

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING ORDINANCE) ORDINANCE NO. 84-181
NO. 83-165, THE DISADVANTAGED)
BUSINESS PROGRAM)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Ordinance No. 83-165, Section 1, is amended to read:

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. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(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. Ordinance No. 83-165, Section 3, is amended to read:

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.
- (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 3. Ordinance No. 83-165, Section 7, is amended to read:

Section 7. Minority-Owned Banks

Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks.

Section 4. Ordinance No. 83-165, Section 8, is amended to read:

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) The Metropolitan Service District will refer businesses in need of management assistance to established agencies that provide direct management assistance to business.

- (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.

- (d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.

(e) Periodic reviews with department heads in order to insure that they are aware of the program goals and desired activities on their part to facilitate reaching the goals.

(f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes. Notify DBE/WBE planning centers of awards to all contractors.

(g) Study the feasibility of certain contracts and procurements being set aside for DBE/WBE participation.

Section 5. Ordinance No. 83-165, Section 9, is amended to read:

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. Metro will adhere to the Recertification Rulings resulting from 105(f).

(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. Decertifications procedures will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287.

(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 6. Ordinance No. 83-165, Section 13, is amended to read:

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. Good faith efforts should minimally comply with standards established in the amendment to 49 CFR 23, Appendix A, items (i) through (g), dated Monday, April 27, 1981.

(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 solicitations 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 7. Ordinance No. 83-165, Section 15, is amended to read:

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. Specifically the percentage of dollar value of all contracts awarded to D/WBE and total dollar value of all contracts D/WBE.
- (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 and women-owned business records will be separately maintained. Required disadvantaged and women-owned business information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare semi-annual reports on disadvantaged and women-owned 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 8. Ordinance No. 83-165, Section 16, is amended to read:

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 and women-owned 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 and women-owned 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 or female business partner in the joint venture.
- (5) Metro shall count toward its goals only expenditures to disadvantaged businesses and women-owned that perform a commercially useful function in the work of a contract. A disadvantaged and women-owned 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 and women-owned 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 and women-owned 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 and women-owned 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 and women-owned business which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other disadvantaged and women-owned business suppliers and manufacturers, provided that the disadvantaged and women-owned 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 and women-owned 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 and women-owned business suppliers that are not manufacturers, provided that the disadvantaged and women-owned 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 9. Ordinance 83-165 as amended is hereby added to Chapter 2.04 of the Metro Code.

ADOPTED by the Council of the Metropolitan Service District
this 13th day of December, 1984.

Conry K. Kuznetsov
Presiding Officer

ATTEST:

A. Marie Wilson
Clerk of the Council

AJ/amn
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STAFF REPORT

Agenda Item No. 7.3, 8.1

Meeting Date Dec. 13, 1984

CONSIDERATION OF ORDINANCE NO. 84-181 AMENDING
THE DISADVANTAGED BUSINESS PROGRAM AND RESOLUTION
NO. 84-511 ADOPTING DISADVANTAGED BUSINESS
PROGRAM GOALS FOR FY 1984-85

Date: October 23, 1984

Presented by: Herman Brame

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this report is to present the suggested annual Disadvantaged Business Program (DBP) goals for FY 1984-85 and to present amendments to the DBP program contained in Ordinance No. 84-181. Federal regulations require that the public be notified that goals have been established and given a forty-five (45) day period to submit written comments on the goals. Public notice will be given on October 29, 1984. Written comments will be accepted until December 13, 1984. After the public comment period has expired the Council will review any proposed changes.

The Council considered Resolution No. 84-511, Adopting Disadvantaged Business Program Goals for FY 1984-85, and Ordinance No. 84-181, Amending the Disadvantaged Business Program on November 8, 1984, and took no action. The 45-day public comment period has expired, thus, making it appropriate for the Council to adopt the Resolution and Ordinance. At the time this staff report was prepared no significant changes were suggested by the public or the federal government.

During the November 8, 1984, meeting the Council suggested that Section 7 of Ordinance No. 83-165 be changed by replacing the terms "Metro Investment Committee" with "Metro Council." The Council also suggested that Section 8(b) be rewritten to clearly indicate that Metro does not provide direct management assistance to businesses, but will refer businesses to the proper agencies providing management assistance.

Ordinance No. 84-181

Proposed Amendments to the Disadvantaged Business Program

UMTA is the cognizant federal agency that is responsible for the annual review and approval of Metro's DBP goals. In a letter dated June 8, 1984, UMTA made a number of comments and suggested revisions pertaining to the Approved FY 1983-84 Goals. The comments and suggested revisions were generally of an administrative nature and will require no additional staff or policy changes. Metro has

responded in detail and incorporated the response in the proposed Ordinance No. 84-181. In addition to the UMTA comments, several other U.S. Department of Transportation agencies made comments:

The desired UMTA/FHWA/FAA amendments are:

1. List specific DBE/WBE Affirmative Action techniques.
2. Explain efforts to encourage prime contractors and suppliers to use services of DBE/WBE controlled banks.
3. Forward Metro's bid solicitation wording regarding DBE/WBE.
4. Describe steps toward establishing a set aside program.
5. FHWA wants DBE and WBE terms used separately in programs.
6. FHWA wants certification appeals filed with U.S. Department of Transportation.
7. FHWA wants certification challenge procedures of certifying agencies added as an addendum.
8. FHWA desires that letters of agreement between DBE/WBE and prime contractors provide ample descriptive information.
9. FHWA desires that DBE/WBE reports include (percent) of the dollar value of all contracts awarded separately to DBE and WBEs.
10. FHWA wants adherence to federal regulations regarding decertification process.
11. FHWA wants Metro's chart comparing actual with goals to clearly show the number and/or dollar value of total contracts awarded.
12. FHWA wants Metro to specify which DOT agencies make up the "DOT Assisted" line item.
13. FAA desires that the program specify that "Good Faith Efforts" should minimally comply with standards set in the amendment of 49 CFR 23, Appendix A, items (1) through (9) dated Monday, April 27, 1981.

Resolution No. 84-511

FY 1984-85 Disadvantaged Business Program Goals

Each year recipients of Urban Mass Transportation Administration (UMTA) funds are required to submit annual goals for disadvantaged and women-owned businesses (DBE and WBE) for federal approval. The establishment of FY 1984-85 goals reflects the likely match of disadvantaged and women-owned businesses with budgeted

Metro contracting and procurement opportunities. Analysis begins with an evaluation of the previous year's actual performance as compared to goals (see Attachment A). In instances where actual falls far short of the goal an attempt is made to determine if this is due to: a) lack of relevant services, skills, and/or products among the certified DBEs and WBEs; b) failure of Metro to provide likely DBE and WBE contractors with timely opportunities to compete for contracts; c) failure of DBEs to respond to invitations to compete for contracts; or d) discrimination by Metro, etc.

The goal may then be lowered if the products, services and skills desired by Metro cannot be provided by known, certified DBE/WBE firms. Analysis has shown that Metro's inability to meet some of its FY 1983-84 goals was due to a combination of factors that include, but are not limited to:

1. Speciality and exotic nature of the Zoo's contracting opportunities (i.e., feline food, veterinarian services, purchase of rare animals, purchase of items for retail operations, etc.).
2. The failure of the contract with a joint venture DBE for the Alaskan Tundra Exhibit.
3. A relative lack of women-owned businesses in the construction and wholesale supply areas.
4. Many Solid Waste contracts are of a highly specialized nature (i.e., engineering, design and operation of solid waste facilities).
5. Due to the comparative small dollar value of Metro contracting opportunities, one or a few contracts can make a great difference in the statistical results (e.g., one 1983-84 DBE Personal Services contract for \$185,300 caused the actual DBE performance (31.9 percent) to far exceed the goal of 3 percent).

Goals are lowered when it is determined that factors beyond Metro's control are prevalent. Thus the following goals are recommended to be lowered.

	<u>Recommended Goals to be Lowered</u>			
	<u>FY 1983-84</u>		<u>FY 1984-85</u>	
	<u>DBE</u>	<u>WBE</u>	<u>DBE</u>	<u>WBE</u>
Procurement	5%	5%	1%	.5%
Labor & Materials	-	5%	-	2%

Goals that are just short of attainment will remain the same when analysis shows that improved management of the program can reasonably be expected to result in their attainment.

	<u>Recommended Goals to be Unchanged</u>			
	<u>FY 1983-84</u>		<u>FY 1984-85</u>	
	<u>DBE</u>	<u>WBE</u>	<u>DBE</u>	<u>WBE</u>
Construction	10%	-	10%	-
Personal Service	-	3%	-	3%
DOT Assisted	10%	3%	10%	3%

Goals are increased when analysis and past performance clearly indicate that there is a high probability of being able to match specific Metro contracting and procurement activities with known, certified DBEs and WBEs. Additionally, a goal must have been at least attained in the previous year before it is raised.

	<u>Recommended Goals to be Raised</u>			
	<u>FY 1983-84</u>		<u>FY 1984-85</u>	
	<u>DBE</u>	<u>WBE</u>	<u>DBE</u>	<u>WBE</u>
Construction	-	0	-	1%
Personal Services	3%	-	5%	-

Metro desires to far exceed all formally established numerical goals which are best seen as "floors" rather than "ceilings" on DBE and WBE opportunities.

The input of other governmental entities with Disadvantaged Business Programs has been sought in order to compare and contrast Metro's goals and determine how realistic they are (see Attachment B).

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends the adoption of Resolution No. 84-511 and Ordinance No. 84-181.

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ATTACHMENT A

ACTUAL UTILIZATION COMPARED TO 1983-84 GOALS

<u>Contract Type</u>	# of Contracts	Cumulative Amount	<u>Actual</u>		Goal	<u>Actual</u>		Goal
			DBE Amount	DBE %	DBE %	WBE Amount	WBE %	WBE %
Construction ^a	5	146,355	9,992	6.8	10	0	0	0
Labor & Materials	76	477,889	28,969	6.0	5	7,084	1.4	5
Personal Service	60	581,186	185,300	31.9	3	2,318	.4	3
Procurement	253	432,377	1,996	.5	5	699	.1	5
DOT Assisted	6	66,692	4,800	7.2	10	0	0	3
Total	355	1,704,499	231,057	13.5	6.1	10,101	.5	3.2

^aDoes not include contract bid by Surety Company outside normal Metro procedures to replace earlier Alaskan Tundra construction contract that was awarded to a DBE that failed on the contract.

Comments

The actual total DBE performance (13.5 percent) exceeded the goal (6.1 percent). DBE personal services (31.9 percent) exceeded the goal (3 percent). DBE procurement (.5 percent) fell short of the goal (5 percent). WBE overall performance (.5 percent) fell short of the goal (3.2 percent).

ATTACHMENT B

1984-85 GOALS COMPARISON

	Proposed Metro		Average Tri-Met and Portland		Program Comparison			
	DBE	WBE	DBE	WBE	City of Portland		Tri-Met	
	DBE	WBE	DBE	WBE	DBE	WBE	DBE	WBE
Construction	10	1	11.5	2.25	10	2.5	13	2
Labor & Materials	5	2	1.5	1.25	1	1.5	2	1
Personal Service	5	3	9.5	5.5	9	9	10	2
Procurement	1 (4)	.5 (1)	11.5	1.75	20	2.5	2	1
DOT Assisted	10%	3	10%	10%	10% overall		10% overall	

Comments

1. Metro's DBE goals except for personal services and construction will remain the same.
2. DBE Personal Services will be increased from 3 percent to 5 percent.
3. DBE procurement will be lowered from 5 percent to 1 percent. Changes based on actual performance (1983-84) and prospects for 1984-85.
4. Metro's WBE goals will remain the same except for Labor and Materials which will be lowered from 5 percent to 2 percent. Procurement will be lowered from 5 percent to .5 percent.
5. 1984-85 goal attainment especially for WBES will be reached by a concerted effort to get successful DBEs and WBES from other programs to actively seek Metro contracts by:
 - a. Obtaining detailed capabilities information on successful DBE/WBE contractors from the City of Portland and Tri-Met, etc.
 - b. Directly encouraging successful contractors to compete for contracts.
 - c. Meet quarterly with department heads in order to assist them in locating potential contractors.
 - d. Work closely with minority business planning centers.
 - e. Encourage prime contractors to use DBE/WBEs by making direct contact with prime contractors.

6. Procurement figures in (brackets) represent an internal management goal. These goals were established because analysis of Metro procurement has shown that out of overall Metro purchasing about 4 percent of the purchases are for the types of goods and services offered by known, certified DBEs and about 1 percent are for goods and services offered by known, certified WBEs. These goals seek to focus management on the specific opportunities available to DBEs and WBEs.

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is 10 percent, the contract goal is 10 percent). Contract goals for such contracts must be met through subcontracting work only or through the best effort clause. The best effort clause is essentially the same as now exists except the publication deadline requirement in a minority newspaper is reduced from 20 days to 10 days and language has been revised to be more specific.

4. For all other applicable contracts (construction contracts under \$50,000, DOT assisted contracts, labor and materials contracts, personal services contracts and procurement contracts), there are no contract goals unless so stated in writing by the Liaison Officer prior to the solicitation of bids. If a goal is set for such a contract, it must be complied with through either the main contractor, subcontractors or a best faith effort made.
5. A Liaison Officer must be designated by the Executive Officer to carry out the objectives of this program. The Liaison Officer is required to report directly to the Executive Officer periodically on the administration of this program. The Liaison Officer has the responsibility to assist Department Heads and project managers in the implementation of the program.

The proposed Program has been developed to be clear, concise and easy to administer. It is anticipated to be administered with existing staff (no additional staff is proposed).

A listing of major issues and a comparison of Committee recommendations with the draft Ordinance is included as Attachment B.

The attached Resolution No. 83-435 establishes the DBP goals for FY 1983-84. Because of the timing of the program revision, Metro did not set new goals in June 1983. Instead, this Resolution would, in fact, set goals retroactively to July 1, 1983.

Attachment A to the Resolution restates the goals and provides the methodology for setting the goals.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 83-165 and Resolution No. 83-436.

COMMITTEE CONSIDERATION AND RECOMMENDATION

On December 12, 1983, the Council Coordinating Committee recommended Council adoption of Ordinance No. 83-165, as amended, and Resolution No. 83-435.

The attached Ordinance No. 83-165 reflects changes as recommended by the Council Coordinating Committee at their December 12, 1983 mark-up session.

AMENDED ORDINANCE NO. 84-181

METROPOLITAN SERVICE DISTRICT
DISADVANTAGED BUSINESS PROGRAM

TABLE OF CONTENTS

<u>Program</u>	<u>Page</u>
<u>ORDINANCE NO. 83-165 ESTABLISHING DISADVANTAGED BUSINESS PROGRAM</u>	
Section 1 Purpose and Authority	1
Section 2 Policy Statement	1
Section 3 Definitions	2
Section 4 Notice to Contractors, Subcontractors and Subrecipients	4
Section 5 Liaison Officer	5
Section 6 Directory	5
Section 7 Minority-Owned Banks	5
Section 8 Affirmative Action and Equal Opportunity Procedures	5
Section 9 Certification of Disadvantaged Business Eligibility	6
Section 10 Annual Disadvantaged Business Goals	6
Section 11 Contract Goals	7
Section 12 Contract Award Criteria	7
Section 13 Determination of Good Faith Efforts	8
Section 14 Replacement of Disadvantaged Business Subcontractors	9
Section 15 Records and Reports	10
Section 16 Counting Disadvantaged Business Participation Toward Meeting Goals	10
Section 17 Compliance and Enforcement	12
<u>RESOLUTION NO. 83-435 ESTABLISHING FISCAL YEAR 1983-84 GOALS FOR USE OF DISADVANTAGED AND WOMEN-OWNED BUSINESSES</u>	<u>13</u>
<u>EXECUTIVE ORDER NO. DESIGNATING PERSONS AND RESPONSIBILITIES FOR IMPLEMENTING AND MAINTAINING DISADVANTAGED BUSINESS PROGRAM</u>	<u>19</u>
<u>APPENDICES</u>	
Disadvantaged Business Utilization Form	21
Sample of Required Letter of Agreement Between General Contractor and Disadvantaged Business Subcontractor	23

substantially alter the intent of staff's amendments but would make the language more clear. Mr. Josselson and Mr. Gibbons said they had no problems with these proposed changes.

Motion: Councilor Kelley moved to remand to the Hearings Officer the changes proposed in Jill Hinckley's memo dated November 8, 1984. Councilor Waker seconded the motion.

Councilor Van Bergen expressed concern about the process for adequate public review of the proposed changes. Ms. Baxendale explained the Metro Ordinance provided for the Council to make changes to the Hearings Officer's Report by remanding amendments back to the Hearings Officer. The Hearings Officer could then make the changes and bring them back before the Council. She explained that, after the Ordinance is adopted, there would be an opportunity for the applicants to ask for rehearing or reconsideration of the Ordinance.

Jill Hinckley said she and Ms. Baxendale were in the process of drafting suggested changes to improve the Metro contested case hearings procedures. She said she would take Councilor Van Bergen's comments into consideration when proposing these changes and encouraged other Councilors' comments.

After receiving comment from Councilor Williamson, Councilor Kelley agreed to the following substitute motion:

Motion: Councilor Kelley moved to remand to the Hearings Officer the changes proposed in Jill Hinckley's memo dated November 8, 1984, and the changes proposed by staff in the staff report dated October 26, 1984. Councilor Waker seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Banzer, Cooper, Kafoury, Kelley, Van Bergen, Waker, Williamson and Kirkpatrick

Absent: Councilors Bonner, Deines, Hansen and Oleson

The motion carried and the Ordinance was remanded back to the Hearings Officer to make the above changes.

7.2 Consideration of Ordinance No. 84-181, for the Purpose of Amending the Disadvantaged Business Program (First Reading)

The Clerk read the Ordinance by title only.

Don Carlson introduced Herman Brame, the newly hired Grants and Contracts Specialist, to the Council. Mr. Carlson explained this Ordinance and Resolution No. 84-511 should be considered together as the annual revision of the District's Disadvantaged Business Program (DBP).

Mr. Brame reported Metro was required to submit DBP goals to the Urban Mass Transit Association (UMTA) on an annual basis. This, he said, was required for any agency receiving Oregon Department of Transportation (ODOT) funds. He explained that as part of this process, Metro was required to announce a 45-day period in which public comments could be received on the DBP goals. He said the City of Portland, Tri-Met, minority business planning centers, Small Business Association, Multnomah County, and ODOT would also be given an opportunity to comment. At the end of this period, he said the Ordinance and Resolution would be brought before the Council for adoption along with a summary of any comments received.

Mr. Brame then explained the new goals were developed as a result of previous comments from the public and other agencies as well as closely examining the numbers of service providers available to provide the kinds of services Metro would require.

In response to Councilor Waker's question, Mr. Brame said UMTA had requested Metro explore the possibility of establishing a set-aside program -- a kind of program that would require Metro to set aside a certain number of contracts exclusively for minority and women contractors. In addition, he said, Metro had, by Ordinance, set aside a category of contract exempt from public contracting procedures. Mr. Brame said he would be exploring the possibility of matching these currently exempt categories with minority and women contractors who could provide these goods and services. He said UMTA would be informed that our first priority would be to conduct business within the confines of our existing procedures and laws.

Councilor Waker questioned the notion of achieving equal opportunity by "far exceeding all formerly established numerical goals," as quoted from the staff report. Mr. Brame explained that the 1982 Surface Transportation Act required all agencies receiving federal funds to make a good faith effort to achieve a 10 percent goal in contracting/purchasing from minority and women business enterprises. Because our stated goals were less than 10 percent, Mr. Brame emphasized we would continue to make a good faith effort and exceed these stated goals and achieve the desired 10 percent goal.

Councilor Williamson requested staff review the language of Section 7 of the Ordinance regarding minority-owned banks. He pointed out that Metro no longer had an Investment Committee and

when the committee existed, its responsibilities did not include making policy for identifying banks. Mr. Carlson said he would be presenting a quarterly investment report at the next Council Management Committee meeting and this matter could be reviewed at that meeting.

Councilor Kelley asked about Section 8(b) of the Ordinance which would provide for Metro to assist disadvantaged businesses in overcoming certain economic barriers. Mr. Brame explained this assistance would take place in the form of referrals to other agencies who were set up to provide direct services and, therefore, no conflicts of interest would occur. Councilor Kelley requested the language of Section 8(b) be changed to: "Providing (assistance) information to disadvantaged and women-owned businesses in overcoming barriers such as the inability to obtain bonding, financing or technical assistance."

There was no public testimony on the Ordinance. The Presiding Officer announced a second reading would occur at the December 13, 1984, Council meeting.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 84-511, for the Purpose of Adopting Disadvantaged Business Program Goals for FY 1984-85

The Presiding Officer explained this Resolution would be reviewed now but it would be considered for adoption at the Council meeting of December 13, 1984.

Mr. Brame said staff's goal was to create a realistic set of objectives based on past performance, comparison with similar agencies and comparison of budgeted contracting opportunities with actual profiles of existing minority and women-owned businesses. For example, he said the procurement goal had been lowered to reflect the fact that the Zoo was responsible for most of the procurement activities and there were very few certified businesses to service the Zoo's needs.

After Council discussion, the Presiding Officer requested staff to publish requests for bids or proposals in both minority trade journals and in journals of general circulation.

8.2 Consideration of Resolution No. 84-512, for the Purpose of Continuing Current Solid Waste Disposal Rates

There was no discussion about the Resolution.

7.2 Consideration of Ordinance No. 84-184, for the Purpose of Amending the Regional Waste Treatment Plan ("208" Plan) to Incorporate Amendments No. 12, 13, 14 and 15, and Request Plan Recertification (Second Reading)

Motion: The motion to adopt this Ordinance was made at the meeting of November 20, 1984, by Councilors Williamson and Deines.

There was no public testimony regarding this Ordinance.

Vote: A vote on the motion to adopt the Ordinance resulted in:

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

Absent: Councilor Banzer

The motion carried and the Ordinance was adopted.

7.3 Consideration of Ordinance No. 84-181, for the Purpose of Amending the Disadvantaged Business Program (Second Reading)

Herman Brame reported he had changed the Ordinance now being considered as instructed by the Council on November 20. These amendments included: 1) changing all references to the "Investment Committee" to read "Council Management Committee", and 2) deleting language that Metro would provide direct assistance to minority or women-owned businesses and replacing it with language specifying that Metro would provide referral services to businesses needing special assistance.

Motion: Councilor Williamson moved to adopt the Ordinance. Councilor Kafoury seconded the motion.

There was no public testimony concerning this Ordinance.

Vote: A vote on the Ordinance resulted in:

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

Absent: Councilor Banzer

The motion carried and the Ordinance was adopted.



METROPOLITAN SERVICE DISTRICT
Providing Zoo, Solid Waste and Local Government
Services

527 S.W. Hall Street, Portland, Oregon 97201-5287

December 26, 1984

Rick Gustafson
Executive Officer

Metro Council

Corky Kirkpatrick
Presiding Officer
District 4

Ernie Bonner
Deputy Presiding
Officer
District 8

Bob Oleson
District 1

Richard Waker
District 2

Charlie Williamson
District 3

Jack Deines
District 5

George Van Bergen
District 6

Sharon Kelley
District 7

Cindy Banzer
District 9

Larry Cooper
District 10

Marge Kafoury
District 11

Gary Hansen
District 12

2586C/D3-Merge List for 2585C

Dear :

Enclosed are true copies of the following ordinances adopted by the Council of the Metropolitan Service District on December 13, 1984:

Ordinance No. 84-183, Amending the
Personnel Rules for Appointments, Code
Section 2.02.040

Ordinance No. 84-184, Amending the
Regional Waste Treatment Plan ("208"
Plan) to Incorporate Amendments No. 12,
13, 14 and 15, and Request Plan
Recertification

Ordinance No. 84-181, Amending the
Disadvantaged Business Program

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

Sincerely,

Marie Nelson
Clerk of the Council

amn
2585C/D3

Enclosures