

# **CITY OF LOS ANGELES**



## **RULES AND PROCEDURES**

### **IMPLEMENTING**

## **THE EQUAL BENEFITS ORDINANCE**

**EFFECTIVE JUNE 27, 2016**

Department of Public Works  
Bureau of Contract Administration  
Office of Contract Compliance  
1149 S. Broadway, Suite 300  
Los Angeles, CA 90015  
Phone: (213) 847-2625  
Fax: (213) 847-2777 (Fax)

**RULES AND PROCEDURES  
IMPLEMENTING THE EQUAL BENEFITS ORDINANCE**

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## RULES AND PROCEDURES IMPLEMENTING THE EQUAL BENEFITS ORDINANCE

### PURPOSE

The Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance, (“OCC”) promulgates these Rules and Procedures as the Designated Administrative Agency (“DAA”) pursuant to Section 10.8.2.1(g) of the Los Angeles Administrative Code (“LAAC”). These Rules and Procedures are intended to articulate guidelines for implementing the provisions of the Equal Benefits Ordinance (EBO), LAAC Section 10.8.2.1 *et seq.* They are also intended to create a flexible implementation plan and to provide guidance to entities seeking to comply with the law. Each Awarding Authority shall cooperate to the fullest extent with the OCC in the administration of the EBO. The OCC may amend or revise these Rules and Procedures consistent with applicable law.

### DEFINITIONS

For purposes of these Rules and Procedures, the definitions set forth in the EBO are incorporated herein and repeated below.

1. **Awarding Authority** means any Board or Commission of the City, or any employee or officer of the City, that is authorized to award or enter into any Contract, as defined herein, on behalf of the City, and shall include departments having control of their own funds and which adopt policies consonant with the provisions of the Equal Benefits Ordinance.
2. **Benefits** means any plan, program or policy offered by a Contractor to its employees as part of the employer’s total compensation package. This includes but is not limited to the following types of benefits: bereavement leave, family medical leave, health benefits (including health benefits offered by employers at a discounted rate and paid by employees for purposes of providing coverage for a spouse/domestic partner), membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.
3. **Cash Equivalent** means the amount of money paid to an employee with a Domestic Partner (or spouse, if applicable) in lieu of providing Benefits to the employee’s Domestic Partner (or spouse, if applicable). The Cash Equivalent is equal to the direct expense to the employer of providing Benefits to an employee for a spouse (or Domestic Partner, if applicable) or the direct expense to the employer of providing Benefits for the dependents and family members of an employee with a spouse (or Domestic Partner, if applicable).
4. **City** means the City of Los Angeles.

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5. **Contract** means an agreement the value of which exceeds \$25,000. It includes agreements for work or services to or for the City, for public works or improvements to be performed, agreements for the purchase of goods, equipment, materials, or supplies, or grants to be provided, at the expense of the City or to be paid out of monies under the control of the City. The term also includes a Lease or License, as defined in the Equal Benefits Ordinance.

Amended, effective 6/27/16 – Per Ordinance No. 184294 Amendment, removed the additional language and increased the threshold amount.

6. **Contractor** means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, or any governmental entity acting in its proprietary capacity that enters into a Contract with any Awarding Authority of the City. The term does not include Subcontractors.

7. **Designated Administrative Agency (DAA)** means the Office of Contract Compliance, a division of the Bureau of Contract Administration within the Department of Public Works.

8. **Domestic Partners** means any two adults, of the same or different sex, who:

- a. Have registered as domestic partners with either a governmental entity pursuant to state or local law authorizing this registration, or with an internal Domestic Partnership registry maintained by the Contractor of at least one of the domestic partners.

Amended 4/12/11 - Per Cintas Case, rescind the 7/1/04 amendment requiring additional requirements to establish a domestic partnership above and beyond the EBO

**Note:** *Section 297 of the California Family Code places an age restriction (one or both partners must be 62 years of age) on opposite sex domestic partners, therefore employers relying on California's definition are considered not to have satisfied the definition contained above for purposes determining compliance with the Equal Benefits Ordinance.*

Amended 7/1/11 to Add Note

9. **Equal Benefits Ordinance** means Los Angeles Administrative Code Section 10.8.2.1 et seq. as amended from time to time.
10. **Equal Benefits** means the equality of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.
11. **Lease or License** means any agreement allowing others to use property owned or controlled by the City, any agreement allowing others the use of City property in

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order to provide services to or for the City, such as for concession agreements, and any agreement allowing the City to use property owned or controlled by others.

12. **Subcontractor** means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, and any governmental entity, that assists the Contractor in performing or fulfilling the terms of the Contract. \*Subcontractors are not subject to the requirements of the Equal Benefits Ordinance unless they otherwise have a Contract directly with the City.

\*Added 7/5/16 to be consistent with ordinance language.

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**PROCEDURE #1: TIMING OF APPLICATION**

**A. Contracts Procured Prior to January 1, 2000**

The EBO does not apply to Contracts that resulted from a procurement process that pre-dates January 1, 2000, or to Contracts executed or amended prior to January 1, 2000, until the Contracts are subsequently amended as provided for herein.

**B. Procurement Packages Released to the Public After January 1, 2000 and Contracts Executed After January 1, 2000**

The following shall apply to any procurement package released to the public, and to any Contract executed or amended, after January 1, 2000, except for those instances in which the Charter requires that a Contract be procured through a competitive bid process:

1. A procurement package, such as a Request for Proposals or Qualifications, and the resulting Contract, are subject to the EBO if the procurement package is advertised and made available to the public after January 1, 2000.
2. A Contract that resulted from a procurement package advertised and made available to the public before January 1, 2000 is subject to the EBO upon its first amendment after January 1, 2000.
3. A Contract that was not procured through a Request for Proposal, Qualification, or other similar procurement process, is subject to the EBO if the Contract is executed or amended after January 1, 2000.

**C. Competitively Bid Contracts Amended After April 1, 2003 and Competitive Bids Released After May 1, 2003**

For Contracts and procurement packages that are required by the Charter to be procured through a competitive bid process, the following shall apply:

1. A Contract resulting from a competitive bid process becomes subject to the EBO if it is amended after April 1, 2003. In such a case, the EBO shall apply to the Contract upon its first amendment after April 1, 2003.
2. Competitive bid packages and the resulting Contracts shall be subject to the EBO if they are released and made available to the public after May 1, 2003.

**D. Subcontractors**

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1. Contractors working on Contracts that became subject to the EBO between January 1, 2000 and March 31, 2003 must ensure that their Subcontractors working on the City Contract comply with the requirements of the EBO unless and until their Contracts are otherwise amended.
2. Subcontractors working on these City Contracts that become subject to the EBO after April 1, 2003 are not required to comply with the requirements of the EBO. Such Subcontractors are not subject to the EBO unless they otherwise have a Contract directly with the City.

**E. Procurement Packages or Competitive Bids Released to the Public or Amended After August 15, 2011**

1. All procurement packages and/or competitive bids released to the public after August 15, 2011 shall no longer contain the EBO Compliance Form, Provisional Compliance Form and the Reasonable Measures Form.
2. The awarding authority shall provide and require that the successful proposer/bidder complete and upload the Equal Benefits Compliance Affidavit Form.
3. The awarding authority may not execute a contract without receiving verification from the DAA that the proposer/bidder has uploaded the correct form, properly completed the form and signed the form.

**F. Procurement Packages or Competitive Bids Released to the Public or Amended after June 27, 2016\***

1. As of July 1, 2016, the contracting procedure in the LABAVN system was revised to reflect the changes of the amendment that was effective 6/27/16.
2. The EBO Compliance Affidavit was revised and simplified for the contractor. The EBO application is now a web application form that should be completed, signed and submitted electronically in BAVN prior to the execution of contract. A verified affidavit will be valid for three years from the upload date.

\*Revised to reflect Amendment changes effective 6/27/16

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## PROCEDURE #2: REPORTING REQUIREMENTS

### **A. Equal Benefits Ordinance Compliance Affidavit\***

Unless waived, prior to the execution of the Contract, the selected Contractor must submit an Equal Benefits Ordinance Compliance Affidavit. A completed and electronically signed EBO Compliance Affidavit submitted in the BAVN system shall serve as evidence that a contractor understands the requirements of the EBO and as a condition of the contract will not discriminate in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners. A Contract cannot be executed until the Equal Benefits Ordinance Compliance Affidavit has been completed and determined acceptable by the OCC.

\*Revised to reflect amendment effective 6/27/16

### **B. Contractor Responsibility - Changes to Employee Benefits Affecting Equal Treatment of Employees with Domestic Partners and Spouses While under Contract with the City of Los Angeles**

If a Contractor's Benefits policies change during the term of the Contractor's Contract with the City, and those changes affect the provision of Equal Benefits to employees with spouses and employees with Domestic Partners, the Contractor shall take the necessary steps to insure that the new benefits policies are in compliance with the requirement of the EBO.

### **C. Waiver of Administrative Processing and Reporting Requirements**

The OCC may waive the administrative processing and reporting requirements of these Rules if the OCC determines that application of the requirements to a specific Contract would be unduly burdensome given the totality of the circumstances.

1. Amendments to Contracts: For an amendment to a Contract not originally subject to the EBO but which, because of the amendment, would become subject, the OCC may consider the following factors in determining whether the administrative processing and reporting requirements may be waived for the specific Contract amendment because application of the requirements would be unduly burdensome:
  - a. The amendment is for an extension of time, provided that all the following requirements are met:
    - (1) The proposed amendment extends the term of the Contract for no more than six months;



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- (2) The proposed amendment does not provide for any additional money; and
  - (3) No additional appropriation has been provided to fund the work that is to be contracted in the amendment.
- b. The length of the time extension under the proposed amendment.
  - c. The amount of money the Contractor has already received under the City Contract, and the amount the Contractor will receive as a result of the time extension.
  - d. The likelihood that the Contractor will have an ongoing contractual relationship with the City.
  - e. Any other factors that may be relevant to determining whether applying the administrative and reporting requirements of the EBO would be unduly burdensome.
2. New Contracts: For new Contracts which may become subject to the EBO because the value exceeds \$25,000, the OCC may consider the following factors in determining whether the administrative processing and reporting requirements may be waived for a specific Contract because application of the requirement would be unduly burdensome:
- a. The length of the Contract.
  - b. The amount of money involved in the Contract.
  - c. Whether the Contract is likely to be renewed or amended to add additional time or money.
  - d. The likelihood that the Contractor will have an ongoing contractual relationship with the City.
  - e. Any other factors that may be relevant to determining whether applying the administrative and reporting requirements of the EBO would be unduly burdensome.

Amended, effective 6/27/16 – Per Ordinance No. 184294 Amendment. Increased the threshold amount.

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### PROCEDURE #3: JURISDICTION

#### A. Location

1. For the purpose of this section, the phrase “in Los Angeles” shall include real property described in subsections 2(a) and (b), and the Contracts described in subsection 3.
2. The nondiscrimination in Benefits requirements apply to a Contractor in all of its operations located:
  - a. In the City of Los Angeles; and
  - b. On real property outside of the City of Los Angeles owned by the City or which the City has a right to occupy if the Contractor's presence at that location is connected to a Contract with the City.
3. The non-discrimination in Benefits requirements apply to a Contractor’s employees located elsewhere in the United States if the employees work on a City Contract. When the EBO applies to a Contractor’s employees located outside City limits, the Contractor must establish policies that provide Equal Benefits to those employees that perform work related the City Contract. If a Contractor is unable to identify the specific employees who perform work related to the City Contract, the Contractor may consider options which include, but are not limited to, assigning only specific employees to work on the City Contract, or restructuring the Contractor’s production process so that only certain employees will perform work related to the Contract. Some Contractors have elected to provide Equal Benefits to all employees at those operations or locations where work related to the Contract may be done as a way of ensuring that Equal Benefits are provided to the eligible employees. This would be in compliance with the EBO. Regardless of the approach taken to comply with the Ordinance requirements, the policies established by the Contractor must ensure that employees located outside of City limits are provided with Equal Benefits if the employees perform work related to a City Contract.

Amended 01/15/04.

4. Nothing in this section shall prohibit a Contractor from ending discrimination in Benefits throughout its U.S. operations. The City encourages Contractors to end discrimination in Benefits throughout their U.S. operations.
5. Where a Contractor declines to end discrimination in Benefits throughout the Contractor's operations in the U.S., the determination of where compliance is required shall be based upon a consideration of factors that include but are not limited to:

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- (1) The nature of the work being performed in locations other than in Los Angeles;
- (2) The degree of connection between the Contract at issue and the work being performed in locations other than in Los Angeles;
- (3) The percentage of the overall work mandated under the Contract that is being performed by the Contractor in a location other than in Los Angeles;
- (4) The amount of contact and communication that persons performing work in locations other than in Los Angeles have with other persons performing work related to the Contract.

### **B. Covered Entity**

The entity that enters into a Contract with the City is the entity that must comply with the Ordinance. Separate corporate entities, including parents and subsidiaries of the entity that enters into a Contract with the City, are not required to comply with the Ordinance unless they also have a Contract with the City. In the case of a joint venture, all joint venture partners will be required to comply. The OCC will examine the corporate structure of the entity to determine whether it has been created for separate, independent and legitimate business reasons, and not for the purpose of avoiding the EBO. The factors to be considered in this determination may include but are not limited to:

1. The legal structure of the entity;
2. The degree of control the entity exercises over the provision of Benefits;
3. The date the entity was formed; and
4. The role within the entity of the person signing the Contract.

### **C. Covered Benefits**

A Contractor must end discrimination in all Benefits offered to spouses or Domestic Partners of employees and in all Benefits offered to employees because they have a spouse or Domestic Partner. Where a Contractor demonstrates that, with respect to a particular Contract, the City is exercising more power in the marketplace than an ordinary consumer of the goods, services or interest in real property at issue in the Contract, then the Contractor may limit the Benefits offered on a nondiscriminatory

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basis to exclude those Benefits provided by an ERISA-sponsored Benefits plan.<sup>1</sup> It is the Contractor's responsibility to raise this issue with the OCC. The OCC may request that the contractor provide the necessary documentation that supports its claim of limited application.

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<sup>1</sup> The term "ERISA" refers to the Employee Retirement Income Security Act of 1974. For purposes of this section, "benefits provided by an ERISA-sponsored benefits plan" shall mean benefits provided under employee welfare programs (such as medical insurance) and employee pension plans. This term shall not include other benefits such as bereavement leave, family leave, employee assistance programs, company discounts and others, unless the Contractor can show that such benefits are provided through a plan that is covered by ERISA.

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**PROCEDURE #4: COMPLIANCE OPTIONS**

**A. Application to Comply with EBO by Paying Employees the Cash Equivalent**

1. A Contractor may comply with the EBO by paying employees the Cash Equivalent only if:
  - a. The Contractor has made a reasonable, yet unsuccessful, effort to provide Equal Benefits. Whether the efforts made by the Contractor are reasonable shall be determined by the OCC based on factors which include but are not limited to the following:
    - (1) The availability of Domestic Partner coverage where the Contractor has operations subject to the EBO.
    - (2) Whether the Contractor has contacted its current carrier or any other carriers to obtain Domestic Partner coverage.
    - (3) The type of coverage available under the Contractor's current carrier as compared to the coverage that would be provided if Domestic Partner coverage were added. For this purpose, factors may include but are not limited to the types of health services covered by the plans; the number of doctors, hospitals, or other providers available under the plans; any geographical limitations imposed by the plans; and the amounts of co-payments or deductibles required under the plans.
    - (4) The existence of federal, state or other law which precludes the Contractor from providing Equal Benefits.
    - (5) Any other factors relevant to the efforts made by the Contractor to provide Equal Benefits.
  - b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse if applicable). Whether it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse if applicable) shall be determined by the OCC based on factors which include but are not limited to the following:
    - (1) The availability of Domestic Partner coverage where the Contractor has operations subject to the EBO.
    - (2) The number of employees in the entire company as compared to the number of employees that would be covered or affected under the EBO.

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- (3) The type of coverage available under the Contractor's current carrier as compared to the coverage that would be provided if Domestic Partner coverage were added. For this purpose, factors may include but are not limited to the types of health services covered by the plans; the number of doctors, hospitals, or other providers available under the plans; any geographical limitations imposed by the plans; and the amounts of co-payments or deductibles required under the plans.
  - (4) The likelihood that the Contractor will have an ongoing contractual relationship with the City.
  - (5) The length of the Contract.
  - (6) The amount of money involved in the Contract.
  - (7) The existence of federal, state or other law which precludes the Contractor from providing Equal Benefits.
  - (8) Any other factors relevant to whether it would be unreasonable to require the Contractor to provide Equal Benefits to employees.
2. Reasonable Measures: A Contractor that wishes to comply with the EBO by paying its employees with Domestic Partners the Cash Equivalent of Benefits made available to the spouses of its employees shall select the option when completing the EBO Compliance Affidavit Form.
- a. Reasonable Measures compliance requires the Contractor to do the following:
    - (1) In the event that the contractor is audited, to verify compliance, the contractor must demonstrate that (a) the Contractor has made a reasonable, yet unsuccessful, effort to provide Equal Benefits; or that (b) under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse if applicable).
    - (2) Provide a copy of the memorandum that the employer has distributed to affected employees.
    - (3) Provide copies of the revised policies, such as bereavement leave, for which the Cash Equivalent is not applicable.
  - b. To effectuate compliance, the employer must:
    - (1) Pay its employees with Domestic Partners the Cash Equivalent of Benefits made available to the spouses of its employees.

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- (2) Amend its employee policies so that for those Benefits for which a Cash Equivalent is not available, Domestic Partners of employees will be treated in the same manner as the spouses of employees. Similarly, the relatives of an employee's Domestic Partner must be treated in the same manner as the relatives of an employee's spouse. For example, if the employer's bereavement leave policy allows an employee three days off in the event of the death of a spouse or a parent-in-law, the policy must be amended to allow an employee three days off in the event of the death of the employee's Domestic Partner or the Domestic Partner's parent.
  - (3) Provide all affected employees with a memorandum notifying them of the availability of the Cash Equivalent if they have Domestic Partners to whom Equal Benefits are not being provided.
3. Where an employer has indicated that it will comply with the EBO by paying employees the Cash Equivalent, the following guidelines shall apply:
  - a. The employer shall pay similarly situated employees the same amount of money when providing the Cash Equivalent. The following scenario is provided as an example of similarly situated employees:

A Contractor with locations in Dallas, TX and Bridgeport, CT, offers spousal health insurance to its employees. The Cash Equivalent the Contractor would pay to its Bridgeport employees would be the amount of money paid by the Contractor for Benefits given to employees with spouses in Bridgeport; the Cash Equivalent the Contractor would pay to its Dallas employees would be the amount of money paid by the Contractor for Benefits given to employees with spouses in Dallas.
  - b. To the extent that a Contractor limits the availability of any Benefit to the spouses of employees, or vice versa, the availability of a Cash Equivalent may be similarly limited. The following scenario is provided as an example of limiting the availability of a Cash Equivalent:

A Contractor limits the availability of spousal health insurance coverage to only those spouses who are not already covered by their own employer's health insurance plan. The Contractor has agreed to provide its employees with Domestic Partners a Cash Equivalent. The Contractor may limit the availability of a Cash Equivalent payment to only that employee whose Domestic Partner is not already covered by their own employer's health insurance.
  - c. The Cash Equivalent payment shall be made either on the same schedule as the Contractor uses for the Benefit given to employees with spouses, or, if no such schedule exists, on another schedule so long as such payment is made no less

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than once per month. No Cash Equivalent payment will be required where making such a payment would violate federal or state law.

### **B. Provisional Compliance Status**

Contractors who agree to comply with the EBO but who need more time to incorporate the provisions of the Ordinance into their operations may do so when any one of the three conditions below are satisfied:

1. Open Enrollment: If a Contractor's health, dental, vision, or other insurance plan cannot be modified to include Domestic Partner coverage until after the open enrollment period following the date the Contract with the City is executed, the Contractor may delay compliance until the date of that next open enrollment period and upon such date, must provide verification that Domestic Partner Benefits have been added. A delay in compliance may not exceed two years from the date the Contract with the City is executed, and applies only to Benefits for which an open enrollment period is applicable.

To qualify for an extension of time under this basis, the Contractor must demonstrate that the insurance carriers have been contacted or have agreed to allow Domestic Partners to be added. Supporting documentation may include but is not limited to the following:

- a. Letters from the Contractor to the insurance provider(s) requesting that the insurance plan(s) be amended to allow for coverage of Domestic Partners of the same and different sex.
  - b. Letters from the insurance provider(s) to the Contractor verifying that the Contractor's insurance plan(s) have been or will be amended to allow for coverage of Domestic Partners of the same and different sex and the effective date of such coverage.
2. Administrative Actions: A Contractor may elect additional time to implement the requirements of the EBO if the administrative actions necessary to incorporate the EBO cannot be completed prior to the date that the Contract with the City is executed. Additional time granted for the completion of the administrative action shall apply only to those Benefits that require administrative actions and may not exceed three months. Administrative actions may include personnel policy revisions and the development and distribution of employee communications.
  3. Collective Bargaining Agreements: Compliance with the EBO may be delayed until the expiration of a Contractor's current collective bargaining agreement(s) (CBA). When the CBA is renegotiated, the Contractor must propose to the union for incorporation into the CBA the EBO requirements so that all Benefits provided to employees with spouses are also extended to employees with Domestic



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Partners. Provisional Compliance Status may be selected if all of the following conditions are met.

- a. The provision of some or all of the Benefits offered to the Contractor's employees are governed by one or more CBA(s) but Domestic Partner coverage for same and different sex couples is not offered under the CBA(s).

Amended 9/15/03.

- b. The Contractor has proposed to the union during negotiations that the EBO requirements be incorporated into the CBA(s) so that all Benefits provided to employees with spouses will be extended to employees with Domestic Partners. At the end of negotiations the Contractor must be able to demonstrate (1) when the issue of the EBO requirements was proposed; and (2) whether the union agreed to incorporate the EBO requirements into the CBA(s).

- 1) If not incorporated the contractor will be required to propose incorporation of the EBO into the CBA at the next CBA negotiation period. When multiple union agreements are involved, the contractor must provide evidence of the EBO incorporation request for each CBA.
- 2) If incorporated the contractor may be requested to provide supporting documents to verify compliance.
- 3) Should the contractor fail to propose to the union to incorporate the EBO provisions into the collective bargaining agreement, the contractor will be determined to be in violation of the provisions of the EBO and subject to sanctions discussed in Procedure #6(e).

Amended 9/15/03.

For Benefits not strictly governed by a CBA, the Contractor must establish policies so that those Benefits are provided in accordance with the requirements of the EBO. For example, the Contractor may be required to expand the existing bereavement leave policy to allow an employee with a Domestic Partner time off in event of the Domestic Partner's death even if the CBA does not require the employer to do so. The Contractor must submit supporting documentation to verify that the policies are in compliance with the EBO, including a listing of Benefits not strictly governed by the CBA along with the Contractor's policies as they relate to those Benefits.

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**PROCEDURE #5: WAIVERS AND NON-APPLICABILITY**

**A. Waivers Requiring OCC Approval**

1. In accordance with the terms and conditions expressed in the Equal Benefits Ordinance, after encouraging a non-compliant prospective Contractor to comply with Section 10.8.2.1 *et seq.*, an Awarding Authority may request a waiver of the requirements of the EBO if:
  - a. The Contract is for the use of City property, and there is only one prospective Contractor willing to enter into the Contract; or
  - b. The Contract is for needed goods, services, construction of a public work or improvement, or interest in or right to use real property that is available only from a single prospective Contractor, and that prospective Contractor is otherwise qualified and acceptable to the City; or
  - c. The Contract is necessary to respond to an emergency that endangers the public health or safety, and no entity which complies with the requirements of the Equal Benefits Ordinance capable of responding to the emergency is immediately available; or
  - d. The City Attorney certifies in writing that the Contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of the Equal Benefits Ordinance; or
  - e. The Contract is (i) with a public entity; (ii) for goods, services, construction of a public work or improvement, or interest in or right to use real property; and (iii) that is either not available from another source, or is necessary to serve a substantial public interest. A Contract for interest in or the right to use real property shall not be considered as not being available from another source unless there is no other site of comparable quality, specifications, or accessibility available from another source; or
  - f. The requirements of the Equal Benefits Ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of the agency with respect to the grant, subvention or agreement, provided that the Awarding Authority has made a good faith attempt to change the terms or conditions of the grant, subvention or agreement to authorize application of the Equal Benefits Ordinance; or
  - g. The Contract is for goods, a service or a project that is essential to the City or City residents and there are no qualified responsive bidders or prospective

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Contractors who could be certified as being in compliance with the requirements of the Equal Benefits Ordinance; or

- h. The Contract involves bulk purchasing arrangements through City, federal, state or regional entities that actually reduce the City's purchasing costs and would be in the best interests of the City.
2. A Contractor may request that an Awarding Authority seek a waiver pursuant to LAAC 10.8.2.1 *et seq.* To make such a request, the potential Contractor must complete the necessary EBO form(s) and submit the form(s) to the Awarding Authority. If the Awarding Authority requests approval for a waiver based upon a request made by a potential Contractor, the Awarding Authority must also submit a copy of the Contractor's completed EBO form(s) with the Awarding Authorities' documentation in support of the waiver to the OCC for review and determination.

### **B. Non-Applicability of the EBO**

1. The EBO shall not apply to the following Contracts:
- a. Contracts involving the investment of trust monies, bond proceeds or agreements relating to the management of these funds, indentures, security enhancement agreements (including, but not limited to, liquidity agreements, letters of credit, bond insurance) for City tax-exempt and taxable financings, deposits of City's surplus funds in financial institutions, the investment of City monies in competitively bid investment agreements, the investment of City monies in securities permitted under the California State Government Code and/or the City's investment policy, investment agreements, repurchase agreements, City monies invested in U.S. government securities or pre-existing investment agreements;
  - b. Contracts involving City monies in which the Treasurer or the City Administrative Officer finds that either:
    - (1) No person, entity or financial institution doing business in the City, which is in compliance with the Equal Benefits Ordinance, is capable of performing the desired transaction(s); or
    - (2) The City will incur a financial loss or forego a financial benefit that in the opinion of the Treasurer or City Administrative Officer would violate his or her fiduciary duties.
  - c. Contracts for gifts to the City.

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- d. Contracts in which the OCC determines that the services provided by the Contractor are services the City would otherwise perform in its regulatory capacity.

**C. Ability of City to Waive EBO Requirements**

Nothing in these Rules and Procedures shall limit the right of the City to waive the provisions of this Ordinance.

**D. Additional Requirements**

If an Awarding Authority seeks to obtain the approval of a waiver from the OCC, the Awarding Authority must:

1. Agree to construct the Contract for the shortest reasonable duration in light of all applicable circumstances; and
2. Attempt to award any future Contracts for the needed goods or services to a Contractor that does not discriminate in the provision of Benefits by developing contacts with other providers who do comply with the nondiscrimination in Benefits requirements of the EBO and/or by assisting the sole source provider to obtain compliance with the EBO.

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### **PROCEDURE #6: COMPLIANCE REVIEW AND ENFORCEMENT**

#### **A. Employer Monitoring**

The OCC will monitor the operations of employers to ensure compliance by conducting random EBO compliance desk reviews. The OCC may review health benefits provided and company policies established by an employer as part of the compliance review. An employer shall cooperate with the OCC when a meeting, a site visit, or documentation is requested by the OCC as part of its review. Cooperation includes providing the OCC with full access to the work site for employer and employee interviews, and with copies of health and benefit statements, employee policy manuals, and any other document(s) that would assist the OCC in determining if an employer is in compliance with the EBO. Requests by the OCC for meetings, site visits, employee interviews, and documents shall be made with reasonable notice. The OCC shall notify the awarding authority of each site visit.

#### **B. Compliance Audit in Response to Specific Concerns or Complaints**

If a complaint is filed, OCC shall validate the complaint prior to initiating an investigation. If the complaint is determined to be valid, OCC shall inform the employer of the allegation and schedule a compliance audit for purposes of investigating the alleged violation(s).

#### **C. Employer's Failure to Reasonably Cooperate**

If an employer fails to produce requested documentation, fails to allow access to the work site or to the employees for employee interviews, or otherwise unreasonably fails to cooperate with the OCC, the OCC may consider the contractor to be out of compliance with the EBO. Consequently, OCC shall request that the Controller's office withhold payments to the employer until such time that the employer cooperates or effectuate remedies as provided by Procedure 6(F).

#### **D. Resolution of Investigation into Employee Complaints**

The OCC will attempt to complete an investigation into an employee complaint within 30 to 60 days. If the OCC is unable to complete the investigation within 60 days, the OCC may notify the employee of the status of the investigation and provide regular status reports to the employee every 30 days until the investigation is completed.

#### **E. Notice to Correct**

The Office of Contract Compliance (OCC) is responsible for the administration and enforcement of the EBO. Enforcement by the OCC may include monitoring, inspection and investigation to ensure that the Contractor is acting in compliance with the Equal Benefits requirements of such City Contracts, or to follow up on an employee complaint

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of non-compliance. The Contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices to the OCC for the purposes of investigation to ascertain compliance with the EBO.

If the contractor is determined to be in violation, the OCC shall issue a "Notice to Correct" detailing the findings of the investigation and the steps the contractor must take in order to comply. Additionally, the contractor will be given a deadline by which it must demonstrate that it has taken and completed the steps to effectuate compliance.

### **F. Failure to Correct**

Should the violation or failure to comply continue and/or no resolution is imminent, the OCC, in cooperation with the Controller's Office, the City Attorney and the awarding authority, may pursue available remedies:

1. The failure to comply may be deemed to be a material breach of the Contract by the Awarding Authority; or
2. The Awarding Authority may cancel, terminate or suspend, in whole or in part, the contract; or
3. Monies due or to become due under the Contract may be retained by the City until compliance is achieved; or
4. The City may also pursue any and all other remedies at law or in equity for any breach; and
5. The City may use failure to comply with the Equal Benefits Ordinance as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

Revised 7/5/16 - included #5 to be consistent with ordinance language.

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### **PROCEDURE #7: OTHER ISSUES**

#### **A. Internal Domestic Partnership Registry**

In addition to recognizing as valid Domestic Partnerships registered with any governmental body, a Contractor may institute an internal Domestic Partnership registry to allow for the provision of Equal Benefits to employees with Domestic Partners who do not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental Domestic Partnership registry exists. In such cases, the City encourages Contractors to do so.

#### **B. Verification of Domestic Partnership or Marriage**

A Contractor may verify the existence of a Domestic Partnership or marriage to the extent such verification will be undertaken equally for employees with Domestic Partners and employees with spouses.

#### **C. Excess Costs**

In the event that the actual cost of providing a certain Benefit to an employee with a Domestic Partner or an employee's Domestic Partner exceeds that of providing the Benefit to an employee with a spouse or to an employee's spouse, or vice versa, the Contractor may condition nondiscrimination in Benefits upon the employee agreeing to pay the excess costs. The excess costs the Contractor may pass on to the employee may include only the actual costs of the Benefit for that employee and may not include implementation or administrative costs, any tax consequence to the employer, or additional costs to other employees.

#### **D. Taxation**

1. The withholding of income tax from an employee for income associated with the provision of Benefits is permissible to the extent the taxation is required by state or federal law.
2. Nothing in these Rules and Procedures is intended to require a Contractor to take any action that would jeopardize the tax-qualified status of a retirement plan.

#### **E. Notification**

Notification by a Contractor to its employees regarding the provision of Benefits to employees with spouses and employees with Domestic Partners must be conducted so that all employees are given equal notice of all available Benefits.

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**F. Continuation Coverage**

The continuation of Benefits, including health Benefits, should be provided equally to the spouses of employees and the Domestic Partners of employees, except where otherwise prohibited by law.

**G. Revisions to These Implementing Rules and Procedures**

Unless otherwise required by law, revisions to these Rules and Procedures, if any, shall be updated once yearly and become effective July 1.