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MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Criteria For Review And Approval Of
Affirmative Action Plans
Presented By The Metropolitan Sports
Facilities Commission

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NOVEMBER 1979

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I N D E X

	<u>Page</u>
I. INTRODUCTION AND OVERVIEW	1
A. General Introduction	1
B. Summary of Criteria	1
C. Definitions	2
D. Applicable Law	5
II. AFFIRMATIVE ACTION PLAN CRITERIA	7
A. Written Document Signed by the Chief Executive	7
B. Application to all Locations and Subdivisions Involved with the Commission	7
C. Statement of Purpose and Commitment	7
D. Affirmative Action Officer	8
E. Internal Monitoring System	9
F. Statistical Breakdown of Current Work Force ...	9
G. Goals and Timetables	10
H. Training and Apprenticeship Program	16
I. Good Faith Effort Clause	17

1. INTRODUCTION AND OVERVIEW

A. GENERAL INTRODUCTION

The Minnesota Department of Human Rights (herein called the department) is responsible for approving affirmative action plans submitted to the Metropolitan Sports Facilities Commission (herein called the commission) by prospective contractors pursuant to Minnesota Statute 473.556, Subdivisions 5,7,8,10 and 15 (1978). This manual provides a detailed outline of the criteria used by the department to approve such plans.

B. SUMMARY OF CRITERIA

The criteria summarized below are intended to clarify the standards used for department review and approval of affirmative action plans submitted pursuant to Minnesota Statute 473.556, Subdivision 15 (1978). Each party with whom the commission contracts for services for construction, concessions, and operation of a sports facility pursuant to Subdivisions 5,7,8 and 10 of the Statute, supra, is required to have a department approved plan.

Based on its experience in the area of affirmative action planning, the department has determined that an effective plan should include the following elements:

- (1) It should be written document, incorporating all of the criteria listed below and signed by the chief executive of the contracting company.
- (2) It should be effective in all subdivisions and units of the contracting party involved with the commission.
- (3) It should include a statement of purpose and commitment.
- (4) It should name the affirmative action officer appointed to implement and monitor the effectiveness of the plan.
- (5) It should include and describe mechanisms for on-going monitoring to gauge the success of the plan, including the reporting and record keeping devices which will be used for this purpose.

B. SUMMARY OF CRITERIA (Continued)

- (6) It should include a statistical breakdown of current work force indicating the number of protected and non-protected class persons in all job classifications.
- (7) It should specify goals and timetables for recruitment, hiring the promotion of minorities and women.
- (8) Training and apprenticeship programs may be included in the plan to provide for special circumstances where goals and timetables cannot be met because women and minorities with requisite job skills are not available.
- (9) A good faith effort clause should appear in the plan, indicting that a good faith effort will be made to fully implement the affirmative action plan and meet the goals and timetables established therein.

In the following pages, the department provides a more detailed explanation of the criteria listed above. Some illustrations are also provided for demonstrative purposes. Immediately following this summary, the department has included a small dictionary of some of the important words and phrases used in this manual. The relevant portions of the applicable law have also been included for the reader's reference.

C. DEFINITIONS

Affirmative Action — Positive, goal-oriented activity specifically designed to rectify the effects of past discrimination and eliminate underutilization of protected class persons.

Affirmative Action Officer — A person appointed to implement and oversee compliance with affirmative action plan policies and practices.

Affirmative Action Plan — A written document expressing a good faith commitment to affirmative action and equal employment opportunity and containing a detailed statement of the methods which will be used to rectify the effects of past discrimination and eliminate underutilization of protected class persons.

Agency — Any political subdivision of the state or federal government including, but not limited to, officers, boards,

C. DEFINITIONS (Continued)

commissions, bureaus, divisions, units and departments of the state of federal government.

Availability — A statistical evaluation of the numbers of protected class persons in the labor market area who have or are capable of acquiring the skills needed for a specific job classification or category and who are not permanently employed elsewhere or otherwise unavailable for hire.

Commission — The Metropolitan Sports Facilities Commission.

Commissioner — The Commissioner of the Minnesota Department of Human rights, or her designated representative.

Contract — Any contract for services for construction, concessions and operations of a sports facility let by the Metropolitan Sports Facilities Commission pursuant to Minnesota Statutes 473.556, Subdivisions 5,7,8 and 10 (1978).

Disability — A mental or physical condition which constitutes a handicap.

Disabled Person — In general, any person who has a physical or mental impairment that substantially affects one or more of his or her major life activities; also, any person who has a record of such impairment or is regarded as having such an impairment.

Discrimination — Differential treatment of persons based on protected class status, to the detriment of protected class persons, including segregation or separation of protected class persons from non-protected class persons.

Equal Employment Opportunity Officer — A person appointed to implement and oversee compliance with affirmative action plan policies and practices and/or equal employment laws.

Equal Employment Opportunity — Treatment of employees, applicants and potential applicants for employment without discrimination on the basis of protected class status in all terms, benefits and conditions of employment including hire, tenure, compensation, upgrading, facilities, privileges, and disciplinary actions.

C. DEFINITIONS (Continued)

Formal Training and Apprenticeship Programs — A program registered with the state or federal bureau of apprenticeship training and/or the State Department of Economic Security designed to train females, minorities and/or other protected class persons.

Good Faith Effort — Action that a prudent business person would take to fulfill a legal obligation.

Informal Training and Apprenticeship Program — A program not registered with the state or federal government designed to train females, minorities and/or other protected class persons.

Infra — Below or following.

Labor Market Area — Area from which the employer or union recruits for each job classification or category.

Minorities — (1) Black — persons with ancestral origins in any of the Black African racial groups.

(2) Hispanic — persons of Mexican, Puerto Rican, Cuban, South or Central American or other Spanish cultural or ancestral origins.

(3) Asians and Pacific Islanders — persons having ancestral origins in any of the original peoples of the Far East, Southwest Asia, the Indian subcontinent, or the Pacific Islands.

(4) American Indians — all persons having ancestral origins in any of the original peoples of North America who maintain identifiable tribal affiliations through membership and participation or community identification.

Non-Minorities — Persons other than Blacks, Hispanics, Asian and Pacific Islanders and American Indians.

Protected

Class —

(1) For purposes of II., F., "Breakdown of Current Work Force", below, females,

C. DEFINITIONS (Continued)

minorities and disabled persons are protected class persons.

- (2) In general, the categories of persons protected by the Minnesota Human Rights Act. The Act prohibits discrimination in employment on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability or age.

Recruitment — The process, formal and informal, of attracting prospective employees to an organization.

Standard Metropolitan Statistical Area (S.M.S.A) — For purposes of this manual, the nine county area which includes Hennepin, Ramsey, Anoka, Washington, Dakota, Carver, Chisago, Scott and Wright counties. S.M.S.A. statistics are used to determine the availability of women and minorities in the nine county area.

Supra — Above or foregoing.

Underutilization — Describes circumstances in which the numbers of protected class persons actually employed are fewer than the number of such persons generally available in the labor market area from which the employer normally recruits.

D. APPLICABLE LAW

MINNESOTA STATUTES 473.556, SUBDIVISIONS 5, 7, 8, 10 and 15 (1978)

Subd. 5. *Facility operation.* The commission may equip, improve, operate, manage, maintain, and control the metropolitan sports area and sports facilities constructed or remodeled under the provisions of Sections 473.551 to 473.595.

Subd. 7. *Contracts.* The commission may contract for materials, supplies, and equipment in accordance with Section 471.345, except that the commission may employ persons, firms, or corporations to perform one or more or all of the functions of architect, engineer, construction manager, or contractor for both design and construction, with respect to all or any part of a

D. APPLICABLE LAW (Continued)

project to build or remodel sports facilities. Such employment shall be through the process of public bidding, provided that it shall be permissible for the commission to narrow the listing of eligible bidders to those which the commission determines to possess sufficient expertise to perform the intended fundtions. Any such person, firm, or corporation shall certify, before the contracts are finally signed, a construction price and completion date to the commission and shall post a bond in an amount at least equal to 100 percent of the certified price, to cover any costs which may be incurred over and above the certified price, including but not limited to costs incurred by the commission or loss of revenues resulting from incomplete construction on the completion date. The commission shall secure surety bonds as required in Section 574.26, securing payment of just claims in connection with all public work undertaken by it. Persons entitled to the protection of the bonds may enforce them as provided in Sections 574.28, to 574.32, and shall not be entitled to a lien on any prepority of the commission under the provisions of Sections 514.01 to 514.16.

Subd. 8. *Employees; contracts for services.* The commission may employ persons and contract for services necessary to carry out its functions. The commission may employ on such terms as it deems advisable persons or firms for the purpose of providing traffic officers to direct traffic on property under the control of the commission and on the city streets in the general area of the property controlled by the commission. The traffic officers shall not be peace officers and shall not have authority to make arrests for violations of traffic regulations.

Subd. 10. *Research.* The commission may conduct research studies and programs, collect and analyze data, prepare reports, maps, charts, and tables, and conduct all necessary hearings and investigations in connection with its functions.

Subd. 15. *Affirmative Action.* The commission shall require that each party with whom it contracts for services for construction, concessions, and operation of a sports facility pursuant to subdivisions 5, 7, 8 and 10 shall have an affirmative action plan for the employment of minority persons that has been approved by the commissioner of human rights.

II. AFFIRMATIVE ACTION PLAN CRITERIA

A. WRITTEN DOCUMENT SIGNED BY THE CHIEF EXECUTIVE

An affirmative action plan is a serious commitment to a particular course of action comparable to a contract. Therefore, the department requests that each plan be submitted in the form of a written document signed by the chief executive of the contracting party.

B. APPLICATION TO ALL LOCATIONS AND SUBDIVISIONS INVOLVED WITH THE COMMISSION

The plan should state that it is effective in all subdivisions or locations of the contracting entity which may be involved, directly or indirectly, with the commission.

C. STATEMENT OF PURPOSE AND COMMITMENT

This statement explains the reasons for creating the plan and what the plan is intended to accomplish. It should include: (1) a concise paraphrase or statement of the applicable state and federal equal opportunity employment laws, (2) a reference to the employer's intention to comply with the law, and, (3) a commitment to the state and federal policy inherent in or implied by the passage of the law. Specifically, the plan should state that it is the policy of the contracting party to establish and maintain a system of employment practices which do not discriminate against any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age except when based on a bona fide occupational qualification. Further, the statement should indicate a policy and positive commitment on the part of the contractor to take affirmative action to alleviate the effects of past discrimination against minority and other protected class persons and to fully comply with state and federal law regarding equal employment opportunity. This policy and commitment should be applicable to all employment practices and all levels of personnel administration including, but not limited to; hire and discharge, wages, benefits, working conditions, and facilities. The statement should also indicate that all officers and employees will be informed of this policy and commitment and will be directed to assist in the effort to achieve full implementation thereof.

D. AFFIRMATIVE ACTION OFFICER

A written plan is meaningless and will not fulfill its purpose unless it is put to practical use. This requires that someone be appointed to ensure that all personnel practices are in accord with the affirmative action plan. An affirmative action officer must have sufficient expertise, authority, management support, and staff to implement the plan fully. The duties of such an officer should include the following:

- (1) Designing the implementing a system for reporting and review of personnel policies and activities as they relate to nondiscrimination and affirmative action. This would include the establishment of goals and timetables for recruitment of women and minorities.
- (2) Monitoring the effectiveness of the affirmative action plan and identifying problem areas where remedial action should be taken.
- (3) Serving as a resource person for management and employees, and providing information about the plan and problem solving techniques in difficult areas.
- (4) Developing and distributing policy statements, posters, updates on changes in the plan and other relevant material to inform management and employees of their rights and responsibilities.
- (5) Developing lines of communication with the public and with community organizations concerned with equal employment opportunity for recruitment purposes.
- (6) Serving as the liaison between the employer and government agencies responsible for enforcing anti-discrimination and equal employment opportunity laws.

Each plan should indicate the name, title or position and authorized duties of the individual within the contracting company who is responsible for the implementation of the plan and the assessment of its success.

E. INTERNAL MONITORING SYSTEM

Each plan submitted to the department should include a description outlining the internal monitoring system used by the contractor's affirmative action officer to ensure that the plan is being implemented and that it is working effectively.

The plans should describe the monitoring mechanisms which will be used to ensure that the following aspects of employment practices and procedures are functioning in a nondiscriminatory manner in accordance with the affirmative action policy:

- (1) Job titles and descriptions.
- (2) Employee selection criteria and minimum qualifications.
- (3) Recruitment efforts.
- (4) Training and upward mobility systems, including job assignments, progressions, transfers, promotions and seniority.
- (5) Wage and salary structure.
- (6) Benefits, terms and conditions of employment.
- (7) Disciplinary actions, discharge, layoff and recall.
- (8) Union contract provisions and union procedures affecting the areas listed above.
- (9) Methods for collecting and reviewing statistical data on a periodic basis to evaluate success in meeting goals and timetables. (See Sections F & G)

F. STATISTICAL BREAKDOWN OF CURRENT WORK FORCE

Statistical breakdown of the current representation of women and minorities in the employer's work force must be included in each affirmative action plan submitted to the department. This has been selected as one of the criteria for approval of such plans because it will enable the department to make a realistic evaluation of the plan submitted. Statistics should include (but need not be limited to) a breakdown of the employee population of each major job classification by sex, race

F. STATISTICAL BREAKDOWN
OF CURRENT WORK FORCE (Continued)

and disability. Members of racial/ethnic minority groups should be specifically identified as Black, Hispanic, Indian or other racial/ethnic minority. (An illustration appears on the next page.)

F. ILLUSTRATION

<u>Job Class</u>	<u>Total No. of Employees in Job Class</u>	<u>Protected Class Status</u>	<u>Total No. of P.C.S. Employees in Job Class</u>	<u>% of P.C.S. Employees in Job Class</u>	<u>% of Non P.C.S. Empl. in Job Class</u>
Professional	100	Women	50	50%	30%
		Hispanic	5	5%	
		Black	10	10%	
		Indian	5	5%	
Operator	100	Women	5	5%	60%
		Hispanic	5	5%	
		Black	25	25%	
		Indian	5	5%	

G. GOALS AND TIMETABLES

(1) In General

The use of an affirmative action plan should ultimately result in a work force with a female and minority component which reflects proportionately the number of such persons available in the labor market area. For example, if 5% of the population of available workers in the labor market area consists of minorities, the employer's overall work force would ideally contain 5% minorities. In many cases an increase in the number of minorities and women in the employer's work force will be needed to achieve this result.

Where minorities and women are available in the labor market area but are presently underutilized in particular job categories, goals and timetables provide a useful tool for increasing their numbers in the employer's work force. An analysis of the present work force by job category will provide the

G. GOALS AND TIMETABLES (1) In General (Continued)

basic data for formulating such goals and timetables. (See Section F, *supra*.)

The ultimate long-range goal should be representation of each group identified as "underutilized" in each major job classification in numbers with reasonable relation to the overall labor force participation of such group. This goal may be modified to the extent that one can prove that valid job-related selection standards reduce the percentage of a particular group qualified for a particular job classification.

Goals should not be rigid and unchangeable. They cannot be based upon exact predictable statistics. For example, studies indicate that many qualified women not in the present labor force could become "available" if job opportunities were open to them. Similarly, many members of minority groups now in the work force could become "qualified" if better jobs and opportunities for training and promotion become open to them.

Specific, numerical interim targets should be developed for hiring, training, transferring and promoting, to reach the goals within the indicated time frame.

Interim targets will depend upon such factors as anticipated turnover, expansion or contraction of the organization, availability of persons with required skills, realistic appraisal of extent of skill necessary for particular jobs, time necessary to acquire such skill, possibility of on-the-job or other training to acquire skills, and similar considerations.

Managers of each department and organizational unit should participate in assessing these factors and setting interim targets (subject to review and revisions by the affirmative action officer) and should be held responsible for reaching them. Targets should be developed for the organization as a whole, for each unit and each job category.

Overall responsibility for goals should remain with the affirmative action officer. If few job openings and promotional opportunities are projected, and goals appear inadequate, other steps should be explored. Restructuring of some jobs into lower and higher-skilled components, and providing additional

G. GOALS AND TIMETABLES (1) In General (Continued)

training opportunities are examples of ways in which goals may be improved.

A reporting, monitoring and evaluation system should be established to assure that there is measurable periodic improvement in hiring, training, transfer and promotion of each group in each area where underutilization has been identified.

Some organizations feel that they have conducted a serious goal setting process and made "good-faith" effort to achieve goals, but that negative external factors — such as unavailability of 'qualified' candidates ... are responsible for lack of significant improvement. Department experience indicates that it is far more likely that negative internal factors are responsible, i.e., continuing discriminatory barriers in the employment system. Therefore, to achieve long-range goals and interim targets, first identify where such barriers may be operating and then take necessary steps to eliminate them and to equalize opportunities for those suffering effects of past discrimination. For example, analysis may reveal underutilization of certain groups in certain jobs, until the entire employment process is reviewed step by step, it will be difficult to pinpoint the cause of underutilization. How much is due to inadequate recruiting efforts? How much is due to failure of applicants to survive various standards and steps in selection and promotion process? How valid is each of these standards in predicting which candidates can perform particular jobs successfully.

G. GOALS AND TIMETABLES

2. Specific Requirements

Due to the many factors which must be considered, setting reasonable goals and timetables for increased minority and female representation in the work force is one of the more difficult tasks in affirmative action planning. Therefore, the department has developed some very specific criteria in this area to indicate clearly what each plan should contain.

- (1) The plan must identify those major job classifications for which the contracting company will seek an increased protected class employment population and

G. GOALS AND TIMETABLES

(2) Specific Requirements (Continued)

specify the steps proposed by the company for location and recruitment of such individuals (e.g., increased or modified advertising of positions, placement of employment advertisements in minority newspapers, contact with community groups or human service agencies, use of AA/EEO posters, broadening of geographical recruitment area, etc.). In addition the plan must indicate the timetable for such location, recruitment, and hiring.

- (2) The plan must identify those major job classifications in which the protected class employee population is deemed not to require an increase and must indicate what will be done to ensure the maintenance of the current protected class employee population.
- (3) The plan must reflect that the contracting company has, or proposes to have within a reasonable period, the following percentages of female and minority employees (based on the Standard Metropolitan Statistical Area);
 - (a) A female employee population of not less than 3% in the job categories specified below;
 - (b) A ^{Minority} ~~female~~ employee population (male and female) of not less than 3% in the job categories specified below. (A "minority employee population" must include members of at least the three major racial/ethnic minority groups in the state of Minnesota, i.e., Blacks, Hispanics, and Indians).
- (b) *Categories* (Definitions appear below)
 - Officials and Managers
 - Professionals
 - Technicians
 - Sales
 - Office — Clerical
 - Skilled Crafts
 - Operatives
 - Transport

G. GOALS AND TIMETABLES

(2) Specific Requirements (Continued)

- (c) A female employee population of not less than 5% in the laborer and service worker category.
- (d) A minority (male and female) employee population of not less than 5% in the laborer and service worker category.

The job categories mentioned in the foregoing criteria are defined as follows for the purposes of this manual:

Officials and Managers: Occupations requiring administrative personnel who set broad policies, exercise overall responsibilities for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: Officials, executives, middle management, plant managers, department managers and superintendants, salaried supervisors who are members of management, purchasing agents and buyers, and kindred workers.

Professional: Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: Accountants and auditors, airplane pilots and navigators, architects, artists, chemists, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations workers, physical scientists, physicians, social scientists, teachers, and kindred workers.

Technicians: Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: Computer operators and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed practical or vocational nurses, photographers, radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronic, physical sciences), and kindred workers.

G. GOALS AND TIMETABLES
(2) Specific Requirements (Continued)

Sales: Occupations engaging wholly or primarily in direct selling. Includes: Advertising agents and sales agents, insurance agents and brokers, real estate agents and brokers, stock and bond sales agents, demonstrators, sales agents and sales clerks, grocery clerks and cashier-checkers, and kindred workers.

Office and Clerical: Includes all clerical-type work regardless of level of difficulty where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, and kindred workers.

Skilled Crafts: Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the process involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades, hourly paid supervisors and lead section supervisors who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and mold makers, stationary engineers, tailors and tailoresses, and kindred workers.

Operatives (Semiskilled): Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices (auto mechanics, bricklayers, carpenters, electricians, machinists, mechanics, plumbers, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery and route drivers, dressmakers and seamstresses (except factory), dyers, furnace installers and repairers, truck and tractor drivers, weavers (textile), welders, and kindred workers.

G. GOALS AND TIMETABLES
(2) Specific Requirements (Continued)

Transport: A term applied to workers who drive gasoline or diesel-powered trucks or tractors to transport materials, merchandise, equipment or people, either for short or long distances. May load and unload trucks by hand, or by use of mechanical devices. Inspects and makes out reports before and after trips, and may perform emergency roadside repairs. Includes: drivers of long-haul sleepers log-trucks, transport trucks, dump trucks, armored cars, milk trucks, and kindred workers.

Laborers (unskilled): Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and requires the application of little or no independent judgement. Includes: garage laborers, car washers and greasers, gardeners and groundskeepers, longshore workers and stevedores, lumber workers and wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

Service Workers: Workers in nonprotective occupations. Includes: attendants (hospital and other institutions), professional and personal service, including nurses aides and orderlies, barbers, clean-up workers, cooks (except household), counter and fountain workers, elevator operators, stewards, janitors, porters, waiters and waitresses, and kindred workers.

H. TRAINING AND APPRENTICESHIP

The plan may, in lieu of reflecting the existence of a 3% or 5% protected class employee population in a specific job category, propose the use of a training or apprenticeship program, either formal or informal, to increase the availability of positions to protected class persons. Such programs are particularly useful where goals and timetables for a particular job category cannot be met due to the unavailability of women and minorities with the requisite qualifications. The use of such programs is basic to the concept of affirmative action and the employer's commitment to rectify the effects of past discrimination.

I. GOOD FAITH EFFORT CLAUSE

It is the department's position that no employer's compliance with the law should be judged solely on the basis of success in meeting goals and timetables. In addition, the contents of the affirmative action plan, the extent of adherence to the plan, and good faith efforts toward realization of the plan's goals within the timetables set for completion should be considered. The department requests that each plan submitted states clearly that the employer will make the good faith effort to meet the goals and timetables established and to fully implement the plan in both policy and practice.