Article 2: Administrative Code

Division 27: Equal Employment Opportunity Outreach Program

§22.2701 Purpose & Intent

The overall objective of the City's Equal Employment Opportunity ("EEO") Program is to ensure that contractors doing business with or receiving funds from the City will not engage in unlawful discriminatory employment practices prohibited by State or Federal law. Such employment practices include, but are not limited to, the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.
(Amended 5–1–1995 by O–18173 N.S.)

§22.2702 Definitions

Unless stated otherwise, the following definitions apply to this Division:

"City" means The City of San Diego and those agencies, boards, commissions and corporations authorized to act on behalf of, or as an agent for, the City of San Diego.

"Contract" means an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded by or on behalf of the City.

"Contractor" means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a contract with department heads and officers empowered by law to enter into contracts on behalf of the City for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies 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 of, or collected by, the City.

"Equal Employment Opportunity Plan" means a document prepared by a Contractor in accordance with a form and format supplied by the City which describes the Contractor's plan of action.

"Gender" means the character of being male or female.

"Program Manager" means the Program Manager for the City's Equal Opportunity Contracting Program or his or her designee.

"Work Force Analysis" means a comparison of a Contractor's Work Force Report with applicable County Labor Force Availability Data.

"Work Force Report" means a report, in a format supplied by the City but compiled by the Contractor, of the Contractor's total work force which indicates the number of males and females in each identified ethnic group by occupational category. *(Amended 5–1–1995 by O–18173 N.S.)*

§22.2703 Scope

Except as provided in Section 22.2704, this Division applies to all Contractors except:

(a) Contractors and subcontractors who do less than a total of $10,000 worth of business with the City during the preceding twelve (12) months or who have less than a total of fifteen (15) employees, except that Contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring.

(b) Contracts to which any City (other than The City of San Diego), county, district or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is a party.

(c) Nonprofit charitable, educational, or religious associations or corporations, as evidenced by records on file with the City to be compiled for purposes of this Division in accordance with procedures established by the City Manager.

(d) Emergency Contracts, if a written partial or full waiver is granted by the City Manager, except that Contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring. The City Manager may grant a partial or full waiver from the requirements of this Division for an emergency contract only to the limited extent necessary in order to expedite the award of such Contract. For purposes of this Section, the term "emergency" has the same meaning as in San Diego City Charter section 94.

(Amended 5–1–95 by O–18173 N.S.)

§22.2704 Mandatory Nondiscrimination Contract Clause

Notwithstanding the provisions of Section 22.2703, every Contract shall contain a nondiscrimination clause which shall read as follows:

Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.
(Amended 5–1–1995 by O–18173 N.S.)

§22.2705 Duty to Submit Reports

(a) If a Contract is competitively solicited, after the lowest responsible bidder has been determined and prior to the execution of the contract, the apparent low bidder shall submit to the Equal Opportunity Contracting Program a Work Force Report, on a City form, or an Equal Employment Opportunity Plan approved by the Program Manager.

If a Contract is not competitively solicited, the Contractor shall submit to the Equal Opportunity Contracting program a Work Force Report or an Equal Employment Opportunity Plan approved by the Program Manager prior to tendering the signed Contract documents to the City for signature.

(b) Staff will conduct a work force analysis on all Work Force Report submittals to determine whether or not an Equal Employment Opportunity Plan is required. If an Equal Employment Opportunity Plan is required, the Contractor will submit a plan for approval by the Program Manager.

(c) Any Equal Employment Opportunity Plan approved by the City shall not include quotas, goals or timetables for increasing women and minority employment and will not require terminating or laying off existing employees.
(d) If the apparent low bidder or Contractor does not submit either a Work Force Report or Equal Employment Opportunity Plan as required by this section, for purposes of awarding the Contract only, the City Manager will ensure an administrative hearing is conducted by an independent hearing officer to determine if the contract should be awarded in accordance with City, State, and Federal law.

(Retitled to "Duty to Submit Reports" and amended 5–1–1995 by O–18173 N.S.)

§22.2706 Duty To Comply With Equal Employment Opportunity Plan

A Contractor for whom an Equal Employment Opportunity Plan has been approved by the City shall use best efforts to comply with that Equal Employment Opportunity Plan.
(Retitled to "Duty To Comply With Equal Employment Opportunity Plan" and amended 5–23–1995 by O–18173 N.S.)

§22.2707 Reviews

(a) The Program Manager shall conduct periodic reviews of Contractors to ensure that unlawful discrimination is not being practiced and Equal Employment Opportunity Plans are implemented.

(b) If the City Manager determines, after review, that the Contractor has not implemented their Equal Employment Opportunity Plan and/or practices unlawful discrimination and corrective action has not occurred by the Contractor after sufficient notice, the City Manager may recommend termination of the contract and debarment to the City Council.

(Retitled to "Reviews"and amended 5–1–1995 by O–18173 N.S.)

§22.2708 Policies And Procedures

The City Manager shall promulgate policies and procedures necessary to implement this Division.
(Retitled to "Policies And Procedures" and amended 5–1–1995 by O–18173 N.S.)

Article 2: Administrative Code

Division 35: Nondiscrimination in Contracting

("Nondiscrimination in Contracting" added 4-10-2000 by O-18785 N.S.)

§22.3501 Purpose and Intent

This Division is intended to further the *City's* policy not to engage in business with *business firms* that discriminate in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability by providing a procedure for receiving, investigating, and resolving complaints of *discrimination* filed against *business firms* that have submitted a bid or proposal for, have been selected to engage in, or are engaged in doing business with the *City*.
("Purpose and Intent" added 4-10-2000 by O-18785 N.S.)

§22.3502 Definitions

All terms defined in this Division appear in italics. For purposes of this Division:

Appeals Officer means an individual appointed by the City Manager to conduct hearings on appeals of decisions issued by the *Hearing Officer*.

Business firm means any *person*, firm, partnership, corporation, or other business entity or combination thereof, including any *financial institution*, prime contractor, subcontractor, supplier, or vendor, that has submitted a bid or proposal, has been selected to do business, or is doing business with the *City*, including selling or leasing supplies, or goods, or providing construction, financial, professional, or other services, for a fee.

City means the City of San Diego and those agencies, boards, commissions, and corporations authorized to act on behalf of, or as agent for, the City of San Diego.

Contract means an agreement with any *person* let by or on behalf of the City for that *person* to provide labor, materials, goods, supplies, or services. It includes *major public works contracts* and *minor public works contracts* as defined in Section 30.3003 of this Municipal Code.

Director means the Deputy Director responsible for the *program*, or his or her representative.

Discrimination means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or treatment of a *business firm* because of the race, gender, religion, national origin, ethnicity, sexual orientation, age, disability, or any other form of unlawful discrimination regarding the characteristics of its employees or owners.

Financial institution means any *person* or entity engaged in the business of lending money, guaranteeing loans, extending credit, securing bonds, providing venture or equity capital, or that offers financial services in connection with *City* projects. *Financial institution* includes banks, savings and loans, venture capital companies, insurance companies, bonding companies, mortgage companies, credit unions, and brokers.

Hearing Officer means an individual appointed by the City Manager to conduct hearings under this Division.

Person has the same meaning as in Municipal Code section 11.0210.

Program means the Equal Opportunity Contracting Program or its successor.

Subcontract means an agreement for the performance of a particular portion of work to be performed under a *contract* with the *City*.
(Amended 9-3-2002 by O-19095 N.S.)

§22.3503 Scope

This Division applies to all *business firms*, *contracts*, and *subcontracts*, but does not apply to *contracts* to which any city (other than the *City*), county, district, or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is also a party.
("Scope" added 4-10-2000 by O-18785 N.S.)

§22.3504 Nondiscrimination Policy

It is the policy of the City of San Diego not to accept bids or proposals from, nor to engage in business with, any *business firm* that has discriminated on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, disability, or any other form of unlawful discrimination in its solicitation, selection, hiring, or treatment of another business.
("Nondiscrimination Policy" added 4-10-2000 by O-18785 N.S.)

§22.3505 Complaints of Discrimination

Any *person* may file an administrative complaint with the *Director* stating facts showing or tending to show that a *business firm* has engaged in *discrimination* against one or more other businesses. Within ten business days, the *Director* shall notify the *business firm* against whom the complaint was filed that a complaint has been received.
("Complaints of Discrimination" added 4-10-2000 by O-18785 N.S.)

§22.3506 Investigation of Complaints

The *Program*'s investigative unit shall review and investigate *discrimination* complaints filed under this Division.
("Investigation of Complaints" added 4-10-2000 by O-18785 N.S.)

§22.3507 Initial Findings and Recommendations

Based upon the investigative unit's review and investigation, the *Director* shall make an initial non-binding finding of each allegation stated in the complaint, that either:

(a) the investigation produced sufficient evidence to find that the alleged *discrimination* did take place ("sustained");

(b) the investigation failed to produce sufficient evidence to find whether the alleged *discrimination* took place ("not sustained");

(c) the investigation produced sufficient evidence to find that the alleged *discrimination* did not take place ("unfounded");

(d) the investigation produced sufficient evidence to establish that the complainant knowingly made one or more false or frivolous allegations ("false or frivolous");

(e) the allegation has been settled or otherwise resolved with the agreement of the interested parties; or

(f) the allegation has been withdrawn.

The *Director* shall recommend to the City Manager, or his or her representative appropriate action to be taken. That action may include additional investigation of the complaint, sanctions, remedies or other action consistent with this Division. The initial non-binding findings and recommendations shall be made by the *Director*

within 120 calendar days of receipt of the complaint. The City Manager may extend this time limit at the request of the *Director* and for good cause or if the parties agree to mediate the complaint pursuant to Division 11, Article 2 of Chapter 1. The *Director* shall notify the complainant and the *business firm* within five business days of the initial findings and recommendations, including an explanation of the reasons justifying the initial findings.
("Initial Findings and Recommendations" added 4-10-2000 by O-18785 N.S.)

§22.3508 Hearings

(a) If the *Director* determines that one or more allegations are sustained, the *business firm* against whom the allegations were made shall be entitled to an administrative hearing on the allegations and an opportunity to participate in the administrative hearing. The *business firm* must request an administrative hearing within fifteen calendar days of notice of the initial findings. The hearing shall be held before a *Hearing Officer* within sixty calendar days of issuance of the *Director*'s initial findings.

(b) Based upon the evidence presented at the administrative hearing, and within thirty calendar days of the hearing, the *Hearing Officer* may affirm or reject the initial findings and recommendations, may substitute different findings and order appropriate remedies, or may return the case to the *Director* for further investigation and findings.

(c) Except where they conflict with this Division or the rules and regulations established by the City Manager pursuant to this Division, the hearing shall be conducted pursuant to the administrative enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.

("Hearings" added 4-10-2000 by O-18785 N.S.)

§22.3509 Remedies

When a complaint is sustained, the *Hearing Officer* shall order any one or more of the following actions:

(a) Any remedy provided by law or agreed to by the *business firm*;

(b) Recommendation to the City Manager and City Attorney for debarment of the *business firm* from bidding and contract awards on City projects for a period of not more than three years, according to the procedures set forth in Division 8, Article 2 of Chapter 2;

(c) Suspension or termination of any current *contract* between the *business firm* and the *City*; or,

(d) Referral of the matter for criminal prosecution, if appropriate under the circumstances.

("Remedies" added 4-10-2000 by O-18785 N.S.)

§22.3510 Sanctions For The Filing Of A False or Frivolous Complaint

If the *Director* determines that one or more allegations of a complaint are false and that the complainant knew them to be false when filed, or that one or more of the allegations of a complaint are so frivolous that they are wholly without merit, the *Director* may refuse to review or investigate any complaint filed under this Division by the same complainant for a period of up to three years. The *Director* may also recommend monetary sanctions against the complainant in the amount of the costs incurred by the *City* for the investigation and review of the false or frivolous complaint.

("Sanctions For The Filing Of A False or Frivolous Complaint" added 4-10-2000 by O-18785 N.S.)

§22.3511 Appeals

A *business firm* against whom a complaint has been filed or a complainant may appeal the decision of the *Hearing Officer* by filing a request for an appeal in writing with the City Manager within ten calendar days from service of the notice of the decision. The City Manager, or his or her representative, shall within ten calendar days of receipt, grant or deny the request for an appeal. If the request for an appeal is denied, the *Hearing Officer*'s decision shall be the final administrative decision. If the request for an appeal is granted, the City Manager shall designate an *Appeals Officer* to hear the appeal. The appeal shall be heard and the *Appeals Officer* shall render a final administrative decision within forty-five calendar days of granting the request for an appeal. Except where they conflict with this Division or the rules and regulations established by the City Manager pursuant to this Division, the appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.

("Appeals" added 4-10-2000 by O-18785 N.S.)

§22.3512 Mandatory Nondiscrimination Contract Clause

Every *contract* and *subcontract* shall contain a nondiscrimination clause that reads as follows:

Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

("Mandatory Nondiscrimination Contract Clause" added 4-10-2000 by O-18785 N.S.)

§22.3513 Contractor Bid Requirements

All requests for bids or proposals issued by the *City* shall include the following language:

As part of its bid or proposal, Bidder shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

("Contractor Bid Requirements" added 4-10-2000 by O-18785 N.S.)

§22.3514 Contract Disclosure Requirements

Every *contract* issued by the *City* shall include the following language:

Upon the City's request, Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions.

("Contract Disclosure Requirements" added 4-10-2000 by O-18785 N.S.)

§22.3515 Other Legal Remedies

The remedies provided by this section are in addition to any other statutory, legal, or equitable remedies that may be available and are not intended to be exclusive.
("Other Legal Remedies" added 4-10-2000 by O-18785 N.S.)

§22.3516 Non-Interruption of Performance

The filing, investigation, hearing, and appeal of a complaint under this Division shall not hinder or affect the award of, performance of, or payment on a *contract* prior to a final administrative decision that establishes a violation.
("Non-Interruption of Performance" added 4-10-2000 by O-18785 N.S.)

§22.3517 Policies and Procedures

The City Manager shall establish such rules and regulations as may be necessary to implement this Division.
("Policies and Procedures" added 4-10-2000 by O-18785 N.S.)