ORDINANCE NO. 37-89

FILED
MAY 18 1989
Billie Joan Burkett
MUNCIE CITY CLERK

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MUNCIE, INDIANA AMENDING SECTIONS 31.13 AND 34.90 OF THE CODE OF ORDINANCES ENTITLED BOARD OF PUBLIC WORKS AND SAFETY AND CITY EMPLOYMENT AND CITY CONTRACTS

WHEREAS, the City of Muncie is committed to equal employment opportunities; and

WHEREAS, the City of Muncie believes it is desirable to further the goal of equal employment opportunities by instituting a procedure whereby contractors who do business with the City shall be required to take specific affirmative action to hire those individuals of the protected classes; and

WHEREAS, the following "Contract Compliance" ordinance shall operate in conjunction with the existing City ordinance which establishes the Human Rights Commission.

Now Therefore, Be It Ordained as Follows:

That Section 34.90 B, C, and D, shall be deleted from the Code of Ordinances of the City of Muncie; and

That Section 31.13 shall be amended by adding the following:

Section 1

Definitions

Sec. 1.1 Definitions

When used in this ordinance, unless the context clearly requires otherwise, the following terms shall have the meaning indicated:

A. "City contract" shall mean any contract in which the City of Muncie, Indiana, or one of its agencies, commissions, boards or departments, is a party.

B. "Contract Compliance Officer" shall mean an employee of the City of Muncie, as designated by the Mayor of the City of Muncie, who shall administer the City's Contract Compliance Program which is established herein and help establish procedures to implement the City's Contract Compliance Program.

C. "Contractor" shall mean any private party that contracts with the City.

D. "Affirmative Action" shall include, but not be limited to the following:

1) The issuance of a statement of policy regarding equal employment opportunity and its communication to all policy making personnel.

2) Active efforts to review the qualifications of all applicants for employment regardless of race, religion, color, sex, age, national origin, ancestry, or handicap.

3) Recruiting, hiring, training, promoting and making other personnel decisions regardless of race, religion, color, sex, age, national origin, ancestry, or handicap.

E. "Public Works Construction" shall mean the construction, alteration, repair of a public building, airport facility, highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment.

Sec. 1.2 Words Not Defined

Words appearing in this ordinance which are not defined by this ordinance but are defined by the official rules and regulations of the Human Rights Commission or the Human Rights Ordinance shall have the meaning as defined in those regulations or that ordinance unless the context clearly requires otherwise.

Section 2

Coverage

Sec. 2.1 Exemptions

A. Dollar Amount Limitation

Only thos City contracts for public works construction that cost Twenty-five Thousand Dollars ($25,000) or more shall be covered by the provisions of this ordinance, except as provided in Section 2.1 (D).

B. Number of Employees

The provisions of this ordinance shall only apply to those contractors who have at least six permanent full-time employees on their payroll.

C. Federal Funding Irrelevant To Coverage

The fact that federal funds are used to pay all or any part of the City's obligations under any City contract shall be of no consideration in determining coverage under this ordinance, with the exception that this ordinance shall not apply to the City contracts which are monitored for non-discrimination pursuant to the regulations of the U. S. Department of Housing and Urban Development, under Title I of the Housing and Community Development Act of 1974, as amended (Pub. L. 93-383).

D. Contracts That Cost More Than $5,000 But Less Than $25,000

City contract for public works construction that cost more than $5,000 but less than $25,000 shall be awarded pursuant to the quote procedures established by Indiana law. Any such contracts shall only be awarded to those quoters who submit an acceptable EEO Policy Statement or who have submitted an acceptable EEO Policy Statement within the 12 month period preceding the opening of quotes.

Section 3

Equal Opportunity Contract Provision

Sec. 3.1 Equal Opportunity Contract Provision Required

A. When Required

On any public works construction covered by this ordinance, there shall be included in the contract a provision entitled "Equal Opportunity".

B. Language Required

The "Equal Opportunity" provision of a City contract shall consist of the following language:

1) The contractor shall demonstrate commitment to equal opportunity by attempting to employ a minority work force to the greatest extent feasible.

2) The contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, religion, color, sex, age, national origin, ancestry, or handicap.

Consideration of minorities and females not in the Workforce -

Contractors of the City of Muncie shall take affirmative action to reach persons who are members of a protected class who are no longer actively seeking employment, and shall attempt to engage said members in employment.

3) The contractor's breach of the foregoing subsections concerning equal opportunity and affirmative action shall be a material breach of this contract, for which the City of Muncie shall be entitled, at its option, to (1) cancel,

terminate, or suspend the contract in whole or in part; (2) use the breach of this contract as a factor to be considered for the award of future contracts for a period not to exceed one (1) year.

C. Federal Language Required

The "Equal Opportunity" provision of a City contract may be required to contain additional terms required by the government of the United States or any agency or department of the United States government.

Section 4

Affirmative Action Plans

Sec. 4.1 Prior to Award of Contract

A. Notice of Requirements

For every City contract reasonably expected to be covered by this ordinance, there shall be notice given to bidders that prior to the execution of the City contract, the bidder must submit an affirmative action plan. The bidder shall also be notified that the Contract Compliance Officer shall be available to assist in the completion of an affirmative action plan. Such notice shall also include the name, address and telephone number of the Contract Compliance Officer. Such notice shall appear each and every time and in the same place and manner in which a notice for an opportunity to bid on the City contract appears. After any board, agency, commission or department establishes a bid date, notice must be provided to the Contract Compliance Officer on or before the date notice is first given to the general public.

B. Submission of Plans

When the successful bidder is given notice that his bid is accepted, notice shall also be included that an affirmative action plan must

be on file with the City's Board of Works office. The contractor shall have five (5) working days after notice that its bid is accepted to submit such a plan. Failure to do so shall bar the contractor from being awarded a contract for its bid.

C. Plans Submitted Within Past 12 Months

Those contractors who have submitted acceptable affirmative action plans within twelve (12) months prior to the opening of bids on any subsequent public works project shall not be required to submit an Affirmative Action Plan.

D. Content of Plans

Affirmative action plans shall be submitted on a form that is approved by the Board of Works.

E. Criteria for Review

Affirmative action plans shall be evaluated in accordance with the following criteria:

1) Is the Affirmative Action Plan properly and completely filled out?

2) Does the affirmative action plan demonstrate a good faith commitment to affirmative action [see definition herein, Section 1.1 (D)]?

3) Language in contractor's affirmative action plan which promises future actions to promote equal opportunity or affirmative action may be considered in determining whether the plan is acceptable, but only if such promised affirmative action is accompanied by projected timetables for implementation.

F. Review of Plans

1) Within ten (10) working days after receipt, the Contract Compliance Officer shall audit any affirmative action plan submitted under Section 4.1 (B) of this ordinance and make a determination as to the acceptability of said plan. Said audit shall be consistent with the Desk Audit procedures as outlined in Chapter 2 of the Office of Federal Contract Compliance Programs (OFCCP) Compliance Manual. If the Contract Compliance Officer finds said plan to be in compliance, he or she shall cause such finding to be made in writing and submitted to the Board of Works.

2) Within ten (10) working days after the receipt of the Contract Compliance Officer's finding that an affirmative action plan is unacceptable, the Board of Works shall review the finding and shall:

a) overrule said finding; or

b) approve said finding of unacceptability in writing.

G. Emergency

If the Mayor of the City of Muncie or a board, agency, commission or department declares that an emergency exists for a public works project, the provisions of this ordinance concerning submission of affirmative action plans shall be waived.

H. Violations

The City of Muncie and any of its agencies, commissions, boards or departments, shall not enter into any City contract covered by this ordinance until the Contract Compliance Officer or the Board of Works has notified the body awarding the contract that the contractor has submitted an acceptable affirmative action plan.

I. Enforcement of Violations

Upon request of the Board of Works, the City Attorney may take appropriate legal action to void a contract that has been executed in violation of this ordinance.

Section 5

General Information

Sec. 5.1 Partial Invalidity

If any provision of this ordinance or the application of a provision to any person or circumstance shall be held invalid, the remainder of this ordinance or the application of a provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Sec. 5.2 Judicial Review

Who May Seek Review

Any party to a City contract covered by this ordinance who is aggrieved by a determination made by the Board of Works shall be entitled to judicial review of such determination if a petition for a review is filed in the Circuit or Superior Court of Delaware County, Indiana, within ten (10) days of the receipt of the notice of such determination by the aggrieved party.

Sec. 5.3 Contract Compliance Rules and Regulations

A. Board of Works may adopt procedural rules and regulations to accomplish the purposes of the foregoing provisions concerning Contract Compliance. Any such rules and regulations shall be consistent with the Contract Compliance enabling ordinance, and those rules and regulations as outlined in the Office of Federal Contract Compliance Programs (OFCCP) Compliance Manual, specifically sections 60-2, 50, 250, 741 (see attached)

B. Any such procedural rules and regulations may be adopted by the Board of Works after a public hearing, and by majority vote of the Board of Works. Said rules and regulations shall be made available to the public through the Contract Compliance Officer and the Board of Works.

Section 6

Effective Date

Provided it is passed by the City Council and approved by the Mayor, this ordinance shall be in full force and effect from and after _____.

Passed by the Common Council of the City of Muncie, Indiana, by the following vote on the 10th day of July, 1989.

	YEAS	NAYS	ABSTAINED	ABSENT
Phillip H. Nichols	✓			
David A. Taylor	✓			
F. Clifford Johnson	✓			
Dorothea Bump	✓			
Winston J. Brandon	✓			
Monty M. Murphy	✓			
Mary I. Chambers	✓			
John S. Rust	✓			
William O. Shroyer	✓			

Passed by the Common Council of the City of Muncie, Indiana, this 10th day of July, 1989.

John S. Rust
President of the Common Council of Muncie, Indiana

Presented by me to the Mayor for his approval this 11th day of July, 1989.

Billie Joan Burkett
Billie Joan Burkett, City Clerk of Muncie, Indiana

The above ordinance is approved (vetoed) by me this 12TH day of July, 1989.

James P. Carey, Mayor of the
City of Muncie, Indiana

ATTEST:

Billie Joan Burkett, City Clerk
of the City of Muncie, Indiana

This ordinance is proposed by: William O. Aburger.
(city councilman)

This ordinance is approved in form by: Barbara Grosscurth
(corporate counsel)
asb
5/18/89