

10/11/10
9/15/2010
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Effective Date: November 10, 2010

50-0-10

AN ORDINANCE

**Amending Title 1, "General Administration,"
Chapter 17, "Purchase, Sale, and Lease of Real and Personal City
Property," Section 1, "Purchase of Goods or Services," of the
Evanston City Code by Amending Subsection 1-17-1(C) of the
Evanston City Code, "Local Employment Program",
and Adding Subsection 1-17-1(D),
"Minority, Women and Evanston Business Enterprise (M/W/EBE) Goals"**

WHEREAS, the City of Evanston declares that its public policy is to promote and encourage the continuing economic development of Minority, Women and Evanston owned and operated businesses in the City's procurement process as to both prime contractors and subcontractors;

WHEREAS, the City expends millions of dollars on public works project contracts each year; and

WHEREAS, a large percentage of these contracts are with non-Evanston based businesses or with businesses employing non-Evanston residents; and

WHEREAS, the City Council determined that it is in the best interests of the City to implement a local hiring requirement which obligates construction contractors contracting with the City to employ Evanston residents for a certain number of hours during the contracted project; and

WHEREAS, it is the policy of the City of Evanston to create job opportunities for low to moderate income Evanston residents,

WHEREAS, through its bidding specifications, the City of Evanston previously established a goal of awarding not less than twenty-five percent (25%) of its contract awards to Minority, Women and Evanston owned businesses and strongly encouraged a minimum three percent (3%) utilization of Evanston owned businesses in its contract awards, and the City of Evanston now seeks to codify those goals herein;

WHEREAS, the City of Evanston seeks to increase its local tax base and promote employment and business opportunity for its local businesses through encouraging the use of Evanston owned businesses in the procurement process;

WHEREAS, it is the public policy of the City of Evanston to prevent discrimination on the basis of race, ethnicity or gender in the award or participation in City contracts and to eliminate discriminatory barriers so as to assure full and equitable opportunities for participation in contracts for all businesses;

WHEREAS, the City of Evanston continues to have a compelling interest in remedying discrimination in the Evanston market, and that the measures remain narrowly tailored to achieve that objective;

WHEREAS, the City of Evanston will continue race and gender neutral measures to broaden access and opportunity to all qualified businesses; and

WHEREAS, the goals adopted herein will be periodically reviewed to ensure the City of Evanston is compliant with all applicable laws in seeking its objectives;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the foregoing recitals are found as fact and incorporated herein by reference.

SECTION 2: That Title 1, Chapter 17, Section 1(c), of the Evanston City Code of 1979, as amended, is hereby further amended to read as follows:

(C) Local Employment Program:

1. **Definitions:** For the purposes of this subsection (C), the local employment program, the following terms shall be defined as follows:

CONTRACT: The written agreement to provide services established between the city and a contractor, including, but not limited to, a redevelopment agreement between the city and any contractor or party.

CONTRACTOR: An individual, partnership, corporation, joint venture or other legal entity entering into a contract, or a subcontract of whatever tier, for a public works project.

DESK REVIEW: A method of monitoring compliance with the local employment program in which the business development coordinator contacts a contractor or subcontractor to gather relevant information or request relevant documentation.

EMERGENCY WORK: Work necessitated by an imminent threat to the property of the city or the health, safety, or welfare of its citizens.

GENERAL CONTRACTOR: An entity that enters into a contract directly with the city. The general contractor may also be known as the prime contractor.

LOCAL RESIDENT DATABASE: A database maintained by the city's business development coordinator containing the names of local residents who have expressed interest in employment on city public works projects.

NEW HIRE: Any employee of a contractor who is not listed on the contractor's last quarterly tax statement and was hired prior to or during the commencement of work on a public works project contract subject to the requirements of the local employment program.

ON SITE MONITORING: The business development coordinator's act of visiting the site of a public works project to ensure compliance with the requirements of the local employment program.

PUBLIC WORKS PROJECT: Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part from city funds.

RESIDENT: Any person whose domicile is in the city. The domicile is an individual's one and only true, fixed and permanent home and principal establishment. In order to qualify as a resident for purposes of the local employment program, an individual must have established domicile within the city at least thirty (30) days prior to commencing work on any public works project subject to the local employment program.

SUBCONTRACT: A contract that exists between the general contractor and a subcontractor or between subcontractors of any tier.

SUBCON-TRACTOR: An entity that enters into a contract with the general contractor or another subcontractor.

TIER: The level of relationship to the prime contractor of a subcontractor who enters into a contract under a prime contractor or another subcontractor to perform a portion of the work on a project.

2. Work Hours And New Hire Requirements:

a. Unless prohibited by federal, state, or local law, all contractors entering into contracts with the City for public works projects valued at two hundred fifty thousand dollars (\$250,000) shall ensure that:

1) fifteen percent (15%) of the total work hours are performed at the construction site by City of Evanston residents, as laborers and/or trade persons; and

2) a minimum of one Evanston resident is hired.

b. The effectiveness of the local employment program regarding the minimum percentage of work hours and residents hired will be evaluated by city staff after two (2) years of implementation.

c. These requirements shall bind the contractor both with respect to persons working directly for the contractor and to subcontractors, regardless of tier or phase of the project, hired to perform any portion of the contracted work. The contractor shall ensure that subcontractors comply with the requirements of the local employment program. It shall be the responsibility and obligation of the

contractor that all contracts are in overall compliance with this subsection (C) and all the requirements listed herein.

d. Requirements of the local employment program are satisfied if the contractor already employs Evanston residents sufficient to meet fifteen percent (15%) of the project's total work hours. Some or all of these requirements may be waived if a waiver is obtained from the city pursuant to subsection (C)5 of this section.

3. Contracts, Bid Documents, Subcontracts: Where appropriate and consistent with law, contracts and bid documents shall incorporate the local employment program by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of the contract or subcontract entitling the city to all the remedies and damages available for material breach of a contract. All subcontracts shall expressly acknowledge the city's status as a third party beneficiary to the subcontract and further expressly acknowledge that the city, as a third party beneficiary, shall have the right to enforce the provisions of the local employment program. Contracts and bid documents shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with the local employment program.

4. Automatic Review: This subsection (C) shall be reviewed to address any deficiencies on or about December 31, 2010.

5. Waiver:

a. The contractor may request that the business development coordinator waive all or a portion of the requirements imposed under the local employment program. Such requests must be in writing and must be received by the business development coordinator prior to the award of any public works project contract. In order to apply for a waiver, the contractor must submit:

1) Documentation to the business development coordinator demonstrating that:

a) The contractor utilized the local resident database to attempt to satisfy the local employment program hiring requirement.

b) The contractor notified residents of the employment opportunities available for the project. Such notification must have appeared in the employment section of a newspaper of local general circulation. Additionally, the Illinois department of employment security's office located in Evanston, Illinois, must have been notified of the employment opportunities. All notices must have stated that all qualified

applicants would receive consideration without regard to race, color, religion, sex or national origin.

c) The contractor, for a contract utilizing union labor, contacted in writing Chicagoland labor unions to request a resident for employment on the project.

2) Any additional documents requested by the business development coordinator in order to evaluate the waiver request.

b. The business development coordinator shall determine, based on the required documentation and conditions cited by the contractor that make compliance unfeasible, whether to grant the waiver prior to the award of the contract. Examples of such conditions include, but are not limited to:

1) Intermittent service by one trade throughout the life of the project.

2) Nonavailability of resident(s) necessary to fulfill craft position(s) required for the project.

c. If circumstances arise subsequent to the issuance of the contract, the results of which the contractor believes will prevent satisfying the local employment program requirements, the contractor will immediately notify the business development coordinator by requesting in writing a waiver of the percentage that cannot be met. The business development coordinator or his or her designee shall meet with the applicant as necessary and issue a decision within five (5) business days, including a determination as to any retroactive liability for failure to achieve the goals for work undertaken prior to the application for such a waiver.

6. Local Resident Database: In order to satisfy the work hours and/or new hire requirements of the local employment program, contractors working under a collective bargaining agreement shall contact the appropriate local union hall to request a resident. If a resident is not available for dispatch by that union hall, the contractor shall contact the business development coordinator or his or her designee to request an available Evanston resident. The business development coordinator or his or her designee will thereafter provide the name of a resident matching the qualifications defined by the contractor to the local union hall and that resident will be dispatched to the contractor within three (3) business days in accordance with the lawful hiring hall rules of the respective union.

In order to satisfy the work hours and/or new hire requirement of the local employment program, contractors working in the absence of a collective bargaining agreement shall contact the business development coordinator or his or her designee to request an

available Evanston resident from the local resident database. The business development coordinator or his or her designee will provide the name of a resident matching the qualifications identified by the contractor within three (3) business days.

7. Reporting Requirements: The contractor shall submit reports as required by the city in order to comply with the local employment program. These reports may include weekly certified payroll records for all crafts within five (5) working days of the end of each payroll period. Additionally, the city may require a weekly or monthly summary of the information that would be obtainable from the certified payroll regarding local hire by craft. These reports, if required, must show the person-hours on a laborer and/or trade person basis and, in the case of certified payroll records, identify the address, new hires, and trade and status (journey person or apprentice) of all employees on the project. All reports must have an original signature and be signed by an authorized officer of the company under penalty of perjury. The city will make a copy of all required forms available to contractors.

Nothing in the local employment program is intended to eliminate the requirement of a contractor to maintain certified payrolls or of the subcontractors to provide certified payrolls to the contractor, or for any contractor to provide certified payrolls to any party that requests them, as required under Illinois state law.

8. Monitoring: The business development coordinator or his or her designee will monitor compliance with the requirements of the local employment program by means including, but not limited to, desk reviews or on site monitoring. Audits of compliance may require the review of documents such as certified payrolls, canceled checks, or quarterly wage and withholding reports. Full scale investigations of noncompliance or violations will be on an as needed basis as determined by the business development coordinator.

A contractor that fails to provide requested documents or misrepresents material facts in such documents shall be deemed to be noncompliant with the local employment program.

9. Post-Award Meeting: At its discretion, the business development coordinator or his or her designee may require the contractor to attend a post-award meeting to familiarize the contractor with the local employment program requirements. If requested by the contractor post-award, or at any time during the project, the city shall hold such a meeting within ten (10) business days.

10. Penalty: If the contractor or subcontractor should fail to meet the total percentage of resident project hours due to a resident termination or resignation, the contractor or subcontractor shall immediately notify the business development coordinator of this occurrence within two (2) business days. Subsequently, the contractor or subcontractor shall have five (5) additional business days to replace a

terminated or resigned worker with another resident. If the contractor or subcontractor fails to make the replacement or to notify the business development coordinator of this occurrence, the offending party will be fined one hundred dollars (\$100.00) per day for each day of noncompliance to be deducted from final payment on the contract. If the noncompliant contractor makes a good faith effort to replace the resident, the fine will be waived.

SECTION 3: That Title 1, Chapter 17, Section 1, of the Evanston City Code of 1979, as amended, is hereby further amended by adding a new Subsection (D), "Minority, Women and Evanston Business Enterprise (M/W/EBE) Goals," to read as follows:

(D) Minority, Women, and Evanston Business Enterprise M/W/EBE) Goals:

1. Definitions: For the purposes of this Subsection (D), Minority, Women and Evanston Business Enterprise (M/W/EBE) Goals, the following terms shall be defined as follows:

EVANSTON-OWNED BUSINESS ENTERPRISE or EBE: An entity which is located in or has one or more offices located in the City for a minimum of one year and which performs a "commercially useful function." The business must be certified by the City in accordance with the provisions of Section 1-17-1(B).

MINORITY-OWNED BUSINESS ENTERPRISE or MBE: A business which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly-held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more members of one or more minority groups, whose management and daily operations are controlled by one or more members of one or more minority groups. The City manager or his or her designee shall determine which MBE certifications shall be accepted by the City.

WOMEN-OWNED BUSINESS ENTERPRISE or WBE: A business which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly-held corporation, fifty-one percent (51%) of the stock of which is owned by one or more women, whose management and daily business operations are controlled by one or more women. The City manager or his or her designee shall determine which WBE certifications shall be accepted by the City.

M/W/EBE Goals: The City of Evanston establishes the goal of awarding not less than twenty-five percent (25%) of its contract awards to MBE, WBE and EBE businesses. The City of Evanston establishes the goal of awarding not less than three percent (3%) utilization of EBEs in its contract awards. The provisions of this ordinance shall be

implemented by the City Manager or his or her designee. The provisions of this ordinance do not guarantee contract participation.

SECTION 4: That nothing in this Ordinance shall be construed to contravene any state or federal law and the provisions of this Ordinance shall not apply in circumstances when it is determined by the federal government or a court of competent jurisdiction that its application would violate federal law or regulation or prevent the City of Evanston's receipt of federal funds.

SECTION 5: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: That if any provision of this Ordinance 50-O-10 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION 7: That this Ordinance 50-O-10 shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

Introduced: September 27, 2010

Approved:


Adopted: October 25, 2010


October 27, 2010


Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:


Rodney Greene, City Clerk


W. Grant Farrar, Corporation Counsel

