

ORDINANCE NO. 4138

AN ORDINANCE (1)(a) to amend and reordain Section 3-3-6 (DEFINITIONS), of Article A (GENERAL PROVISIONS); (b) to enact new Section 3-3-31.1 (SERVICE CONTRACT WAGES), to amend and reordain Section 3-3-44 (BID EVALUATION), subsection (a) of Section 3-3-45 (BID AWARD), and subsection (a) of Section 3-3-50 (CONTRACT MODIFICATION), of Division 1 (COMPETITIVE SEALED BIDDING), to enact new Section 3-3-63.1 (SERVICE CONTRACT WAGES), and to amend and reordain Section 3-3-66 (EVALUATION FACTORS) and Section 3-3-68 (AWARD), of Division 2 (COMPETITIVE NEGOTIATION), to amend and reordain Section 3-3-72 (SMALL PURCHASES), and to enact new Section 3-3-78 (DRUG-FREE WORKPLACE), of Division 3 (MISCELLANEOUS PROVISIONS), all of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); and (c) to amend and reordain subsection (a) of Section 3-3-104 (PROTEST OF AWARD OR DECISION TO AWARD), of Article G (APPEALS AND REMEDIES FOR BID PROTESTS), all of Chapter 3 (PROCUREMENT), Title 3 (FINANCE, TAXATION AND PROCUREMENT); and (2) to amend and reordain subsection (a) of Section 12-4-6 (CITY CONTRACTS), of Chapter 4 (HUMAN RIGHTS), TITLE 12 (EDUCATION, SOCIAL SERVICES AND WELFARE), all of The Code of the City of Alexandria, Virginia, 1981, as amended.

WHEREAS, the City Council of Alexandria finds and determines that:

1. The Washington metropolitan area has many residents who, although gainfully employed, earn less than the income required to live above the federal poverty line, and therefore live with a constant struggle to provide adequately for themselves and their families while contributing as productive citizens to our community, and draw disproportionately upon social support services.

2. It is the policy of government at the national, state and local levels to encourage, and in some instances to require, recipients of public assistance to make a transition to financial self-sufficiency through gainful employment.

3. The City of Alexandria, as a principal provider of public assistance and other social support services, has a compelling interest in ensuring that citizens, employees and employees of city contractors receive a wage sufficient to enable a family to live above the federal poverty line, which is found to be a living wage.

4. A living wage should ensure that an employee, working full-time, is able to live above the federal poverty line for a family of four, and this wage currently equates to \$8.20 per hour.

5. A living wage should in addition afford an employee reasonable access to necessary health care and preventive medicine, and, according to the U.S. Bureau of Labor Statistics, the prevailing hourly contribution by private industry with 500 or more employees to costs of health insurance is currently \$1.64 per hour.

6. The City of Alexandria contracts with various persons and private entities for the provision of certain services essential to the functioning of the City government, including, but not limited to, cleaning services, landscaping services, maintenance services, clerical services, food services, parking services, and security services, and many employees under such contracts have heretofore not received the wages described in paragraph 4 above, and such employees are infrequently offered health benefits by their employers.

7. The payment of a living wage results in better workmanship, increased employee morale, lower turnover, better employee health, reduced absenteeism, and higher productivity, and, therefore, results in the provision of higher quality services and the best value to the City relative to the City=s need for such services.

8. In competitively contracting for services, it is in the public interest for the City of Alexandria to ensure that the City receives the highest level of services and economic return by requiring contractors, as a condition of entering into contracts with the City for such services, to agree to pay their employees a living wage.

9. The City of Alexandria desires to make certain, additional revisions to its procurement law, as permitted or required by applicable state law.

10. Based upon the foregoing findings and all other facts and circumstances of which the City Council may properly take notice in its capacity as the legislative body of the City of Alexandria, adoption of this ordinance is necessary and desirable to protect and advance the best interests of the City in the procurement of goods and services, and to protect the public health, safety and general welfare; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That section 3-3-6 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-6Definitions.

(1) Best value: the overall combination of quality, price, and various elements of required services that in total are optimal relative to the city=s needs. The best value process is used to select the most advantageous bid or offer by evaluating and comparing pre-

established factors, including, but not limited to, quality, technical features, experience and past performance, in addition to cost or price.

(2) Brand name specification: A specification limited to one or more items by manufacturers= names or catalogue numbers.

(3) Brand name or equal specification: A specification limited to one or more items by manufacturers= names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

(4) City council: The city council of the City of Alexandria.

(5) City purchasing agent or agent: The purchasing agent of the City of Alexandria.

(6) Construction management contract: A contract in which a party is retained by the city to coordinate and administer contracts for the provision of construction services by others, and which also provides for such party to furnish construction services to the city.

(7) Construction: Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

(8) Contract: All types of agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

(9) Contract modification: Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.

(10) Contractor: Any person having a contract with the city or a using agency thereof.

(11) Cost analysis: The valuation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid and costs to be reimbursed.

(12) Cost data: Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(13) Cost reimbursement contract: A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee or profit, if any.

(14) Design-build contract: A contract in which the contractor agrees to both design and build a structure, roadway or other item specified in the contract.

(15) Direct or indirect participation: Involvement through decision, approval, disapproval, recommendation, or preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

(16) Disadvantaged business: A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

(17) Employee: An individual drawing a salary or wages from the city whether elected or not; any noncompensated individual performing personal services for the city or any department, agency, commission, council, board or any other entity established by law.

(18) Goods: All material, equipment, supplies, printing and automated data processing hardware and software.

(19) Informality: A minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not affect the price, quality, quantity or delivery schedule for the goods, services, insurance or construction being procured.

(20) Insurance: A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

(21) Invitation for bids: All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.

(22) Multiphase professional services contract: A contract for the provision of professional services in multiple phases where the total scope of work in the second or a subsequent phase of the contract cannot be specified without the results of the first or other phase of the contract.

(23) Nominal value: So small, slight or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name, but in no case to be more than \$10.

(24) Nonprofessional services: Any services not specifically identified as professional services in the following definition.

(25) Professional services: Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

(26) Person: Any business, individual, union, committee, club, other organization or group of individuals.

(27) Price analysis: The evaluation of pricing data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(28) Pricing data: Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offer or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

(29) Public body: Any legislative, executive or judicial body, agency, office, department, authority, commission, committee, institution, board, political subdivision or other entity created by law to exercise some sovereign power or to perform some governmental duty.

(30) Public contract: Any contract between the city and a nongovernmental source that is enforceable in a court of law.

(31) Qualified products list: An approved list of goods, services or construction items described by model or catalogue number, which prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

(32) Request for proposals: All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(33) Responsible bidder or offeror: A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been prequalified, if required.

(34) Responsive bidder or offeror: A person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.

(35) Services: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials or the rental of equipment, materials and supplies.

(36) Small business: A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

(37) Specification: Any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

(38) Using agency: Any department, agency, commission, office, bureau or other unit in the city government requiring goods, services, insurance or construction.

Section 2. That Chapter 3 of Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding thereto a new Section 3-3-31.1 to read as follows:

Sec. 3-3-31.1 Service Contract Wages.

(a) *Required wage rate.*

(1) Except as otherwise provided in this section, each public contract for the provision of services, awarded after a process of competitive sealed bidding, shall require that the contractor pay each employee assigned to perform services under such public contract, while performing such services on property owned or controlled by the city, an hourly rate equal to:

(i) the average poverty threshold for a family of four, as determined pursuant to the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. ' 9902(2), divided by 2,080, plus

(ii) the average cost per hour incurred by an employer, on behalf of each employee, for the provision of health insurance, as determined by the U.S. Bureau of Labor Statistics (U.S. Bureau of Labor Statistics, Table 8, Employer costs per hour worked for

employee compensation and costs as a percent of total compensation: Private industry workers, by establishment employment size, 500 or more workers).

(2) For purposes of subparagraph (a)(1) above, the initial required wage rate shall be computed based upon the average poverty threshold for a family of four, as determined pursuant to the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. ' 9902(2), for 2000, and the costs for health insurance, as determined by the U.S. Bureau of Labor Statistics (U.S. Bureau of Labor Statistics, Table 8, Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by establishment employment size, 500 or more workers), in March of 1999.

(3) If either the U.S. Department of Health and Human Services or the U.S. Bureau of Labor Statistics discontinues the determinations used to establish the required wage rate, the city manager, in his discretion, shall adopt a substitute procedure to establish the required wage rate, which reasonably reflects the average poverty threshold for a family of four or the average cost per hour incurred by an employer, on behalf of each employee, for the provision of health insurance, as applicable.

(4) The contractor under each such public contract shall include the provisions of this subsection (a) in every subcontract so that such provisions, and the other provisions of this section 3-3-31.1, will be binding upon each subcontractor. When a contractor undertakes a public contract subject to this section 3-3-31.1, the contractor agrees to assume the obligation that this section=s wage requirements will be observed in fulfilling the requirements of the public contract. This obligation may not be relieved by shifting all or a part of the work under the public contract to another, and the contractor shall be jointly and severally liable with any subcontractor for any underpayment of wages on the part of any such subcontractor. The appropriate enforcement sanctions under this section may be invoked against both the contractor and any such subcontractor in the event of such subcontractor=s failure to comply with any of the provisions of this section 3-3-31.1.

(5) The required wage rate set forth in subparagraph (a)(1) above shall be paid without contemporaneous or subsequent deduction or rebate of any nature, except such payroll deductions as are required or permitted by law, by a collective bargaining agreement, or by specific written authorization from an employee.

(b) *Adjustments.* The wages required to be paid under subsection (a) above shall be adjusted as of July 1 of each year to reflect the most current determinations made by the U.S. Department of Health and Human Services and the U.S. Bureau of Labor Statistics and shall be applicable to any public contract awarded thereafter until the date of the next adjustment;

provided, however, the wage rates in effect at the time a public contract is awarded to a contractor by the city shall remain in effect under such public contract during its original term.

At the time of the exercise by the city of any renewal option under a public contract, the required wage rate shall be adjusted as provided above, and as adjusted, shall remain in effect during the renewal term.

(c) *Limits on applicability.* The provisions of this section shall not apply to public contracts for professional services, contracts for construction, construction management contracts, design-build contracts or contracts for services procured under sections 3-3-71, 3-3-72, 3-3-73 and 3-3-74, as amended. Nor shall the provisions of this section require payment of the required wage rate to persons employed by a contractor and incarcerated at the city jail.

(d) *Publication and notice.*

(1) As soon as possible after the annual determination of the required wage rate, as adjusted pursuant to subsection (b) above, the purchasing agent shall publish such rate in English and Spanish on the purchasing division's world wide web site.

(2) The then current required wage rate shall be posted by each contractor in English and Spanish, on such form as shall be provided by the purchasing agent, in a prominent place at its offices and each location where its employees perform services under a public contract.

(3) Within five days of an employee's request, a contractor shall provide to such employee a written statement in English and Spanish, on such form as shall be provided by the purchasing agent, of the then current required wage rate.

(4) Notice of the required wage rate shall be stated in the procurement solicitation, as required by subsections 3-3-44(b) and 3-3-66(b) of this code.

(e) *Records and reports.* Each contractor and its subcontractors subject to the provisions of this section 3-3-31.1 shall:

(1) for a period of three (3) years after the expiration or earlier termination of the applicable public contract, keep and preserve records which show wages and benefits provided by such contractor and its subcontractors to each employee assigned to perform services under such public contract. The purchasing agent, or his designee, shall have the power to examine such records at reasonable times and without unreasonable interference

with the business of such contractor or its subcontractors, for the purpose of administering and enforcing the provisions of this section, and to make copies of all or any parts thereof; and

(2) on a quarterly and annual basis during the term of the applicable public contract, submit to the purchasing agent a report, in a form acceptable to the purchasing agent, which shows hourly wage rates, wages and benefits provided by such contractor and its subcontractors to each employee assigned to perform services under such public contract, and such other information as may be required by the purchasing agent.

(f) *Additional contract requirements.*

(1) Any contractor subject to this section shall, as a term of the public contract, further comply with all applicable federal, state and city laws, rules and regulations including, but not limited to, the U.S. Fair Labor Standards Act of 1938, as amended, the U.S. Occupational Safety and Health Act of 1970, as amended, the U.S. Employee Retirement Income Security Act, as amended, and Chapter 3 of Title 40.1 of the Code of Virginia, 1950, as amended. The violation of any such laws, rules or regulations by a contractor, as determined by the purchasing agent, shall be grounds for termination of such public contract, and debarment of such contractor, in accordance with the procedures set forth in article F, chapter 3, title 3.

(2) As an additional term of the public contract, no contractor shall discharge, reduce the compensation of, or otherwise retaliate against any employee who files a complaint with the purchasing agent, or takes any other action to enforce the requirements of this section or a public contract subject to this section.

(g) *Enforcement.*

(1) Within six months of a contractor=s or subcontractor=s failure to comply with the wage requirements of a public contract, an aggrieved employee may file a complaint with the purchasing agent, requesting that the purchasing agent enforce the wage requirements of such public contract. In the event that the purchasing agent determines that the employee has not received the wages required under this section 3-3-31.1, the purchasing agent shall direct the payment forthwith of such wages, plus interest at the judgment rate from the date originally due, and less any deductions required or permitted by law. Failure of a contractor or subcontractor to comply with the directive of the purchasing agent shall be grounds for termination of such public contract and debarment of such contractor or subcontractor, in accordance with the procedures set forth in article F, chapter 3, title 3.

(2) Any contractor or subcontractor which fails to pay an employee the wage required by this section shall be liable to the employee affected in the amount of the unpaid

wage, plus interest at the judgment rate from the date originally due, and less any deductions required or permitted by law.

(3) Any employee assigned to perform services under a public contract subject to the requirements of this section

3-3-31.1 shall be deemed a third party beneficiary of this section and the provisions mandated by this section in any public contract.

(h) *Administrative Procedures.* Subject to the approval of the city manager, the purchasing agent may promulgate such additional procedures, not inconsistent with the provisions of this section, and consistent with the procedures for the procurement of services, as he deems necessary and appropriate to effect and enforce the provisions of this section.

Section 3. That section 3-3-44 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-44 Bid evaluation.

(a) Evaluation of bids shall be based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life cycle costing, value analysis and any other criteria such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose, which are helpful in determining acceptability.

(b) Best value concepts may be considered when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors and basis for consideration of best value and the process for the consideration of best value shall be as stated in the invitation for bids.

Section 4. That subsection (a) of section 3-3-45 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-45 Bid award.

(a) Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the invitation to bid, awards may be made to more than one bidder.

Section 5. That subsection (a) of section 3-3-50 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-50 Contract modification.

(a) A public contract may include provisions for modification of the contract during performance, but no fixed price contract may be increased by more than 25 percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the city council.

Section 6. That Chapter 3 of Title 3 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding thereto a new section 3-3-63.1 to read as follows:

Sec. 3-3-63.1 Service contract wages.

The provisions of section 3-3-31.1 shall apply to public contracts awarded by competitive negotiation, unless excluded pursuant to section 3-3-31.1(c).

Section 7. That section 3-3-66 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-66 Evaluation factors.

(a) The request for proposals shall state the relative importance of price and other evaluation factors.

(b) Best value concepts may be considered when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors and basis for consideration of best value and the process for the consideration of best value shall be as stated in the request for proposals.

Section 8. That section 3-3-68 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-68 Award.

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. When the terms and conditions of multiple awards are so provided in the request for proposals, awards may be made to more than one offeror.

Section 9. That section 3-3-72 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-72 Small purchases.

(a) Any contract for goods or services not exceeding \$ 50,000 may be made in accordance with small purchase procedures; provided, however, that contract requirements shall not be artificially divided so as to constitute a small purchase under this section. Insofar as it is practical, no less than three businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. The name of the business submitting a quotation, and the date and amount of each quotation, shall be recorded and maintained as a public record.

(b) Subject to the approval of the city manager, the purchasing agent may establish written procedures, not requiring competitive negotiation for single or term contracts for professional services, if the aggregate or sum of all phases is not expected to exceed \$30,000; provided, however, such small purchase procedures shall provide for competition wherever practicable.

Section 10. That Chapter 3 of Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding thereto a new section 3-3-78 to read as follows:

Sec. 3-3-78 Drug-free workplace.

Any public contract over \$10,000 shall include substantially the following provision:

ADuring the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor=s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor=s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.@

For the purposes of this section, Adrug-free workplace@ means a site for the performance of work done in connection with a specific public contract awarded to a contractor in

accordance with this chapter, the employees of which are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Section 11. That subsection (a) of section 3-3-104 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-104 Protest of award of decision to award.

(a) Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the purchasing agent no later than 10 days after public notice of the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the purchasing agent in the manner prescribed in the terms or conditions of the invitation for bids or request for proposals. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The purchasing agent shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking the administrative procedures set forth in the contract, if any, or in the alternative by instituting legal action as provided in section 3-3-108 of this chapter. Nothing in this section shall be construed to permit a bidder or offeror to challenge the validity of the terms or conditions of the invitation for bids or request for proposals.

Section 12. That subsection (a) of section 12-4-6 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 12-4-6 City contracts.

(a) Any contract of over \$10,000, except any contract for the sale, purchase or rental of land, to which the city is a party shall include substantially the following provisions:

A Employment Opportunity. The contractor hereby agrees:

A(1) Not to discriminate against any employee or applicant for employment on account of race, color, sex, religion, ancestry, national origin, marital status, age, disability, when such person is a qualified person with a disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor

agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

A(2) To implement an affirmative action employment program as defined in section 12-4-3 of this chapter to ensure nondiscrimination in employment under guidelines to be developed by the commission and approved by the city council.

A(3) To include in all solicitations or advertisements for employees placed by or on behalf of the contractor the words "Equal Opportunity Employer" or a symbol, approved by the commission, meaning same.

A(4) To notify each labor organization or representative of employees with which said contractor is bound by a collective bargaining agreement or other contract of the contractor's obligations pursuant to this equal employment opportunity clause.

A(5) To submit to the city manager and the city's human rights administrator, upon request, no more frequently than annually, regular equal employment opportunity reports on a form to be prescribed by the city's human rights administrator with the approval of the city manager, except that the administrator may request more frequent special reports of particular employers provided the commission has found such employers to have violated any provision of this chapter.

A(6) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this subsection.

A(7) To make reasonable accommodation to the known physical or mental limitations of an otherwise qualified person with a disability who is an applicant or employee unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

A(8) That for the purpose of this section reasonable accommodation may include (i) making facilities used by employees readily accessible to and usable by persons with a disability and (ii) job restructuring, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters and other similar actions.

A(9) That in determining whether an accommodation would impose an undue hardship on the operation of the contractor's business, factors to be considered include but are not limited to the following:

Aa. the overall size of the contractor=s business with respect to the number of employees, the number and type of facilities and size of budget;

Ab. the type of the contractor=s operation, including the composition and structure of the contractor's work force; and

Ac. the nature and cost of the accommodation needed.

A(10) That it may not deny any employment opportunity to a qualified person with a disability who is an employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

A(11) To include the provisions in subsections (1) through (10) of this clause in every subcontract so that such provisions will be binding upon each subcontractor.

A(12) That in the event of the contractor's noncompliance with any provision of this equal employment opportunity clause, upon a finding of such noncompliance by the city's human rights commission and certification of such finding by the city manager, the city council may terminate or suspend or not renew, in whole or in part, this contract.@

Section 13. If any provision of this ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder of the ordinance shall be valid in all other respects and shall continue to be effective. In the event of a subsequent change in applicable law under which the provision that had been held invalid is no longer invalid, the provision shall thereupon return to full force and effect without further action by the city, unless the city council determines otherwise by ordinance.

Section 14. That this ordinance shall become effective on July 1, 2000; provided, however, that the provisions of sections 3-3-31.1 and 3-3-63.1 shall not be implemented until, and shall not apply to any public contract awarded or renewed prior to, October 1, 2000.

KERRY J. DONLEY

Mayor

Introduction:	June 13, 2000
First Reading:	June 13, 2000
Publication:	June 15, 2000
Public Hearing:	June 17, 2000
Second Reading:	June 17, 2000
Final Passage:	June 17, 2000

