

## Berryessa Union School District

**CONTRACTOR'S AFFIRMATIVE ACTION PROGRAM  
FOR MINORITY EMPLOYMENT**Statement of Intent

It is the intent of the Board of Trustees of the Berryessa Union School District to further the opportunities for minority persons to be gainfully employed in the performance of School District building contracts. To effectuate this intent, the following provisions are included in the contract documents pertaining to school building in excess of \$5,000.00.

I. Lowest Responsible Bidder

Criteria for determining which bidder qualifies as "lowest responsible bidder" shall include, but not be limited to, price, ability, experience and reputation for performance, and whether or not the bidder has submitted as part of the bid, a satisfactory Minority Employment Program (MEP), as hereafter described.

II. Affirmative Action For Minority EmploymentA. Compliance Report (MEP Form No. 1)

The bidder shall complete a compliance report furnished by the District setting forth the affirmative actions the bidder has taken or will take to:

1. Recruit minorities in its location, for all levels of jobs.
2. Select methods assuring equal employment opportunity for all persons.
3. Establish a training program for new hires where necessary to assure ample opportunity for the less qualified to more fully qualify.
4. Provide adequate opportunity for upgrading and further training to assure equal opportunity in advancement and promotion.
5. Provide counseling service for all who may need help to advance, especially newer employees.
6. Educate supervisors regarding nondiscrimination practices.

B. Minority Employment Program

In addition to furnishing the completed compliance report called for under "A" above, each general contractor and subcontractor bidding for a construction project with the District shall submit in accordance with the Notice to Contractors, the following information. This information shall constitute the bidding contractor's Minority Employment Program (hereafter "MEP").

1. The estimated total number of job classifications or personnel who shall be used by the contractor and each subcontractor in performance of the contract. These numbers shall include the estimated breakdown of minorities to be used in each classification.

No estimate furnished under this subparagraph shall be construed or enforced as a hiring quota. (MEP Form No.2)

2. In preparing these estimates, it is expected the bidder will take or agree to take these additional steps to assure affirmative action in the field of minority employment:
  - a. Recruiting for needed help in the local areas inhabited by minority members, including open advertising and use of various established public and private agencies.
  - b. Training those less qualified to assure adequate promotional opportunities for all.
  - c. Providing necessary counseling for upgrading, including use of outside training facilities in this area.
  - d. Assigning an Equal Employment Opportunity (EEO) coordinator full time, or as additional duty, and assuring that all supervisors are aware of their responsibilities and that union representatives recognize their responsibilities in the equal employment program.
  - e. Where the contract is of sufficient duration, assuring development of apprenticeship programs with union cooperation.
  - f. Upon request, furnishing the District a copy of the latest Federal Form EEO-1 or equivalent form.
  - g. Providing the name and address of all subcontractors listed on the contractor's proposal form.
3. The Superintendent or designee will analyze the MEP submitted by each bidding contractor with the objective of determining whether the contractor's and any subcontractor's program presents reasonable effort to further minority employment.
4. If the Superintendent or designee has questions about a particular bidder's proposal, he/she may address such questions to the bidder. The Superintendent or designee will be available to answer questions relative to the MEP and to advise those seeking assistance or resources known to him/her. The Superintendent or designee shall not be responsible for the service or lack of service rendered by the resources recommended, nor shall the Superintendent or designee be responsible for developing an MEP for any bidder, or to serve as a recruiter for any bidder.
5. Bidders shall be allowed to revise their MEP after consultation prior to award of the contract. If bidders withdraw their MEP for revision, their revised program must be resubmitted by a date which shall be established by the Superintendent or designee.
6. The Superintendent or designee, pursuant to this program, shall make a determination as to whether each bidder's MEP is acceptable prior to award of contract and make a recommendation to the Board of Trustees.

C. Inclusion of MEP in Contract

Upon award of the contract by the District, the recipient's MEP, which has been approved and accepted by the District, shall be an integral part of the contract and subject to the provisions thereof.

D. Performance of Contractor

1. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided, setting forth the law prohibiting discrimination and advising anyone who feels they are being discriminated against to advise the FEPC.
2. The contractor shall make written progress reports on the performance of the MEP at intervals established by the Superintendent or designee. The contractor, however, is encouraged to submit written reports as often and whenever the contractor deems it relevant to the MEP.
3. The subcontractor shall make written progress reports on the performance of subcontractor's MEP at intervals established by Superintendent or designee. These reports shall be given to the general contractor for transmittal.
4. The Superintendent or designee will monitor the performance of the MEP until the completion of the contract and will report the progress of the contractor in living up to the MEP.
5. Any questions regarding possible breach of MEP shall be discussed with the contractor by the Superintendent or designee.

E. Liquidated Damages of Violation of Affirmative Action Provisions

Should the general contractor or any subcontractor be found by the Superintendent or designee to be in violation of contractor's agreement to pursue an affirmative course of action for minority employment, due allowance being made for circumstances over which the contractor has no control, the District shall have the authority to cancel or suspend the contractor in whole or in part, or contractor shall become liable to the District in the amounts indicated below, to be for liquidated damages, and not as a penalty, agreed upon by the parties to the contract, it being expressly stipulated that it would be impracticable and extremely difficult to fix the actual amount of damage. Liquidated damages for violation, as indicated above, will be limited to the following amounts for each calendar day after the contractor has been notified in writing by the Superintendent or designee that a violation exists.

1. For the general contractor, \$250 per day when contractor or the contractor's employees, but excluding subcontractors or their employees, are involved.
2. \$100 per day for the subcontractor or subcontractor's employees.

The limit of liability in each of the above cases, "1" and "2," shall be five percent (5%) of the portion of the contract which relates to either "1" or "2" above.

Any money due or to become due the contractor may be retained to cover said liquidated damages, and should such money be insufficient to cover such damages, the owner shall

have the right to recover the balance from the contractor or contractor's sureties.

No contractor shall be deemed in material breach of contract under these provisions when contractor has made a reasonable and substantial effort to comply with the MEP.

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