficient duration.
 - j) Upon request, furnishing the City a copy of the latest Federal Form EEO-1, or equivalent form.
 - k) Upon request, the bidder and subcontractors to make themselves available for counseling individuals and groups in the minority community who wish aid and assistance in writing contracts,

preparing bids, securing bonds, and generally encouraging those employed minorities to bid for and get subcontracting work.

- 1) To seek out licensed and insured minority group subcontractors to bid on items not as yet contracted for, including the following items:
 - 1) Installation of temporary electrical power
 - 2) Painting of street barricades
 - 3) Job debris removal
 - 4) Clean up (janitorial)
 - 5) Any other items which become apparent as the job develops

 - m) Providing the name and address of all suppliers whose supplies and/or equipment exceed 20% of the total supply cost of each contract and subcontract for the performances of the contract.
 - n) To press in future negotiations with labor unions for agreement on a meaningful affirmative action clause in the collective bargaining agreement to support the principles of these guidelines.
- 2) Bidders shall submit the certificate, questionnaire and the M.E.P. to the City Manager by the time and date specified in order to be defined as a "responsible bidder". The bid of any bidder not submitting any such plan or submitting a plan not approved shall be discarded in the same process as other nonacceptable or nonresponsible bids, or a bid of a nonqualified bidder.
 - 3) The City Manager will analyze the M.E.P. submitted by each bidder with the objective of determining if the program submitted for the contractor and his subcontractor or suppliers presents a reasonable effort to further minority employment. If there are questions on the proposed M.E.P., the City Manager will address such questions to the particular bidder. Information on possible available resources where the bidder and subcontractors may turn for assistance will be available through the City Manager's office. He shall not be responsible for service or lack of service rendered by the resources recommended.

- 4) Revision of a proposed M.E.P. shall be allowed within a time period specified by the City Manager.
- 5) M.E.P.'s must be approved on or before the date specified for final prequalification or the bidder will not be classified as a "responsible bidder". The City Manager shall have the sole discretion to determine the responsibility of each bidder and the qualification thereof under this resolution.

B. Award phase of contract:

Once the award of the contract to the successful bidder has been made by the City, the M.E.P., already approved by the City, becomes an integral part of that contract.

C. Post award phase of contract:

- 1) No contractor shall be deemed in material breach of its M.E.P. when it has made a reasonable and substantial effort to comply with its M.E.P.
- 2) The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided, setting forth the law prohibiting discrimination and advising anyone who feels he is being discriminated against to advise the F.E.P.C.
- 3) The contractor shall make written progress reports on the performance of his M.E.P. at intervals established by the City Manager. The contractor, however, is encouraged to submit written reports as often and when he deems it relevant to his M.E.P.
- 4) A written record of all meetings, conferences, progress meetings and reports thereof and of all Minority Employment Program activities will be maintained at the jobsite and will be available for inspection at all reasonable times by the City Manager.
- 5) The City Manager shall monitor the performance of the M.E.P. until completion of the contract.
 - A) It is the intent of the enforcement process to assure not only compliance with the nondiscrimination policy but also to encourage and support the development of a philosophy of fair employment of minority groups in construction and services through the initiative of contractors and suppliers receiving City of Menlo Park contracts.

- B) Enforcement procedures should include site inspections throughout the length of the contract and according to the changing work schedule requiring different work crews.
 - C) Site inspections and other compliance checks should be conducted by assigned City staff, coordinated with other standard City inspections to minimize work disruption and to emphasize positive contacts.
 - D) Site inspections will be conducted in such a manner as to avoid interference with work crews.
6. The contractor may appeal any ruling of the City Manager under the M.E.P. to the City Council. The action of the City Council on the matter will be final.

I, MARGARET E. SNOWDEN, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Resolution was duly and regularly passed and adopted at a regular meeting by said Council on the 23rd day of June, 1970.

AYES: Councilmen: Belangie, Bonde, Calloway, Horstkorta,
Lawson

NOES: None

ABSENT: None

I further certify that the foregoing copy of Resolution is a true and correct copy of said resolution on file in the office of the City Clerk, City Hall, Menlo Park, California.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of said City, this 24th day of June, 1970.

Margaret E. Snowden
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