

ATTACHMENT A

Regulation Prohibiting Discrimination by Businesses Contracting with DeKalb County

PART 1

NON-DISCRIMINATION IN EMPLOYMENT BY COUNTY CONTRACTORS AND SUBCONTRACTORS

SECTION I PURPOSE

The County declares that discrimination because of the real or perceived inclusion or exclusion of any person in a Protected Class as defined in section 1-2 of the Code of DeKalb County, as revised 1988, is inconsistent with the Constitution, laws and policies of the United States, state and County, and the County establishes these regulations to prohibit discrimination by contractors who do business with the County, and their subcontractors, against any employee working on a County contract because of the real or perceived inclusion or exclusion of any person in a Protected Class as defined in section 1-2.

SECTION II STATEMENT OF POLICY

It is the policy of the County that all contracts hereinafter executed on behalf of the County or amended in any manner shall include a provision obligating the contractor and/or subcontractor not to discriminate against any employee working on a County contract because of the real or perceived inclusion or exclusion of any person in a Protected Class as defined in section 1-2.

The County further encourages equal employment opportunity at all levels among firms, corporations and partnerships which do business with the County. Although not required, the County expects that persons of varying Protected Classes are internally integrated as officers and directors of corporations or as partners of partnerships. The County prefers to do business with firms or institutions which include representation of varying Protected Classes at all levels, and it is in the furtherance of that policy that the County encourages firms doing business with the County to integrate fully.

SECTION III. SCOPE

These regulations shall apply to all County contracts exceeding \$100,000 as approved by the Governing Authority. These regulations do not apply to contracts entered into on behalf of the Tax Commissioner, Clerk of Superior Court, the District Attorney, or the Sheriff. These regulations supersede and repeal all existing regulations and/or policies to the extent they are inconsistent with the provisions herein.

PART 2

REQUIREMENTS FOR EXECUTION OF COUNTY CONTRACTS

SECTION I. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

There shall be an equal employment opportunity (EEO) clause required in all County contracts, which shall read as follows:

"During the performance of this agreement, said contractor agrees as follows:

- (a) The contractor shall not discriminate against any employee, or applicant for employment, because of the real or perceived inclusion or exclusion of any person in a Protected Class as defined in section 1-2 of the Code of DeKalb County. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

- (b) The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.
- (c) The contractor shall conduct a prompt, thorough, and impartial investigation into complaints of alleged discrimination. The investigation shall, at minimum, include interviews of the complainant, the alleged violator, and any witnesses, a determination as to whether discrimination has occurred, and appropriate corrective action or other preventative measures such as training or monitoring.
- (d) The contractor shall, in all solicitations or advertisements for employees, placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to the real or perceived inclusion or exclusion of any person in a Protected Class as defined in section 1-2 of the Code of DeKalb County.
- (e) The contractor shall send to each labor union or representative of workers with which the contractor may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the contractor's commitments under the equal employment opportunity program of the County and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The contractor shall respond to all requests for information by the County in a timely manner. The contractor shall also furnish all information and reports required by the County and shall permit access to the books, records, and accounts of the contractor during normal business hours by the County for the purpose of ascertaining compliance with the program.

- (g) The contractor shall take such action with respect to any subcontractor as the County may direct as a means of enforcing the provisions of paragraphs (a) through (j) herein, including penalties and sanctions for noncompliance.
- (h) The contractor and its subcontractors, if any, shall file compliance reports at reasonable times and intervals with the County in the form and to the extent prescribed by the County. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the contractor and its subcontractors.
- (i) The contractor shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
- (j) Non-compliance by the contractor or subcontractor with any section of these regulations, as herein provided and described, may constitute a material breach of the contract and may subject the offending party to any or all of the following penalties:
 - (1) Withholding from the contractor in violation all future payments under the involved contract until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract;
 - (2) Refusal of all future bids for any contract with the County or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that it has established and is carrying out all of the provisions of the program as provided in these regulations;
 - (3) Termination of the contract;
 - (4) In a case in which there is willful, substantial, or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to specifically enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

PART 3
BIDS AND OFFERS

SECTION I. NOTICE

The chief procurement officer or his/her designee shall include, as a part of any contract specifications published for the use of prospective bidders and offerors, a notice that all bidders or offerors will be required to comply with this portion of the County's EEO Contractor program set forth in these regulations.

SECTION II. REQUIREMENTS

Each bidder or offeror shall submit any information required by these regulations in duplicate to the chief procurement officer or his/her designee. Each bidder or offeror shall file, as part of the documents of such contract, employment information in such form as may be required by the County and shall ensure that each subcontractor also files such information.

SECTION III. PRECERTIFICATION

A. PRECERTIFICATION LIST

The chief procurement officer or his/her designee shall create and maintain a precertification list containing the names of all suppliers who, upon application, meet the EEO standards and criteria as set forth in these regulations. When placed upon the precertification list, a contractor shall be deemed in compliance with the EEO Contractor program and eligible to enter into a contract for a period of 12 months subsequent to the date of being placed on the precertification list, if the contract has met the requirements of these regulations. Such listing may be renewed by application of the contractor.

B. NOTICE TO CONTRACTOR

The chief procurement officer or his/her designee shall notify any contractor, within 30 days after application for listing, whether or not the contractor has met the criteria for being an equal employment opportunity contractor. A contractor may appeal the decision of the chief procurement officer to the chief operating officer or his/her designee in writing within 10 days.

PART 4**COMPLIANCE WITH EEO CONTRACTOR PROGRAM****SECTION I. AUTHORITY OF CHIEF PROCUREMENT OFFICER**

The Chief Procurement Officer or his/her designee is responsible for the administration and enforcement of this EEO program. To that end, the Chief Procurement Officer or his/her designee is authorized to:

- A. Create and maintain a precertification list as set forth in Part 3, Section III of these regulations and send all notices related thereto.
- B. Issue a written determination as to whether potential contractors have complied with the EEO standards and criteria set forth in these regulations prior to the award of any public bid, or the execution of any County contract or purchase order.
- C. Receive and investigate written complaints of alleged violations of the EEO program by a contractor or subcontractor employee working on a County contract or other violation. However, complaints of discrimination against County contractors or subcontractors that do not involve or implicate employees working on County contracts will not be investigated.
- D. Request a written statement from a contractor or subcontractor, on forms provided by the County, in connection with the investigation of any complaint alleging a violation of the EEO Contractor program. Such written statement shall be signed by the corporate officer that executed the company's contract with the County. If that person is unavailable, the written statement may be signed by any corporate officer who has authority to bind the company contractually. Such written statement shall be provided within 21 calendar days from the date of the request.
- E. Create forms, in consultation with the Law Department, to be used by contractors and/or subcontractors when responding to a request for the written statement by the County. Such form shall state whether an investigation which complies with the parameters set forth in the EEO clause of these regulations is being (or has been) conducted and shall outline the steps taken during the investigation.
- F. Make findings of noncompliance and transmit findings and recommendations thereon to the Chief Operating Officer or his/her designee. Findings of noncompliance shall not be made unless the Chief Procurement Officer or his/her designee has: (1) determined that a contractor or subcontractor has violated or failed to comply with the EEO Contractor Program; (2) the contractor or subcontractor has been given a reasonable time to correct the violation or noncompliance and has failed to do so; and (3) informal negotiations have been to no avail.

- G. Determine whether any penalty set forth in these regulations is appropriate and should be imposed.
- H. Take such other action as may be necessary and proper for the administration and enforcement of the EEO Contractor Program, to the extent permitted by applicable state and local law.

SECTION II. PENALTIES FOR NON-COMPLIANCE

The finding of refusal or failure by a contractor or subcontractor to comply with any portions of these regulations may subject the offending party to any or all of the following penalties:

- A. Withholding from the contractor in violation all future payments under the involved contract until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract.
- B. Refusal of all future bids for any contract with the County or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in this division.
- C. Removal from the precertification list.
- D. Termination of the contract.

SECTION III. APPEAL OF FINDING OF NON-COMPLIANCE

A contractor or subcontractor may appeal a finding of non-compliance and any resulting penalty by petition for writ of certiorari to the superior court of DeKalb County.

SECTION IV. EXEMPTIONS

The following contracts are exempted from the requirements of these regulations:

1. *Emergency or sole source contracts.* The contract has been determined by the chief executive officer, the chief executive officer's designee or the chief procurement officer to be an emergency procurement or to be available only through a sole source.
2. *Fourteen or less employees.* The contractor and all subcontractors, if any, have work forces of 14 or less employees.
3. *Contracts of \$100,000 or less.* The contract price for the contract does not exceed \$100,000.