

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ESTABLISHING A) ORDINANCE NO. 83-165
DISADVANTAGED BUSINESS PROGRAM)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Purpose and Authority

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses.

(b) This ordinance is adopted pursuant to 49 CFR 23 and is intended to comply with all relevant federal regulations.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

Section 2. Policy Statement

(a) Through this Program, Metro:

- (1) expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;
- (2) informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) assures conformity with applicable Federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

- (1) to assure that provisions of this ordinance are adhered to by all Metro departments, employees, subrecipients and contractors.
- (2) to initiate and maintain efforts to increase program participation by disadvantaged businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all agreements with subrecipients and in all DOT assisted contracts between Metro or subrecipients and any contractor.

Section 3. Definitions

For purposes of this Ordinance, the following definitions shall apply:

- (1) APPLICANT -- one who submits an application, request or plan to be approved by a DOT official or by Metro as a condition to eligibility for Department of Transportation (DOT) financial assistance; and "application" means such an application, request or plan.
- (2) CONSTRUCTION CONTRACT -- means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.
- (3) CONTRACT -- means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this ordinance, a lease or a purchase order of \$500.00 or more is a contract.
- (4) CONTRACTOR -- means the one who participates, through a contract or subcontract, in the Program and includes lessees.
- (5) DEPARTMENT or "DOT" -- means the United States Department of Transportation, including its operating elements.
- (6) DOT ASSISTED CONTRACT -- means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between Metro and a lessee.
- (7) DOT FINANCIAL ASSISTANCE -- means financial aid provided by DOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or

personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

- (8) DISADVANTAGED BUSINESS -- means a small business concern:
(a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
(b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Unless the language or context of this ordinance provide otherwise, "disadvantaged business" includes Women-Owned Business Enterprises (WBE).
- (9) JOINT VENTURE -- is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.
- (10) LABOR AND MATERIALS CONTRACT -- is a contract including a combination of personal service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.
- (11) LESSEE -- means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.
- (12) PERSONAL SERVICES CONTRACT -- means a contract for services of a personal or professional nature.
- (13) PROCUREMENT CONTRACT -- means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.
- (14) RECIPIENT -- means any entity, public or private, to whom DOT financial assistance is extended, directly or through another recipient for any program.
- (15) SMALL BUSINESS CONCERN -- means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- (16) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR DISADVANTAGED INDIVIDUALS -- means those individuals who are citizens of the United States (or lawfully admitted

permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
 - (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
 - (e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.
- (17) WOMEN-OWNED BUSINESS ENTERPRISE or WBE -- means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations which is owned and controlled by one or more women. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women.

Section 4. Notice to Contractors, Subcontractors and Subrecipients

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate.

Section 5. Liaison Officer

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program.

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that disadvantaged businesses are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

Section 6. Directory

A directory of certified disadvantaged businesses and certified women-owned businesses shall be maintained by the Liaison Officer to facilitate identifying disadvantaged and women-owned businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements.

Section 7. Minority-Owned Banks

Metro will seek to identify minority-owned banks within the policies adopted by the Metro Investment Committee and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services.

Section 8. Affirmative Action and Equal Opportunity Procedures

Metro shall use affirmative action techniques to facilitate disadvantaged and women-owned business participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of disadvantaged and women-owned businesses.

(b) Providing assistance to disadvantaged and women-owned businesses in overcoming barriers such as the inability to obtain bonding, financing or technical assistance.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

Section 9. Certification of Disadvantaged Business Eligibility

(a) To participate in the Program as a disadvantaged or women-owned business, contractors, subcontractors and joint ventures must have been certified pursuant to 49 CFR §23.51 through §23.55.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather, pursuant to 49 CFR §23.45(f) and 49 CFR §23.51(c)(2) and (3), Metro will rely upon the certification and recertification processes of the City of Portland, Oregon, the State of Oregon (ODOT), the metropolitan area transit district (Tri-Met), and the Small Business Administration (SBA) and will utilize the certification lists of said agencies in determining whether a prospective contractor or subcontractor is certified as a disadvantaged business. A prospective contractor or subcontractor must be certified as a disadvantaged or women-owned business by any one of the above agencies, and appear on the respective certification list of said agency, prior to the award of a contract in order to be considered by Metro to be an eligible disadvantaged or women-owned business and be counted toward meeting goals.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to 49 CFR §23.55 and applicable agency regulations. However, such appeal shall not cause a delay in any contract award by Metro.

(d) Challenges to certification or to any presumption of social or economic disadvantage, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section.

Section 10. Annual Disadvantaged Business Goals

(a) The Metro Council shall, by resolution each June, establish annual disadvantaged business goals, and separate WBE goals, for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and DOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) projection of the number and types of contracts to be awarded by Metro;
- (2) projection of the number, expertise and types of disadvantaged businesses likely to be available to compete for the contracts;
- (3) past results of Metro's efforts under the Program; and

(4) existing goals of other local DOT recipients and their experience in meeting these goals.

(c) Annual goals must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the overall goals are available for inspection when they are submitted to DOT or other federal agencies. They will be made available for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

Section 11. Contract Goals

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000 and shall be met pursuant to Section 11(b) of this ordinance.

(b) Contract goals for construction contracts over \$50,000 may be complied with by prime contractors only by subcontracting a percentage of the contract work, equal to or exceeding the contract goal, to one or more disadvantaged business subcontractors or by showing of good faith efforts to comply pursuant to Section 13 of this ordinance.

(c) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$50,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied to the annual goal for such contract type. Contract goals for such contracts may be complied with pursuant to Section 16(a)(2) or Section 13 of this ordinance.

Section 12. Contract Award Criteria

(a) Efforts will be made to assure that prime contracts are awarded to competitors that meet applicable disadvantaged business goals. In order to be eligible for award of contracts containing a disadvantaged business goal, prime contractors must either meet or exceed the specific goal for disadvantaged businesses, or prove that they have made good faith efforts to meet the goal.

(b) All solicitations on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal. To document the intent to meet the goals, all bidders shall complete and endorse a Disadvantaged Business Utilization form and include said form with bid documents. The form shall be provided by Metro with bid solicitations.

(c) Agreements between a bidder/proposer and a disadvantaged business in which the disadvantaged business promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders who indicate compliance with the goal shall, within five (5) working days of bid opening (or bid submission date when no public opening is had), submit to Metro signed Letters of Agreement between the bidder and disadvantaged business subcontractor and suppliers to be utilized in performance of the contract. A form Letter of Agreement will be provided by Metro.

(e) An apparent low bidder who states in its bid that the goal will be met but who fails to meet the goal or fails to provide Letters of Agreement with disadvantaged businesses in a timely manner, may, in lieu thereof, submit evidence of good faith efforts to meet the goal as provided in paragraph (f) of this section.

(f) Apparent low bidders who will not meet the goal but who state in their bid that they have made good faith efforts to meet the goal shall within five (5) working days of bid opening (or bid submission date when no public opening is had) submit to Metro evidence of such good faith efforts. Evidence of good faith efforts, and Metro's determination of the sufficiency of such efforts, shall be in accordance with Section 13 of this ordinance.

(g) In very limited situations the Liaison Officer may in writing, at his/her discretion, extend the five (5) working day deadline noted in paragraphs (d) and (f) above to allow for additional positive efforts to utilize certified disadvantaged or women-owned businesses prior to contract award. Such extensions shall not exceed a total of ten (10) additional working days.

(h) Except as provided in paragraph (i) of this section, apparent low bidders who state in their bids that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (f) of this section, shall have their bids rejected and shall forfeit any required bid security or bid bond. In that event, the next lowest bidder shall, within five days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(i) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's compliance with the requirements of this section.

Section 13. Determination of Good Faith Efforts

(a) Pursuant to Section 12 of this ordinance, bidders on contracts to which disadvantaged business goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal.

(b) A showing of good faith efforts must include written evidence of at least the following:

- (1) Advertisement in a trade association newsletter or general circulation newspaper and through a minority-owned newspaper at least 10 days before bids or proposals are due.
- (2) Written notification to no less than three (3) disadvantaged businesses that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of minority-owned firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from disadvantaged businesses, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from minority firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow disadvantaged firms sufficient opportunity to develop quotes or proposals for the work described.
- (3) Evidence of follow-up to initial soliciations of interest, including the following:
 - A. the names, addresses, telephone numbers of all disadvantaged businesses contacted;
 - B. a description of the information provided to disadvantaged businesses regarding the plans and specifications for portions of the work to be performed; and
 - C. a statement of the reasons for non-utilization of disadvantaged businesses, if needed to meet the goal.

Section 14. Replacement of Disadvantaged Business Subcontractors

Prime contractors shall not replace a disadvantaged business subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a disadvantaged business subcontractor shall replace such disadvantaged business subcontractor with another certified disadvantaged business subcontractor or make good faith efforts to do so.

Section 15. Records and Reports

(a) Metro shall develop and maintain a recordkeeping system to identify and assess disadvantaged and women-owned business contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to disadvantaged or women-owned businesses by number, percentage and dollar amount.
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All disadvantaged business records will be separately maintained. Required disadvantaged business information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare semi-annual reports on disadvantaged business participation to include the following:

- (1) the number of contracts awarded;
- (2) categories of contracts awarded;
- (3) dollar value of contracts awarded;
- (4) percentage of the dollar value of all contracts awarded to disadvantaged businesses in the reporting period; and
- (5) the extent to which goals have been met or exceeded.

Section 16. Counting Disadvantaged Business Participation Toward Meeting Goals

(a) Disadvantaged business participation shall be counted toward meeting the goals on each contract as follows:

- (1) On construction contracts of \$50,000 or more, the total dollar value of a contract subcontracted to disadvantaged businesses is counted toward the applicable contract goal. On such contracts, the dollar amount to be performed by a disadvantaged business or joint venture which is also the prime contractor will not be counted toward the applicable goal for contract award purpose, but will be counted for purposes of Metro compliance with annual goals.
- (2) On contracts other than those indicated in paragraph (1) above, and except as provided below, the total dollar value of a contract to be performed by

disadvantaged businesses is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.

- (3) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business. The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.
- (4) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged business partner in the joint venture.
- (5) Metro shall count toward its goals only expenditures to disadvantaged businesses that perform a commercially useful function in the work of a contract. A disadvantaged business is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a disadvantaged business is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (6) Consistent with normal industry practices, a disadvantaged business may enter into subcontracts. If a disadvantaged business contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the disadvantaged business shall be presumed not to be performing a commercially useful function. The disadvantaged business may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by DOT for DOT-assisted contracts.
- (7) A disadvantaged business which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other disadvantaged business

suppliers and manufacturers, provided that the disadvantaged business contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.

- (8) Metro shall count its entire expenditure to a disadvantaged business manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (9) Metro shall count against the goals 20 percent of its expenditures to disadvantaged business suppliers that are not manufacturers, provided that the disadvantaged business supplier performs a commercially useful function in the supply process.

(b) Disadvantaged or women-owned business participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by disadvantaged or women-owned businesses is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(3) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

Section 17. Compliance and Enforcement

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this ordinance and the contract and with any representation made by a contractor prior to contract award pertaining to disadvantaged business participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual disadvantaged business participation.

ADOPTED by the Council of the Metropolitan Service District
this 20th day of December, 1983.



Presiding Officer

ATTEST:



Clerk of the Council

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12/13/83

STAFF REPORT

Agenda Item No. 7.1

Meeting Date Dec. 20, 1983

CONSIDERATION OF ORDINANCE NO. 83-165 FOR THE PURPOSE OF ADOPTING A DISADVANTAGED BUSINESS PROGRAM, AND RESOLUTION NO. 83-435 FOR THE PURPOSE OF APPROVING FY 1983-84 GOALS FOR UTILIZATION OF DISADVANTAGED AND WOMEN OWNED BUSINESSES.

Date: November 2, 1983

Presented by: Donald E. Carlson and Sue Klobertanz

FACTUAL BACKGROUND AND ANALYSIS

In March 1983 the Metro Council expressed a need to review existing minority business enterprise policies and created the MBE Policy Review Committee, an ad hoc committee, to review Metro's existing MBE policies (Committee make up shown in Attachment A). Subsequent to that time, Metro also received revised federal regulations dealing with utilization of disadvantaged businesses.

The ad hoc MBE Committee met for five consecutive weeks in May and June, reviewing Metro's current MBE Program, potential problem areas and recommending a general method for resolution.

From the Committee recommendation and revised federal regulations, Metro staff drafted a proposed Disadvantaged Business Program which was reviewed and further changed per Committee recommendation in October 1983. The attached draft Ordinance (DB Program) and draft Resolution (FY 1983-84 DBP Goals) were released on October 28, 1983, for review with a first reading and public hearing scheduled for November 22, 1983.

The essential features of this Ordinance are as follows:

1. The DB Program applies to all Metro contracts. (Intergovernmental Agreements, revenue producing contracts and agreements for receipt of pass-through funds are not included in the definition of contracts for purposes of this program.)
2. The Council is required each June to establish overall program goals for each type of contract (i.e., construction, DOT assisted, procurement, personal service and labor and materials) for the ensuing fiscal year.
3. For each construction contract over \$50,000 the annual goal shall be the contract goal (i.e., if the annual goal

ATTACHMENT A

MBE POLICY REVIEW COMMITTEE
(as appointed)

Mr. Charles Crews
National Business League
6939 N.E. Grand Avenue, Suite 4
Portland, OR 97211

Ms. Grace Gallegos
IMPACT
8959 S.W. Barbur Blvd.
Portland, OR 97219

Mr. Ron Anderson
Associated General Contractors
9450 S.W. Commerce Circle
Wilsonville, OR 97070

Mr. Don Matsuda
Small Business Administration
1220 S.W. 3rd Avenue
Portland, OR 97204

Mr. Harold Vaughan
City of Portland
1220 S.W. 5th Avenue
Portland, OR 97204

Mr. Kay Rich
Metro's Washington Park Zoo
4001 S.W. Canyon Road
Portland, OR 97221

(also participating)

Mr. Jim Cason
CA-SUN Solar Mechanical
5036 N.E. Holman Street
Portland, OR 97218

ATTACHMENT B

COMPARISON OF COMMITTEE RECOMMENDATION
TO DRAFT DISADVANTAGED BUSINESS PROGRAM

MBE Questions	Committee Recommendation	Draft Program
1. Should the MBE Program apply to all program areas or just those areas required by federal law (USDOT and EPA assisted contracts)?	All Areas	Same
2. Should the Program apply to all types of contracts (construction, consulting, procurement)?	All Types	Same
3. Should certain types of contracts be exempt (e.g., retention of legal counsel, retention bonding consultants, procurement of materials under \$_____, contracts which can or should be performed only by a single person)?	All Types	Same
4. Should subcontracting be required or can a prime MBE contractor meet the goal without subcontracting? Should certain types of contracts be exempt from subcontracting?	Must subcontract on all construction contracts over \$10,000.	Must subcontract on all construction contracts over \$50,000.
5. Should Metro perform certification or continue to use Portland's certification process?	Use Portland	Use Portland and other DOT approved programs.
6. Should "good faith effort" be allowed? If so, should "good faith effort" be the equivalent of goal compliance?	Use good faith; Equivalent	Same
7. Should MBE goal information be provided by the bidders with their bids, or at some later time? If at some later time, should all bidders be required to submit the information or only the apparent low bidder?	5 day delay	Same
8. What should be the process and timing of overall goal-setting? Annually? Biennially?	Annual	Same
9. Should Metro establish overall goals by project or only by year?	Annual by type	Same
10. Contract goals need be established only where a given contract has "subcontracting possibilities." Who decides whether such possibilities exist and how?	Liaison Officer	Same

MBE Questions

Committee
Recommendation

Draft
Program

MBE Questions	Committee Recommendation	Draft Program
11. Alternatives to "good faith efforts" are allowed in lieu of a good faith effort requirement if the alternative is equally or more effective. What alternatives exist? Would they be as effective?	No alternatives	Same
12. Should Metro establish an MBE "set aside" program? For what kinds of projects?	No	Same
13. Which types of efforts should be required? How many of the efforts listed in the DOT regulations must be proven to be eligible?	Use Portland List	Same
14. Who should decide whether a minority women-owned firm should be counted against the MBE goal or the WBE goal?	Liaison Officer/ Contractor	Same
15. Is the existing MBE affirmative action program adequate? If not, how should it be revised?	NA	NA
16. Should Metro be able to grant time extensions to contractors to show MBE compliance or good faith efforts (but not later than the time for contract execution)?	Yes, 5-day time flexible.	Same
17. How and where should Metro locate "plan centers"?	Existing centers and as requested.	Issue addressed by administrative procedures.
18. Must joint ventures of two or more already certified MBEs be recertified as a joint venture?	No	Same
19. Can certification occur after bid opening?	No	Same
20. Should the Council allow the Executive Officer to adopt additional regulations?	No	Same
21. What is required for proof of subcontracting? When is proof submitted?	Signed letter of agreement required within five days.	Same

7.1 Consideration of Ordinance No. 83-165 for the purpose of adopting a Disadvantaged Business Program; and Resolution No. 83-435, for the purpose of approving FY 1983-84 Goals for Utilization of Disadvantaged and Women-Owned Businesses. (First Reading)

The ordinance was read a first time, by title only.

Councilor Hansen, chair of the MBE Subcommittee, reported on the Subcommittee's work. He said they had met approximately six times and that the product that was formulated was a fair, workable and easily understood document.

Councilor Kirkpatrick reported that no one had testified at the Council Coordinating Committee meeting on November 14 and that the Committee was unanimously recommending adoption of the ordinance. She noted that the Committee would conduct a work session on the ordinance at their December meeting to make any modifications in response to questions or issues raised by Council members.

Donald Carlson, Deputy Executive Officer, reviewed with the Council the essential features of the ordinance, as contained in the agenda of the meeting. Sue Klobertanz, Management Analyst, reviewed the resolution which set forth the FY 83-84 goals for use of disadvantaged and women-owned businesses.

Councilor Van Bergen asked if the kinds of contracts the DBP included such items as short-term securities or depository agreements. In addition, he was concerned about Section 7 of the ordinance which addressed minority-owned banks. He said the DPB program may be in conflict with the adopted investment policies of Metro. Ms. Klobertanz responded that anytime Metro would make a commitment for an expenditure, it would come under the program. Mr. Carlson said if changes or clarifications were required because of a conflict, staff would bring them to the Council Coordinating Committee work session in December.

Councilor Waker questioned whether Section 12(h) would prohibit Metro from accepting a low bid if the contractor did not comply with the DBP requirements, and the enforceability of the forfeiture of the bid bond if a contractor did not comply with the DBP requirements. Mr. Jordan responded that Metro could reject a bid if it did not comply and that the bid bond requirement was the only lever Metro had to ensure that a bidder carried through with the DBP requirements.

Councilor Waker commented that he would prefer that the first policy statement (Section 2(a)(1)) state in effect that Metro was expressing "its strong commitment to provide equal opportunity to disadvantaged and women-owned businesses in contracting". He said the way it read they would be going beyond what he believed was a prudent course. He also said it didn't make sense and was not efficient to include in Section 11(b) language which required a minority prime contractor to subcontract a percentage of the contract work to one or more disadvantaged business contractors.

Ms. Klobertanz said the philosophy behind Section 11(b) was that if a minority prime contractor was bidding a job over \$50,000, he really wasn't a disadvantaged business any longer and should meet the same requirements as any other non-minority prime contractor.

Councilor Waker then commented on Section 7 which addressed the use of minority-owned banks. He said there was only one way to make the "greatest feasible use" of a minority-owned bank and that was exclusive use of their services. He said he believed the intent was to give minority-owned banks an equal opportunity for use.

Councilor Deines said he believed that the low bidder should have to submit evidence of goal compliance or good faith effort at the time the bid was submitted (Section 12(h)) instead of being able to submit the proof no later than five days after the bid submittal date.

Mr. Carlson said that the contractors who sat on the MBE Subcommittee had requested the five day "window" because of time constraints in getting all the information gathered.

Councilor Deines requested that alternative language be presented which would require all DBP information to be submitted with the bid and if not submitted, the bid would not be considered.

Motion: Councilor Kirkpatrick moved adoption of Ordinance No. 83-165. Councilor Deines seconded the motion.

Deputy Presiding Officer Oleson then called for public testimony.

Mr. Ron Anderson, 1529 S.w. 12th Avenue, 97201, stated he had served as a member of the MBE Subcommittee. He complimented

the staff and Councilor Hansen for the work they had done. He said he believed the document was a workable one and supported the Council's efforts to adopt a plan. In response to Councilor Deines' comments regarding the five-day "window", he said contractors were overwhelmed by the amount of documentation which must be submitted with their bids and needed the extra time to comply with requirements.

Mr. Barker, Council Assistant, asked Mr. Anderson what the differences were between the City of Portland' plan and the proposed Metro plan. Mr. Anderson responded that the major difference between the plans was that Metro's plan would use the City of Portland's certification list of MBE's as well as other DOT certifying agencies. He said by in large Metro's plan was a mirror of Portland's plan.

Councilor Etlinger asked if the City of Portland and Multnomah County had the five-day "window" for submission of MBE goal compliance documentation in their plans. Mr. Anderson responded that Multnomah County did have the "window" and Ms. Klobertanz said the City of Portland also had the five-day language.

The ordinance was then passed to second reading on December 20, 1983.

7.2 Consideration of Ordinance No. 83-166, for the purpose of establishing the Metro Equal Employment Opportunity and Affirmative Action Policies; and Resolution No. 83-436, for the purpose of adopting the Goals and Objectives in the Affirmative Action Plan as the approved goals for FY 1983-84. (First Reading)

Councilor Kirkpatrick reported that the Council Coordinating Committee unanimously recommended Council adoption of Ordinance No. 83-166. She said the Committee would hold a work session on the ordinance at its December 12 meeting and the ordinance would come back to the Council for second reading on December 20.

Motion: Councilor Kirkpatrick moved adoption of Ordinance No. 83-166. Councilor Kelley seconded the motion.

Ms. Jennifer Sims, Budget & Administrative Services Manager, presented the staff report, as contained in the agenda of the meeting.

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7.1 Ordinance No. 83-165, for the purpose of adopting a Disadvantaged Business Program, and Resolution No. 83-435, for the purpose of approving FY 1983-84 goals for utilization of Disadvantaged and Women-Owned Businesses. (Second Reading)

Councilor Kirkpatrick reported that the Council Coordinating Committee was recommending several amendments to the ordinance and further that action on the ordinance be deferred until UMTA's comments on the ordinance were received.

Mr. Carlson, Deputy Executive Officer, suggested that the ordinance be referred to the Council Coordinating Committee so that once the comments from UMTA were received, the Coordinating Committee could respond to them and bring the ordinance back to the Council for adoption.

Presiding Officer Banzer said she did not think the Council should wait until the federal government commented. She said she preferred that the Council adopt the ordinance and amend it at a later date if needed.

Councilor Van Bergen agreed with the Presiding Officer. Councilors Kirkpatrick and Hansen argued for deferral of action on the ordinance. Councilor Kirkpatrick said the process to amend the ordinance would add more time to adoption of a final document than would deferral. Councilor Hansen said he was also concerned about the time consuming process involved with amending the ordinance.

Presiding Officer Banzer requested that the ordinance be read a second time.

The ordinance was read a second time, by title only.

There was no public testimony.

Mr. Carlson noted that the Executive Officer was recommending postponement until the federal comments were received.

Motion: Councilor Hansen moved that action on the adoption of Ordinance No. 83-165 be postponed until federal comments were received and responded to by the Council Coordinating Committee. Councilor Kafoury seconded the motion.

Vote: The vote on the motion resulted in:

Ayes: Councilors Deines, Etlinger, Hansen,
 Kafoury, Kelley, Kirkpatrick, and Waker.

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Nays: Councilors Banzer, Bonner, Oleson, Van Bergen, and Williamson.

Motion carried.

(Note: See after Agenda Item 8.1 for reconsideration of this item)

7.2 Ordinance No. 83-166, for the purpose of establishing the Metro Equal Employment Opportunity and Affirmative Action Policies, and Resolution No. 83-436, for the purpose of adopting goals and objectives in the Affirmative Action Plan as the approved goals for fiscal year 1983-84. (Second Reading)

Councilor Kirkpatrick reported that the Council Coordinating Committee was recommending adoption of the Resolution and Ordinance, with an amendment.

Jennifer Sims, Budget & Administrative Services Manager, stated the proposed amendment to the ordinance was a technical change to correct the specific federal regulation citation applicable to affirmative action. She pointed out that the ordinance in the agenda packet reflected the proposed change.

Motion to amend: Councilor Kirkpatrick moved to amend Ordinance No. 83-166, Section 2(f) to read as follows:

(f) Metro accepts and agrees to the statements of the Department of Transportation, Urban Mass Transportation Administration, Circular UMTA C 1155.1, December 30, 1977, "UMTA Interim Equal Employment Opportunity Policy and Requirements for Grant Recipient".

Councilor Kafoury seconded the motion.

There was no public testimony.

Vote: The vote on the motion to amend resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Nays: None.

Motion to amend carried.

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 December 20, 1983
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7.1 Reconsideration of Ordinance No. 83-165, for the purpose of adopting a Disadvantaged Business Program and Resolution No. 83-436, for the purpose of approving FY 1983-84 goals for utilization of Disadvantaged and Women-Owned Businesses.

Motion: Councilor Deines moved reconsideration of the motion to postpone action on Ordinance No. 83-165 and Resolution No. 83-435. Councilor Williamson seconded.

Vote: The vote on the motion resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Oleson, Van Bergen, Waker, and Williamson.

Nays: Councilors Kelley and Kirkpatrick.

Absent: Councilor Kafoury.

Motion carried.

Presiding Officer Banzer said she thought it was inappropriate to postpone action on the ordinance and wanted to vote on it that evening. Councilor Deines said he changed his mind about postponement believed they should proceed to take action.

Mr. Carlson and Councilor Kirkpatrick reviewed the amendments recommended by the Council Coordinating Committee, as contained in the agenda of the meeting.

Motion to amend: Councilor Oleson moved to amend Ordinance No. 83-165 to include the Council Coordinating Committee's recommended amendments, as contained in the agenda of the meeting. Council Deines seconded the motion.

Vote: The vote on the motion to amend resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Nays: None.

Absent: Councilor Kafoury.

Motion to amend carried.

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Vote: The vote on the main motion to adopt Ordinance No. 83-165, made by Councilors Kirkpatrick and Deines on November 22, 1983, as amended, resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Nays: None.

Absent: Councilor Kafoury.

Motion carried, Ordinance adopted

Motion: Councilor Deines moved adoption of Resolution No. 83-435. Councilor Hansen seconded the motion.

Vote: The vote on the motion to adopt Resolution No. 83-435 resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Nays: None.

Absent: Councilor Kafoury.

Motion carried, Resolution adopted.

8.2 Consideration of Resolution No. 83-440, for the purpose of recommending approval of the City of Tigard's request for acknowledgement of compliance with LCDC goals.

This item was referred to the Regional Development Committee for further review, at the request of staff.

9.1 Consideration of a Master Plan for the Washington Park Zoo.

Councilor Hansen reported that the Services Committee had reviewed the Plan during its development several times and was recommending Council adoption of the Washington Park Zoo Master Plan.



METROPOLITAN SERVICE DISTRICT
Providing Zoo, Transportation, Solid Waste and
other Regional Services

December 22, 1983

Rick Gustafson
Executive Officer

Metro Council

Cindy Banzer
Presiding Officer
District 9

Bob Oleson
Deputy Presiding
Officer
District 1

Richard Waker
District 2

Charlie Williamson
District 3

Corky Kirkpatrick
District 4

Jack Deines
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Ernie Bonner
District 8

Bruce Etlinger
District 10

Marge Kafoury
District 11

Gary Hansen
District 12

Mr. Don Stillwell
Washington County
150 N. First Avenue
Hillsboro, OR 97123

Dear Mr. Stillwell:

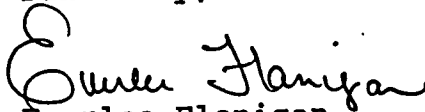
Enclosed are true copies of the following ordinances
adopted by the Council of the Metropolitan Service
District on December 20, 1983:

Ordinance No. 83-165, an Ordinance establishing a
Disadvantaged Business Program.

Ordinance No. 83-166, an Ordinance establishing an
Equal Opportunity and Affirmative Action Policy
Statements.

Please file these ordinances in the Metro ordinance files
maintained by your county.

Sincerely,


Everlee Flanigan
Clerk of the Council

EF/gl
0463C/D4

Enclosures

527 SW Hall St.
Portland, OR
97201
503/221-1646



METROPOLITAN SERVICE DISTRICT
Providing Zoo, Transportation, Solid Waste and
other Regional Services

December 22, 1983

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District 9

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Charlie Williamson
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Corky Kirkpatrick
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Jack Deines
District 5

George Van Bergen
District 6

Sharon Kelley
District 7

Ernie Bonner
District 8

Bruce Etlinger
District 10

Marge Kafoury
District 11

Gary Hansen
District 12

Ms. Juanita Orr
County Clerk
Clackamas County Courthouse
8th & Main
Oregon City, OR 97045

Dear Ms. Orr:

Enclosed are true copies of the following ordinances
adopted by the Council of the Metropolitan Service
District on December 20, 1983:

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Ordinance No. 83-166, an Ordinance establishing an
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Please file these ordinances in the Metro ordinance files
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Sincerely,

Everlee Flanigan
Clerk of the Council

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Enclosures

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Portland, OR
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