

ASSURING EQUAL OPPORTUNITY FOR WOMEN IN CONSTRUCTION: CHECKLIST FOR DEVELOPERS

Promoting equal employment opportunity (“EEO”) on construction sites begins with developers conveying their EEO commitment from the very first bid solicitations. Developers should go beyond including EEO “boilerplate” language in their contracts and identify specific obligations on the part of the contractor and subcontractors. Finally, developers must actively monitor compliance with the contract’s EEO provisions, and must impose timely penalties for noncompliance.

SELECTING A CONTRACTOR

- Establish a workforce participation goal for women, and other targeted groups. The federal government uses a goal of 6.9% women, while prominent New York City developers have adopted goals as high as 10% (Forest City Ratner) and 14% (Lower Manhattan Development Corporation). The Mayor’s Commission on Construction Opportunity has set a 15% goal for certain “High Impact Projects,” such as World Trade Center Towers Two, Three, and Four.
- Inform each bidding contractor of the workforce participation goal, and alert contractors that the developer expects affirmative efforts to meet the goal.
- Inform each bidder that conforming to specific EEO standards will be a condition of satisfactory contract performance, and that a contractor’s compliance will be reviewed by an on-site monitor.
- Review a bidder’s employment practices, such as its employment policies, practices, and procedures; its workforce composition; its EEO standards and compliance measures; and any pending lawsuits or administrative charges of discrimination, past court or administrative findings, and consent decrees or court orders to which it is subject.

IMPLEMENT CONTRACT TERMS THAT ENSURE EQUAL OPPORTUNITY

Developers must contractually bind their construction contractors and subcontractors to these specific obligations to promote equal opportunity for all workers:

Contract Terms: Commitment to Equal Employment Opportunity

- Adopt an explicit policy of non-discrimination and state this policy in all solicitations for workers, distribute it to applicants and workers on the job, and convey it to all unions supplying workers to the project.

- Adopt a comprehensive EEO policy that includes a simple, confidential procedure for employees to lodge complaints, and that explains how investigations will be conducted.
- Distribute the EEO policy to applicants and employees.
- Train on-site supervisory personnel and workers in the EEO policy.

Contract Terms: Recruiting and Hiring Practices

- Identify and communicate with specific recruitment sources for women, and provide periodic, accurate, up-to-date hiring timelines so that those entities can notify and refer qualified women.
- Record efforts to recruit women, and keep records of all female applicants, as well as why female applicants were rejected.
- Keep accurate records of the work hours and number of women from each trade working on the job at any time.
- If a union's referral practices inhibit the contractor's ability to recruit women workers, identify alternative recruitment sources and report the union to the relevant administrative enforcement agencies.

Contract Terms: On-the-Job Opportunities

- Regularly review work assignments, job classifications, shift schedules, overtime allocation, and other personnel practices to assure fair wages and equitable work conditions.
- Place qualified women in leadership positions, such as foreperson and crew leader, and encourage them to participate in management training programs and other promotional opportunities.

Contract Terms: Worksite Conditions

- Prohibit all forms of gender-based harassment, specifically including non-sexual harassment, that conveys animus toward women.
- Adopt and enforce a "zero tolerance" policy for pornography, obscene graffiti, and other offensive images on the jobsite.
- Maintain restroom and changing facilities that are accessible to women, meaning clean, private, and close to the jobsite.

CARRY OUT MEANINGFUL COMPLIANCE AND ENFORCEMENT

Construction Workforce Monitors

- Developers must hire a construction workforce monitor for each site.
- Provide the monitor with on-site office space and administrative support services.
- The monitor (i) helps locate qualified targeted workers; (ii) maintains records of applications received; (iii) regularly generates reports reflecting workforce composition, including decisions to hire, fire, promote, train, and assign workers; (iv) promotes and assesses contractor and union compliance with the EEO mandate; (v) acts as a liaison with sources of qualified workers; (vi) regularly walks the site to review work assignments and other workforce issues, and to communicate directly with workers and contractors; (vii) ensures supervisors and employees receive EEO training; (viii) holds

regular meetings with stakeholders to identify and resolve equal opportunity problems and challenges; (ix) receives complaints under the EEO policy, conducts investigations, and resolves disputes. (For more information on a monitor's role and activities, see "Checklist for Construction Workforce Monitors.")

Penalties and Incentives

- Include penalty and incentive provisions in the contract. If the EEO provisions are violated, promptly impose the contractual penalties during the life of the contract.
- Financial penalties may include withholding payments, paying a subcontractor directly while withholding overhead and profits from the contractor, terminating the contract, and/or barring the contractor from future contracts with the developer.
- Penalties also may include reporting the contractor's perceived EEO violations to administrative agencies for further investigation.
- Incentives may include achievement awards, public recognition and monetary awards including preferential bidding status for contractors exceeding goals.
- To encourage a contractor to achieve workforce participation goals, pay a portion of the contract price in increments, such as assigning a defined sum for every tenth of 1% by which contractors exceed a minimum workforce percentage and approach the stated goal.

Legal Momentum's Equality Works program assists public and private builders, contractors, unions, governmental representatives, community organizations and tradeswomen in order to ensure equal opportunity in the construction industry. Our work includes:

- *identifying and recruiting experienced tradeswomen;*
- *identifying and supporting training sources;*
- *developing equal opportunity contractual clauses and policies;*
- *supporting and training independent monitors; and*
- *representing tradeswomen when employers or unions violate their right to equal opportunity.*

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