

ABH:pm

No. 12/28/83

1st Reading 11-23-83

Ref. to GOVT OPS Comm.

Public Hearing 12-7 & 12-20-83

2nd Reading & Final

Passage

Council Members Rockenstein, Kaplan, Dziedzic, O'Brien, Daugherty, Rainville, White, Slater, Carlson, Scallon, Howard and Hoyt

83-Or- 324.

AN ORDINANCE

of the

CITY OF

MINNEAPOLIS

Date

Date to Mayor

Date Returned

Date Resubmitted
to Council

presently the following ordinance:

Amending Title 7, Chapter 139 of
the Minneapolis Code of Ordinances
relating to Civil Rights: In General.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 139.50, Subdivision (a)(6) of the above-entitled ordinance be amended to read as follows:

- (6) The contractor ~~will use its best efforts~~ SHALL TAKE AFFIRMATIVE ACTION to afford business enterprises owned and controlled by women and minorities the maximum ~~practicable~~ FEASIBLE opportunity to participate in the performance of this contract and resulting subcontracts. As used in this contract, the term "business enterprise owned and controlled by women and minorities" means a business, at least fifty-one (51) per cent of which is owned and controlled by minority group members of women. For the purposes of this definition, "minority group members" are black, hispanic, Asian-Americans, and American Indians and Alaskan natives. ~~For the purposes of compliance with this chapter, the subcontractor status as a business enterprise owned and controlled by women and minorities shall be determined by the City of Minneapolis' office of women and minority business enterprise.~~ This provision is not intended to limit in any manner the right of a contractor to enter into a contract with a subcontractor whose status as a business enterprise owned and controlled by women and minorities has not been determined by the city.

Section 2. That Section 139.50, Subdivision (a)(7) of the above-entitled ordinance be amended to read as follows:

- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or provisions of Title 7, this contract may be canceled, terminated or suspended, in whole or in part, and the contractor may be declared ineligible by the Minneapolis city council for further city contracts in addition to other remedies as provided in Title 7. In addition, the contractor shall be liable for any costs or expenses incurred by the City of Minneapolis in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the city under this contract AND FOR ADMINISTRATIVE COSTS INCURRED IN SEEKING COMPLIANCE. THE CITY SHALL HAVE THE RIGHT TO SPECIFIC PERFORMANCE OF THIS CONTRACT. Further, in the event there is probable cause to believe the contractor is in noncompliance with the nondiscrimination clauses of this contract or with any applicable rules or regulations, the city shall withhold up to fifteen (15) percent of said contract price until such time as the contractor is found to be in compliance ~~by the director or the commission~~ OR IN THE EVENT THAT WITHHOLDING A PORTION OF THE CONTRACT PRICE IS NOT A FEASIBLE ALTERNATIVE, THEN LIQUIDATED DAMAGES OF FIVE HUNDRED DOLLARS PER DAY FOR EACH DAY THAT THE DIRECTOR SHALL DETERMINE THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE CONTRACTOR IS IN NONCOMPLIANCE WITH THIS SECTION SHALL BE IMPOSED, or is otherwise adjudicated to be in compliance.

Section 3. That Section 139.50, Subdivision (a)(8) of the above-entitled ordinance be substituted in lieu of the present subdivision (a)(8) and that it read as follows:

- (8) When the official empowered to monitor any affirmative action provision of any contract or part of any contract under this section 139.50 shall have probable cause to believe that the contractor is not in compliance with any provision of paragraphs (1) through (7) or with the implementing rules,

regulations, provisions or plans thereto, said official shall notify the department administering said contract and shall engage in conciliation and persuasion to try to eliminate the acts or practices giving rise to such belief.

(aa) Should conciliation and persuasion fail to eliminate the complained of acts or practices said official in his/her discretion shall either request a hearing before the City Council on the subject matter of the noncompliance or file a complaint with the Director of the Department of Civil Rights demanding that a hearing panel of the Commission on Civil Rights be convened to hear the complaint. Upon said referral, said official may request that sanctions permitted under paragraph (a)(7) of this section be immediately imposed.

(bb) Where said official has requested a hearing before the City Council, the president may refer the matter in conformance with Council procedures to the appropriate standing committee, no later than its second next regular meeting, for public hearing on the alleged noncompliance and the committee shall report its findings to the Council. The Council may take final action including final imposition of sanctions under paragraphs (1) through (7) of this subsection, direction to said official to obtain compliance or any other action it deems just and proper.

(cc) Should said official have probable cause to believe that the contractor remains in noncompliance, ^{she}he shall file a complaint with the Director of the Department of Civil Rights demanding that a hearing panel of the Commission on Civil Rights be convened to hear the complaint.

(dd) Within fifteen (15) days of receiving a complaint under this section, the Director of the Department of Civil Rights shall certify the matter for hearing. The Director of the Department of Civil Rights

shall assist said official referring the complaint in preparation for hearing and in conciliation prior to hearing. The hearing on the complaint shall be held within thirty (30) days of notification of the matter for hearing. The City Attorney shall represent said official upon hearing.

(ee) The chairperson of the Commission on Civil Rights shall appoint a three person panel, one of whom shall be an attorney, who shall also be chairperson of the panel. The panel shall hold a public hearing on the complaint of said official and shall receive evidence pursuant to the provisions of Minnesota Statutes Section 14.60. The hearing panel shall make findings with respect to the contract, ordinance provisions, affirmative action plan or women and minority business enterprise plan. The hearing panel shall order final action including final imposition of sanctions under paragraphs (1) through (7) of this section.

(ff) Whenever, in the director's judgment a public hearing pursuant to this subsection (a)(8) will take longer than two (2) full days to complete, the director shall certify such fact to the Commission and the chairpersons of the Commission shall appoint a person who is a lawyer and who may or may not be a member of the Commission to conduct the public hearing. In such cases, the hearing examiner shall have the same duties, obligations and powers as a hearing panel.

Section 4. That present Section 139.50, Subdivision (a)(8) be renumbered as Section 139.50, Subdivision (a)(9) and that it be amended to read as follows:

~~(8)~~ (9) The contractor will include the provisions of paragraphs (1) through ~~(7)~~ (8) in every subcontract or purchase order, specifically or by reference, unless exempted by rules, regulations or orders of the director or the commission, issued pursuant to section 139.90, so that such provisions will be binding upon each subcontractor or vendor.

Section 5. That Section 139.50(b) of the above entitled ordinance be amended to read as follows:

(b) The City of Minneapolis shall not enter into contracts or subcontracts in excess of ~~two hundred fifty thousand~~ FIFTY THOUSAND dollars (~~\$250,000.00~~) (\$50,000.00) INCLUDING CONTRACTS AND AGREEMENTS ENTERED INTO AND PERFORMED PURSUANT TO POWERS GRANTED BY MINNESOTA STATUTES, SECTIONS 273.71 TO 273.78 KNOWN AS THE MINNESOTA TAX INCREMENT FINANCING ACT; MINNESOTA STATUTES CHAPTER 458, SOMETIMES KNOWN AS THE PORT AUTHORITY ACT; MINNESOTA STATUTES, CHAPTER 472A, SOMETIMES KNOWN AS THE MUNICIPAL DEVELOPMENT DISTRICT ACT; AND MINNESOTA STATUTES, CHAPTER 474, KNOWN AS THE MINNESOTA INDUSTRIAL DEVELOPMENT ACT, with any bidder, prospective prime contractor or proposed subcontractor until a written affirmative action plan has been provided to the director or the director's designee and until a pre-award compliance review has been conducted and the director or the director's designee has reported on the ability of the bidder, prospective prime contractor or proposed subcontractor to comply with the provisions of subsection (a) of this section. The director or director's designated city staff shall examine evidence of the past performance of the bidder, prospective prime contractor or proposed subcontractor (entity under review) regarding compliance with the provisions of subsection (a) of this section which should include, but not be limited to the following factors: The record of the entity under review regarding observance of the City of Minneapolis contract compliance rules and regulations, the books, records, payrolls and other relevant documents including a list, separated by construction project or work site of all protected-class employees who worked for the entity under review during the period to be reviewed, documentary evidence of the implementation of each of the affirmative action standards set forth in the specifications and evidence demonstrating whether or not the entity under review has complied with subsection (a)(1) of this section or similar equal employment opportunity clause in contracts with any other governmental body or any other entity. The director or director's designated city staff shall have thirty (30) days after receiving notice of the proposed contract to report to city council.

Section 6. That Section 139.50(c) of the above-entitled ordinance be amended to read as follows:

(c) All provisions of subdivisions (a) and (b) above shall also be applicable to all development contracts INCLUDING CONTRACTS AND AGREEMENTS ENTERED INTO AND PERFORMED PURSUANT TO POWERS GRANTED BY MINNESOTA STATUTES, SECTIONS 273.71 TO 273.78 KNOWN AS THE MINNESOTA TAX INCREMENT FINANCING ACT; MINNESOTA STATUTES, CHAPTER 458, SOMETIMES KNOWN AS THE PORT AUTHORITY ACT; MINNESOTA STATUTES, CHAPTER 472A, SOMETIMES KNOWN AS THE MUNICIPAL DEVELOPMENT DISTRICT ACT; AND MINNESOTA STATUTES, CHAPTER 474, KNOWN AS THE MINNESOTA INDUSTRIAL DEVELOPMENT ACT, without regard to any dollar amount of such contract, which are administered by the Minneapolis Community Development Agency, and all duties, responsibilities and functions assigned in such subdivisions to the director or commission shall, as to such contracts administered by his/^{her}department, be exercised by the director of the Minneapolis Community Development Agency or his/^{her}designee, provided that when any project to be administered by the director of the Minneapolis Community Development Agency will involve contracts for the development of a parcel of land on which structures exceeding thirty thousand (30,000) square feet will be built or rehabilitated, the developer and affirmative action department shall develop an affirmative action plan and a process for monitoring said affirmative action plan for such project ~~which will be sent to the civil rights department for~~ WHICH SHALL BE APPROVED BY review and approval, ~~which approval or disapproval shall be communicated to the director of the Minneapolis Community Development Agency and the director of the affirmative action department in writing within ten (10) days of receipt.~~ In the event of disapproval and the inability of the director of the Minneapolis Community Development Agency and the civil rights department to mutually agree on an effective affirmative action plan and a process for monitoring said affirmative action plan, the matter shall be referred to the city council

for determination. An approved plan must be included when the project is submitted to the council or to the Minneapolis Community Development Agency and made part of any project specifications and contracts entered into by either the council or the agency. Contract compliance with the affirmative action plan shall be monitored by the affirmative action department and the results of such monitoring activities sent to the director or the director's designee for review. In the event of the contractor's noncompliance with the affirmative action plan the director of the Minneapolis Community Development Agency or his/^{her}designee ~~or the civil rights director or the commission on civil rights~~ may recommend to the Minneapolis City Council that sanctions authorized by subdivision (a)(7) of this section be imposed. ~~The affirmative action department shall at least quarterly submit a report to the director of the Minneapolis Community Development Agency, the civil rights department, the commission on civil rights, the city council and the mayor, as to its activities under this subdivision.~~ Subsequent to the effective date of the creation of the Minneapolis Community Development Agency the powers and duties exercised by the city coordinator with regard to section 139.50(c) shall be assumed and exercised by the director of the Minneapolis Community Development Agency, provided that the affirmative action department shall continue to carry out the function of development and monitoring of affirmative action plans as set forth in section 139.50(c).

Section 7. That Section 139.50 of the above-entitled ordinance be amended by adding thereto a new subdivision (d) to read as follows:

(d) WITH REGARD TO DEVELOPMENT CONTRACTS INCLUDING BUT NOT LIMITED TO CONTRACTS AND AGREEMENTS ENTERED INTO AND PERFORMED AND PROJECTS FINANCED PURSUANT TO POWERS GRANTED BY MINNESOTA STATUTES, SECTIONS 273.71 TO 273.74, KNOWN AS THE MINNESOTA TAX INCREMENT FINANCING ACT; MINNESOTA STATUTES, CHAPTER 458, SOMETIMES KNOWN AS THE PORT AUTHORITY ACT; MINNESOTA STATUTES, CHAPTER 472A, SOMETIMES

KNOWN AS THE MUNICIPAL DEVELOPMENT DISTRICT ACT; AND MINNESOTA STATUTES, CHAPTER 474, KNOWN AS THE MINNESOTA INDUSTRIAL DEVELOPMENT ACT, THE JURISDICTION OF THE CITY OF MINNEAPOLIS AND/OR THE MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY UNDER THIS SECTION 139.50 SHALL EXTEND FOR A PERIOD OF THREE YEARS FROM THE DATE OF THE CONTRACT OR UNTIL SUCH LONGER PERIOD AS MAY BE STATED IN THE CONTRACT AND SHALL INCLUDE JURISDICTION OVER OWNER-OCCUPANTS OF ANY PROJECT FINANCED PURSUANT THERETO.

Section 8. That Section 139.50 of the above-entitled ordinance be amended by adding thereto a new subdivision (e) to read as follows:

(e) DUTIES OF THE W/MBE LIAISON OFFICER. THE STATUS OF A BUSINESS OWNED AND CONTROLLED BY WOMEN AND MINORITIES SHALL BE DETERMINED BY THE WOMEN AND MINORITY BUSINESS ENTERPRISE LIAISON OFFICER AND SAID LIAISON OFFICER SHALL INVESTIGATE AND CERTIFY OR DENY THE STATUS OF EACH APPLICANT FOR PARTICIPATION AS A "CITY OF MINNEAPOLIS WOMEN OR MINORITY BUSINESS ENTERPRISE." THE LIAISON OFFICER SHALL ESTABLISH WOMEN AND MINORITY PARTICIPATION GOALS ON ALL CONTRACTS INCLUDING DEVELOPMENT CONTRACTS WITHOUT REGARD TO ANY DOLLAR AMOUNT OF SUCH CONTRACT WHETHER ADMINISTERED BY THE CITY OF MINNEAPOLIS OR BY THE MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY CONTRACTS FOR THE SUPPLYING OF GOODS OR SERVICES INCLUDING PROFESSIONAL AND TECHNICAL SERVICES, AND PUBLIC WORKS CONTRACTS. THE LIAISON OFFICER SHALL ADMINISTER THE CITY OF MINNEAPOLIS WOMEN AND MINORITY BUSINESS ENTERPRISE AFFIRMATIVE ACTION PLAN AND IN THE EVENT OF NONCOMPLIANCE WITH SAID PLAN SHALL REFER THE MATTER TO THE MINNEAPOLIS CIVIL RIGHTS COMMISSION FOR ENFORCEMENT. THE LIAISON OFFICER SHALL MEET AT LEAST ANNUALLY WITH EACH DEPARTMENT

ADMINISTRATOR FOR THE PURPOSE OF ESTABLISHING PERCENTAGE GOALS FOR THE UTILIZATION OF WOMEN AND MINORITY BUSINESS PARTICIPATION.

Section 9. That a new Section 139.70 be added to the above-entitled ordinance to read as follows:

139.70 DEVELOPMENT OF AFFIRMATIVE ACTION PLANS BY CITY DEPARTMENTS. ALL CITY OF MINNEAPOLIS DEPARTMENTS, INCLUDING THE MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, AND ALL BOARDS, COMMISSIONS OR AGENCIES SHALL AT LEAST ANNUALLY DEVELOP AND SUBMIT TO THE CITY COUNCIL A PLAN, INCLUDING GOALS AND TIMETABLES FOR THE HIRE, PROMOTION AND RETENTION OF MINORITIES, WOMEN, AND PERSONS WHO ARE HANDICAPPED, AND FOR THE PURCHASE OF GOODS AND SERVICES FROM WOMEN AND MINORITIES.

Section 10. That a new Section 139.80 be added to the above-entitled ordinance to read as follows:

139.80 AFFIRMATIVE ACTION REQUIREMENTS IN REGARD TO PROFESSIONAL OR TECHNICAL SERVICES. PRIOR TO ITS SOLICITATION OF REQUESTS FOR PROPOSALS FOR PROFESSIONAL OR TECHNICAL SERVICES, AND WHERE REQUESTS FOR PROPOSALS HAVE NOT BEEN SOLICITED, PRIOR TO ENTERING INTO ANY CONTRACT OR AGREEMENT TO PROVIDE PROFESSIONAL OR TECHNICAL SERVICES, THE PERSON AUTHORIZED TO REQUEST SUCH PROFESSIONAL OR TECHNICAL SERVICES SHALL MEET WITH THE WOMEN AND MINORITY BUSINESS ENTERPRISE LIAISON OFFICER AND CONFER AS TO WHETHER REASONABLE OPPORTUNITIES EXIST FOR BUSINESSES OWNED AND CONTROLLED BY WOMEN OR MINORITIES TO PARTICIPATE IN THE PERFORMANCE OF SUCH CONTRACTS OR AGREEMENTS. NO CONTRACT OR AGREEMENT TO PROVIDE SUCH PROFESSIONAL OR TECHNICAL SERVICES SHALL BE APPROVED UNTIL THE

PERSON AUTHORIZED TO REQUEST SUCH PROFESSIONAL OR TECHNICAL SERVICE AND THE WOMEN AND MINORITY BUSINESS ENTERPRISE LIAISON OFFICER SHALL CERTIFY THAT A MEETING WAS HELD PURSUANT TO THIS SECTION.

ALL BID NOTICES, DOCUMENTS AND SPECIFICATIONS USED FOR SOLICITATION OF REQUESTS FOR PROPOSALS FOR PROFESSIONAL OR TECHNICAL SERVICES SHALL INCLUDE THE FOLLOWING LANGUAGE:

THE CITY OF MINNEAPOLIS HEREBY NOTIFIES ALL BIDDERS THAT BUSINESSES OWNED AND CONTROLLED BY WOMEN OR MINORITIES SHALL BE AFFORDED THE MAXIMUM FEASIBLE OPPORTUNITY TO SUBMIT BIDS AND/OR PROPOSALS AND THAT ALL BIDDERS SHALL COMPLY WITH THE CITY OF MINNEAPOLIS WOMEN AND MINORITY BUSINESS ENTERPRISE AFFIRMATIVE ACTION PLAN. FAILURE TO DO SO SHALL RENDER A BID OR PROPOSAL NON-RESPONSIBLE.

Section 11. That a new Section 139.90 be added to the above-entitled ordinance to read as follows:

139.90 REPORTING. THE CHIEF ADMINISTRATIVE OFFICER, OR HIS/HER DESIGNEE, OF THE AFFIRMATIVE ACTION MANAGEMENT PROGRAM, THE DEPARTMENT OF CIVIL RIGHTS, THE AFFIRMATIVE ACTION DEPARTMENT OF THE MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, AND THE WOMEN AND MINORITY BUSINESS ENTERPRISE OFFICE SHALL, AT LEAST QUARTERLY, REPORT TO THE CITY COUNCIL AS TO THEIR ACTIVITIES PURSUANT TO SECTION 139.50. SUCH REPORT SHALL ALSO BE MADE TO THE MAYOR, THE MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY BOARD OF COMMISSIONERS, AND THE MINNEAPOLIS COMMISSION ON CIVIL RIGHTS AND SHALL CONTAIN ONLY MATTER

WHICH IS CLASSIFIED AS PUBLIC DATA PURSUANT TO THE MINNESOTA GOVERNMENT DATA PRACTICES ACT.

Section 12. That the effective date of Sections 1, 2, 3, 4, and 7 shall be March 1, 1984. The remaining Sections of this act are effective upon final enactment.

RECORD OF COUNCIL VOTE

Council Member	Aye	Nay	N.V.	Abs.	Ovrd.	Sust.		Aye	Nay	N.V.	Abs.	Ovrd.	Sust.
Dziedzic	X						Scallion	X					
O'Brien	X						Howard	X					
Daugherty	X						Rockenstein	X					
White	X						Schulstad		X				
Slater	X						Hoyt	X					
Carlson	X						Pres. Rainville	X					
Kaplan	X												

X INDICATES VOTE — N.V. - Not Voting Abs. — Absent Ovrd. - Vote to Override Sust. - Vote to Sustain

PASSED DEC 30 1983 19

APPROVED JAN 4 1984 19

~~NOT APPROVED~~
VETOED

ATTEST [Signature]
City Clerk

[Signature]
President of Council

[Signature]
Mayor