

Ordinance No. 101432

AN ORDINANCE requiring inclusion of certain provisions in contracts with the City to prevent discrimination and promote equality of opportunity in employment, establishing affirmative action requirements, providing procedures and penalties to enforce compliance, and repealing Ordinance 98386.

C.F. 272418
(ENGROSSED BILL)

Council Bill No. 93032

INTRODUCED:	BY:
Sept. 5, 1972	Human Resources & Aud.
REFERRED:	TO:
Sept. 5, 1972	Human Resources & Aud.
REFERRED:	
REPORTED:	SECOND READING:
SEP 25 1972	SEP 25 1972
THIRD READING:	SIGNED:
SEP 25 1972	SEP 25 1972
PRESENTED TO MAYOR:	APPROVED:
SEP 26 1972	OCT 2 1972
SENT TO CITY CLERK:	PUBLISHED:
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PASSED OVER VETO:	VETO SUSTAINED:
ENGROSSED:	BY:
VOL.	PAGE

ORDINANCE 101432

AN ORDINANCE requiring inclusion of certain provisions in contracts with the City to prevent discrimination and promote equality of opportunity in employment, establishing affirmative action requirements, providing procedures and penalties to enforce compliance, and repealing Ordinance 98386.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. DEFINITIONS. As used herein:

(1) "Bona Fide Occupational Qualification" shall mean a job qualification as to a person's age, sex, race, creed, color or national origin which will be essential to the accomplishment of the purposes for which the person is hired.

(2) "Commission" shall mean the Human Rights Commission of the City of Seattle.

(3) "Consultant contracts" shall mean contracts for expert and temporary personal services, but shall not include contracts for services in connection with anticipated or pending litigation in which the City is involved.

(4) "Contracting Authority" shall mean the City officer or board authorized to enter into contracts on behalf of the City.

(5) "Contract" shall have its ordinary and usual meaning, but shall not include agreements made with other governmental agencies, associations of governmental agencies or officials, or with particular officers or employees of such agencies for services related to their official position or employment.

(6) "Director" shall mean the Director of the Department of Human Rights or his designee.

(7) "Minority", "minorities", or "minority persons" shall mean: persons who may be excluded or discriminated against because of creed, race, color, sex, age or national origin and including but not limited to persons between the ages of 40 and 65, women, Blacks, Asians (Japanese, Chinese, Filipino, Korean, Samoan), American Indians, Spanish Americans, Mexican Americans, Puerto Ricans and other persons with Spanish surnames not otherwise reported.

(8) "Services" shall have its ordinary and usual meaning, but shall not include subscription services or services related to anticipated or pending litigation in which the City is involved.

(9) "Vendor" shall mean a contractor who has a contract with the City for supplies, materials or equipment.

Section 2. POWERS AND DUTIES OF THE DIRECTOR. The Director shall have the power and duty to:

(1) Assist all city contracting authorities in preparing equal opportunity and anti-discrimination provisions for contract specifications, advise as to the compliance records of prospective contractors, and report findings as to discriminatory practices and employment guidelines recommended by the Human Rights Commission and established by pertinent ordinances, state or federal laws or regulations pertaining to equal opportunity affecting prospective contracts.

(2) Recommend to city contracting authorities the content of contract specifications requiring affirmative action to assure equality of employment opportunity, including but not limited to minimum employment goals and ranges of ratios for minority persons adversely affected by discrimination.

(3) Perform the duties prescribed in this ordinance, including adopting, rescinding, and amending suitable rules and regulations to implement this ordinance, reviewing sworn statements and proposed affirmative action programs, making investigations, assisting contractors, and evaluating contractor compliance and assisting contracting authorities to meet the requirements of this ordinance.

(4) Perform such other duties as may be required by ordinance or which are necessary to implement the purposes of this ordinance.

Section 3.1. REQUIREMENTS FOR CITY CONTRACTS--FRANCHISES, CONSULTANT, PUBLIC IMPROVEMENT AND SERVICES CONTRACTS. All consultant contracts, franchises, and contracts for public improvements, or services, the estimated cost of which exceeds one thousand dollars, shall contain the following provisions:

(1) "During the performance of this contract, the contractor agrees as follows:

"The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, or

national origin, unless based upon bona fide occupational qualification. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, race, color, sex, age, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

(2) "Contractor will, prior to commencement and during the term of this contract, furnish to the Director of Human Rights (as used herein Director means the Director of the Human Rights Department or his designee) upon his request and on such form as may be provided by the Director therefor, a report of the affirmative action taken by the contractor in implementing the terms of this provision, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records by the Director for the purposes of investigation to determine compliance with this provision."

(3) "If upon investigation the Director finds probable cause to believe that the contractor has failed to comply with any of the terms of the provision, the contractor and the contracting authority shall be so notified in writing. The contracting authority shall give the contractor an opportunity to be heard, after 10 days notice. If the contracting authority concurs in the findings of the Director, it may suspend the contract and/or withhold any funds due or to become due to the contractor, pending compliance by the contractor with the terms of this provision."

(4) "Failure to comply with any of the terms of this provision shall be a material breach of this contract."

(5) "The foregoing provision will be inserted in all sub-contracts for work covered by this contract."

Section 3.2. REQUIREMENTS FOR CITY CONTRACTS--LEASE AND CONCESSION

CONTRACTS. All contracts of the City for leases and concessions shall contain the following provisions:

"The lessee (contractor) agrees to comply with all state and local laws prohibiting discrimination with regard to creed, race, color, sex, age, or national origin."

All contracts of the City for leases and concessions of seven (7) consecutive days duration or longer and involving employers with three or more employees shall contain the following provisions:

"During the performance of this contract, the lessee (contractor) agrees as follows:

"The lessee (contractor) will not discriminate against any employee or applicant for employment because of creed, race, color, sex, age, or national origin, unless based upon a bona fide occupational qualification. The lessee (contractor) will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, race, color, sex, age, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The lessee (contractor) agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The lessee (contractor) will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to this provision; provided, nothing herein shall prevent an employer from giving preference in employment to members of his immediate family.

"Lessee (contractor) will, upon the request of the Director (as used herein Director means the Director of the Human Rights Department, or his designee) furnish to the Director on such form as may be provided therefor, a report of the affirmative action taken by the lessee (contractor) in implementing the terms of this provision, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records by the Director for the purpose of investigation to determine compliance with this provision.

"If, upon investigation, the Director determines that there is probable cause to believe that the lessee (contractor) has failed to comply with any of the terms of this provision, the lessee (contractor) shall be so notified in writing. The contracting authority shall give the lessee (contractor) an opportunity to be heard, after 10 days notice. If the contracting authority concurs in the findings of the Director, it may suspend or terminate this lease (contract) and evict lessee (terminate the contract) in accordance with law.

"Failure to comply with any of the terms of this provision shall be a material breach of this lease (contract).

"The foregoing provision will be inserted in all subleases (subcontracts) entered into under this lease (contract)."

Section 3.3. REQUIREMENTS FOR CITY CONTRACTS--SUPPLIES, MATERIALS AND EQUIPMENT CONTRACTS. All contracts of the City for the purchase of supplies, materials, or equipment shall contain the following provision:

"During the performance of this contract, the vendor agrees as follows:

"The vendor will not discriminate against any employee or applicant for employment because of creed, race, color, sex, age, or national origin, unless based upon a bona fide occupational qualification. The vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, race, color, sex, age, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to

be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

Before any city contracting authority accepts any bid or enters into any contract for the purchase of supplies, materials, or equipment the vendor shall be pre-qualified to do business with the City as provided for herein, provided that the contracting authority may waive the requirement of pre-qualification whenever it finds and certifies after investigation that:

- (a) Needed supplies, materials or equipment are available only from a single source and that the vendor has failed to comply with the requirements for pre-qualification, or
- (b) An emergency exists which requires the immediate purchase of supplies, materials, or equipment and for which the contracting authority is authorized to secure the supplies, materials, or equipment in the open market, without advertisement, at the lowest obtainable price, and that the vendor of the supplies, materials, or equipment is not currently disqualified from doing business with the city by reason of its removal from pre-qualified status or its failure to satisfy the pre-qualification requirements pursuant to its application for pre-qualification.

City contracting authorities purchasing supplies, materials, or equipment shall cause notice of this pre-qualifying requirement to be included in all invitations to bid and to be conspicuously displayed in all offices purchasing supplies, materials, or equipment for the City.

A vendor shall be deemed to be pre-qualified when the contracting authority, with the advice and recommendations of the Director, finds that:

- (a) The vendor is complying with Federal, State, and local laws regarding discrimination.
- (b) The vendor has satisfactorily completed and filed with the Director on such form as the Director provides therefor, the following information:
 - 1. An employment profile which may include the number of employees, their creed, race, color, sex, age and national origin, and the

type of work each performs by general categories, and such other information as requested by the Director; and

2. A sworn statement as set out in Section 4 of this ordinance which shall become terms and conditions of any and all contracts of the vendor with the City for the purchase of supplies, materials, or equipment.

A contracting authority may assume that a vendor has satisfied the requirements for pre-qualifying if the Director does not notify the contracting authority to the contrary within 3 working days of the submission to the Director by the vendor of all information and sworn statements required to pre-qualify.

Whenever the contracting authority, with the advice of the Director, finds that a contractor's sworn statement is in need of review or updating, he shall so notify the vendor who shall take steps as necessary to review or update his sworn statement to meet the contracting authority's requirements, provided that if changes in the sworn statement would have a substantial financial impact on the contractor with regard to contracts already entered into, the changes shall not apply to such contracts.

If upon investigation the Director determines that there is probable cause to believe that the vendor has failed to comply with any of the terms of this section or with the obligations of the sworn statement, written findings as to each such probable breach shall be given by the Director to the vendor and the contracting authority. The contracting authority shall give the vendor an opportunity to be heard, after 10 days notice. If the contracting authority concurs in the findings of the Director, it may cancel or suspend the vendor's pre-qualification.

Section 3.4. A City contracting authority may substitute in lieu of the contract provisions set forth in Sections 3.1, 3.2, and 3.3 such antidiscrimination or equal opportunity provisions required or requested by the Department of Human Rights, the United States of America or the State of Washington.

Section 4. SWORN STATEMENT. All City contracts covered by this ordinance except those for the purchase of supplies, materials, or equipment, shall include a sworn statement specifically setting forth what affirmative action the contractor will take to insure equality of opportunity in employment during the term of the contract.

Section 5. NOTICE OF CONTRACTS AWARDED. As to each City contract of \$1,000 or more, the contracting authority shall furnish to the Director the name of the contractor to whom such contract has been awarded and the dollar amount for which it was awarded. City contracts of less than one thousand dollars shall be made available upon request of the Director.

Section 6. ASSISTANCE TO CONTRACTORS. The Director may offer the services and facilities of the Department of Human Rights to assist contractors desiring to bid on, or having been awarded a city contract, to comply with the equal opportunity provisions for such contract, and may offer information as to organizations and agencies available to assist such contractor in recruiting, tutoring, training, and/or otherwise preparing potential employees.

Section 7. EMPLOYMENT GOALS, RANGES, OR RATIOS. Whenever the Director has certified to any City contracting authority that:

- (1) Identified minorities are being denied equal employment opportunity within the City in certain occupations, trades, professions or supervisory types of work included in City contracts by reason of creed, race, color, sex, age, or national origin due to existing discrimination or the effects of prior discrimination; and
- (2) Persons within such minorities are ready, willing and capable of accepting such employment or performing such tasks if the opportunity be available; and
- (3) Employment goals, ranges, or ratios for employment of such minorities in such occupations, trades, professions or supervisory types of work or tasks are necessary to assure such persons equality of employment opportunity and to overcome discrimination or the effects of past discrimination and social or institutional inertia; and
- (4) The goals, ranges or ratios certified reasonably reflect the employment goals, ranges or ratios that would exist under conditions of

equal employment opportunity and assure fair, equal and nondiscriminatory treatment of all persons without respect to creed, race, color, age, sex, or national origin.

then specifications for contracts let by any contracting authority and involving the line of work or tasks so certified shall include a provision establishing employment goals, ranges or ratios for such minorities as certified by the Director and adjusted by the contracting authority, if necessary, to reflect a standard of performance that can be carried out by a contractor proceeding in good faith and making ever reasonable effort to comply in all phases of employment, including solicitation, training and apprenticeship, promotion, and treatment of employees. Such provisions shall include provisions relating to enforcement and sanctions for noncompliance.

Employment goals may be implemented by or stated as a minimum number, ratio, range or a particular assignment, and may include participation in multi-employer programs for training and/or employment or coordination with State and Federal equal opportunity training programs, and shall be designed and used to assure that applicants for employment and employees receive equal employment opportunities and fair, equal and nondiscriminatory treatment without regard to creed, race, color, sex, age, or national origin.

On projects or activities financed with assistance from the United States or the State of Washington, the contracting authority may substitute for such provisions such anti-discrimination or equal employment opportunity provision required or requested by the Department of Human Rights, the United States or the State.

City contracting authorities shall, upon making adjustments or when requested by the Director, submit copies of the contracts covered by this section to the Director for recommendations and further suggestions with regard to minority employment goals which should be part of the specifications. Contracts so submitted to the Director may be assumed adequate if not returned within five days with recommendations for improvement. Contracting authorities shall, as to any contract submitted to the Director under this section, notify the Director for the final form of such contract before the date of its award.

Certifications by the Director under this section shall be in effect until revoked or revised by the Director and the contracting authority is notified

of such revocation or revision.

Employment goals established by this section are not intended and shall not be taken to diminish the contractor's responsibility and obligation under other sections of this ordinance. A contractor whom the Director of Human Rights has certified to be acting in good faith and making every reasonable effort to comply with the employment goals established shall be deemed in compliance, even though the employment goals are not met.

Section 8. PROCEDURES WHEN COMPLIANCE WITH SPECIAL GOALS IS UNSATISFACTORY. Prior to the completion of any contract which contains provisions establishing employment goals, ranges or ratios, the Director may report to the contracting authority regarding the performance by such contractor. If the Director fails to submit such report, the City contracting authority may assume adequate compliance.

Coincident with or before a report from the Director asserting unsatisfactory contractor performance is sent to a contracting authority, the Director shall notify the contractor of such report in writing and of the contractor's right to be heard as set forth in this ordinance.

The contracting authority shall give the contractor an opportunity to be heard, after 10 days notice. If the contracting authority concurs with the report of the Director and is satisfied from the evidence that the contractor has failed to comply with the provisions of this ordinance or the promises and/or representations made in a sworn statement pursuant to Section 4 of this ordinance, or with the employment goals established in the contract in accordance with Section 7 of this ordinance, the contracting authority shall so find, and shall not enter into any other contract with such contractor until it is reasonably assured of future satisfactory compliance.

Action under this section shall be in addition to other remedies that may be available to the City under the contract.

Section 9. TRANSITION PERIOD FOR PRE-QUALIFICATION. For a period of three months following the effective date of this ordinance, a contracting authority purchasing supplies, materials, or equipment may find a contractor to be pre-qualified for purposes of Section 3.3 hereof when the contractor has filed the required information and sworn statement with the Director and such contractor shall continue to be pre-qualified unless the contracting authority, with the advice and recommendations of the Director, finds the contractor not qualified.

Section 10. REPEAL OF ORDINANCE 9838. That Ordinance 98386, entitled:

"AN ORDINANCE relating to public works contracts, requiring inclusion therein of certain provisions to prevent discrimination and promote equality of opportunity in employment by persons having or seeking contracts with the City, establishing procedures for the enforcement of compliance therewith, and repealing Ordinance 93939.",

is hereby repealed.

(To be used for all Ordinances except Emergency.)

Section 11. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 25 day of September, 1972
and signed by me in open session in authentication of its passage this 25 day of
September, 1972 Wm S. Iwai

President..... of the City Council.

Approved by me this 2 day of October, 1972
W. A. Wilson
Mayor.

Filed by me this 2 day of October, 1972

Attest: C. H. Richardson
City Comptroller and City Clerk.

(SEAL)

Published.....

By G. H. Alper
Deputy Clerk.

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported
and Adopted

SEP 25 1972

Your Committee on HUMAN RESOURCES & JUDICIARY

to which was referred C.B. 93032,

requiring inclusion of certain provisions in contracts with the City to prevent discrimination and promote equality of opportunity in employment, establishing affirmative action requirements, providing procedures and penalties to enforce compliance, and repealing Ordinance 98386,

RECOMMENDS THAT THE ENGROSSED BILL 93032 BE SUBSTITUTED FOR THE ORIGINAL COUNCIL BILL 93032
AND WHEN SO SUBSTITUTED THE SAME DO PASS.

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Purchasing managers

The Purchasing Management Association of Washington will feature "Hawaiian Night" at the meeting.

Plywood Supply appoints Tech Sales Co., Portland

The Okanagan National Forest Service will use Tech Sales Co., Portland, as its exclusive agent for the sale of forest products.

AN ORDINANCE requiring inclusion of certain provisions in contracts with the City to prevent discrimination and promote equality of opportunity in employment, establishing affirmative action requirements, providing procedures and penalties to enforce compliance, and repealing Ordinance 23385.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

(1) "Bona Fide Occupational Qualification" shall mean a job qualification as to a person's age, sex, race, creed, color or national origin which will be essential to the accomplishment of the purposes for which the person is hired.

(3) "Consultant contracts" shall mean contracts for expert and temporary personal services, but shall not include contracts for services in connection with anticipated or pending litigation in which the City is involved.

(5) "Contract" shall have its ordinary and usual meaning but shall not include agreements made with other governmental agencies, associations of governmental agencies or officials, or with particular officers or employees of such agencies for services related to their official position or employment.

(7) "Minority," "minorities" or "minority persons" shall mean: persons who may be excluded or discriminated against because of creed, race, color, sex, age or national origin and including but not limited to persons between the ages of 40 and 55, women, Blacks, Asians (Japanese, Chinese, Filipino, Korean, Samoan), American Indians, Spanish Americans, Mexican Americans, Puerto Ricans and other persons with Spanish surnames not otherwise reported.

(3) "Vendor" shall mean a contractor who has a contract with the City for supplies, materials or equipment.

Section 2. **POWERS AND DUTIES OF THE DIRECTOR.** The Director shall have the power and duty to:

(2) Recommend to city contracting authorities the content of contract specifications requiring affirmative action to assure equality of employment opportunity, including but not limited to minimum employment

All contracts of the City for leases and concessions of seven (7) consecutive days duration or longer and involving employers with three or more employees shall contain the following provisions:

"The lessee (contractor) will not discriminate against applicant

"Lessee (contractor) will upon the request of the Director (as used herein Director means the Director of the Human Rights Department, or his designee) furnish to the Director on such form as may be provided therefor, a report of the affirmative action taken by the lessee (contractor) in implementing the terms of this provision, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records by the Director for the purpose of investigation to determine compliance with this provision.

law.

"Failure to comply with any of the terms of this provision shall be a material breach of this lease (contract).

Section 3.3. REQUIREMENTS
FOR CITY CONTRACTS—SUP-
PLIES MATERIALS AND EQUIP.

Whenever the contracting authority, with the advice of the Director, finds that a contractor's sworn statement is in need of review or updating, he shall so notify the vendor who shall take steps as necessary to review or update his sworn statement to meet the contracting authority requirements, provided that if changes in the sworn statement would have a substantial financial impact on the contract with regard to contracts already entered into, the changes shall not apply to such contracts.

Section 3.4. A City contracting authority may substitute in lieu of the contract provisions set forth in Sections 3.1, 3.2 and 3.3 such antidiscrimination or equal opportunity provisions required or requested by the Department of Human Rights, the United States of America or the State of Washington.

Section 5. NOTICE OF CONTRACTS AWARDED. As to each City contract of \$1,000 or more, the contracting authority shall furnish to the Director the name of the contractor to whom such contract has been awarded and the dollar amount for which it was awarded. City contracts of less than one thousand dollars shall be made available upon request of the Director.

Section 7. EMPLOYMENT GOALS, RANGES OF RATES. Whether the Director has set a goal and rate contracting in industry shall:

1. be based on the number of jobs created since the year 1960, and

2. be based on the number of persons who are currently within the following categories:

- a. certain occupations, trades, professions or supervisory types of work included in any contracts for reasons of creed, race, color, sex, age or national origin due to existing discrimination of the effects of previous discrimination, and

(3) Employment goals, ranges or ratios for employment of such minorities in such occupations, trades, professions or necessary types of work.

The contracting authority shall give the contractor an opportunity to be heard after 10 days' notice. If the contracting authority concurs with the report of the Director and is satisfied from the evidence that the contractor has failed to comply with the provisions of this ordinance of the premises and/or representations made in a sworn statement pursuant to Section 4 of this ordinance or with the employment goals established in the contract in accordance with Section 4 of this ordinance, the contracting authority shall so find and shall not enter into any other contract with such contractor until it is reasonably assured of future satisfactory compliance.

Section 4. TRANSITION PERIOD FOR PRE-QUALIFICATION. For a period of three months following the effective date of this ordinance, a contracting authority purchasing supplies, materials, or equipment may find a contractor to be pre-qualified for purposes of Section 3.3 hereof when the contractor has filed the required information and sworn statement with the Director and such contractor shall continue to be pre-qualified unless the contracting authority, with the advice and recommendations of the Director, finds the contractor not qualified.

"AN ORDINANCE relating to public works contracts, requiring inclusion thereof in certain provisions to prevent discrimination and promote equality of opportunity in employment by persons hiring or seeking contracts with the city, establishing penalties for the enforcement of compliance therewith, and repealing Ordinance 31

Passed by the City Council
15th day of September, 1971
signed by me in open session
authentication of its passage
15th day of September, 1971

WFO CHICAGO
FBI CHICAGO
FBI NEW YORK

Filed by the
attorney
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the Daily Journal of Law
October 1, 1972

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