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Title: Ordinance amending the Pittsburgh Code of Ordinances, Title I - Administrative, Article IX - Boards, Commissions and Authorities, Chapter 177A - Equal Opportunity Review Commission by adding new language and amending current language.

Sponsors: Reverend Ricky V. Burgess, R. Daniel Lavelle

Indexes: PGH. CODE ORDINANCES TITLE 01 - ADMINISTRATIVE

Code sections:

Attachments: 1. 2012-0530.docx, 2. 2012-0530 VERSION 2.doc, 3. 2012-0530 VERSION 2 - REVISED.doc

Date	Ver.	Action By	Action	Result
12/12/2012	2	Mayor	Signed by the Mayor	
12/4/2012	2	City Council	Passed Finally	Pass
11/28/2012	2	Standing Committee	AMENDED BY SUBSTITUTE	Pass
11/28/2012	2	Standing Committee	Affirmatively Recommended as Amended	Pass
7/2/2012	1	Standing Committee		
6/26/2012	1	City Council	Read and referred	

Ordinance amending the Pittsburgh Code of Ordinances, Title I - Administrative, Article IX - Boards, Commissions and Authorities, Chapter 177A - Equal Opportunity Review Commission by adding new language and amending current language.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1.

§ 177A.01 - PURPOSE, AUTHORITY AND DEFINITIONS.

This Chapter shall not apply to those services which are contracted out in accordance with the Act 47 Plan.

The purpose and authority of the Equal Opportunity Review Commission (EORC) shall be to review and approve all applicable [Construction and Professional Services] contracts for compliance with Chapter 161 of the Pittsburgh Code of Ordinances, as well as the contractor's compliance with successfully meeting the City of Pittsburgh's policies regarding minority and women business enterprise opportunities, and employment opportunities for minorities and women in municipal government and covered construction and Professional Services as well as other contracts with the City of Pittsburgh and

its Authorities.

"EORC" or "Commission" - Equal Opportunity Review Commission
"MBE" - Minority Owned Business
"WBE" - "Women-Owned Business
"IFB" - Invitation for Bid
"RFP" - Request for Proposal
"RFQ" - Request for Qualifications
"Prime" or "Primary" - Primary Contractor
"Sub" - Subcontractor

(Ord. 21-2004, §§ 5, 7, 12-2-04)

§ 177A.02 - EQUAL EMPLOYMENT OPPORTUNITY PRACTICE AND GOALS.

The City of Pittsburgh is committed to the ideal of providing all citizens an equal opportunity to participate in City and its Authorities Contracting opportunities. In order to ensure that there are opportunities for historically disadvantaged minority groups and women to participate on Covered Contracts, and consistent with the City's current equal employment opportunity practice and goals, the EORC will review contracts to include an evaluation of a developer/contractor's employment of minority groups and women, encouraging goals of twenty-five (25) percent and ten (10) percent, respectively.

(Ord. 21-2004, §§ 5, 7, 12-2-04)

§ 177A.03 - CREATION AND ORGANIZATION.

- (a) The Equal Opportunity Review Commission shall consist of eleven (11) members who are residents of the City and shall be appointed by the Mayor subject to the approval of Council.
- (b) Six (6) members shall serve two-year terms and five (5) members shall serve four-year terms, with the terms of the individual members determined by lot.
- (c) Their successors shall be appointed on the expiration of their respective terms and appointments to fill a vacancy shall be for the unexpired portion of the term.
- (d) All appointed members shall serve without compensation except for reimbursement of approved expense.
- (e) The Commission shall have the power to adopt its own rules of procedure not inconsistent with any law or ordinance.
- (f) The Department of Equal Opportunity and Review shall be headed by the Director of Equal Opportunity and Review who shall report directly to the Mayor.

(Ord. 21-2004, §§ 5, 7, 12-2-04)

(g) The Department of Equal Opportunity and Review shall solicit companies to provide software and related services for the purpose of tracking MBE/WBE participation.

§ 177A.04 - RESPONSIBILITIES OF THE EORC.

With respect to the provisions discussed in Chapter 161, the EORC shall gather all information necessary to make a determination of the adequacy of [an apparent low] a responsive and responsible bidder's plan to attain the MBE/WBE requirements and equal employment opportunity goals established in this Chapter.

(a) The Department of Equal Opportunity and Review shall be responsible for monitoring compliance with the provisions of this Chapter and the contract provisions established in accordance therewith.

(b) The EORC shall further promulgate regulations to permit the coordination of purchasing between the City and County and by all City departments, agencies and Authorities consistent with the spirit and intent of this Chapter[.], which is to facilitate actual participation by minority- and women-owned businesses as prime contractors and subcontractors in construction and professional services contracts within the City of Pittsburgh.

(c) The [EORC] Department of Equal Opportunity and Review shall, no later than thirty (30) days following the close of each quarter, submit to Council, the Mayor and the Controller, a quarterly report which details the extent to which minority-owned and women-owned businesses have been actual participants in the sale of goods and services to the City and its Authorities for the preceding quarter[.] either as prime contractors or subcontractors. This report shall be based on payments received for actual work performed. The report shall, at a minimum, show for each agency the name and address of each such minority-owned business and/or women-owned business, the contract or subcontract price, a description of the work performed on the contract by class of work, project type and the amount of actual payments made on said contract(s). [and] The report shall show separately the total [number of contracts awarded to minority-owned businesses and women-owned businesses as a percentage of the total number of contracts awarded and as a percentage of the total contract price.] amount of money paid on contracts with minority-owned and/or women-owned businesses as prime contractors and subcontractors as a percentage of the total contract price paid by each agency that quarter. This report shall include all categories of procurement for the City of Pittsburgh and its Authorities and shall include commodities, construction, professional services and service contracts and shall identify administrative and legislative policy initiatives which have been implemented to improve minority-owned business and women-owned business procurement with the City and its authorities.

(d) The [EORC] Department of Equal Opportunity and Review shall, no later than March 15 of each year, submit to the EORC, Council, the Mayor and the Controller, a yearly report which details the extent to which minority-owned and women-owned businesses have been actual participants in the sale of goods and services to the City and its Authorities for the preceding year[.] either as prime contractors or subcontractors. This report shall be based on payments received for actual work performed. The report shall, at a minimum, show for each agency the name and address of each such minority-owned business and/or women-owned business, the contract or subcontract price, a description of the work performed on the contract by class of work, project type and the amount of actual payments made on said contract(s). [and] The report shall show separately the total [number of contracts awarded to minority-owned businesses and women-owned businesses as a percentage of the total number of contracts awarded and as a percentage of the total contract price.] amount of money paid on contracts with minority-owned and/or women-owned businesses as prime contractors and subcontractors as a percentage of the total contract price paid by each agency that year. This report shall include all categories of procurement for the City of Pittsburgh and its Authorities and shall include commodities, construction, professional services and service contracts and shall identify administrative and legislative policy initiatives which have been implemented to improve minority-owned business

and women-owned business procurement with the City and its authorities.

(e) The EORC shall update its minority-owned and women-owned business disparity study (ies), pursuant to established Supreme Court precedent at *City of Richmond, VA vs. J.A. Croson Co.* 488 U.S. 469 (1989), in [2008], 2012 and every five (5) years thereafter.

§ 177A.05 - PROPOSAL REQUIREMENTS

All City Departments, agencies and Authorities to which the EEO goals of the City apply shall implement the following process:

- a. All IFBs/RFPs/RFQs shall include a section explaining the MBE/WBE participation goals.
- b. All IFBs/RFPs/RFQs shall include a sample MBE/WBE Commitment Letter which contains a signature line for both primary contractor and the subcontractor to sign.
- c. Pre-submission meetings are held for all IFB/RFP/RFQ's. During these meetings MBE/WBE participation and documentation requirements are reviewed. Bidders/Proposers are reminded to submit copies of the commitment letters, proof of out-reach, and their current M/WBE certification and/or current M/WBE certification for their M/WBE partners/subcontractors.

§ 177A.06 - PROPOSAL REVIEW PROCESS

- a. Once bid/proposals are received, a responsive determination is conducted which includes a review of the bidders/proposers M/WBE participation plan.
- b. If a bidder/proposer failed to submit a plan, their bid/proposal shall be deemed non-responsive.
- c. If a bidder/proposer failed to submit any of the required information (such as certifications), or if clarification is needed, a written request is sent to the bidder/proposer requesting the additional information or clarification. A due date shall be stated in the request.
- d. Professional services contracts over \$25,000.00 and construction contracts over \$250,000.00 require Department of Equal Opportunity and Review/EORC review.
- e. Once a proposal is selected, if it meets the criteria for submission to the EORC, a representative shall complete the necessary EORC forms using information included as part of the bid or proposal and submits to the EORC no later than 5 calendar days in advance of the monthly meeting.
- f. At the EORC meeting, a representative shall present the proposed M/WBE Plan to the Commission. Presentation includes an overview of the project, review of the documentation previously submitted and an open discussion/question and answer session regarding the proposed M/WBE Plan. The prospective awardee and M/WBE subcontractor must be present at the meeting in order to participate in the presentation.
- g. Only payments to a certified M/WBE primary or subcontractor are accepted toward the M/WBE goals. Labor hours are counted or tracked for the purpose of meeting the EORC goals.
- h. Current Certification and Signed Commitment letters must accompany all plans submitted to the EORC.
- i. The Director of Equal Opportunity and Review shall present to the Commission, prior to a vote by the Commission, a staff recommendation explaining the reasons for a positive or negative recommendation.
- j. The EORC board may vote to approve the proposed plan or may table the vote and request additional information. If approved, the agency(ies) may move forward with the award process. If additional information is requested provide a timely response.
- k. If a proposed plan is rejected, the Director of Equal Opportunity and Review shall work with the

bidder/proposer to incorporate additional opportunities for M/WBE participation and present a revised plan at the next Commission meeting for consideration.

1. The EORC shall send a follow-up letter listing the Plans that were presented, the date presented, name(s) of presenter(s) and their recommendation as how to proceed with the contract.

§ 177A.06 7 - POST-AWARD PARTICIPATION AND PAYMENT CONFIRMATION

- a. All contracts require an MBE/WBE utilization report to be filed with contractor invoice payment application.
- b. Quarterly confirmation letters are sent by the Department of Equal Opportunity and Review to awarded MBE/WBE partner(s)/subcontractor(s) verifying the dollar amount they have been paid with a return date.
- c. The EORC and the Department of Equal Opportunity and Review shall maintain a tracking database as a way to ensure that the awarded contractors meet the obligations as listed in their contract and reported to the EORC.
- d. The EORC database shall compare MBE/WBE commitment to the actual numbers reported by the contractors and their identified MBE/WBE. partner(s)/subcontractor(s).
- e. If there is a discrepancy, the Department of Equal Opportunity and Review will contact the Contractor and the MBE/WBE partner for clarification.
- f. The Department of Equal Opportunity and Review shall develop a bi-annual report to the EORC showing both commitment and actual spend information.
- g. Variances between commitment and actuals must be resolved by EORC, including by recommending contract modification/termination.

§ 177A.0[5]7 8 - COMPLIANCE REVIEW PROCESS.

- (a) In the event of a developer/contractor's failure to meet the requirements of this Chapter, the EORC shall take the following steps:

(1) Issue a written Alert Notice to a developer/contractor and to appropriate unions whenever, in the EORC's opinion, the developer/contractor is not in compliance with the provisions of this Chapter or the rules and regulations issued pursuant thereto.

(2) If the Alert Notice is not satisfied within three (3) working days by a correction of the violation(s), the EORC shall follow up the Alert Notice by issuing a written Violation Notice. Upon the issuance of such notice, the developer/contractor will have seven (7) working days to correct the violation. If the violation has not been corrected within that period, the EORC may recommend actions to be taken by the City of Pittsburgh including the sanctions identified below.

- (b) Either or both notices described above may be rescinded by the EORC if the developer/contractor meets its obligations under this Chapter or if it presents a satisfactory explanation, in writing, as to why such compliance is impractical or impossible.

(Ord. 21-2004, §§ 5, 7, 12-2-04)

§ 177A.0[6]8 9 - DETERMINATION OF GOOD FAITH EFFORTS.

(a) In the event of failure by a developer/contractor to meet the residency requirements of Chapter 161 of the City Code of Ordinances, the developer/contractor shall be given an opportunity to demonstrate that every good faith effort has been made to meet these requirements. In a proceeding in which such good faith is an issue, all the actions of the developer/contractor in seeking to comply with the requirements shall be reviewed and evaluated by the EORC in light of the criteria set forth below. Compliance with these conditions shall be monitored by the EORC.

(b) A developer/contractor's good faith efforts with regard to City Resident work force requirements shall be measured by:

(1) The developer/contractor's effort to actively solicit City Residents as members of the work force to be employed in connection with the Covered Contract and to solicit subcontractors employing City Residents.

(2) The developer/contractor's efforts to notify the EORC of opportunities for City Resident participation in proposed projects. The developer/contractor shall place notifications in area publications, including minority publications, and shall also notify nonprofit and community organizations regarding such employment opportunities.

(3) The consideration given by the developer/contractor for employment as journeymen, trainees, advanced trainees and apprentices to persons referred by any training source approved by the Department of Personnel.

(4) The size of the developer/contractor's work force.

(Ord. 21-2004, §§ 5, 7, eff. 12-2-04)

§ 177A.0[7]9 10- SANCTIONS.

(a) The City shall have the power to impose sanctions upon contractors and subcontractors found to be in non-compliance with the residency requirements set forth in this Chapter. Such sanctions shall include, but not be limited to:

- (1) Suspension of payments,
- (2) Termination of the contract,
- (3) Recovery by the City of a percentage of the contract award price as liquidated damages,
- (4) Denial of right to participate in future projects for up to three (3) years,
- (5) Require the developer/contractor to comply with the terms of this Chapter through appropriate legal action,
- (6) Notify the City Controller to withhold payments under any contract or grant, which may be due or owing to the developer/contractor,
- (7) Require the developer/contractor to enforce his obligations under his contract with contractors and subcontractors by litigation at law or in equity, whichever is appropriate,
- (8) Take all other actions available at law or in equity for the breach of this agreement or any

act of irresponsibility by the contractor which the City may take into account in evaluating future bids by that contractor within the parameters of the laws of the State of Pennsylvania.

(b)

When work is completed, in the event that the City has determined that a contractor or subcontractor has not complied with the requirements of this Chapter concerning the work hours performed by City Residents or has failed to report in the manner as required by this Chapter, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to City Residents to the degree required in this Chapter.

(1)

In such case of noncompliance, a percentage of the base bid price for the contract shall be surrendered by the contractor to the City in payment for each percentage of shortfall toward the resident employment requirement of this Chapter. The formula shall be determined by the EORC.

(2)

Refusal to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Pittsburgh resident were employed. Any monies received by the City on account of liquidated damages shall be used to provide training, work experience and summer employment for Pittsburgh City Residents.

(c)

The use of any or all of the above remedies shall rest within the discretion of the EORC with the advice and approval of the City Solicitor.