




**Administrative Policies and Procedures**

Policy Title: <b>NON-DISCRIMINATION BY CITY CONTRACTORS</b>	Policy Number: 206
Effective: 10/16	
Supersedes: APR #206 dated 9/92, revised 1/93, revised 8/97	
Approval: 	Page 1 of 8

**1. Scope**

Temporary/Contract

Independent Contractors

Vendors

**2. Purpose**

To provide the city with a systematic and uniform approach for the enforcement of Section 9:158, "Nondiscrimination by city contractors" of Chapter 112 of Title IX of the City Code, to ensure the city's compliance with appropriate federal, state and local equal employment requirements. Moreover, these guidelines are designed to assist firms providing goods and/or services to the city in complying with Section 9:158 with the least amount of difficulty and minimum degree of expense.

This policy is in addition to and does not alter or amend any obligations under federal or state law, regulations or contractual terms of any federal funding agreement or state cooperative agreement.

**3. Responsibilities**

The Finance Service Area has responsibility for the administration of all solicitations for the procurement of goods and services for the City. The Purchasing Manager shall be responsible for the administration of these guidelines. The Purchasing Manager, in conjunction with the City Attorney's Office shall develop procedures consistent with this administrative policy, subject to the approval of the City Administrator, for notice and enforcement of non-

compliance. The Human Rights Commission will provide input and guidance on these procedures.

#### **4. Policy**

##### **4.1 Application**

4.1.1 These guidelines apply to all firms providing goods and/or services whose contract value exceeds \$25,000 (the term contract includes purchase orders) with the following exceptions:

4.1.1.1 The firm or vendor does not have a physical presence in the State of Michigan or local laws which govern the firm prohibit the collection, maintenance, or provision of the information required under this policy;

4.1.1.2 The City Administrator specifically exempts the firm or vendor from provisions of this policy. Such exemption must be in writing and must include specific reasons for the exemption.

##### **4.2 Formal Solicitation Process**

4.2.1 All bid specifications, contracts and purchase orders shall include a provision entitled "Nondiscrimination." The purpose of this provision is to inform the contractor of his/her responsibilities, the city's authority and responsibilities, sanctions for "non-compliance" and the appeals procedures.

4.2.2 All formal solicitations (Invitations to Bid and Requests for Proposals) shall include instructions for and a copy of the authorized Posting of the City of Ann Arbor NonDiscrimination Ordinance issued by the Finance Service Area.

4.2.2.1 Formal solicitations (Invitations to Bid and Requests for Proposals) shall include a Declaration of Compliance form, and in addition instructions for completion of the City contract compliance form(s) when required by the terms of the Invitation/Request. All Bidders will be required to complete the City's Declaration of Compliance form prior to issuance of a PO or contract award.

## **5. Contracts Not Subject to Affirmative Action Requirements**

### **5.1 Pre-Award Requirements**

5.1.1 It is highly recommended that Contractors affirm their compliance with the City's Nondiscrimination Ordinance in conjunction with their formal solicitation response.

### **5.2 Post Award Requirements**

5.2.1 The compliance of each contractor with the nondiscrimination provisions of its contract will be reviewed. Each contractor will be provided with an approved poster of the City's Nondiscrimination Ordinance which must be posted at all work locations where its employees provide services under a contract with the City. Procedures approved by the City Administrator, shall be followed in cases of non-compliance. Review may include review of information provided by contractor as well as review of complaints alleging noncompliance.

### **5.3 Non-Compliance Sanctions**

5.3.1 Contractors who are alleged to be violating the City's nondiscrimination ordinance shall be requested to attend a compliance conference to review the allegations. If, after the conference and subsequent review, the City finds that the contractor is not in compliance with the City's nondiscrimination ordinance the Purchasing Manager, in conjunction with the City Attorney's Office, shall recommend to the City Administrator sanctions to be taken against the contractor.

5.3.2 Failure by contractors to submit required information within any specified time limits, failure to cooperate with City staff, failure to comply with nondiscrimination provisions or to provide true information to the City shall be cause for the City to do any or all of the following:

- (i) Cancel, terminate, or suspend the contract in whole or in part and/or refuse to make any required periodic payment until contractor is certified as in compliance.
- (ii) Declare the contractor ineligible for the award of any future contracts with the city for a specified length of time, after which time period, the contractor may apply for reinstatement in accordance with Section 8 below.

- (iii) Recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditures for the time period involved which would have accrued to affected employees had the nondiscrimination contractual provision not been breached.
- (iv) Impose for each day of non-compliance liquidated damages of a specified sum based upon the following schedule:

Contract Amount	Assessed Damages Per Day of Non-Compliance
\$25,000 - \$99,999	\$50.00
\$100,000 - \$199,999	\$100.00
\$200,000 - \$499,999	\$150.00
\$500,000 - \$1,499,999	\$200.00
\$1,500,000 - \$2,999,999	\$250.00
\$3,000,000 - \$4,999,999	\$300.00
\$5,000,000 and above	\$500.00

## 6. Contracts Subject to Affirmative Action Requirements

### 6.1 Pre-Award Requirements

- 6.1.1 All required contract compliance form(s) will be reviewed by the Purchasing Manager to insure that the lowest responsible bidder recommended for award of a contract for goods or services complies with City Code Section 9:158.
- 6.1.2 Approval shall be given to the lowest responsible bidder(s) who employs minorities and females commensurate with their availability by occupational category within the low bidder's labor recruitment area as identified in City Code Section 9:158(4). Any contractor not specifically exempted from these requirements by Code, Administrative Policy or written determination of the City Administrator, which fails to satisfy the requirements of 9:158 shall be considered not in compliance.
- 6.1.3 Selected lowest responsible bidder(s) not in compliance will be notified by letter indicating deficiencies and corrections to be made in order to comply with Section 9:158. The selected lowest responsible bidder(s) will also be informed they have 15 calendar days to submit an acceptable affirmative action program. If the

affirmative action program is not received prior to the deadline their bid shall be considered incomplete and rejected.

- 6.1.4 Only lowest responsible bidders who submit acceptable affirmative action programs (within the specified deadline) shall be approved.

## **6.2 Post Award Requirements**

6.2.1 The compliance of a City contractor with the nondiscrimination provisions of its contract will be reviewed. All formal solicitations issued by the City will include an approved poster of the City's Nondiscrimination Ordinance which the selected contractor(s) must post at all work locations where its employees provide services under a contract with the City. Procedures approved by the City Administrator, shall be followed in cases of non-compliance.

6.2.2 A Contractor's affirmative action program will be reviewed based on the following time line:

- (i) Construction contractors determined to be in compliance and accepted as having fulfilled nondiscrimination requirements shall be reviewed each year to evaluate progress toward affirmative action program goals.
- (ii) All other contractors determined to be in compliance and accepted as having fulfilled nondiscrimination requirements shall be reviewed annually to evaluate progress toward affirmative action program goals.

Reviews may include, but not be limited to, on-site inspections of the contractor's office to review program data or submission by the contractor of a contract compliance form, or other documentation as required.

6.2.3 On-site inspections for construction contractors may include, but not be limited to, the visitation of the construction site to review the workforce and interviewing employees to verify pay rates.

6.2.4 Construction contractors may be required to submit a list of minority and female employees employed at the construction site at the time of an on-site inspection or at any point during the contract term, if determined to be necessary by the Purchasing Manager in conjunction with the City Attorney's Office, to determine the contractor's continued compliance. Included on the list would be

employee names, job titles, seniority dates, addresses and phone numbers. The specified information is provided to the City for verification purposes only.

## **7. Non-Compliance Sanctions**

### **7.1 Notification Process**

7.1.1 For contractors not pursuing affirmative action program goals in good faith, the following notification process shall apply:

- (i) A written notice shall be sent to the contractor at his/her office indicating the apparent non-compliance and stating the contractor should contact the Purchasing Manager to attend a compliance conference within five (5) business days of receipt of the notice.
- (ii) If it is determined after the compliance conference that the contractor is non-compliant, a written violation notice will be issued to the project manager. The violation notice shall state that the contractor must contact the Purchasing Manager and correct the deficiency within seven (7) business days of receipt of the violation notice. If the situation is not corrected within this period, the Purchasing Manager, in conjunction with the City Attorney's Office, shall recommend to the City Administrator sanctions to be taken by the City Administrator.
- (iii) For purposes of this Section 7.1 a notice will be deemed "received" on the date when one of the following first occur (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

### **7.2 Sanctions**

7.2.1 Failure by contractors to submit required information within any specified time limits, failure to cooperate with City staff, failure to comply in good faith with affirmative action program goals or to provide true information to the City shall be cause for the City to do any or all of the following:

- (i) Cancel, terminate, or suspend the contract in whole or in part and/or refuse to make any required periodic payment until contractor is certified as in compliance.
- (ii) Declare the contractor ineligible for the award of any future contracts with the city for a specified length of time, after which time period, the contractor may apply for reinstatement in accordance with Section 8 below.
- (iii) Recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditures for the time period involved which would have accrued to minorities and females had the nondiscrimination contractual provision not been breached.
- (iv) Impose for each day of non-compliance liquidated damages of a specified sum based upon the following schedule:

Contract Amount	Assessed Damages Per Day of Non-Compliance
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\$3,000,000 - \$4,999,999	\$300.00
\$5,000,000 and above	\$500.00

7.2.2 The contractor shall be notified by overnight delivery of all recommended actions to be taken by the City Administrator against the contractor. The contractor shall have seven (7) business days from date of delivery to appeal the recommended action. If no appeal is registered within seven (7) business days, recommended action shall be effective on the eighth business day.

### 7.3 Appeal Process

In the event the contractor appeals, an appeals conference shall be scheduled with the City Administrator to be attended by the City Attorney's Office, the Purchasing Manager, the contractor and other relevant parties. City staff shall present their evidence in support of the finding of non-compliance and the contractor shall present all evidence of good faith efforts in attempting to achieve affirmative action program goals. The City Administrator, based upon the presented evidence, shall determine the

action, if any, to be taken against the contractor. A record of the proceeding shall be made.

## **8. Reinstatement Criteria for Ineligible Employers under Sections 5 and 6**

### **8.1 Reinstatement Process**

8.1.1 In order for a contractor to be reinstated after it has been declared ineligible:

- (i) The contractor must submit a written request for a review and evaluation to the City Administrator.
- (ii) This written request must detail actions, policy changes and progress toward full implementation of equal employment opportunity which, in the opinion of the employer, warrant a change from ineligible status.
- (iii) Staff, upon consideration of the request for a review, will follow-up if evidence presented in the written request is indicative of a change in attitude, practices and/or make-up of the workforce.

8.1.2 No request for reinstatement will be considered until at least sixty (60) days have elapsed from the date the contractor was declared ineligible or non-awardable. This requirement may be waived at the discretion of the City Administrator.