Affirmative Action Hearing Training – 5/15/25

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MGO 39.02(9), Contract Compliance Provisions of the City of Madison's Affirmative Action Ordinance

Requirements of Vendors: Within thirty (30) days from the effective date of a contract or purchase order with the City, and prior to the release of payment by the City, all nonexempt Vendors and Suppliers are required to submit an approvable Affirmative Action Plan. Vendors and suppliers have the option of completing:

- The model affirmative action plan approved by the Common Council
- Or their own plan that meets the requirements of Federal Revised Order No. 4, 41 CFR Par*t 60-2.*

  *MGO authorizes the Affirmative Action Division Manager to approve affirmative action plans.

Exemption for 14 or Fewer: Contracts and/or purchase orders with individuals, partnerships, corporations, associations, or other entities including contractors, vendors, or suppliers, which employ fewer than fifteen (15) employees, qualify for an Affirmative Action Plan Exemption that can be completed online.

Exemption for Less than $50K: Contracts and/or purchase orders with individuals, partnerships, corporations, associations, or other entities including contractors, vendors, or suppliers whose aggregate annual business with the City for the calendar year in which the contract takes effect is less than fifty thousand dollars ($50,000), qualify for an Affirmative Action Plan Exemption that can be completed online.

**Contracts for goods, supplies or services necessitated by or resulting from an emergency situation as duly determined by the Mayor with the advice of the Council where possible, including those executed as an emergency services contract under Sec. 4.26(4)(c).

Failure to Comply:

In the event of the Contractor's or subcontractor's failure to comply with the Affirmative Action provisions of the Madison General Ordinances, the AAC Appeals Subcommittee may do any or all of the following:

- Cancel, terminate or suspend this Contract in whole or in part.
- Declare the Contractor ineligible for further City contracts for a period of 2 years or until the Affirmative Action requirements are met. ;
- Recover on behalf of the City from the contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or ten thousand dollars ($10,000), whichever is less.

Hearing Procedure

1) AA Appeals Subcommittee Hearings are considered Quasi-Judicial hearings – similar to a trial, but less formal.

2) The Chair of the AAC Appeals Subcommittee shall conduct the hearing.

3) The parties may be represented by an attorney, but there is no requirement that they are.

4) Witnesses shall be sworn in by the Chair and testify under oath.

5) Affirmative Action Division, (represented by ACA Jason Donker) has the burden of proof and will present their case first – this may include testimony of witnesses and the presentation of exhibits as evidence.

    a. **Witnesses**
        i. Shall be sworn in and testify under oath.

            Oath: "Do you affirm that your testimony will be the truth, the whole truth, and nothing but the truth?"

            Response should be an audible "yes".

        ii. Shall be asked by the Chair to state their name for the record.

        iii. May testify in a narrative format, or by more formal question/answer format with their attorney/other representative of the contractor.

    b. **Evidence**

        i. Shall be moved by the presenting party into the record.

        ii. The Chair shall ask the opposing party if there are any objections to the admission of the evidence.
        iii. The Chair shall determine whether evidence is to be admitted. If so, it shall become a part of the hearing record.

        iv. Wis. Stat. 227.45 shall govern the admission of evidence:

            227.45 Evidence and official notice. In contested cases:

            227.45(1) **(1)** Except as provided in s. 901.05, an agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. The agency or hearing examiner shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative

force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

c. After the completion of witness testimony and/or the admission of any exhibits, the Chair will ask the party if they rest their case.

6) Contractors will then have the opportunity to present their case.

   a. Contractors will follow the same procedure when presenting witnesses and evidence.

   b. After the completion of witness testimony and/or the admission of any exhibits, the Chair will ask the party if they rest their case.

7) The Affirmative Action Division shall the opportunity again to provide any additional testimony/evidence (Because they have the burden of proof) to rebut anything the Contractor presented.

8) Members of the AAC Appeals Subcommittee will have the opportunity to ask questions of any witnesses.

9) After both parties have rested, the AAC Appeals Subcommittee MAY move into closed session (by motion) to deliberate the case/cases. The Burden of Proof is the Preponderance of the Evidence.

   a. Procedure to go into Closed Session:
      i. A member of the body will make a motion to go into closed session and cite the reason and the statue: To deliberate concerning a case which was the subject of any quasi-judicial hearing before the Subcommittee, under Wis. Stats. Section 19.85(1)(a).
      ii. Must be a roll call vote.
      iii. During closed session, everyone will leave the room/virtual room except for the members of the body and City staff.
   b. After convening in Closed Session and making their determinations, the body will return to Open Session, again by motion and roll call vote.

10) Announcements of the decisions of the AAC Appeals Subcommittee (by Chair or staff).

11) Adjournment.

Post Hearing: Assistant City Attorney Adriana Peguero will draft orders for the Chair's signature.