

ORDINANCE NO. 10574 (N.S.)

AN ORDINANCE AMENDING ARTICLE IIIK OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES RELATING TO AFFIRMATIVE ACTION PROGRAM FOR VENDORS

The board of Supervisors of the County of San Diego ordains as follows:

Section 1. Article IIIk of the San Diego County Code of Administrative Ordinances is hereby amended to read in its entirety as follows:

SEC. 84. AFFIRMATIVE ACTION PROGRAM FOR VENDORS.

This Article establishes an Affirmative Action Program to require vendors of the County of San Diego, and their subcontractors, on County contracts to take affirmative action to improve employment of disabled persons in their work forces.

The goal of this Affirmative Action Program shall be the attainment of the conditions of each vendor's work force such that the employment of disabled persons at all levels of the vendor's work force, for all activities, is approximately equal to the proportion of disabled persons in the local labor market of the County of San Diego based on the current Federal Census Data.

Nothing contained within this ordinance shall be constructed to promote sexual discrimination.

SEC. 84.1. DEFINITIONS.

Unless the provisions of contract otherwise requires, these definitions govern the construction of this Article:

(a) "Contract" means a purchase order, offer and acceptance, lease agreement or other arrangement creating an obligation to which the County is a party and would bring the other party within the definition of a vendor.

(b) "Subcontractor" means any person who agrees with any vendor who has a contract with the County of San Diego to furnish supplies, goods or services to such vendor with respect to such contract.

(c) "Contract documents" means any document or group of documents which constitute or form a part of a contract.

(d) "Person" means any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, or any other group or combination acting as a unit. A "Person" does not include a public agency.

(e) "Vendor" means all persons who provide, or offer to provide to the County, labor, equipment, materials or services of any kind or type, pursuant to a purchase order from the

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Purchasing Agent of the County or pursuant to a contract awarded by the Board of Supervisors; service contractors performing services for the County; all banks or institutions which receive money for deposit from the County other than the Treasurer; all persons who lease real property from the County; all persons who lease equipment from the County; and all persons who receive grant moneys pursuant to a contract awarded by the Board of Supervisors.

(f) "Competent" means possessing the requisite abilities and skills to perform the duties and tasks required of the position.

(g) "Local labor market" means the entire San Diego County labor market.

(h) "Good-faith efforts" means efforts made in sincerity and with genuine purpose to hire and promote disabled employees when opportunities exist for employment and for promotion. Good-faith efforts are evidenced by the vendor taking the positive steps and procedures set forth in Section 84.9 to recruit, employ, train, upgrade and retain disabled persons and also by including the specific, detailed documentation in instances of failure.

(i) "Disabled person" means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

(j) "Physical or mental impairment" means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organ; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(k) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(l) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(m) "Is regarded as having an impairment" means (1) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a vendor as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as the result of the attitudes of others toward such impairment; or (3) has none of the impairments defined in paragraph (1) of this section, but is treated by a vendor as having such an impairment.

(n) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

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(o) Director means as follows: The Director of the Department of General Services of the County of San Diego or staff designee where the subject agreement is a lease for real property, and the Director of the Department of Purchasing and Contracting for all other County Contracts subject to this Section.

SEC. 84.2. GOALS.

The Director, shall establish goals for vendor employment of disabled persons, with such goals being the proportion of disabled persons in the local labor market of the County of San Diego based on the current Federal census.

SEC. 84.3. INCORPORATION BY REFERENCE.

Each vendor and subcontractor of the County shall be required to make good-faith efforts to comply with the Program. This Program shall be incorporated by reference in all vendor contracts. A vendor who does not comply with the provisions of this Article shall be ineligible to receive any contract from the County during the period of vendor noncompliance.

SEC. 84.4. SUPPLEMENTARY RULES.

In order to implement this Program, the Board of Supervisors may from time to time adopt such rules and regulations as it deems reasonable and necessary.

SEC. 84.5. SMALL WORK FORCES.

Vendors and subcontractors who have a regular paid work force of less than fifteen (15) employees are exempted from compliance with this Article. Exemption is granted upon vendor's verification of work force size submitted annually.

SEC. 84.6. COMPLIANCE WITH FEDERAL AND STATE LAW.

(a) Each vendor shall submit certification of compliance with Civil Rights Act of 1964, Executive Orders 11246 and 11375, the Equal Employment Opportunity Act of 1974, the Rehabilitation Act of 1973, as amended, Department of Labor Regulations, the California Fair Employment Practice Act, and the California Labor Code Section 1777.5 and any other applicable Federal and State laws and regulations hereinafter enacted. Such certification shall be on forms to be provided by the County.

(b) Notwithstanding any other provision in this Article, any entity or individual subject to the provisions of the Article IIIk and who has an Affirmative Action Program substantially consistent with the objectives of this Article which is approved by an agency of the Federal Government or is otherwise complying with all federal or State disabled persons hiring requirements shall be deemed to be in compliance with the provisions of this Article upon certifying such compliance to the Director. The entity or individual shall immediately notify the Director where such entity or individual is no longer in compliance with such federal or State requirements.

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SEC. 84.7. COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAM.

(a) Each vendor shall have on file with the County certification of compliance with the provisions of this Affirmative Action Program. This form, to be provided by the County, shall include an Employment Data Sheet, certification of the authenticity of present employment data, and an agreement to make good-faith efforts to meet the current goals as part of the contractual obligations.

(b) This certification and employment data, if approved, will be kept on file for the remainder of the current year of the County's program and will be acceptable for such term.

(c) The County will maintain a current list of vendors and subcontractors who have been found by the Board of Supervisors to be in noncompliance with the Affirmative Action Program. Upon request, the County will supply this list of prospective vendors.

(d) Any vendor who does not meet the current minimum level goals of this Affirmative Action Program may be determined to be in noncompliance with this Affirmative Action Program if employment records show that hiring subsequent to the effective date of this Article has not tended to meet the current goals established for this Affirmative Action Program.

(e) No employer will be required to discharge any employee in order to increase the number of disabled persons.

SEC. 84.8. COMPLIANCE BY SUBCONTRACTORS.

Subcontractors shall comply with this Article in the same manner as vendors unless any subcontractor is exempted. Each subcontractor not exempted shall submit to the vendor a certificate that the subcontractor will comply with the provisions of the Affirmative Action Program. This form, to be provided by the County, shall include an Employment Data Sheet, certification of the authenticity of present employment data, and an agreement to make good-faith efforts to meet the current goals of the Affirmative Action Program as part of the contract. The apparent successful vendor shall provide to the County these required certificates for all subcontractors within the prescribed time limit.

SEC. 84.9. COUNTY OF SAN DIEGO AFFIRMATIVE ACTION PLAN -- AFFIRMATIVE ACTION EFFORTS; GOOD-FAITH COMPLIANCE.

The County of San Diego adopts the following County of San Diego Affirmative Action Plan, which sets forth those good-faith efforts to be undertaken by a vendor in complying with the Affirmative Action Program:

(a) The vendor shall notify local organizations that the vendor has employment opportunities available and shall maintain records of the organization's responses.

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(b) The vendor shall maintain a file of the names and addresses of each disabled applicant referred to the vendor and what action was taken with respect to each such referred applicant. If such applicant was not sent to the union hiring hall for referral, or if such applicant was not employed by the vendor, the vendor's file should document this and the reasons therefor.

(c) The vendor shall notify the Director when the union or unions with whom the vendor has a collective bargaining agreement have not referred to the vendor a disabled worker sent for by the vendor or the vendor has other information that the union referral process has impeded the vendor's effort to meet the established goals.

(d) The vendor shall participate in affirmative action training programs in the area, especially those funded by the County, State and Federal governments.

(e) The vendor shall disseminate the vendor's Affirmative Action Policy within the vendor's own organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, and other company publications, by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting the policy, and by specific review of the policy with disabled employees.

(f) The vendor shall disseminate the vendor's Affirmative Action Policy externally by informing and discussing it with all recruitment sources, by advertising in news media, specifically including disabled persons' news media, by notifying and discussing it with all local disabled persons' organizations and subcontractors.

(g) The vendor shall make specific and constant personal written and oral recruitment efforts directed at all local disabled organizations; schools with disabled students; disabled persons' recruitment organizations; and disabled persons' training organizations.

(h) The vendor shall make specific efforts to encourage present disabled employees to recruit their friends and relatives.

(i) The vendor shall insure that all employee specifications, selection requirements, tests, medical examinations, and other employee recruitment or evaluation procedures do not discriminate against disabled persons in application or effect.

(j) The vendor shall make every effort to provide after school, summer and vacation employment to disabled youths.

(k) Where reasonable, the vendor shall develop on-the-job training opportunities and participate and assist in any association or employer group training programs relevant to the vendor's needs.

(l) The vendor shall continually inventory and evaluate all disabled personnel for promotion opportunities and encourage disabled employees to seek such opportunities.

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(m) The vendor shall make sure that seniority practices, job classifications, rates of pay and other forms of compensation, and other employee practices and classifications do not have an unlawfully discriminatory effect on disabled employees.

(n) The vendor shall make reasonable accommodation to the known physical or mental limitations of a qualified disabled applicant or employee including job restructuring, part-time or modification of equipment or devices, the provision of readers or interpreters, and other similar actions unless the vendor can demonstrate that the accommodation would impose an undue hardship on the operation of the program.

(o) The vendor shall make certain that all facilities normally used concurrently by all employees and all company activities are nonsegregated, and accessible to and usable by disabled persons.

(p) The vendor shall continually monitor all personnel activities to insure that this County of San Diego Affirmative Action Plan is being carried out.

(q) The vendor shall solicit and maximize the utilization of disabled-owned businesses as subcontractors depending upon availability, including notification of disabled contractor groups and associations.

The vendor's and subcontractor's commitment to attain the current goals of disabled utilization as required by the Affirmative Action Program shall constitute a commitment to make good-faith efforts to meet said Affirmative Action Program goals. If a vendor or subcontractor has failed therein, "good-faith" compliance will be determined by the extent of vendor or subcontractor efforts, in accordance with the County of San Diego Affirmative Action Plan, to meet the Affirmative Action Program goals.

SEC. 84.10. SUBMISSION OF AFFIRMATIVE ACTION PLANS.

(a) Any vendor may submit to the Director for review and approval a written Affirmative Action Plan developed by the vendor in lieu of adopting the County's Affirmative Action Program.

(b) The vendor's or subcontractor's Affirmative Action Plan must include an analysis of all major job categories within the vendor's work force, with a notation if disabled persons are currently being underutilized in any one or more job categories. In making the work force analysis, the vendor shall conduct such analysis separately for disabled persons.

(c) The vendor's or subcontractor's Affirmative Action Plan must include goals and timetables for projected disabled employment on a line by line (job title) basis. Goals and timetables must be designed to correct any identifiable deficiencies. Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the vendor shall establish and set forth specific goals and timetables separately for disabled persons.

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(d) The vendor or subcontractor shall submit a certification of compliance with the County's Affirmative Action Program for Vendors together with its Affirmative Action Plan.

SEC. 84.11. VENDOR'S DUTIES.

(a) If the vendor's disabled work forces and the distribution of such work forces by general classification are equal to or exceed the current goals by general classification as established for each year of the Affirmative Action Program, the vendor will not be required to demonstrate the efforts made in reference to upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination for any period during which the vendor reaches or exceeds the established goals.

(b) The vendor shall maintain and permit access to updated employment records and information with respect to all employees directly or indirectly performing work under the County contract, in accordance with the direction of the County, setting forth the distribution of personnel and members of all disabled groups by classification, including information relating to apprentices and trainees.

(c) Vendors shall also demonstrate compliance on the contract by submitting evidence of disabled employment by general classification of both permanent and temporary employees. The County may exempt from the Affirmative Action Program those facilities of the vendor and the vendor's subcontractors not involved in performance under the County contract.

(d) The vendor shall send to each labor union, worker representative or employment agency with which such vendor has a collective bargaining agreement or other contract or understanding, a notice, in the form to be provided or approved by the County, advising said group of the vendor's commitments under this Article, and shall post copies of the notice in conspicuous places accessible to employees and applicants for employment.

(e) The inability of the vendor to recruit and hire competent personnel of disabled groups from unions, employee representatives or employment agencies shall not exempt the vendor from complying with this Affirmative Action Program except as provided in Section 84.12.

(f) Reporting procedures, for purposes of monitoring the vendor's Affirmative Action Program, shall be established by the Director and reporting guidelines will be set forth adopting rules and regulations for implementing this Article. The vendor shall be required to comply with such reporting procedures. The vendor shall require and submit information from the vendor's subcontractors.

(g) The vendor shall assure that the disabled are not discriminated against in receiving any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired in whole or in part, with Federal or County assistance. This shall include making reasonable accommodation to the known physical or mental limitations of otherwise qualified disabled applicants and employees, as stated in Section 84.9 (n) and (o) of this Code.

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SEC. 84.12. FAILURE OF VENDOR TO COMPLY WITH PROGRAM.

In the event that the vendor has failed to meet the current goals, or otherwise fulfill the County of San Diego Affirmative Action Plan for complying with the Affirmative Action Program, and desires to present evidence that failure to comply or meet such goals was through no fault of the vendor, but was due to an inability to obtain competent disabled employees, after making all good-faith efforts to do so from other sources such as public advertisements, unions, employment or other agencies capable of providing such employees, the vendor shall submit written evidence as required by the County that said vendor has made such good faith efforts and that competent disabled employees have not been available by such means.

SEC. 84.13. CORRECTING VIOLATIONS.

After a finding by the Director that a vendor or subcontractor has failed to file with the County all forms or reports required by this Article while operating under a County contract or has committed a violation of any applicable State or Federal law concerning equal employment practices, the Director shall serve written notice of such violation on the vendor. The vendor shall be responsible for notifying any subcontractor involved in such violation. Upon request by the Director, the vendor found to be in violation shall meet with the Director in order to determine a method of correcting the violation and the time period within which such remedy shall be effected. If the remedy is not agreed upon within ten (10) days of the above notice, the Director shall prescribe the method by which the violation shall be corrected and shall notify the vendor in writing of such method. The vendor shall be responsible that said vendor's subcontractors correct their violations.

If the vendor has not corrected the violation in the manner prescribed by such notice, unless an extended period is permitted in writing by the Director, the Director shall make a finding that the vendor is in violation of this Article and shall impose one or more of the sanctions provided in this Article.

SEC. 84.14. SANCTIONS.

Upon a finding that a vendor or subcontractor has violated any portion of this Article, the Director shall impose one or more of the following sanctions:

(a) Find that the vendor is not eligible for the award of any contracts or any future contract until the vendor has demonstrated to the satisfaction of the County that said vendor has made a good-faith effort to improve disabled employment, and will comply with the Affirmative Action Program in effect at the time of any future contracts; in no event shall the vendor be eligible for award of any contract within one year from such finding, unless earlier approved by the Board of Supervisors.

(b) Terminate the entire contract effective at a time specified by the County.

(c) Terminate any portion of the contract or work thereunder.

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(d) Find that any subcontractor to the vendor in violation of this Affirmative Action Program is not a responsible party to a County contract and may refuse to contract with any vendor performing County contracts, until the subcontractor has demonstrated to the satisfaction of the County that the vendor has made a good-faith effort to improve disabled employment and will comply with the Affirmative Action Program in effect at the time of any future contracts; in no event shall said subcontractor be eligible to participate in any County contract within one year from such finding unless earlier approved by the Board of Supervisors.

SEC. 84.15. INTENT OF BOARD OF SUPERVISORS.

It is the intent of the Board of Supervisors to enact each provision of this Article independent of every other provision and therefore, should any part or language or any provision in this Article be declared invalid, the remaining provisions of the Article shall be of full force and effect.

SEC. 84.16. NOTICE OF VIOLATION AND IMPOSITION OF SANCTIONS.

In any case where the Director has made a finding that a vendor is in violation of this Article and has imposed any of the sanctions authorized by this Article, the Director shall mail or deliver to the vendor affected at least ten (10) days prior to the effective date of such sanction, a written notice which includes a statement of the action, a concise explanation of the reasons for such action, the basis relied upon for such action and an explanation of the vendor's right to appeal such action to the Board of Supervisors before the effective date of such action. A copy of the notice shall also be sent to any subcontractor of the vendor if the Director has made a finding that such subcontractor is in violation of the provisions of this Article.

SEC. 84.17. APPEAL PROCEDURE.

(a) A vendor or subcontractor who has received the notice required by Section 84.16 may, prior to the effective date set forth in such notice, file an appeal in writing with the Clerk of the Board of Supervisors. Such appeal shall set forth the reasons why the action of the Director should not have been taken. Failure of the vendor or subcontractor to appeal prior to the effective date set forth in such notice, shall make the action taken by the Director final.

(b) Upon receipt of the vendor's or subcontractor's written appeal, the Clerk of the Board of Supervisors shall within fifteen (15) days from such receipt set a hearing on the appeal before the Board of Supervisors. Such hearing shall be set at a time no more than thirty (30) days from the date that the Clerk receives the written appeal. The Clerk shall notify by mail the Director and vendor or subcontractor of the time and place set for said hearing. Pending hearing and decision of the Board of Supervisors, the effect of action of the Director shall be stayed.

(c) At the hearing on the appeal before the Board of Supervisors, the Director and vendor or subcontractor may present evidence relating to the action taken by the Director in the notice. Upon completion of the presentation of the evidence the Board may affirm, modify or overrule the action of the Director. The decision of the Board shall be final.

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SEC. 84.18. IN LIEU SANCTIONS FOR CERTAIN LONG-TERM LEASES.

Section 84.14 shall not be applicable to lease from the County entered into pursuant to Article 10 (commencing with Section 25549.1) of Chapter 5, Part 2, Division 2, Title 3 of the California Government Code. In lieu thereof, the Director shall impose one or more of the following sanctions upon a finding that a vendor or subcontractor has violated any portion of this Article:

(a) Find that the vendor is not eligible for the award of any contracts or any future contract until the vendor has demonstrated to the satisfaction of the County that said vendor has made a good-faith effort to improve disabled employment, and will comply with the Affirmative Action Program in effect at the time of any future contracts; in no event shall the vendor be eligible for award of any contract within one year from such finding, unless earlier approved by the Board of Supervisors.

(b) Find that any subcontractor to the vendor in violation of this Affirmative Action Program is not a responsible party to a County contract and may refuse to contract with any vendor performing County contracts until the subcontractor has demonstrated to the satisfaction of the County that the vendor has made a good-faith effort to improve disabled employment and will comply with the Affirmative Action Program in effect at the time of any future contracts; in no event shall said subcontractor be eligible to participate in any County contract within one year from such finding unless earlier approved by the Board of Supervisors.

(c) Assess the vendor or subcontractor an amount of up to One Thousand Dollars (\$1,000) per day for each violation which occurs or continues unabated. Upon exhaustion of the administrative remedies provided elsewhere in this Article, a vendor or subcontractor may, within ten (10) days, demand that the assessment be submitted to binding arbitration. If the demand is made, the arbitration proceedings shall be held and conducted pursuant to any arbitration procedures provided in the lease agreement or, in the absence of any such provisions, pursuant to Title 9 (commencing with Section 1280), Part 3 of the Code of Civil Procedure. The decision of the Board of Supervisors shall be stayed pending issuance of the arbitration decision. The arbitration decision shall (1) determine whether a violation of this Article has occurred and is occurring, (2) affirm, modify, or reject in whole or part the decision of the Board of Supervisors, (3) be binding upon both parties, and (4) be effective immediately.

Payment of any assessment shall be made daily commencing upon the effective date of the decision by the arbitrator(s) to assess. Late payments shall accrue simple interest at the rate of eighteen percent (18%) per annum (not to exceed in any event the maximum rate of interest then permitted to be charged by the County pursuant to applicable laws) and the County may offset the amount assessed and due, together with interest thereon, against any sums owed by the County to the vendor or subcontractor.


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(d) Commence an action in a court of competent jurisdiction, equitable or otherwise, for monetary damages, declaratory relief, injunctive relief, or for any other remedy deemed just and proper by such court. Failure of the vendor or subcontractor to abide by the final determination (including available appeals) by such court shall constitute an event of default under the lease and entitle the County to pursue any and all remedies available under the lease for default, including, but not limited to, termination of such lease.

Section 2. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the Daily Transcript, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL
BY: Shiri Hoffman, Senior Deputy

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 13th day of November, 2018.


KRISTIN GASPAR
Chairwoman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Roberts, Horn
ABSENT: Gaspar

ATTEST my hand and the seal of the Board of Supervisors this 13th day of November, 2018.

DAVID HALL
Clerk of the Board of Supervisors

By C. Rodry
Chrystal Rodriguez, Deputy



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