

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
 CODE CHAPTER 2.04 IN ORDER TO)
 STRENGTHEN THE MWESB PROGRAM.)
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ORDINANCE NO. 10-1240
 Introduced by Michael Jordan, Chief
 Operating Officer, with the concurrence of
 Council President David Bragdon.

WHEREAS, Metro Code 2.04.100 through 2.04.190 establishes agency policies for maximizing opportunities for minority-owned, women-owned and emerging small businesses (MWESB) in the contracting process; and

WHEREAS, Metro relies on the State of Oregon’s Business Development Department to certify firms as minority-owned business enterprises (MBE), women-owned business enterprises (WBE), and emerging small businesses (ESB); and

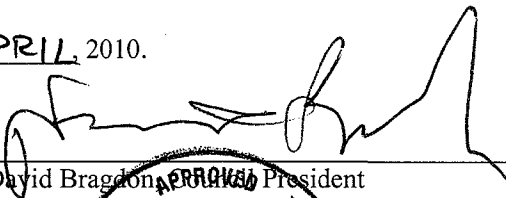
WHEREAS, the Metro Council has determined that participation by MWESB firms in the contracting process is vital to the local economy and is in the best interest of Metro and the community; and

WHEREAS, the Procurement Officer in conjunction with the Office of the Metro Attorney has proposed certain revisions to the Metro Code which will provide additional opportunities to MWESB firms. These revisions are attached as Exhibit A and are hereby incorporated into this resolution; and

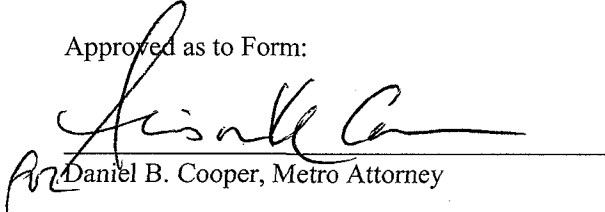
WHEREAS, the proposed revisions to the Metro Code to improve the agency’s MWESB program were included as recommendations in the 2007-2008 Annual MWESB Report provided to the Metro Council pursuant to Metro Code 2.04.170; now therefore

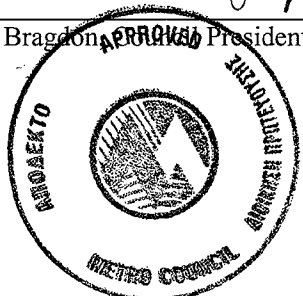
The Metro Council ordains that Metro Code 2.04.100 to 2.04.190 are amended in the form attached hereto as Exhibit A.

ADOPTED by the Metro Council this 22 day of APRIL, 2010.


 David Bragdon, ~~President~~ President

Approved as to Form:


 Daniel B. Cooper, Metro Attorney



METRO ESB, MBE AND WBE PROGRAM

2.04.100 Findings

(a) The Metro Council finds:

- (1) The opportunity for full participation in our free enterprise system by emerging small businesses, minorities and women owned businesses is essential;
- (2) Greater economic opportunity for emerging small businesses, minorities and women owned businesses is essential;
- (3) Historical patterns of exclusion and discrimination against racial or ethnic groups and women resulted in unfortunate effects of social, political and economic inequity that still exist;
- (4) It is in the best interest of Metro and the community to do business with emerging small businesses, minority and women owned businesses resulting in increased competition and a stronger local economy;
- (5) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program should be established to recommend remedies.

(b) It is the purpose of this policy to establish and implement a program to encourage the utilization by Metro of emerging small businesses, minority and women owned businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally-funded Metro contracting activities. This program does not apply to federally-funded contracts, which are governed by Metro Code 2.04.300, et seq.

(Ordinance No. 83-165, Sec. 1. Amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 1; replaced by Ordinance No. 97-692A, Sec. 2.)

2.04.105 Policy Statement

(a) Metro expresses its strong commitment to provide maximum opportunity to do business with ESBs, MBEs and WBEs.

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

(Ordinance No. 83-165, Sec. 2. Amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 3.)

2.04.110 Definitions

For purposes of Metro Code Sections 2.04.100 to 2.04.190, unless the context requires otherwise, the following definitions shall apply:

(aa) "Department" means the State of Oregon's Department of ~~Consumer and Business Affairs Development~~, Office of Minority, Women and Emerging Small Business or such state agency, department or entity to which has been delegated the responsibility to certify a Emerging Small Business Enterprise, Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(bb) "Emerging Small Business ~~Enterprise~~" or "ESB" means a small business concern which is certified as such by the Department.

(ce) "Minority Business Enterprise" or "MBE" means a business concern which is certified as such by the Department.

(d) "Public Improvement" has the meaning specified in Metro Code Section 2.04.010 (m).

(ed) "Women Owned Business Enterprise" or "WBE" means a business concern which is certified as such by the Department.

(Ordinance No. 165, Sec. 3. Amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 96-635B, Sec. 4.; repealed by Ordinance No. 97-692A, Sec. 4; replaced by Ordinance No. 97-692A, Sec. 5.)

2.04.115 Program Administration

(a) The ~~Chief Operating Procurement~~ Officer shall be responsible for administering this program on behalf of the Chief Operating Officer. ~~The Chief Operating Officer may, by executive order, designate a Program Coordinator and, if necessary, other staff adequate to administer this program on the executive's behalf.~~

(b) In administering this program, the ~~Chief Operating Procurement~~ Officer shall advise potential ESB, MBE and WBE vendors that Metro does not certify ESBs, MBEs and WBEs, and shall direct them to the Department.

(Ordinance No. 83-165, Sec. 4. All previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 6; replaced by Ordinance No. 97-692A, Sec. 8; amended by Ordinance No. 02-966A, Sec. 1.)

2.04.120 Program Activities

The ~~Chief Operating Procurement~~ Officer shall ~~direct staff to~~ develop procedures in the following areas leading to increased business with ESBs, MBEs, and WBEs:

(a) Outreach. Such procedures may include electronic notices, ~~telephone hotlines~~, annual contract lists, newsletters, attending regularly-scheduled contractor orientation programs, and participation in local and regional outreach opportunities.

(b) Technical Assistance. Provide information on feasible options for management assistance, ~~-bonding~~, insurance, certification and financial assistance.

(c) Reduce Contract Size. Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by ESBs, MBEs and WBEs.

(d) Education. Periodic training for staff to ensure awareness of program objectives and desired activities on their part.

(e) Plan Centers. Ensuring ESB, MBE and WBE plan centers and contractors are receiving requests for bids, proposals and quotes.

(f) Advertising. Advertise formal purchases and contracting opportunities in at a minimum, one newspaper of general circulation and one minority-oriented publication. Additional advertising may be used in order to increase outreach to the MWESB community.

(g) Informal Purchasing Opportunities. Requiring that at least one ESB and one MBE and one WBE vendor or contractor be contacted for all purchases and contracts more than \$2,5005,000 and less than \$2550,000. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(h) Informal Construction Opportunities. Requiring all public improvement construction opportunities for contracts more than \$2,5005,000 and less than \$2550,000 to be bid only by qualified ESBs, MBEs and WBEs. The Chief Operating Procurement Officer may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(i) Additional Activities. The program coordinator Procurement Officer may establish and implement additional techniques which are consistent with this Program and designed to facilitate participation of ESBs, MBEs and WBEs in Metro purchasing and contracting activities.

(Ordinance No. 83-165, Sec. 5. Amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2;

repealed by Ordinance No. 97-692A, Sec. 7; replaced by Ordinance No. 97-692A, Sec. 9; amended by Ordinance No. 02-966A, Sec. 1.)

2.04.130 Minority-Owned Banks

Metro will seek to identify minority-owned banks and banks utilizing equal opportunity banking practices, including community reinvestment, and, to the greatest extent permitted by law, use their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on such banks.

(Ordinance No. 83-165, Sec. 7. Amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2.)

2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities

The ~~Chief Operating~~Procurement Officer shall establish procedures relating to good faith opportunities for ~~major-formal~~ construction projects. Procedures shall be consistent in nature and scope with those of other local public bodies for ease in understanding for contractors.

(a) Good faith efforts for maximizing ESB, MBE and WBE subcontracting opportunities shall be required for construction contracts ~~in an amount determined by the Chief Operating Officer over \$100,000.~~

(b) At the discretion of the ~~program~~ Procurement Officer, good faith efforts may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids or proposals for such contract.

(c) When construction projects using a proposal process are approved by Council, the staff shall consider past ESB, MBE and WBE utilization as part of the selection criteria. The program coordinator shall provide the awarded contractor with ESB, MBE and WBE targets for subcontracting.

(d) Compliance with good faith efforts during the bidding process is required. Contractors failing to comply will be considered ~~in breach of contract~~non-responsive.

(Ordinance No. 83-165, Sec. 11. Repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 12; Ordinance No. 02-966A, Sec. 1.)

2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities

(a) Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(b) Assuring that minorities and women have access to employment opportunities in the construction industry is critical. The ~~Chief Operating~~Procurement Officer shall establish procedures relating to work apprenticeships for minorities and women for Metro major construction projects. Procedures may include participation in a workforce clearing house providing opportunities for minorities and women.

(Ordinance No. 97-692A, Sec. 14-15. Amended by Ordinance No. 02-966A, Sec. 1.)

2.04.165 Replacement of ESB, MBE or WBE Subcontractors

Prime contractors shall not replace an ESB, MBE or WBE subcontractor with another subcontractor, either before contract award or during contract performance, without the prior notice written consent of~~to~~ Metro. Prime contractors who replace an ESB, MBE or WBE subcontractor shall make good faith efforts as described in the preceding section in selecting a replacement.

(Ordinance No. 83-165, Sec. 14. Amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 28.)

2.04.170 Council Information Reports

~~The On behalf of the~~ Chief Operating Officer, the Procurement Officer shall provide an annual report to Council showing Metro's utilization of ESBs, MBEs and WBEs ~~doing business within Metro~~the procurement and contracting process.

The Chief Operating Officer shall use MWESB utilization when evaluating the performance of this program and of Department Directors.

(Ordinance No. 83-165, Sec. 15. Amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 16; replaced by Ordinance No. 97-692A, Sec. 17; amended by Ordinance No. 02-966A, Sec. 1.)

2.04.190 Severability and Intent

(a) The provisions of Metro Code Sections 2.04.100 to 2.04.190 shall be effective in all cases unless otherwise provided for by state or federal law. The provisions of Metro Code Sections 2.04.100 to 2.04.190 are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of Metro Code Sections 2.04.100 to 2.04.190 or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of Metro Code Sections 2.04.100 to 2.04.190, or the validity of their application to other persons or circumstances.

(b) Metro Code Sections 2.04.100 to 2.04.190 are intended, and should be construed, as establishing and requiring the maximum efforts at assuring ESB, MBE, and WBE participation in Metro contracting activities that is consistent with the United States and Oregon Constitutions and applicable federal and state law.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 19.)

STAFF REPORT

FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.04 IN ORDER TO STRENGTHEN THE MWESB PROGRAM

Date: March 28, 2010

Prepared by: Darin Matthews
Procurement Officer
797-1626

BACKGROUND

Metro Code 2.04.100 to 2.04.190 sets forth the agency's policies on the use of minority-owned, women-owned and emerging small businesses (MWESB) in the procurement and contracting process. These policies were established by the Metro Council as a result of the Regional Disparity Study conducted by state and local agencies in Oregon.

Metro found that the opportunity for MWESB firms to participate in the agency's procurement process was vital to the local economy. It also determined that historical patterns of exclusion and discrimination warranted the need for a program that supported MWESB's.

MWESB Contacts

Currently Metro requires solicitations to purchase goods and services up to \$25,000 include contact with one MBE, one WBE, and one ESB. The Metro Procurement Office is recommending this amount be raised to \$50,000 in order to provide additional contracting opportunities to MWESB's.

Sheltered Market

Construction projects up to \$25,000 currently fall within Metro's sheltered market program. These contracts must be competitively bid solely to qualified MWESB firms. It is recommended that this amount be increased to \$50,000 in order to include more agency projects in the program. This amount is appropriate for our agency based on the types and sizes of projects put out for bid. In comparison, the City of Portland's sheltered market program includes projects up to \$200,000 and Multnomah County's up to \$250,000.

Direct Appointment

The Procurement Office is proposing that personal service contracts up to \$10,000 be directly negotiated with qualified MWESB firms. In addition to providing opportunities to MWESB's, this will also speed up the contracting process for these projects. For the past decade, Multnomah County has successfully used a similar direct appointment process for MWESB personal service providers.

Good Faith Effort

On large construction projects there are often opportunities for MWESB's to earn sub-contracts in their area of expertise. Even when a large non-MWESB general contractor is selected, they can in turn provide opportunities for smaller MWESB firms to earn work. Metro currently requires prime contractors to contact MWESB sub-contractors through our good faith effort program. Procurement Services is proposing that all formal construction projects over \$100,000 include a good faith effort.

Program Responsibilities

Currently the Procurement Officer provides program oversight of the MWESB program on behalf of the Chief Operating Officer. For program duties such as waiving MWESB requirements and requiring good faith efforts, it is suggested that the Procurement Officer be given the necessary authority.

These program enhancements were noted in the Annual MWESB Report submitted to the Metro Council for Fiscal Years 2008 and 2009, and are supported by the Chief Operating Officer and the senior leadership team of Metro. It is believed that these revisions to the Metro Code will help strengthen the agency's MWESB program.

The proposed revisions to this section of the Metro Code are attached to the ordinance as Exhibit A.

ANALYSIS/INFORMATION

1. **Known Opposition** None known.
2. **Legal Antecedents** Metro Code 2.04.100 through 2.04.190, ORS 279A.100
3. **Anticipated Effects** Additional contracting opportunities will be provided to MWESB's; program roles and responsibilities will be clarified.
4. **Budget Impacts** None.

RECOMMENDED ACTION

Metro Council approves the proposed revisions to Metro Code 2.04 in order to strengthen the agency's MWESB procurement program.