

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED May 20, 2008

REFERRED Board of Public Works;

Affirmative Action Commission

RULES SUSPENSION _____

PUBLIC HEARING _____

Amending Secs 33.07(7)(m) and 39.02(9)(e)1.a., and creating Sec. 39.02(9)(e)3. of the Madison General Ordinances to clarify procedures relating to Public Bidding and Affirmative Action Plans.

Drafted by: Michael May

Date: May 12, 2008

SPONSORS: Mayor Cieslewicz, Alders Clausius, Solomon

DRAFTER'S ANALYSIS: Following the recent receipt of some public works bids, the City Attorney was made aware of some inconsistencies in language regarding the conditional prequalification of bidders and the approval of Affirmative Action Plans. This ordinance amends both the public bidding ordinance and the Affirmative Action ordinance to make them consistent, and to require that an Affirmative Action Plan must be approved no later than the date the Board of Public Works first considers the award of a contract. The ordinance also clarifies the method of appeal on disapproval of an Affirmative Action Plan. Following adoption of this ordinance, other changes will be made to certain bidding documents to conform to the ordinance.

The Common Council of the City of Madison do hereby ordain as follows:

1. Subdivision (m) entitled "Conditional Approval" of Subsection (7) entitled "Best Value Contracting" of Section 33.07 entitled "Board of Public Works" is amended to read as follows:

"(m) Conditional Approval. The City Engineer may issue conditional approvals of any application for prequalification and shall set out the conditions thereof in writing, provided, however, that no conditional approval of a bidder's application for prequalification that relates to the pending approval of an Affirmative Action Plan shall extend beyond the date of the initial consideration of the award by the Board of Public Works, at which time the contractor must be in full compliance with sec. 39.02(9)(e), MGO."

2. Subparagraph a. entitled "Public Works Projects" of Paragraph 1. entitled "Submission of Affirmative Action Plans" of Subdivision (e) entitled "Compliance Requirements" of Subsection (9) entitled "Contract Compliance Provisions" of Section 39.02 entitled "Affirmative Action Ordinance" of the Madison General Ordinances is amended to read as follows:

"a. Public Works Projects. The award of any public works contract, except those exempted by Sec. 39.02(9)(a)2.a., shall be subject to and contingent upon the lowest responsible bidder submitting in writing to the Division of Affirmative Action, an Affirmative Action Plan for Public Works Contractors on a form approved by the Affirmative Action Division Head. Such Affirmative Action Plan shall be submitted with the contractor's bid prequalification documents. Should any contractor fail or refuse to submit an Affirmative Action Plan as required by this section, such contractor shall not be qualified to bid on any City Public Works contracts until said contractor has complied. Any bid submitted by a contractor who has failed to submit an Affirmative Action Plan as required by this section shall be rejected. All such

Approved as to form:

contractors shall require their subcontractors to file an approved Affirmative Action Plan prior to the subcontractor being allowed to start work on any City project.

No public works contractor may be prequalified by the Director of Public Works for work advertised after April 1, 1991, unless the contractor submits an Affirmative Action Plan approved by the Division of Affirmative Action. If such a contractor submits an Affirmative Action Plan and the contractor is conditionally prequalified by the City Engineer, the contractor's Affirmative Action Plan must be approved by the Affirmative Action Division Head prior to the initial consideration of the contract award by the Board of Public Works. The Board of Public Works shall not award any contract to a contractor unless the Affirmative Action Division Head has approved the Affirmative Action Plan submitted by the contractor no later than the time the award is initially considered by the Board.

3. Paragraph 3. entitled "Appeal" of Subdivision (e) entitled "Compliance Requirements" of Subsection (9) entitled "Contract Compliance Provisions" of Section 39.02 entitled "Affirmative Action Ordinance" of the Madison General Ordinances is created to read as follows:

"3. Appeal. Any person aggrieved by a determination not to approve an Affirmative Action Plan shall have a right of appeal to the Affirmative Action Commission. The person shall institute the appeal by delivering a written notice of appeal, requesting a hearing before the Affirmative Action Commission, to the Head of the Affirmative Action Division within five (5) business days of the determination. Upon receipt of such a notice, the Head of the Affirmative Action Division shall follow the procedures for hearing set out in sec. 32.09(9)(g)6-8, MGO, except that the Affirmative Action Commission shall, in addition to issuing a written decision as provided therein, render a decision orally immediately after the hearing. An appeal by certiorari to Circuit Court must be taken within 30 days of the written decision of the Affirmative Action Commission."