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CITY OF BOSTON

CORI RULES

Adopted June 3, 2014

Office of Fair Housing and Equity

***One City Hall Plaza, Room 966
Boston, Massachusetts 02201***

SECTION 1

GENERAL PROVISIONS

1.01 Authority

These Rules are promulgated pursuant to City of Boston Code, Chapter 4, Section 7.7.

1.02 Purpose

These Rules are intended to establish standardized procedures for the City of Boston's regulation of City vendors' compliance with the City's CORI Ordinance, Chapter 4, Section 7, City of Boston Code. These Rules create a reporting, investigation, and sanctioning process for vendors that violate the City's CORI Ordinance, in the context of vendors' contractual performance.

1.03 Definitions

- (a) The definitions found in City of Boston Code, Chapter 4, Section 7.2, are incorporated herein.
- (b) "Complainant" means the person who files a complaint alleging a vendor does not comply with the City's CORI Ordinance.
- (c) "CORI" means Criminal Offender Record Information.
- (d) "Sensitive position" includes, but is not limited to, positions which have unsupervised contact with children 18 years of age or less, the disabled, or the elderly, or where a good faith determination is made that the position is of such sensitivity that a CORI report is warranted.

1.04 Persons Covered

- (a) These Rules shall apply to any vendor that supplies goods or services to the City of Boston.

SECTION 2

POWERS AND DUTIES OF THE OFFICE OF FAIR HOUSING AND EQUITY

2.01 Powers and Duties

- (a) The Office of Fair Housing and Equity (formerly known as the Office of Civil Rights) shall have the authority to investigate complaints alleging that vendors have not

complied with the City's CORI Ordinance.

- (b) The Office of Fair Housing and Equity shall have the authority to issue publications, results of investigations, and educational materials that promote vendors' compliance with the City's CORI Ordinance.
- (c) The Office of Fair Housing and Equity shall have the authority to require any vendor to provide the Office with a list of sensitive versus non-sensitive positions based on their past CORI screenings, and the rationale for such classifications.
- (d) The Office of Fair Housing and Equity shall have the authority to require any vendor to provide the Office with a copy of their written CORI policies.

SECTION 3

PRACTICE AND PROCEDURE BEFORE THE OFFICE OF FAIR HOUSING AND EQUITY

3.01 Complaints

(a) Who may file:

- (1) Any person aggrieved by a vendor's alleged practices in violation of the City's CORI Ordinance;
- (2) Any duly authorized representative of a person aggrieved by a vendor's alleged practices in violation of the City's CORI Ordinance; or
- (3) Any interested person with knowledge of a vendor's alleged practices in violation of the City's CORI Ordinance.

(b) Forms and Filing

- (1) All complaints must be in writing and shall name and be signed by the complainant.
- (2) The complaint shall contain the following information:
 - (i) The name and address of the complainant;
 - (ii) The name and address of the vendor alleged to have committed the CORI Ordinance violation;
 - (iii) A concise statement of the alleged CORI screening practices that do not comply with the City of Boston CORI Ordinance,
 - (iv) The dates on which the alleged acts occurred, or, where such acts are of a continuing nature, the period of time during which such acts occurred.

(3) The original complaint shall be filed with the Office of Fair Housing and Equity.

(c) Time of Filing

No complaint shall be considered unless it is filed with the Office of Fair Housing and Equity within one hundred eighty (180) days after the occurrence of the alleged CORI Ordinance violation.

(d) Manner of Filing

The complaint may be filed in person, via the Office of Fair Housing and Equity website, or sent by mail, addressed to the Office of Fair Housing and Equity. The complaint shall be submitted pursuant to the procedures or forms established by the Office of Fair Housing and Equity for filing complaints.

(e) Screening

The Office of Fair Housing and Equity shall screen all complaints to determine whether there is sufficient information and basis to initiate a complaint investigation. Within thirty (30) days of receipt of a properly filed complaint, the Office of Fair Housing and Equity, in its sole discretion, shall determine whether a complaint investigation is warranted.

(f) Notice to Vendor

Within fourteen (14) days of the determination to investigate a complaint, the Office of Fair Housing and Equity shall provide a copy of the complaint to the vendor by certified mail, at the vendor's last known address or place of business or by personal service, and shall provide the Awarding Authority with a copy of the complaint.

(g) Vendor Reply

Vendor may, within fourteen (14) days of receiving a copy of the complaint, file a response to the complaint that in short and plain terms states the vendor's response to each claim asserted.

(h) Extension of Time Periods

When an act is required or permitted within a specified time period under these Rules, the Executive Director of the Office of Fair Housing and Equity may extend the time period for good cause.

3.02 Investigation

(a) Commencement of Investigation

Upon receipt of a properly filed complaint and a determination that an investigation is warranted, the Executive Director of the Office of Fair Housing and Equity shall cause an investigation to be made in connection therewith.

(b) Length of Investigation

The investigation shall be completed within six (6) months. In the conduct of any investigation, the Office of Fair Housing and Equity may call upon not only the members and staff of the Office of Fair Housing and Equity, but to the extent practicable, any City department or agency.

(c) Both the complainant and the vendor shall have the opportunity to present their position to the Office of Fair Housing and Equity, at such time as the Office of Fair Housing and Equity determines in the course of its investigation.

(d) The Office of Fair Housing and Equity shall make a recommendation to the Awarding Authority regarding the vendor's compliance with the City's CORI Ordinance.

(e) The Office of Fair Housing and Equity shall prepare a written report of its findings and recommendations and provide a copy to the vendor, the complainant, the Corporation Counsel, and the Awarding Authority.

SECTION 4 SANCTIONS

4.01 Sanctions

(a) The Office of Fair Housing and Equity may recommend, but is not limited to the following sanctions:

(1) Upon finding a vendor violated the City of Boston's CORI Ordinance for the first time, the vendor may be directed to attend a CORI Ordinance education workshop conducted by the City of Boston or any other organization approved by the City.

(2) Upon finding a vendor violated the City of Boston's CORI Ordinance for the second time within a 2 year period, the Office of Fair Housing and Equity may recommend to the Awarding Authority that the offending vendor be found non-responsible in any future City procurement for a period of one year. The Awarding Authority shall exercise its discretion in accordance with Massachusetts law to determine if the vendor is non-responsible and ineligible for a contract award during the one year period.

(3) Upon finding a vendor violated the City of Boston's CORI Ordinance for the third time within a 3 year period, the Office of Fair Housing and Equity may recommend to the Awarding Authority that the City of Boston terminate any existing contracts with the vendor and find the vendor non-responsible in any future City procurement for a period of two years. The Awarding Authority shall exercise its discretion in accordance with Massachusetts law to terminate such contracts in the best interests of the City and to determine if the vendor is non-responsible and ineligible for a contract award during the two year period.

4.02 Severability

(a) If any provision of these Rules shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

4.03 Implementation

(a) The provisions of these Rules shall be effective on June 3, 2014

Ordinance

City of Boston Municipal Code

Boston

§ 4.7

**CHAPTER IV
CONTRACTS**

4-1 DESIGNER SELECTION BOARD.**4-1.1 Definitions.**

The words defined in this ordinance shall have the meanings set forth below whenever they appear in this section, unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular paragraph or provision.

Applicant shall mean any person or entity applying to perform design services, the principal personnel responsible for the provision of such services for the project, and the persons who will be the principal staff for the project.

Board shall mean the Designer Selection Board.

Continued services shall mean authorization for a designer who has been appointed for one stage of a project to act as the designer for a succeeding stage or stages of the same project.

Construction manager shall mean any designer or any other corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of construction management or construction scheduling.

Director shall mean the director of the Department of Administrative Services.

Designer shall mean an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering, which satisfies the following:

- a. If an individual, the individual is a registered architect, landscape architect, or engineer;
- b. If a partnership, a majority of all the partners are persons who are registered architects, landscape architects, or engineers;
- c. If a corporation, sole proprietorship, joint stock company or other entity, the majority of directors and the chief executive officer are persons who are registered architects, landscape architects, or engineers, and the person to have the project in his or her charge is registered in the discipline required for the project;
- d. If a joint venture, each joint venturer satisfies the requirements of this section.

Design services shall mean any of the following services provided by any designer, programmer, or construction manager in connection with any public building project:

- a. Preparation of master plans, studies, surveys, soil tests, cost estimates or programs;
- b. Preparation of drawings, plans, or specifications, including but not limited to schematic drawings, preliminary plans and specifications, working plans and specifications or other

administration of construction contracts documents;

- c. Supervision or administration of a construction contract;
- d. Construction management or scheduling.

Extended services shall mean authorization for a designer who has been appointed to provide design services for a project to act as designer for work to be done on another project not originally included in that designer's contract.

Mayor shall mean the Mayor or persons designated by him/her.

Programmer shall mean any designer or any other individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the preparation of architecture facility programs or studies.

Using agency shall mean a department, agency, board, commission, authority, or other instrumentality of the City of Boston.

(CBC 1981 c. 21 § 1)

4-1.2 Membership Regulations and Procedures of the Board.

a. *Appointment of Members; Terms.* There shall be located within the Administrative Services Department a Designer, Selection Board, consisting of five (5) members. Four (4) members shall be appointed by the Mayor within sixty (60) days of the effective date of this ordinance, as follows: one from three (3) candidates nominated by the Boston Society of Architects, one from three (3) candidates nominated by the Massachusetts Society of Professional Engineers, one from three (3) candidates nominated by the Boston Municipal Research Bureau, one from three (3) candidates nominated by the Boston Society of Civil Engineers, and the director of Administrative Services ex officio. The nominee of the Boston Society of Civil Engineers shall be appointed for a term of two (2) years; of the Boston Municipal Research Bureau for a term of three (3) years; of the Massachusetts Society of Professional Engineers for a term of four (4) years; and of the Boston Society of Architects for a term of five (5) years. As the term of any commissioner expires, his successor shall be appointed for a term of five (5) years. Vacancies in the Commission shall be filled for the unexpired term. The members of the Board shall serve without compensation. The Board shall elect each year one member to serve as the chairman. The Director of Administrative Services shall serve as the secretary thereof and shall keep all records of the Board. The Board shall not be subject to the supervision or control of the Administrative Services Board or any member thereof and shall, on or before the last Monday of January, 1982, and annually thereafter, make a report of its proceedings and votes to the City Council.

b. *Jurisdiction and Duties.* The Board shall have jurisdiction over the selection of all designers, programmers, and construction managers performing design services in connection with any building projects for all City departments.

c. *Public Notice.*

1. Each contract for designer services for a project subject to the jurisdiction of the Board shall be publicly advertised by the Board in a newspaper of general circulation in the City, local minority papers, and in such places as the Board requires by regulation, at least two (2) weeks before the deadline for filing applications.

2. The public notice required by the above shall contain:

(a) A description of the project, including the specific designer services sought, the estimated construction cost, and the time period within which the project is to be completed;

(b) If there is a program for the project, a statement of when and where the program will be available for inspection by applicants, and when and where a briefing session will be held for applicants, if one is required by the Board's regulations and if there is not a program for the project, a statement to the effect;

(c) The qualification required of applicants for the projects;

(d) The categories of designers, consultants, if any, for which applicants must list the names of consultants which the applicant may choose to use;

(e) Whether the fee has been set or will be negotiated, and if the fee has been set, the amount of the fee.

d. *Filing of Designer's Statement.* No designer, programmer, or construction manager may file an application for any project subject to the Board's jurisdiction unless having first filed with the Board a written statement containing the following information:

1. Certification that the applicant legal entity, if applying to perform design services other than preparation of studies, surveys, soil testing, cost estimates or programs, is a designer or construction manager;

2. The names and addresses of all partners, if a partnership, of all officers, directors and all persons with an ownership interest of more than five (5%) percent in the applicant if not a partnership;

3. The registration number and status of each such person in every jurisdiction in which such person has ever been registered as an architect, landscape architect or engineer;

4. A list of all projects for all public agencies within the Commonwealth for which the applicant has performed or has entered into a contract to perform design services within the five (5) year period immediately preceding the filing of the information required in this section;

5. A list of all current projects for which the applicant is performing or is under contract to perform any design services; and

6. If the applicant is a joint venture, the information required in this section shall be required for each joint venturer, as well as for the joint venture itself.

e. *Statement Required to Be Current.* The Board shall keep a permanent record of the statements filed pursuant to this section and shall require the statements to be made current on a regular basis, and that statements pursuant to subparagraphs 5. and 6. of paragraph d. of this section be current with each application filed.

f. *Statement of Experience and Qualifications.* An applicant to perform design, programming or construction management services on a project may be required to file, in addition to the statement required under paragraph d. of this subsection, a written application as prescribed by the Board, relating to the applicant's experience, ability, and qualifications.

g. *Swearing to Statements.* Every application or statement filed pursuant to this section shall be sworn to under penalties of perjury. A designer, programmer or construction manager who

has been determined by the Board to have filed materially false information under this section shall be disqualified by the Board from further consideration for any project for such time as the Board determines is appropriate.

h. *Board's Restriction in Advertising.* The Board shall not advertise for designers nor select any finalists to perform any design services other than the preparation of master plans, studies, surveys, soil tests, cost estimates, or programs unless the Director of Administrative Services certifies: That it is appropriate to do so and either that a program defining the design services required has been prepared, and has been approved by the Administrative Services, or that no program is required by the Administrative Services.

i. *Board to Adopt Written Criteria.* The Board shall adopt written applicants' criteria for selection of semifinalists and finalists based upon information obtained under paragraph d. of this section for each project. The criteria shall include:

1. Prior similar experience;
2. Past performance on public and private projects;
3. Financial stability;
4. Identity and qualifications of the consultants who will work with the applicant on the project; and
5. Any other criteria that the Board considers relevant for any project.

j. *Semifinalists.* Semifinalists may be chosen for each project. The Board shall select at least three (3) finalists from among all the applicants, or from the semifinalists selected under this section, and in doing so may require all the applicants or the semifinalists to:

1. Appear for an interview before the Board;
2. Present a written proposal to the Board not including a fee quotation; or
3. Participate in a design competition held by the Board.

k. *List of Finalists.* The Board shall transmit a list of the chosen finalists to the Mayor. No person or firm disqualified pursuant to paragraph d. of this section, or debarred pursuant to Section 44C of Chapter 149 of the General Laws of the Commonwealth, shall be so included as a finalist.

The list shall rank the finalists in order of qualification and include a record of the final vote of the Board on the selection; and include a written statement explaining the Board's reason for its choice and its ranking of the finalists.

1. *Disqualification of Board Member.* For the purpose of this ordinance, and subject to the penalties therein, no member of the Board shall participate in the selection of a designer as a finalist or semifinalist for any project if the member or any member of his or her immediate family has a direct or indirect financial interest in the award of the design contract to any applicant;

1. Is currently or has ever been employed by, or is currently a consultant to or under contract to an applicant;
2. Is negotiating or has an arrangement concerning future employment or contracting with any applicant; or

3. Has an ownership interest in, or is an officer or director of any applicant.

m. *Fee Set by City Prior to Selection of Designer.* In the selection of a designer when the fee for design services has been set by the City prior to the selection process, the Mayor shall appoint a designer from among the list transmitted to him/her under paragraph k. of this section. If the Mayor appoints any designer other than the one ranked first by the Board, she/he shall file a written justification of the appointment with the Board.

When the fee for design services is to be negotiated, the Mayor shall review the list transmitted by the Board, and may exclude any designer from the list if a written explanation is filed with the Board. The Mayor shall then appoint a designer based on a successful fee negotiation. The Mayor or persons designated by him/her shall first negotiate with the first-ranked designer remaining on the list. Should the Mayor be unable to negotiate a satisfactory fee with the first-ranked designer within thirty (30) days, negotiations shall be terminated and negotiations undertaken with the remaining designers, one at a time, in the order in which they were ranked by the Board, until an agreement is reached. In no event may a fee be negotiated which is higher than a maximum fee set by the City prior to selection of finalists. Should the Mayor be unable to negotiate a satisfactory fee with any designer initially selected as a finalist by the Board, the Board shall recommend additional finalists in accordance with the provisions of this section. The Mayor may require a finalist with whom a fee is being negotiated to submit a fee proposal and include with it such information as the Mayor requires to provide current cost and pricing data on the basis of which the designer's fee proposal may be evaluated.

n. *Statement of Fees in Contract.* All fees shall be stated in designer's contracts and in any subsequent amendment thereto as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

o. *List of Consultants Used by Applicants.* When the Board has required that applicants list consultants which the applicants may employ, in no event shall a consultant be used who is debarred pursuant to General Laws of the Commonwealth Section 44C of Chapter 149, as amended, and any change in or addition to the consultants named in the application and allowed by the Board upon appointment must be approved by the Mayor and reported to the Board, along with a written statement by the designer or construction manager of the reasons for the change.

p. *Truth-In-Negotiations Certificate.* If the designer's or construction manager's fee is negotiated, the designer or construction manager must file a truth-in-negotiations certificate prior to being awarded the contract by the Mayor, which must be incorporated into the contract. The certificate must contain:

1. A statement that the wage rates and other costs used to support the designer's compensation are accurate, complete, and current at the time of contracting; and

2. An agreement that the original contract price and any additions to the contract may be adjusted within one year of completion of the contract to exclude any significant amounts if the Mayor determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

q. *Special Conditions.* The Board may specify other special conditions or requirements in selecting a particular applicant as a finalist. If any change is made by the applicant after appointment relating to such special conditions or requirements, the change must be approved by the Mayor and reported to the Board along with a written statement by the appointee of the reasons for the change.

r. *Eligibility.* A designer or programmer appointed to do a feasibility study, master plan or program for a project shall be ineligible for appointment to perform the design services for that project.

s. *Gifts and Contributions Prohibited.* Every contract for design services awarded under this section shall include the following:

1. Certification that the designer or construction manager has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services;

2. Certification that no consultant to or subcontractor for the designer or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;

3. Certification that no person, corporation or other entity, other than a bona fide, full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or consideration contingent upon the award of the contract to the designer.

t. *Liability Insurance.* Contracts for design services shall include a requirement that the designer at his/her own expense obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of such contracts for design services. The designer shall furnish a certificate or certificates of such insurance coverage to the City prior to the award of the contract. A professional liability insurance policy obtained and maintained pursuant to this subparagraph shall provide for coverage in an adequate amount for the applicable period of limitations and include any added coverage and in such amounts as the City shall require.

At the request of the City, a consultant employed by a designer subject to this subparagraph shall obtain and maintain a liability insurance policy covering negligent errors, omissions and acts of such consultant or of any person or business entity for whose performance the consultant is legally liable arising out of the performance of the contract of consultant services.

u. *Disqualification for False Statements.* A designer, construction manager, or programmer who has been determined by the Board to have provided materially false statements or information under this section shall be disqualified by the Board from future work on any project for such time as the Board determines is appropriate.

v. *Appointment for Continuous or Extended Service.* The Mayor may appoint a designer to perform continued or extended services if the following conditions are met:

1. A written statement is filed with the Board explaining the reasons for the continuation or extension of services;

2. The program for the design services is filed with the Board if one is required by the regulations of the using agency; and

3. The Board approves the appointment of the designer for continued or extended services

and states the reasons therefor.

w. *Use of Expedited Procedures.* Whenever the Mayor shall declare that the health or safety of any persons will be endangered because of the time required for the selection of a designer, programmer or construction manager by the procedures prescribed in this section or whenever a deadline for action is set on a project by any court or Federal agency which cannot be met if those selection procedures are followed. Finalist selection may be made by the Board by expedited procedures adopted by regulation by the Board.

x. *Contracts Under Ten Thousand (\$10 000.00) Dollars.* Every contract for design services for any building construction, reconstruction, alteration, remodeling, or repair estimated not to exceed ten thousand (\$10,000.00) dollars by the City, thereof, shall be awarded complying with the purposes and intent of this section, and the following requirements:

1. The establishment by using agency of uniform requirements of information to be submitted by all applicants, a uniform procedure for the evaluation of all applications to a group of no fewer than three (3) finalists, and the opportunity to be afforded equally to all finalists to provide additional information to or appear before the selection body;

2. That a written explanation of the reasons for selection including the recorded vote, if any was taken, be made public and recorded with the Designer Selection Board prior to the notification of award;

3. The provisions of this section regarding the designation of fees in the contract;

4. Provided, however, that nothing in this section shall be interpreted to require the establishment of a Board or waive or reduce the requirements of any other applicable law or regulation.

y. *Adoption of Procedures.* The Board shall independently adopt procedures and regulations as necessary to implement expeditiously the requirement of this section.

(Ord. 1981 c. 21 § 2)

4-1.3 Failure to Comply With Regulations and Procedures.

In the event that any City official awards a contract for design services after this ordinance is in force without complying with the provisions of this ordinance, such contract shall not be binding on the City; and the Mayor or City Council, with the assistance of the Corporation Counsel or Special Counsel, shall proceed in any court of competent jurisdiction to recover any City funds expended in accordance with the provision of such contract from the contractor or the City official who awarded the contract without compliance herewith.

(Ord. 1981 c. 21 § 3)

4-1.4 Severability Clause.

If any portion of this ordinance is found by a court of competent jurisdiction to be unlawful, such finding shall not affect any other portion of said ordinance not specifically so found.

(Ord. 1981 c. 21 § 4)

4.2 TO ENABLE CITY DEPARTMENTS TO GIVE PREFERENCE TO CITY FIRMS IN THE PURCHASE OF CERTAIN GOODS AND SERVICES.

4-2.1 Definition.

For purposes of this section the term "city firm" shall mean that for the term of the contract:

- a. In the case of a sole proprietorship, the person's principal place of business and residence are located in the City, or a majority of his/her employees are residents in the City;
- b. In the case of a partnership, a majority of the partners reside in the City, or the principal place of business of the partnership is located in the City, or a majority of the employees of the partnership reside in the City;
- c. In the case of a corporation, a majority of its shareholders are residents of the City, or the principal place of business of the corporation is located in the City, or a majority of the employees of the corporation are residents of the City.

(Ord. 1979 c. 44 § 1)

4-2.2 City Firms Bid; Mayor's Permission Required to Award Contract.

Whenever any officer or board in charge of a Department of the City or County invites proposals to do any work or make any purchase, except work done or purchases made in accordance with G.L. c. 30, s. 39M, or G.L. c. 149, ss. 44A-L, and a responsible and eligible City firm bids a price no higher than five (5%) percent above a non-City firm which is the lowest bidder, said officer or board shall request the Mayor's permission to award the contract without further advertising to the City firm.

(Ord. 1979 c. 44 § 2)

4-2.3 Mayor to Refer to Committee.

The Mayor shall refer such request to a Committee composed of the Director of Administrative Services, the Collector-Treasurer and the Corporation Counsel. If a majority of said Committee recommends the award of the contract to the City firm notwithstanding that its bid was not the lowest, the Mayor may approve such award.

(Ord. 1979 c. 44 § 3)

4-2.4 Mayor to Notify Boston City Council; Time Required.

Provided, however, that at least three (3) weeks prior to the awarding of such a contract, the Mayor shall notify the Boston City Council.

(Ord. 1979 c. 44 § 4)

4-3 TASK FORCE FOR IMPLEMENTATION.

4-3.1 Purpose.

The purpose of this task force shall be: to ensure compliance with Chapter 40 Section 4F in promoting the purchase of clothing and apparel by cities and towns from manufacturers that pay their employees a prevailing wage; to review the implementation and enforcement of this section; and to make recommendations from time to time in connection herewith.

(Ord. 2001 c. 7)

4-3.2 Composition and Term.

The Task Force for Implementation shall be composed of three (3) members who shall be appointed by the Mayor.

a. One (1) member of the task force shall be a labor union member appointed by the Mayor from a list of three (3) nominees recommended by the AFL-CIO.

b. One (1) member of the task force shall be a representative of the garment industry or an association representing said industry.

c. One (1) member of the task force shall be a member of a public interest group with experience in the garment industry.

Each member of the task force shall serve a three-year (3) term.

(Ord. 2001 c. 7)

4-3.3 Meetings.

The task force shall meet periodically and in special session as required. All meetings of the task force shall be open to the public under the Commonwealth's Open Meeting Law.

(Ord. 2001 c. 7)

4-3.4 Reporting.

On a regular basis, the City Auditor shall issue a report on the City's compliance with G.L. c. 40, s. 4F. The report, sorted by department, shall include: contract or order for clothing apparel; the vendor, name and address of the vendor's manufacturer(s) and contractor(s); factory name(s) and address(es) to be used for the contract or order; and a copy of the bidder's written declaration of G.L. c. 40, s. 4F compliance.

This report will also be subject to review by the City Council Post Audit and Oversight Committee through the formal hearing process of the Boston City Council and its members.

(Ord. 2001 c. 7)

4-3.5 Sunset Clause.

The above terms and conditions for the Task Force for Implementation shall expire three (3) years from the date of passage of G.L. c. 40, s. 4F.

(Ord. 2001 c. 7)

Editor's Note:

Former Section 4-3, Conditions Required as Part of Contractual Agreements, previously codified herein and containing portions of Ordinance Nos. 1986 c. 18 and 1991 c. 6, were repealed in their entirety by Ordinance No. 1994 c. 4.

4-4 PROMOTING MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES IN THE CITY OF BOSTON.

4-4.1 Findings.

Whereas, in keeping with the City of Boston's (the "City") economic development philosophy to maximize economic opportunity for all citizens of Boston and every segment of the business community, it is the policy of the City to encourage, assist and provide equal opportunity for minority and women owned businesses to participate in the receipt of City contracts; and Whereas, the City supports every reasonable measure to avoid becoming a passive participant in any private sector discrimination practiced against minority and women owned business enterprises within the City of Boston's marketplace; and Whereas, nondiscrimination alone in the awarding of City contracts is not sufficient to maximize economic opportunity for all residents of Boston and every segment of the business community, the need exists for purposeful steps to be taken to ensure that both minority and women owned businesses are utilized by the City to a more substantial and equitable extent; and Whereas, City Ordinance § 4-4 "Promoting Minority and Women Owned Business Enterprises in the City of Boston," as enacted, could no longer be implemented due to United States Supreme Court jurisprudence; now therefore the City declares and finds that it is necessary to ameliorate the continuing negative impact of said underutilization and under-representation of minority and women owned businesses in City contracts.

(Ord. 1987 c. 14 § 1; Ord. 1994 c. 18 § 1; Ord. 1995 c. 6 § 1; Ord. 2008 c. 8)

4-4.2 Definitions.

City of Boston Departments shall mean those City of Boston Departments, Authorities, Agencies, and any Department or Agency acting on behalf of another ("Awarding Authorities") under the supervision of the Mayor or persons appointed by him.

City of Boston Minority and Women Business Enterprise Initiative (MWBE Initiative) means the initiative outlined in this section shall be referred to as and shall commence upon execution of the section.

Director shall mean the Director of the SLBE who, for the purposes of overseeing the implementation of this section, shall report directly to the Mayor or his specified designee concerning internal compliance with the section by the leadership and general ranks of City of Boston Departments.

Minority Business Enterprise (MBE) shall mean a business certified by the Small and Local Business Enterprise (SLBE) Office as a bona fide minority business.

MWBE shall mean Minority and Women Business Enterprise.

Women Business Enterprise (WBE) shall mean a business certified by the SLBE Office as a bona fide women business.

(Ord. 1987 c. 14 § 2; Ord. 1995 c. 6 §§ 2-12; Ord. 2008 c. 8)

4-4.3 Affirmative Marketing Policy.

a. The SLBE Office shall seek to identify those minority and women businesses that may benefit from this section, reach them with information and education regarding City contracting needs and policies, and encourage those businesses to participate in City contracts for goods and services.

b. To the extent not otherwise provided by statute and subject to G.L. c. 7 §§ 38A¹/₂-38O (Design Services), whenever any Department of the City announces contracting opportunities for professional services (architecture and engineering) for an amount less than \$25,000.00, the City shall seek proposals from at least one MBE or WBE firm whose professional services (architecture and engineering) qualify as such under the City's 2003 Disparity Study.

(Ord. 1987 c. 14 § 3; Ord. 1994 c. 18 § 3; Ord. 1995 c. 6 § 13; Ord. 2008 c. 8)

4-4.4 Policy Implementation.

a. The SLBE Office shall have primary oversight authority of the MWBE Initiative.

b. The SLBE Office shall have primary responsibility for implementation of MWBE outreach efforts. In order to fulfill this responsibility, the SLBE Office shall be responsible for providing the resources to each Department to achieve maximum MWBE participation in Department contracts.

c. The SLBE Office shall be responsible for educating City Departments regarding the requirements of this section and shall guide Departments in their efforts to document and report MWBE participation.

d. The SLBE Office shall be responsible for monitoring the effectiveness of Departmental efforts and the participation of MBE/WBEs in City of Boston contracts for goods or services. The SLBE Office shall maintain records required or reasonably necessary to monitor such participation.

e. The SLBE Office shall develop and maintain a directory of certified MBEs and WBEs to be published on the SLBE Office's website. The directory shall be updated on a bi-monthly basis.

(Ord. 1987 c. 14 § 5; Ord. 1994 c. 18 § 4; Ord. 1995 c. 6 §§ 15, 16; Ord. 2008 c. 8)

4-4.5 Compliance and Enforcement.

a. The SLBE Office shall be responsible for monitoring and enforcing this section.

(Ord. 1987 c. 14 § 6; Ord. 1994 c. 18 § 5; Ord. 1995 c. 6 § 17; Ord. 1996 c. 14; Ord. 2001 c. 11;

Ord. 2008 c. 8)

4-4.6 Data Collection.

a. The SLBE Office shall collect and the City's Departments shall provide data from all parties affected by this section. This data shall include but not be limited to the following:

1. Business name, address, telephone number, and name/title of the vendor;
2. The MWBE status of vendor;
3. Any unique identification code or number for the vendor;
4. A brief description of services to be performed by the vendor;
5. Date and dollar amount of contract award;
6. Funding source of contract; and
7. Start and end dates of the contract.

b. The data shall be submitted in conformity with the schedule and reporting format developed by SLBE.

c. Data shall be collected for informational purposes and shall not be used in a discriminatory manner.

d. All City Departments shall require any vendor affected by this section to submit the data required under subsection 4-4.6(a) as part of the standard billing/payment submission process.

e. All City Departments shall report to the Mayor and the City Council on a quarterly basis each department's contracting activities, including utilization of Minority and Women Owned Business Enterprises.

(Ord. 2008 c. 8)

4-4.7 Waiver.

If a City Department determines that circumstances exist which prevent it from complying with this section, then such Department may request from the SLBE Office an exemption from compliance with the provisions of this section.

(Ord. 2008 c. 8)

4-4.8 Conformity with Existing State and Federal Law.

The City of Boston MWBE Initiative shall be implemented in conformity with any and all state and federal law, including but not limited to the statutory standards set forth in the Massachusetts Construction Reform Law, Chapter 193 of the Acts of 2004, and the revisions it made to M.G.L. c. 23A, §44 and M.G.L. c. 7, § 40N.

(Ord. 2008 c. 8)

4-4.9 Severability.

The provisions of this section are severable and if any provision, or portion thereof, should be held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the remaining provisions which shall remain in full force and effect.

(Ord. 1987 c. 14 § 8; Ord. 2008 c. 8)

4-4.10 Effective Date.

This section shall take effect upon passage.

(Ord. 1987 c. 14 § 9; Ord. 1992 c. 14 § 1; Ord. 1993 c. 8 § 1; Ord. 1994 c. 7 § 1; Ord. 1994 c. 18 §2; Ord. 1995 c. 6 § 18; Ord. 2000 c. 7; Ord. 2001 c.11; Ord. 2008 c. 8)

4-5 REQUIRING HARMONY IN CONSTRUCTION CONTRACTS.

4-5.1 Policy Statement.

It is the policy of the City of Boston to insure that all City departments, authorities, commissions and agencies serving as awarding authorities for contracts for new construction, rehabilitation, renovation or remodeling work require the contractor and/or sub-contractor to certify in writing that he or she shall furnish labor who can and will work in harmony with all other labor employed in any work or at the worksite which is the subject of the written contract.

(Ord. 1989 c. 3 § 100)

4-5.2 Continuance of this Section Until Repealed.

The requirements contained herein shall continue in effect unless specifically repealed, notwithstanding any repeal of G.L. c. 30, § 39M(c). (Ord. 1989 c. 3, § 101)

4-6 EMPLOYMENT AND COMPENSATION OF CONSULTANTS.

4-6.1 Definitions.

Consultants or *Contractors* shall mean any person or organization who, as a non-employee of the City of Boston, gives advice in the field of his/her knowledge or training, or provides a service, and whose compensation is payable from other than the salary and wage account as identified in the City of Boston Budget Code.

This person or organization does not have to be in a supervisory role but merely identified as a non-employee of the City of Boston.

Employee shall mean any person whose compensation is payable from the salary and wage account as identified in the City of Boston Budget Code and shall not include people on the Trustee Payroll of Boston City Hospital.

(Ord. 1989 c. 12, § 1)

4-6.2 Replacement of Unionized Employees by Consultant or Contractor Contracts Prohibited.

Consultant or contractor contracts shall not be used to replace any positions currently held by unionized employees of the City of Boston or fill any vacant union positions. (Ord. 1989 c. 12, § 2)

4-6.3 Restriction on Hiring of Consultants to Supervise City Employees.

After the effective date of this section unless an emergency situation exists and a waiver is approved by the Mayor and City Council, no person shall be hired by the City as a consultant or contractor, so-called, to directly or indirectly supervise another temporary, provisional or permanent employee of the City of Boston. This shall not apply to current consultant/contractor contracts or their reapproval. (Ord. 1989 c. 12, § 3)

4-6.4 Effective Date.

This section shall take effect immediately. (Ord. 1989 c. 12, § 4)

4-7 CORI SCREENING BY VENDORS OF THE CITY OF BOSTON.

4-7.1 Purpose.

These sections are intended to ensure that the persons and businesses supplying goods and/or services to the City of Boston deploy fair policies relating to the screening and identification of

persons with criminal backgrounds through the CORI system.

(Ord. 2005 c. 7)

4-7.2 Definitions.

Unless specifically indicated otherwise, these definitions shall apply and control in CBC 4-7.

Applicant means any current or prospective employee, licensee, or volunteer and includes all persons included in 803 CMR 2.03.

Awarding authority means any department, agency, or office of the City of Boston that purchases goods and/or services from a vendor.

CHSB means the Criminal History Systems Board defined in M.G.L. c. 6 and 803 CMR 2.00.

City means the City of Boston or department, agency, or office thereof.

Otherwise qualified means any applicant that meets all other criteria for a position or consideration for a position.

Vendor means any vendor, contractor, or supplier of goods and/or services to the City of Boston.

(Ord. 2005 c. 7)

4-7.3 CORI-Related Standards of the City of Boston.

The City of Boston will do business only with vendors that have adopted and employ CORI-related policies, practices, and standards that are consistent with City standards.

The City of Boston employs CORI-related policies and practices that are fair to all persons involved and seeks to do business with vendors that have substantially similar policies and practices. The awarding authority shall review all vendors' CORI policies for consistency with City standards. The awarding authority shall consider all vendors' CORI standards as part of the criteria to be evaluated in the awarding of a contract and will consider a vendor's execution of the CORI standards to be evaluated among the performance criteria of a contract. The awarding authority shall consider any vendor's deviation from the CORI standards as grounds for rejection, rescission, revocation, or any other termination of the contract.

The CORI-related policies and practices of the City include, but are not limited to:

- a. The City does not conduct a CORI check on an applicant unless a CORI check is required by law or the City has made a good faith determination that the relevant position is of such sensitivity that a CORI report is warranted.
- b. The City reviews the qualifications of an applicant and determines that an applicant is otherwise qualified for the relevant position before the City conducts a CORI check. The City does not conduct a CORI check for an applicant that is not otherwise qualified for a relevant position.
- c. If the City has been authorized by the CHSB to receive CORI reports consisting solely of conviction and case-pending information and the CORI report received by the City contains other information (i.e. cases disposed favorably for the applicant such as not guilty, dismissal)

then the City informs the applicant and provides the applicant with a copy of CHSB's information for the applicant to pursue correction.

d. When the City receives a proper CORI report of an applicant that contains only the CORI information that the City is authorized to receive and the City is inclined to refuse, rescind, or revoke the offer of a position to an applicant then the City fully complies with 803 CMR 6.11 by, including, but not limited to, notifying the applicant of the potential adverse employment action, providing the applicant with a photocopy of the CORI report received by the City, informing the applicant of the specific parts of the CORI report that concern the City, providing an opportunity for the applicant to discuss the CORI report with the City including an opportunity for the applicant to present information rebutting the accuracy and/or relevance of the CORI report, reviewing any information and documentation received from the applicant, and documenting all steps taken to comply with 803 CMR 6.11.

e. The City makes final employment-related decisions based on all of the information available to the City, including the seriousness of the crime(s), the relevance of the crime(s), the number of crime(s), the age of the crime(s), and the occurrences in the life of the applicant since the crime(s). If the final decision of the City is adverse to the applicant and results in the refusal, rescission, or revocation of a position with the City then the City promptly notifies the applicant of the decision and the specific reason(s) therefor.

(Ord. 2005 c. 7)

4-7.4 Waiver.

Under exigent circumstances, an awarding authority, by its highest ranking member, may grant a waiver of CBC 4-7.3 on a contract-by-contract basis and shall submit a written record of the waiver to the Office of Civil Rights and to the Boston City Council's Staff Director who shall provide a copy to each and every City Councillor. The written record shall include, but not be limited to, (a) a summary of the terms of the contract, (b) the details of the vendor's failure or refusal to conform with the City's CORI-related standards, and (c) a brief analysis of the exigency causing the grant of waiver.

No waiver may be considered perfected unless the awarding authority fully complies with the provisions of this sub-section.

(Ord. 2005 c. 7)

4-7.5 Data Collection and Report.

Any awarding authority, vendor, applicant, or other interested party may contact the Office of Civil Rights to report any problems, concerns, or suggestions regarding the implementation, compliance, and impacts of these sections, and the Office of Civil Rights shall log every comment received with a summary of the comment and shall keep on file any written comments. Subsequent to logging any comment, the Office of Civil Rights may refer a complaint to the CHSB and shall notify the relevant awarding authority. The Office of Civil Rights shall prepare a written report including, but not limited to, a summary of the granted waivers, a summary of any feedback regarding CORI-related policies and/or practices, and any other information or analysis deemed noteworthy by the Director of the Office of Civil Rights. The Office of Civil Rights shall file the report with the Boston City Council via the Boston City Clerk every six (6) months from the implementation date of these sections.

(Ord. 2005 c. 7)

4-7.6 Applicability.

If any provision of these sections imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, order, or policy then the provisions of these sections shall control.

(Ord. 2005 c. 7)

4-7.7 Regulatory Authority.

The Office of Civil Rights shall have the authority to promulgate rules and regulations necessary to implement and enforce these sections and may promulgate a form of the affidavit.

(Ord. 2005 c. 7)

4-7.8 Severability.

If any provision of these sections shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

(Ord. 2005 c. 7)

4-7.9 Implementation.

The provisions of these sections shall be effective on July 1, 2006.

(Ord. 2005 c. 7)