

CITY CHARTER - HUMAN RIGHTS

Chapter 27, Article IV, Section 27-3-2 Contractors with City required to take Affirmative Action and Section 27-4-7 Affirmative Action may be required.

Sec. 27-3-2. Contractors with city required to take affirmative action.

(a) All contractors, prospective and other wise, doing business with the city, shall take affirmative action to achieve reasonable representation of minority groups and women, on their work force. Such affirmative action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training or education, including apprenticeships. Breach of the covenant shall be regarded as a material breach of the contract.

(b) All contracting agencies of the city or any department thereof shall include in all contracts hereafter negotiated or renegotiated by them a covenant obligating the contractor to take affirmative action as outlined above to achieve reasonable representation of minority groups and women on their work force. City contractors shall be required to include a similar provision in all subcontracts.

(c) All contracting agencies of the city or any department thereof shall include in all contracts hereafter negotiated or renegotiated by them a covenant obligating the contractor not to discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance

of the contract, with respect to his or her hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex, or sexual orientation. Breach of this covenant shall be deemed a material breach of the contract. This section shall not apply if it is determined by the human rights department that such requirements are bona fide occupational qualifications reasonably necessary to performance of the duties required for employment. The burden of proof that the occupational qualifications is bona fide is upon the employer.

(d) All contracting agencies of the city or any department thereof shall include in all contracts hereafter negotiated or renegotiated by them a covenant obligating the contractor to furnish information required by the agency of the department of human rights pursuant to subsections (a), (b), and (c) above. Breach of this covenant shall be regarded as a material breach of the contract.

(e) All contracting agencies of the city or any department thereof shall include in all contracts hereafter negotiated or renegotiated by them a liquidated damages clause to allow for recovery from the contractor, by set-off against the unpaid portion of the contract price, or otherwise pursuant to the

contract, a specified dollar amount per day, as liquidated damages and not as a penalty, for each day that the contractor shall fail to comply with this ordinance as determined by the department of human rights in accordance with its rules and regulations; the said sum being fixed as negotiated and agreed upon by and between the contractor and the city because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the city would sustain in the event of such a breach of contract, and said amount is agreed to be the amount of damages which the city would sustain.

(f) In the event of the contractor's failure to comply with the equal employment opportunity and affirmative action provisions of the contract in question, including the affirmative action undertaking outlined in its proposal, and/or with any of the rules, regulations or orders as issued by the department, the city, at its option may:

- (1) Cancel, terminate or suspend the contract in whole or in part;
- (2) Recover from the contractor liquidated damages pursuant to subsection (e);
- (3) Utilize such other remedies as may be provided by law.

(g) Review and determination of compliance status as to Section 27-3-1 shall be made by the human rights department prior to the award and effective date of contract of prospective contractors with the city.

(h) The human rights department shall have power in accordance with Article 7, Section 7-1004 of the Charter:

- (1) To cooperate with and with their consent, utilize regional, state, local and other agencies, both public and private, and individuals in the application and enforcement of this chapter;
- (2) To order guidelines or programs providing a remedy to correct the effect or past discrimination where appropriate in accordance with this chapter;
- (3) Appeals by persons or firms aggrieved by decisions of ineligibility to do business with the city may be heard by the city council or such other appellate body as may be provided by ordinance under Section 9-302 of the Charter (Ord. No. 303-H, § 1(2-7-3.1), 1-24-79)

Sec. 27-4-7. Affirmative Action may be required.

Persons subject to section 27-4-1 may be required, as determined by the human rights department, to adopt and carry out a plan of affirmative action to remedy present effects of past discriminatory practices or to assure equal opportunity with respect to minority groups and women (Ord. No. 303-H, § 1(2-7-4.6, 1-24-79)