

## **EQUAL OPPORTUNITY CONTRACT LANGUAGE**

Legal Momentum's research shows that equal opportunity on construction sites begins when building owners publicize the importance of their plans for hiring and retaining women and minorities *from the very first bid packages* – and back them up with contract clauses that individually bind both the general contractor and all subcontractors. While no two contracts are the same, project owners who are committed to ensuring equal opportunity on their construction projects should include the following provisions in their construction contracts.

### **1) Recruiting, Training, and Hiring Practices**

- *Workforce hiring goals:* set hiring goals that are at least as high as those set by the federal government under Executive Order 11246, 6.9% for every occupational category, and goals that are higher for trades where women are more highly represented. Make these goals applicable to the company's entire construction workforce on the site, not just the new hires.
- *Record-keeping:* require contractors and subcontractors to keep records of all their efforts to recruit minorities and women, and to keep records of all female and minority applicants and why they were hired or rejected.
- *Unions:* specify that any union's failure to cooperate in hiring efforts does not excuse contractors or subcontractors from attempting to meet their hiring goals.
- *Layoffs:* require all contractors and subcontractors to ensure that layoffs do not disproportionately affect minorities and women.

### **2) Worksite Conditions**

- *Harassment policy and complaint procedure:* require every contractor and subcontractor to develop and post an anti-harassment policy and procedure for reporting and investigating complaints. Direct contractors and subcontractors to guarantee the confidentiality of all complaints, and to designate someone outside employees' usual chain of supervisory command to receive complaints.
- *Communications/diversity training:* require that training in harassment prevention and other skills necessary to a diverse workplace be given at least annually.
- *Equal facilities:* require every contractor and subcontractor to maintain clean, women-only restrooms and changing facilities that lock both from the outside and the inside on every site, whether women are currently on the job or not. If women's restrooms on the site are less accessible than men's, specify that women cannot be penalized for the extra time it takes them to get to restrooms.
- *No-pornography rule:* specify that there will be zero tolerance for pornography on the site, whether in trailers, changing rooms, or personal tool boxes.

### 3) Reporting and Monitoring

- *Independent Monitor:* employ an independent monitor on every site, paid from the project budget, who is present on the site at least three days per week and who tracks applications and hiring, receives and attempts to resolve complaints about harassment or other discrimination, and assists contractors and subcontractors in locating qualified tradespeople.
- *Workforce reporting:* direct contractors and subcontractors to provide a notarized report tracking applications, hiring, firing, and hours worked by all employees, disaggregated by race and gender, to the independent monitor at least every two weeks. Ideally, worksite owners should set up an electronic key-card security site access system that also tracks work hours automatically.
- *Weekly site walks:* inform contractors and subcontractors that the independent monitor will walk the site at least weekly to confirm the accuracy of hiring reports and to inspect the site for unclean restrooms, pornography, and other problematic working conditions.

### 4) Community Involvement

- *Workforce projections:* require contractors and subcontractors to provide periodic, accurate, up-to-date hiring timelines to community groups and organizations that promote women's and minorities' access to the skilled trades so that they can notify and refer qualified tradespeople.
- *Monthly community meetings:* require every contractor and subcontractor to attend a monthly meeting with the project owner, the independent monitor, and community groups to review equal opportunity performance. If workforce goals are not being met or if other problems such as discriminatory working conditions have occurred, the parties will devise a solution to be implemented by the next meeting.

### 5) Penalties and Incentives

- *Penalties:* if contractors or subcontractors fail to make required reports, cooperate with the independent monitor, or make good faith efforts to meet their hiring goals, subject them to penalties, including withholding payments, withholding the portion of contract funds that should have been paid out in salaries and benefits to targeted workers, paying subcontractors directly while withholding overhead and profit from contractors, terminating the contract, and/or barring them from future contracting.
- *Pre-apprenticeship training:* require all contractors and subcontractors who don't meet their hiring goals to develop pre-apprenticeship programs for women and minorities and, negotiating with their unions as necessary, to hire pre-apprenticeship graduates as apprentices who will be retained for one year, or at least six months beyond the duration of the instant project.
- *Financial incentives and penalties:* give general contractors monetary incentives or penalties (for instance \$5,000) for every tenth of 1% by which they exceed or fail to meet their hiring goals.

Legal Momentum can provide examples of contract language used by governments and contractors. We can also advise you on recruitment, training, hiring, and workforce policies. For more information, contact Françoise Jacobsohn, Women Rebuild Project Manager, [fjacobsohn@legalmomentum.org](mailto:fjacobsohn@legalmomentum.org), at (212) 413-7530 or Christina Brandt-Young, Equal Justice Works Staff Attorney Fellow, [cbrandt-young@legalmomentum.org](mailto:cbrandt-young@legalmomentum.org), at (212) 413-7540.