[MS-0087.007.016.009]

ADOPTED BY CITY COUNCIL
FEBRUARY 8, 1972

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

This five-year Affirmative Action Program is designed to require contractors awarded City contracts for construction, alteration, maintenance or demolition and vendors, when state law mandates advertising for bids, 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 attainment of the condition on City construction and City assisted construction contracts such that the employment of Mexican-Americans, Blacks, Filipinos, American Indians and Asian/Orientals in each construction and related craft is approximately equal to the proportion of each minority group in the population of the City of San Diego.

The City shall establish a minimum level for each year 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, 40% for the second year, 60% for the third year, 80% for the fourth year and 100% for the fifth year. (See Exhibit "A")

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 non-responsive bidder.

Contractors, subcontractors, suppliers and vendors 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, 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 certification shall include the bidder's plan for reaching, in each craft, and for each of his subcontractors and suppliers, the minimum level set for each year for which performance may be due under the proposed contract.

(2) If a bidder desires prior approval of his plan, he may submit his plan for review by the City no less than 10 days in advance of submitting his bid. Once a bidder's plan, submitted in accordance with this Program, has been determined to be in compliance with this Program, his plan shall not otherwise affect the award of the contract.

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

(4) Any bidder who does not meet the current minimum levels of this Program may be determined to be in non-compliance if his employment records show that his hiring

practices subsequent to the effective date of this Program have not tended to meet the minimum levels established for this Program. No employer will be required to discharge members of his work force in order to increase the number of minority workers employed.

(5) At such time as the City Council determines that a hometown plan for the City of San Diego has been implemented and meets or exceeds the current and future requirements of this Affirmative Action Program and is an effective alternative thereto the City may accept compliance with such hometown plan as compliance with the Affirmative Action Program.

(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 such subcontractor and supplier shall submit to the bidder a plan for reaching the minimum level under the proposed contract and a certificate that he will fulfill his obligations under this Program. The certification shall be on forms provided by the City. The apparent successful bidder shall provide to the City these required plans and certificates for all listed subcontractors and suppliers prior to award of the contract.

The apparent successful bidder shall provide to the City these required plans and certificates for all non-listed subcontractors and suppliers 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 services on the construction project will be considered employees of the prime contractor for the purpose of this Program.

(d) CONTENTS OF BIDDER'S PLAN.

In order to be acceptable, the bidder's plan for compliance with the Affirmative Action Program must satisfy the City that the bidder has taken and will take all reasonable steps available to improve minority employment, when necessary. The plan must demonstrate, but is not limited to, the following:

(1) That the bidder has made, and/or will make, every effort to solicit minority subcontractors to submit bids on appropriate portions of the job.

(2) That the bidder has taken, and if awarded the contract, will take affirmative action to ensure that applicants are employed and employees are treated equally without regard to race, color, sex, religious ancestry or national origin, including: employment, in all crafts, of foremen, journeymen, apprentices, or trainees; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training including trainees and apprentices where applicable.

(3) That, in all advertisements for subcontractors, suppliers and vendors, labor or other personnel, or requests for employment of any nature relating to the City construction contract, the bidder has stated in writing, and will state in writing if awarded the contract that he is seeking persons of all minority groups to apply and that it is his intention to hire employees, in all crafts, from all minority groups.

In addition to the above, the bidder's plan shall detail all other appropriate steps which he determines to be necessary to attain the minimum level set for each year.

(e) CONTRACTOR'S DUTIES.

(1) If the contractor's minority work force, and the distribution of such work force by crafts, is equal to or exceeds the minimum level 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.

(2) The contractor shall maintain and permit access to, updated employment records and information with respect to all employees directly or indirectly performing work within the geographical boundaries of San Diego County under the City construction contract, in accordance with the direction of the City setting forth the distribution of personnel and members of all minority groups by craft or trade classification, including information relating to apprentices and trainees, and shall maintain records indicating the monthly average man-days worked by employees of each such minority group.

(3) Contractors, subcontractors, suppliers or vendors shall demonstrate compliance on the project by submitting evidence of minority employment by crafts either on the specific project or in his total organization.

(4) 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.

(5) 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 abilities and skills to perform the duties and tasks required of the position.

(6) The contractor shall maintain records detailing his compliance with the requirements 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.

In the event that the contractor has failed to meet the minimum levels, or otherwise fulfill his plan for complying with the Affirmative Action Program, and desires to present evidence that failure to comply or meet such levels was through no fault of his own, but was due to an inability to obtain competent minority employees [see Section (e)(5)] 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 that minority employees have not been available by such means.

(g) CORRECTING VIOLATIONS.

After a determination by the City that a contractor, subcontractor, supplier or vendor 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 subcontractor or supplier involved in the violation, of such violation.

Upon request by the City, the contractor determined to be in violation shall meet with 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 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 violation in the manner prescribed by such second notice within 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, supplier or vendor 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 the 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 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 responsibile 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) There may be assessed the sum of 1/4 of 1% of the contract price as liquidated damages for each day under the contract for which the contractor has failed to comply with this Program and his plan submitted with his bid. Such liquidated damages shall be a minimum of $25.00 per day and a maximum of $100.00 per day.

(7) 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.

EXHIBIT "A"

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.