

ORDINANCE NO. 2303

**ORDINANCE FOR THE IMPLEMENTATION OF CONTRACT COMPLIANCE
FOR THE CITY OF MICHIGAN CITY**

WHEREAS, the city of Michigan City is committed to policy of providing equal employment opportunity on public contracts and prohibiting discrimination based on race, creed, color, sex, national origin, handicap, or relationship, and

WHEREAS, since the population of the City of Michigan City consists of people of many races, colors, religions, national origins, handicaps, and relationships, the City has a vital and compelling interest initiating positive practices in the expenditures of public funds to promote the general welfare of the City and to make possible the achievement of these laudable purposes, and

WHEREAS, the enactment of programs calling for affirmative action to assure equality of opportunity is essential to promote the full realization of the rights of all citizens, consistent with ability, to participate in the economic life of the City.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY:

Section 1. Definitions

(a) The words *discriminate*, *discriminates*, and *discrimination* wherever used in this ordinance are hereby defined as distinguish, differentiate, separate, or segregate solely on the basis or race, religion, color, sex, national origin, age, handicap, or relationship.

(b) The word *Contractor* wherever used in this ordinance is hereby defined as any person, partnership, corporation, association, or joint venture which has been awarded a public contract and includes every subcontractor on such a contract.

(c) The word *Subcontractor* wherever used in this ordinance is hereby defined as any person, partnership, corporation, association, or joint venture which supplies any of the work, labor, services, supplies, equipment, materials, or any combination of the foregoing under a contract with the contractor on a public contract.

(d) The words *public contract* wherever used in this ordinance are hereby defined as any contract awarded by the city whereby the city is committed to expend or does expend its funds in return for work, labor, services, supplies, equipment, materials, or any combination thereof, or any lease, lease by way of concession, concession agreement, permit, or permit agreement whereby the city leases, grants or demises property of the City of Michigan City or otherwise grants a right or privilege to occupy or use property of the City of Michigan City.

Section 1. Definitions (continued)

(e) The word *bidder* wherever used in this ordinance is hereby defined as any person, partnership, corporation, association, or joint venture seeking to be awarded a public contract.

(f) The term *construction contract* wherever used in this ordinance means any public contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, streets, or other improvements to real property.

Section 2. Equal Employment Opportunity Officer

The equal employment opportunity officer shall administer and enforce the city's Equal Employment Opportunity program established by the following sections inclusive, establish procedures to effectuate such sections, make all determinations as to compliance with the program, and shall meet with the contracting parties for said purposes. He shall have at his disposal the resources of the City's several departments, the Michigan City Human Rights Commission, and other independent duly authorized public agencies who may be under contract with the City and other City instrumentalities.

Sections 3. Equal Employment Opportunity Clause

In all public contracts entered into, the City of Michigan City shall incorporate an Equal Employment Opportunity clause, which shall read as follows:

During the performance of this contract, the contractor shall agree to the following:

(A) The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, handicap or relationship. The contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, handicap or relationship. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.

(B) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, handicap or relationship.

Sections 3. **Equal Employment Opportunity Clause (continued)**

(C) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contact or understanding a notice advising the labor union or workers' representative of the contractor's commitments under the equal employment opportunity clause of the city, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The contractor shall furnish all information and reports required by the equal employment opportunity officer pursuant to Sections 1 to 9, inclusive, and shall permit access to his employment books, records and accounts by the contracting agency and by the equal employment opportunity officer for purposes of investigation to ascertain compliance with the program.

(E) The contractor shall take such action with respect to any subcontractor the city may direct as a means of enforcing the provisions of paragraphs (A) through (H) herein, including penalties and sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in or is threatened with litigation as the result of such direction by the city, the city will enter into such litigation as is necessary to protect the interests of the city and to effectuate the city's equal employment opportunity program. In the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.

(F) The contractor shall file and shall cause his subcontractors, if any, to file compliance reports with the city in the form and to the extent prescribed by the equal employment opportunity officer of the city. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.

(G) The contractor shall include the provisions of paragraphs (A) through (H) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

(H) Refusal by the contractor or subcontractor to comply with any portion of this program as herein stated and described will subject the offending party to any or all of the following penalties:

1. Withholding of all future payments under the involved public contract to the contractor in violation until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract;

Sections 3. **Equal Employment Opportunity Clause (continued)**

2. Refusal of all future bids for any public contract within the City of Michigan City or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that he has established and shall carry out the policies of the program as herein outlined;
3. Cancellation of the public contract and declaration of forfeiture of the performance bond.
4. In cases in which there is substantial or material violation or the threat of substantial or material violation of the compliance procedure or as may be provided for by contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining within applicable law of contractors, subcontractors, or other organizations, individuals or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the policy as herein outlined.

Section 4. **Contract Compliance Requirements**

All notices to prospective bidders published on behalf of the city shall include as a part of the contract specifications the condition that all bidders will be required to comply with the Michigan City Equal Employment Opportunity program.

All reports required in this subdivision shall be submitted in duplicate to the department, division or other agency letting the contract.

Each bidder shall file, as part of the bid documents, contract employment reports with the city contracting agency or as may be directed by the equal employment opportunity officer. The contract employment reports shall include such information as to the employment practices, policies, programs and statistics of the contractor, and shall be in such a form, as the equal employment opportunity officer may prescribe. Subcontractors shall also submit contract employment reports to the city before approval by the city as subcontractor.

Section 5. **Pre-Award Conference**

Following receipt and review of the employment information submitted by the bidders under this subdivision and prior to award of a contract, the apparent successful bidder and his known major subcontractors shall be required to attend a pre-award conference if called by the equal employment opportunity officer, at which time the bidder and major subcontractors shall submit affirmative action programs to promote equal opportunity in employment.

Section 5. Pre-Award Conference (continued)

The equal employment opportunity officer shall determine whether or not the apparent successful bidder has complied with sections *III*, *IV*, and *V*, and shall submit his determination and recommendation thereon to the mayor or the director of the department involved.

After receiving the recommendation of the equal employment opportunity officer, the mayor, or the director of the department involved, shall process the award recommendation.

Section 6. Project site reports

Where a construction contract exceeds \$5,000.00, a project site report shall be completed and submitted by the contractor and any subcontractor not more than 30 days from the beginning of work on the site. The project site report shall include such information as to employment practices and statistics of the contractor and each subcontractor, and shall be in such a form, as the equal employment opportunity officer may prescribe. Where the term of the contract exceeds 30 days, the project site report shall be submitted once each 30 days or more frequently if the equal employment opportunity officer determines that this submittal is deemed necessary for a continuing evaluation of the work force composition. Subcontractors shall complete and submit project site reports to the contractor for transmittal to the city.

Post-award reports shall be reviewed as one means of determining contract compliance.

Section 7. Intergovernmental Cooperation

If specific discriminatory practices are found to exist in the administration and enforcement of Sections *I* to *IX* inclusive, in addition to the sanctions that may be imposed as provided for by the terms of the contract, the city may forward all pertinent information to the appropriate federal and state agencies.

Section 8. Contract Disposition

(A) In the event a contractor fails to cooperate in reaching mutually satisfactory solutions or to implement contract compliance agreements previously made, the equal employment opportunity officer shall review the case to determine:

- (1) Whether further efforts or alternative approaches are desirable. Depending upon the nature of the problem, the alternatives may involve contracts with industry or related labor unions, or requesting the assistance of the state (Indiana) civil rights commission or the Office of Federal Contract Compliance and the particular federal agency involved for further negotiations; or

Section 8. Contract Disposition (continued)

- (2) Whether any of the penalties set forth in paragraph *H* of Section *III* are appropriate to the case.

(B) If the equal employment opportunity officer determines that the contractor has violated or has failed to comply with the equal employment opportunity requirements of the contract after affording the contractor a reasonable time to correct his situation and where negotiations have been of no avail, he shall make a finding under subsection (*A-1*) or (*A-2*) of this section and shall transmit the finding and recommendations thereon to the Human Rights Director, who shall forward the finding and recommendations to the Mayor for appropriate action.

Section 9. Severability Clause

Sections 1 to 9, inclusive, and each part of such sections are hereby declared to be independent sections and parts of sections and notwithstanding any other evidence of legislative intent that if any provision of said sections, or the application thereof to any person or circumstances, other than those as to which it is held invalid, shall not be affected thereby, and it is hereby declared that this ordinance would have been passed independently of such section, sections, or parts of a section so held to be invalid.

Section 10

This ordinance shall be in full force and effect after passage, approval by the Mayor and publication as required by law.