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ORDINANCE NO. _____ (NEW SERIES)

ORDINANCE ADDING SECTION 398.14 TO ARTICLE XXII b OF THE ADMINISTRATIVE CODE OF THE COUNTY OF SAN DIEGO PROHIBITING DISCRIMINATION IN EMPLOYMENT AND PROVIDING FOR COMPLIANCE WITH AN AFFIRMATIVE ACTION PROGRAM BY CONSTRUCTION CONTRACTORS DOING BUSINESS WITH THE COUNTY

The Board of Supervisors of the County of San Diego do ordain as follows:

Section 1. Section 398.14 is hereby added to Article XXII b of the Administrative Code of the County of San Diego to read as follows:

[ms-0087.007.017.008]

proposed new program

ORDINANCE NO. _____ (NEW SERIES)

ORDINANCE ADDING SECTION 398.14 TO ARTICLE XXII b OF THE ADMINISTRATIVE CODE OF THE COUNTY OF SAN DIEGO PROHIBITING DISCRIMINATION IN EMPLOYMENT AND PROVIDING FOR COMPLIANCE WITH AN AFFIRMATIVE ACTION PROGRAM BY CONSTRUCTION CONTRACTORS DOING BUSINESS WITH THE COUNTY

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Section 1. Section 398.14 is hereby added to Article XXII b of the Administrative Code of the County of San Diego to read as follows:

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SECTION 398.14.. AFFIRMATIVE ACTION PROGRAM.

This section establishes an Affirmative Action Program to require contractors awarded county construction contracts, when State law mandates the bidding process, their subcontractors and suppliers to take affirmative action to improve employment of racial and ethnic minorities in the construction industry.

The goal of this Affirmative Action Program shall be the attainment of the condition on county construction and county assisted construction contracts such that the employment of Blacks, Mexican-Americans, American Indians and Asians/Orientals in each construction and related craft at the beginning of the fifth year of the Program is approximately equal to the proportion of each such racial or ethnic group in the population of the County of San Diego.

SECTION 398.14. AFFIRMATIVE ACTION PROGRAM.

This section establishes an Affirmative Action Program to require contractors awarded county contracts for construction, alteration, maintenance or demolition, when State law mandates advertising for bids, their subcontractors and suppliers to take affirmative action to improve employment of racial and ethnic minorities in the construction industry.

The goal of this Affirmative Action Program shall be the attainment of the condition on county construction and county-assisted construction contracts such that the employment of Blacks, Mexican-Americans, American Indians and Asians/Orientals in each construction and related craft at the beginning of the fifth year of the Program is approximately equal to the proportion of each such racial or ethnic group in the available work force of the County of San Diego.

The County shall establish a minimum level for each year of this Program, with each level being a percentage of the racial and ethnic 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 and each subsequent year of the Program.

The County shall establish a minimum level for each of the first three years of this Program, with each level being a percentage of the racial and ethnic minority proportion of the population for that year: the percentage shall be 20% for the first year, 40% for the second year and 60% for the third year. Between the second and third anniversary date of this Program, the County shall hold hearings, for the purpose of establishing the minimum levels of this program for the fourth, fifth and subsequent years in light of its findings regarding the following factors:

- the racial and ethnic composition of the work force;
- the racial and ethnic composition of unemployed persons in the work force;
- the proportion of racial and ethnic minorities in the population;
- the anticipated expansion, contraction and turnover of and in the work force comprising the building trades;
- the cooperation of the construction industry and building trades in programs to improve racial and ethnic minority employment in such industry and trades.

Each contractor awarded a construction contract by the County 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 County for which bidding is required by State law. Any bidder who does not comply with the provisions of this section shall be a non-responsibe bidder.

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This Program shall be incorporated by reference in all construction contracts let by the County for which bidding is required by State law. Any bidder who does not comply with the provisions of this section shall be a non-responsive bidder.

In order to implement this Program, the Board of Supervisors may from time to time adopt such rules and regulations by resolution as it deems necessary.

Contractors, subcontractors and suppliers who do not have a work force sufficiently large to be divided into all of the percentages provided by the ordinance may be excepted by employing that portion which is possible, subject to approval by the compliance officer.

(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 County.

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(b) COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAM.

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. If a bidder is in doubt as to the adequacy of his proposed plan he may submit such plan for review by the County in advance of submitting his bid. Once a bidder's plan, submitted in accordance with this section, has been determined to be in compliance with this section, his plan shall not otherwise affect the award of the contract.

(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 County no less than 10 days in advance of submitting his bid. Once a bidder's plan, submitted in accordance with this section, has been determined to be in compliance with this section, his plan shall not otherwise affect the award of the contract.

(3) The County will maintain a current list of contractors, subcontractors and suppliers who have been found by the Board of Supervisors to be in non-compliance with this Program. Upon request, the County 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 with this Program if his employment records show that his hiring practices subsequent to the effective date of this ordinance 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.

(c) COMPLIANCE BY SUBCONTRACTORS AND SUPPLIERS.

Each potential subcontractor of, and supplier to the bidder shall be required to comply with this section as though he were the bidder or contractor, unless he is part of a group exempted by a resolution implementing this Program. 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 section. The certification shall be on forms provided by the County. Prior to the award of the contract by the County the apparent successful bidder shall provide to the County these required plans and certificates.

(5) At such time as the Board of Supervisors determines that a hometown pla for the County 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 Board may accept compliance with such hometown plan as compliance with this Affirmative Action Program.

(6) Any requirements placed on bidders will be required of the contractor who is awarded the contract, when applicable.

(c) COMPLIANCE BY SUBCONTRACTORS AND SUPPLIERS.

(1) Each subcontractor of, and supplier to the bidder shall be required to comply with this section as though he were the bidder or contractor, unless he is part of a group exempted by a resolution implementing this Program. 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 section. The certification shall be on forms provided by the County. The apparent successful bidder shall provide to the County 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 County 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, not within the group excluded by a resolution implementing this Program, 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 county construction contract.

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(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 county that the bidder has taken and will take all reasonable steps available to improve racial and ethnic minority employment. The plan must demonstrate, but is not limited to, the following:

(1) That the bidder has made, and will make, every effort to solicit racial and ethnic minority subcontractors to make 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 that employees are treated 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) When a subcontractor is not recognized as such by the County construction contract, all workmen providing services on the construction project will be considered employees of the prime contractor for the purpose of this section.

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(3) That, in all advertisements for subcontractors, suppliers, labor or other personnel, or requests for employment of any nature relating to the county construction contract, the bidder has stated in writing, and will state in writing if awarded the contract that he is seeking persons of all racial and ethnic groups to apply and that it is his intention to hire employees, in all crafts, from all ethnic and racial 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 ethnic and racial 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 has made under this Program, for any period during which he reaches or exceeds the minimum level.

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

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(1) If the contractor's ethnic and racial 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 has made under this Program, for any period during which he reaches or exceeds the minimum level.

(2) The contractor shall maintain on the job site, and permit access to, updated employment records and information with respect to all employees directly or indirectly performing work under the county construction contract, in accordance with the direction of the county, setting forth the distribution of personnel and members of all racial and ethnic 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.

If the contractor is unable to demonstrate that the employees performing work on the county construction contract equal or exceed the minimum level, he may, if he chooses, submit evidence of his racial and ethnic employment, by crafts, in his total organization, in which case his total organization will be evaluated to determine his compliance with his plan, and this Section.

(2) The contractor shall maintain and permit access to, updated employment records and information with respect to all employees directly or indirectly performing work under the county construction contract, in accordance with the direction of the county, setting forth the distribution of personnel and members of all racial and ethnic 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 or suppliers shall demonstrate compliance on the project by submitting evidence of racial and ethnic employment by crafts either on the specific project or in his total organization.

(3) The contractor shall send to each labor union or worker representative with which he has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the County 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. The inability of the contractor to recruit and hire qualified foremen, journeymen, apprentices, or trainees of racial and ethnic minority groups from labor unions shall not exempt the contractor from complying with this Affirmative Action Program.

(4) The contractor shall maintain records detailing his compliance with the requirements of this Section and with his plan, and shall submit to the County 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.

(4) The contractor shall send to each labor union or worker representative with which he has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the County 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 racial and ethnic minority groups from labor unions shall not exempt the contractor from complying with this Affirmative Action Program.

(6) The contractor shall maintain records detailing his compliance with the requirements of this Section and with his plan, and shall submit to the County 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.

(f) EXPLANATIONS.

(1) Any requirements placed on bidders will be required of the contractor who is awarded the contract, when applicable.

(2) Any subcontractor or supplier, not within the group excluded by a resolution implementing this Program, 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 county construction contract.

(3) When a subcontractor is not recognized as such by the county construction contract, all workmen providing services on the construction project will be considered employees of the prime contractor for the purpose of this section.

(g) FAILURE OF CONTRACTOR TO COMPLY WITH PROGRAM.

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 minority employees, 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 County that he has made such efforts and that minority employees have not been available by such means.

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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, 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 County that he has made such efforts and that minority employees have not been available by such means.

(h) CORRECTING VIOLATIONS. After a determination by the County that a contractor, subcontractor, or supplier has failed to comply with the terms of this Program while operating under a county construction contract or has committted a violation of any applicable state or federal law concerning equal employment practices, the County 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 county, the contractor determined to be in violation shall meet with county 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 County 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 of suppliers correct their violations.

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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 County, the County may impose one or more of the sanctions provided in this section.

(I) SANCTIONS. Upon a determination by the county that a contractor, subcontractor or supplier has violated any portion of this section the county shall impose one or more of the following sanctions:

(1) Find that the contractor is not a responsible bidder for any future contracts until such time as the contractor has satisfied the county that he will meet the requirements of the San Diego County Affirmative Action Program in effect at the time of any future bids, and that he has made a good faith effort to encourage minority employment.

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(1) Find that the contractor is not a responsible bidder for any future contracts until he has demonstrated to the satisfaction of the County 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 he be a responsible bidder on contracts advertised within one year from such finding, unless earlier approved by the Board of Supervisors.

(2) Terminate the entire contract effective at a time specified by the county.

(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 section.

(5) Find that any subcontractor or supplier in violation of this Program is not a responsible party to a county contract and refuse to accept bids from prime contractors who intend to use such subcontractors or suppliers in performing county contracts until such time as he has satisfied the County that he will meet the requirements of the Affirmative Action Program in effect at the time of the contractor's bid, and that he has made a good faith effort to encourage minority employment.

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(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 section.

(5) Find that any subcontractor or supplier in violation of this Program is not a responsible party to a County contract and refuse to accept bids from prime contractors who intend to use such subcontractors or suppliers in performing County contracts, until the subcontractor or supplier has demonstrated to the satisfaction of the County 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 he be a responsible party to any County contract advertised within one year from such finding unless earlier approved by the Board of Supervisors.

(6) Since it is one purpose of this Program to improve employment of racial and ethnic minorities which make up a substantial portion of the welfare cost to the County, and since it is estimated that greater minority employment will reduce such cost in an amount not capable of accurate measurement 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.

(j) It is the intent of the Board of Supervisors to enact each provision of this Section independent of every other provision and therefore should any part or language in this Section be declared invalid the balance of the Section shall be of full force and effect.

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