

ARTICLE III. EQUAL OPPORTUNITY IN PURCHASING ORDINANCE*

***Cross references:** Human rights, Ch. 17.

Sec. 12.5-61. Title.

This article shall be known as the Equal Opportunity in Purchasing Ordinance or "EOPO."
(C.B. No. 2003-081, § 1, 5-6-03)

Sec. 12.5-62. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

(1) *Construction contract* means any contract to which the City is a party for the construction, rehabilitation, alteration, conversion, demolition or repair of buildings, highways or other improvements to real property.

(2) *Construction contractor* means any person who contracts with the City in a construction contract.

(3) *Construction subcontractor* means any person who contracts with a construction contractor in an amount greater than the administrative purchasing limit for any single construction contract.

(4) *Contracting entity* means any vendor, construction contractor, or construction subcontractor.

(5) *Vendor* means persons who sell goods or services to the City in non-construction contracts and any financial depository in which the City deposits funds.

(C.B. No. 2003-081, § 1, 5-6-03)

Sec. 12-5.63. Policy.

It is the policy of the City to encourage and require equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, creed, class, national origin, sex, age, martial status, physical or mental handicap, sexual preference, family responsibilities, matriculation, political, affiliations, prior arrest record or source of income as required by the City's Human Rights Ordinance, and to promote the full realization of equal employment opportunity through actions by contracting entities who contract with the City.

This article establishes standards and procedures by which contracting entities who perform under City contracts may comply with the above-stated equal employment opportunity policy.

(C.B. No. 2003-081, § 1, 5-6-03)

Sec. 12.5-64. Terms in all contracts.

(a) *Terms in all contracts.* All contracts for purchases entered into by the City, except as excluded by this article, shall include the following provisions:

Human Rights Guarantee Provision

For the purposes of this provision, "contracting entity" means the legal entity that has signed a contract to provide services or perform work or to provide personal property or a combination thereof to or on behalf of the City. The words used herein and the requirements shall be interpreted in accordance with and have the meaning ascribed to them as set forth in the City's Equal Opportunity in Purchasing Ordinance and the City's Human Rights Ordinance.

(1) *Non-discrimination pledge.* The contracting entity shall not discriminate against any employee during the course of employment or applicant for employment because of race, color, religion, creed, class, national origin, sex, age, marital status, physical or mental handicap, sexual preference, family responsibilities, matriculation, political affiliations, prior arrest record or source of income.

The contracting entity shall take good faith affirmative action in accordance with its affirmative action plan if one is required to be submitted to and approved by the City.

(2) *Notices.* The contracting entity shall post notices regarding non-discrimination in conspicuous places available to employees and applicants for employment. The notices shall be provided by the City, setting forth the provisions of the nondiscrimination pledge; however, the contracting entity may post other notices of similar character supplied by another governmental agency in lieu of the City's notice.

(3) *Solicitation and ads for employment.* The contracting entity shall, in all solicitations and advertisements for employees placed by or on behalf of the contracting entity, state that all qualified applicants will receive consideration for employment as provided for in the City's Human Rights Ordinance. An advertisement in a publication may state "This is an Equal Opportunity Employer," which statement shall meet the requirements of this section.

(4) *Employment relations.* The contracting entity shall have sent within six (6) months prior to entering into a City contract or shall send prior to the effective date of the contract to each labor union, employment service agency, or representative of workers with which the contracting entity has a collective bargaining agreement or other contract or understanding, a notice as set forth in section (2) advising the labor union, worker representative, employment service agency of the contracting entity's commitment under the non-discrimination pledge.

(5) *Access to books.* The contracting entity shall permit access to all books, records and accounts pertaining to its employment practices by the City Manager or the City Manager's designee for purposes of investigation to ascertain compliance with this provision.

(6) *Reports.* The contracting entity shall provide periodic compliance reports to the City Manager, upon request. Such reports shall be within the time and in the manner proscribed by the City and describe efforts made to comply with the provisions of this provision entitled "Human Rights Guarantees."

(7) *Remedies.* In the event that any contracting entity fails to comply with the above subsections, or fails to comply with or make good faith efforts to comply with affirmative action plan or any provision of city, state or federal law relating to human rights, after the City has provided written notice to the contracting entity of such failure to comply and provided the contracting entity with an opportunity to speak to the City Manager or the City Manager's designee relative to such failure to comply, then the City, at its option,

may declare the contracting entity to be in default of this agreement and take, without election, any or all of the following actions:

- (i) Cancel, terminate or suspend the contract in whole or in part;
- (ii) Declare the contracting entity ineligible for further contracts for a calendar year;
- (iii) Recover from the contracting entity by set-off against the unpaid portion of the contract price, or otherwise recover money due to the contracting entity pursuant to the contract, the sum of fifty dollars (\$50.00) per day, as liquidated damages and not as a penalty, for each day after the date of the notice that the contracting entity shall fail to comply with these provisions of the contract, as determined by the City Manager, the said sum being fixed and agreed upon by and between the contracting entity 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 breach of contract, and said amount is agreed to be the amount of monetary damages which the City would sustain;
- (iv) Seek other sanctions as may be imposed by the Human Relations Commission or other governmental bodies pursuant to law.

(b) The construction contractor shall automatically include the provisions of the foregoing paragraphs in every construction subcontract so that the provisions will be binding upon each construction subcontractor.

(C.B. No. 2003-081, § 1, 5-6-03)

Sec. 12.5-65. Affirmative action plan; submittal and approval.

(a) *Submittal.* Each contracting entity, as defined herein, shall submit an affirmative action plan for the City's consideration describing the actions the entity will take to ensure compliance with this article. Such plan shall be accepted for a period of one (1) year from the date of approval by the City.

(b) *Minimum requirements.* The plan shall be approved by the City Manager if, and only if, the plan at minimum reflects substantial compliance with the following requirements:

(1) *Equal employment policy statement.* The contracting entity must indicate a positive attitude toward equal employment opportunity and indicate that decisions regarding recruitment, hiring, training and promotion will be made without regard to race, color, creed, age, physical or mental handicap, marital status, sexual preference, family responsibilities, matriculation, political affiliation, arrest record, or source of income, religion, sex or national origin, except when one (1) of these criterion is a good faith qualification for the occupation involved.

(2) *Assignment of responsibility.* The contracting entity must select a director of the contracting entity's affirmative action program. It will be the director's responsibility, among other things, to assist in the identification and solution of problems. The contracting entity must give the director the necessary top management support and staffing to fulfill his or her job duties.

(3) *Procedures for disseminating policy.* A policy of affirmative action is considered to be of little value unless it goes beyond the words on a piece of paper and is put into effect. The contracting entity is responsible for establishing procedures for disseminating his or her affirmative action program both within the entity (internally) and outside the entity (externally).

(4) *Utilization analysis.* The contracting entity must identify those areas within the contracting entity's workforce in which minorities and women are being under-utilized. A utilization analysis is composed of four (4) different parts: a workforce analysis; identification of job groups within the contracting entity; an availability analysis; and an under-utilization analysis.

(5) *Goals and timetables.* For each job group in which under-utilization of minorities or women is found, the contracting entity must set up a system of goals and timetables for correcting the deficiencies. Separate goals for minorities and women must be established, but a single goal for minorities is acceptable unless it is determined that one (1) minority is under utilized in a substantially disparate manner.

(6) *Identification of problem areas and adverse effect.* The contracting entity must identify key job titles in which women or minorities are under-represented in relation to their availability in the workforce and those employment practices which have an adverse effect on women or minorities so as to discourage their employment or full utilization. The contracting entity studies of applicant flow, recruitment procedures, selection and placement procedures, promotions and transfers, seniority systems, terminations, relations with labor unions, employee benefits and working conditions are required.

(7) *Corrective action measures.* Should problem areas be identified or a disproportionate impact on women or minorities be uncovered, the contracting entity is obligated to develop and execute corrective action programs. The total selection process should be evaluated and the necessary changes made.

(8) *System for monitoring compliance.* To insure that the non-discrimination policy is being carried out, the contracting entity should monitor employment actions at all levels and require the submission for review of reports from unit managers on a scheduled basis.

(9) *Support of EEO programs.* Local and national programs that are designed to improve the employment opportunities of women and minorities should be actively supported by the contracting entity.

(10) *Recruitment of persons outside workforce.* Racial minorities and women generally considered outside of the workforce should be considered for employment when they have the requisite skills and can be recruited through affirmative action efforts.

(11) *System of records and annual summary.* In order to be able to supply compliance officers with information on affirmative action efforts, contracting entities should establish a system of compiling support data in such forms as applicant flow data, progression line charts, seniority rosters, and applicant rejection ratios indicating minority and sex status.

(c) *Failure to submit plan.* If the proposed contracting entity fails to submit an affirmative action plan which, in the City Manager's sole discretion, complies with this section, prior to the execution of a contract by the City, or within such reasonable time after execution as may be provided by the City Manager, the sanctions provided for in this article or provided for in the agreement shall be enforced against the contracting entity.

(d) *Failure to cooperate or comply with plan.* If the contracting entity fails to provide information required to the City Manager to determine compliance with the plan within seven (7) days of any such request, or fails to make a good faith effort to comply with the provisions of the submitted and approved affirmative action plan, the City Manager may invoke any of the sanctions provided for under the terms of the agreement with the contracting entity.

For the purpose of this subsection, "good faith effort" means documented actions reasonably calculated to meet an established hiring goal or to correct or eliminate deficiencies or deviations from accepted equal employment opportunity practices or those practices recommended or required by the United States Office of Federal Contract Compliance Programs or its successors, or Uniform Guidelines on Employee Selection Procedures promulgated by the United States Equal Opportunity Commission or its successor.

(e) *Inclusion in bid and proposal requests.* In addition to the required "Human Rights Guarantee Provision" in section 12.5-64, the City Manager shall include the requirements of (a), (b), (c) and (d) in all bidding documents and requests for proposals for contracts not exempted by this article.

(C.B. No. 2003-081, § 1, 5-6-03)

Sec. 12.5-66. Powers and responsibilities of City.

(a) *City's responsibilities.*

(1) *Investigation.* The City may examine the employment practices of any contracting entity or initiate such investigation by the appropriate agent of such entity to determine whether or not the provisions of this article have been met.

(2) *Employment relations.* The City shall use its best efforts to cause any contracting entity, who is engaged in work under City contracts, any referral, recruiting or training agency, or other representatives who are or may be engaged in work under construction contracts and construction subcontracts to cooperate with and to comply in the implementation of purposes of this article.

(3) *Notice to other agencies.* The City shall, in appropriate cases, notify the concerned contracting agency, the Illinois Department of Human Rights, the United States Department of Justice, or other appropriate federal, state or city agencies whenever it has reason to believe that practices of any contracting entity have violated any provision of law relating to human rights.

(4) *Review of employment practices.* The City may periodically review the employment practices and procedures of contracting entities to determine compliance with the

provisions of this article, and require such entities to file the appropriate reports as required by this article.

(b) *City manager's responsibilities.*

(1) *Compliance.* The City Manager shall be responsible for seeking compliance with the contract provisions as set forth in section 12.5-64.

(2) *Report to council.* The City Manager shall file a written report with the City Council and the Human Relations Commission within the first thirty (30) days of each quarter of the fiscal year. Such report shall contain:

- a. Those contracting entities doing business with the City who are in compliance with this article;
- b. Efforts that have been made to determine contracting entities' compliance with this article;
- c. The level of minority employment in City contracts covered by this article;
- d. Any and all actions taken against contracting entities during the quarter.

(C.B. No. 2003-081, § 1, 5-6-03)

Sec. 12.5-67. Contracts exempted.

This article shall not be applicable to the following contracts:

- (1) Individual contracts not exceeding the administrative purchasing limit, unless in any fiscal year, the contracting entity has accumulated greater than an amount which exceeds the administrative purchasing limit in individual contracts with the City in that or the previous fiscal year, in which case the contracting entity shall comply with each and every provision of this article for the remainder of the fiscal year and the next full fiscal year after such accumulation;
- (2) Contracts for the purchase or sale of all or any interest real estate, or for the development or annexation of real estate;
- (3) Contracts with other governmental entities;
- (4) Collective bargaining and employment contracts;
- (5) Purchases made at auctions or bankruptcy sales;
- (6) Contracts for the purchase of goods or services, such as utilities or books, which can only be made from a single source;

(7) Contracts with contracting entities which the City Manager determines have met affirmative action requirements of other governmental entities with requirements similar to those of the City;

(8) Contracts with contracting entities which employ only owners or the owners' relatives, or which employ less than three (3) persons to work as employees;

(9) Contracts for sale of goods, services or property by the City; and

(10) Contracts for goods or services which are "emergency purchases" under the City's purchasing ordinance.

(C.B. No. 2003-081, § 1, 5-6-03)

Sec. 12.5-68. Interpretation.

The provisions of this article shall be interpreted liberally and consistent with the requirements, exceptions and other provisions of the City's Human Rights Ordinance.

(C.B. No. 2003-081, § 1, 5-6-03)