

FROM:

Rena Cusma
Executive Officer

Executive Order #15

No longer relevant. Rescinded by Metro
Code Chapter 2.04.

METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

EXECUTIVE ORDER NO. 15

Effective Date: December 7, 1982

Subject: Minority Business Enterprise Amendments

Legislative Authority: Ordinance No. 80-195

This Order amends Metro's Minority Business Enterprise (MBE) program as follows:

1. Metro will not perform MBE/WBE certifications. Metro will recognize any certification awarded by a jurisdiction or agency maintaining a federally approved MBE program.
2. The presumptive conclusion clause and procedure as described on pages 17, 28, 29 and 30 of Metro's MBE program as revised February 1981 are deleted.

The following language is substituted: "Prime contractors must demonstrate good faith best efforts in achieving MBE participation as listed under prime contractor responsibilities, page 18, Section 4. This "best effort" information and/or the following MBE information must be submitted to Metro by the apparent low responsible bidder within five (5) days after bid opening:

- a. name of firms
 - b. principals
 - c. address and telephone number
 - d. scope of MBE/WBE work
 - e. dollar value of subcontract; and
 - f. MBE/WBE percentage of the contract and dollar value.
3. Best or good-faith efforts must include, but are not limited to:
 - a. Advertisement in a trade association newsletter and through a minority-owned newspaper for at least 20 days before bids or proposals are due.
 - b. Written notification to MBES that their interest in the contract is solicited.
 - c. Effort to negotiate with MBES for specific sub-bids including the following:
 - (1) the names, addresses, telephone numbers of all MBES contacted;
 - (2) a description of the information provided to MBES regarding the plans and specifications for portions of the work to be performed; and
 - (3) a statement of the reasons why additional prospective agreements with MBES if needed to meet the goal were not reached.

Metro will not award the contract until this information is provided."

The definitions for Minority, MBE and WBE are as follows:

MINORITY -- According to Title 49 Code of Federal Regulations Part 23.5 (amended December 10, 1981), a minority means a person who is a citizen or lawful permanent resident of the United States and who is: a) Black (a person having origins in any of the black racial groups of Africa); b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race); c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race); d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands); e) American Indian and Alaskan Native (a person having origins in any of the original people of North America); f) members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

MINORITY BUSINESS ENTERPRISE (MBE) -- According to Title 49 Code of Federal Regulations Part 23 effective April 30, 1980, a "Minority Business Enterprise" or "MBE" signifies 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 minorities. For purposes of Metro's MBE Program, owned and controlled means a business:

- (a) Which is at least 51 percent owned by one or more minorities, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; and
- (b) Whose management and daily business operations are controlled by one or more such individuals; more specifically one or more such minorities must also possess and exercise proprietary management control over the financial, planning, marketing, policy-making and operational matters of the business.

WOMEN-OWNED BUSINESS ENTERPRISE (WBE) -- For purposes of Metro's MBE Program, a WBE means a business:

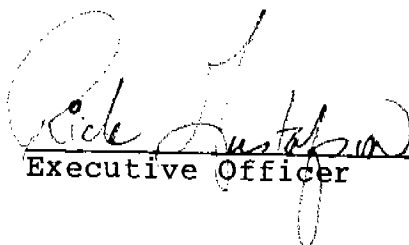
- (a) Which is least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (b) Whose management and daily business operations are controlled by one or more such individuals; more specifically one or more women must also possess and exercise proprietary management control over the financial, planning, marketing, policy-making and operational matters of the business.

A business owned and controlled by minority women is counted toward either the minority goal or the goal for women, but not to both.

To qualify as an MBE/WBE, a firm must be certified prior to bid opening.

Terms of this Order supersede any previous programs or policies on this matter.

Ordered by the Executive Officer this 7th day
of December, 1982.


Executive Officer

RG/JS/srb
6997B/D3
12/07/82



METRO

METROPOLITAN SERVICE DISTRICT

527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: December 6, 1982

To: Council

From: Rick Gustafson, Executive Officer
Rick Gustafson

Regarding: Administrative Revisions to Contract Procedures and the Minority Business Enterprise (MBE) Program

Earlier this year, local contractors expressed concern that the Metro MBE Program and contracting procedures unduly constrained the award of major construction contracts by Metro. In an effort to address possible problems Metro staff met with members of the construction community to discuss possible changes to the existing procedures.

Participants in the meeting were primarily concerned with standardization of bid documents and procedures; and revision of the MBE Program to allow for a "best effort" clause consistent with federal recommendations.

Several recommendations on both areas of concern were derived from the discussion. These were evaluated by staff and determined to be such that they could be implemented through Executive Orders.

Regarding the MBE program, only the policy statement and goals were adopted by the Council. The Council directed the Executive Officer to prepare a program to meet the policy. Therefore, as long as program revisions meet the Council's intent, administrative changes can be made. The same interpretation has been applied to revisions to the contract procedures. The ordinance adopting the procedures allows the Executive Officer to establish regulations not inconsistent with the adopted procedures.

Two Executive Orders were drafted for review and comment by the interested contractors, the Director of the Urban League and the editor of the Skanner. Their comments were incorporated into the final versions which are attached. Future discussions may result in additional changes or amendments.

Order No. 16 requires a standard format which assists bidders by providing some consistency and limits duplication of staff work. This order also specifies conditions under which a bid

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will be excluded from consideration. Contractors feel this insures fairness and avoids manipulation of the rules.

Order No. 15 replaces a mandatory MBE requirement with a "good faith best effort" clause. This approach is now required by the federal government due to the extensive litigation that has resulted from the mandatory requirement. In addition, this order allows MBE information to be submitted up to five days after bid opening.

These actions allow us to immediately address most of the concerns brought to our attention and to reflect changes in the federal regulations while we continue with a more comprehensive MBE program review.

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