

Chapter 6: 'Original Equipment Manufacturer Agreements' for Purposes of the City's Anti-Apartheid Law

§ 6-01 Definitions.

For purposes of the City's anti-apartheid rider, included in City contracts pursuant to Administrative Code § 6-115 whenever the contractor has agreed to sign the rider, a company shall be deemed to be providing goods or services to South Africa pursuant to an "original equipment manufacturer agreement" which provides for or authorizes the sale of equipment, alone or as part of a finished product, to a South African entity" in accordance with the following definitions:

(a) "Company #1" includes the company which seeks to enter a contract with a City agency, and is determining whether it is qualified to sign the City's anti-apartheid rider, and all "affiliates" of that company, as that term is defined in Administrative Code § 6-115(a)(8).

(b) "Sale" includes lease or rental of equipment.

(c) An "original equipment manufacturer agreement" ("O.E.M. agreement") is an agreement between a manufacturer (Company #1) and another manufacturer, a distributor, or a value-added reseller (Company #2), such that Company #1 provides products (which may include parts, components and/or subassemblies) and authorizes the sale of such products by Company #2 under any of the following circumstances:

(1) Company #1 makes a sale of its equipment to Company #2, which, with or without making minor modifications to the equipment, **privately labels** and sells it. An example would be an O.E.M. agreement whereby Company #2 purchases a copier from Company #1, and resells it as a copier under its own brand name, with or without having first made minor modifications to the copier's packaging.

(2) Company #1 makes a sale of its equipment to Company #2, which provides substantial **added value** to Company #1's product before selling it. Company #2's added value may be major application software and/or special hardware integrated into the product. Examples include:

(i) an O.E.M. agreement whereby Company #2 adds banking application software to Company #1's personal computer, marketing the resulting product as a banking teller station under Company #2's brand name.

(ii) an O.E.M. agreement whereby Company #2 embeds a subassembly purchased from Company #1, such as a disk drive or a telecommunications multiplexor, into Company #2's computer system, and then sells that computer system under its own brand name.

(iii) Company #1 makes a sale to Company #2, which resells Company #1's product with Company #1's name still intact on the product. An example would be an O.E.M. agreement whereby Company #2 sells Company #1's word processor and licensed software as an **authorized dealer** (exclusive or non-exclusive) of Company #1.

(d) An O.E.M. agreement for equipment sold by a manufacturer of computers, copiers or telecommunications equipment is considered to "provide for or authorize the sale of such equipment, alone or as part of a finished product, to a South African entity" if any of the following conditions is met:

(1) The O.E.M. agreement states that Company #2 may sell equipment made by Company #1 (with or without modification by Company #2) in South Africa.

(2) The equipment covered by the agreement (as sold by Company #1 or after modification by Company #2, if any is made) falls under one of the designated classifications government by the Export Administration Act of 1979 (50 U.S.C. App. § 2401) and the associated federal regulations for Electronics and Precision Instruments (15 C.F.R. § 799.1, Supp. 1, Group 5), such that Company #1 knows of the resale or distribution of the equipment to South Africa by Company #2 and assists Company #2 in procuring required governmental authorizations for such resale or distribution.

(3) Company #1 has actual knowledge of resale or distribution of the equipment to South Africa by Company #2 and has not either terminated its contractual arrangement with Company #2 concerning such equipment or otherwise prohibited Company #2 from making further resale or distribution of Company #1's equipment to South Africa.