

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING METRO'S) RESOLUTION NO. 10- 4214
MWESB CONTRACTING)
RECOMMENDATIONS AND AUTHORIZING) Introduced by Chief Operating Officer
THE METRO CHIEF OPERATING OFFICER TO) Michael Jordan with the concurrence of
IMPLEMENT THE RECOMMENDATIONS) Council President Carlotta Collette.

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

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

WHEREAS, on April 22, 2010 the Metro Council adopted Ordinance No. 10-1240, For the Purpose of Strengthening Metro's MWESB Program and increasing the sheltered market program and informal MWESB bidding threshold to \$50,000; and

WHEREAS, in Attachment A to this Resolution, Metro management staff have identified eleven specific recommendations that will strengthen the agency's MWESB program; and

WHEREAS, the recommendations are consistent with Metro goals and represent best practices in the public procurement process; now therefore,

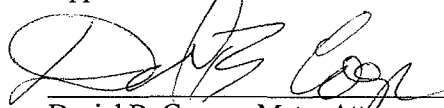
BE IT RESOLVED that the Metro Council hereby adopts the MWESB contracting recommendations and authorizes the Metro Chief Operating Officer to implement the recommendations in the manner that the Chief Operating Officer deems necessary.

ADOPTED by the Metro Council this 18 day of NOV 2010.

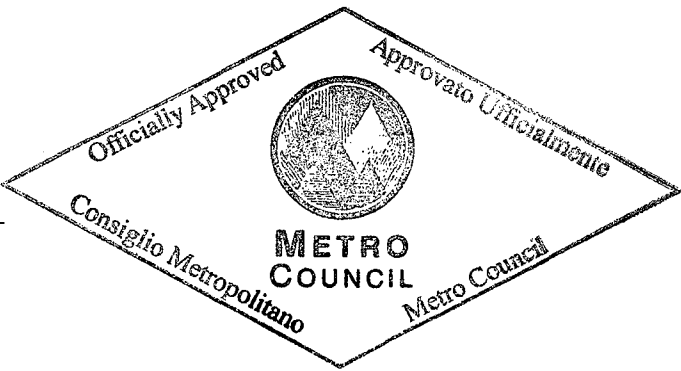


Carlotta Collette, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



**Exhibit A to Resolution No. 10-4214
MWESB Program Recommendations**

Include an MWESB goal in all formal agency bids

Metro should follow the practice employed by other area agencies (Portland Development Commission, City of Portland, TriMet, etc.) and include a numeric goal for MWESB subcontractor participation in all formal bids. Currently the agency requires a documented “good faith effort” of all prime bidders, but does not establish a firm target. We believe that a goal of 15 percent of contract dollars being awarded to MWESB firms is realistic. This approach has recently been used on a lighting project for the Oregon Convention Center, and will also be used on the Veterinary Medical Center project at the Oregon Zoo. This recommendation includes formal bids as well as request for proposals (RFP).

Increase reporting requirements for prime contractors

Our current rules require prime contractors to identify which subcontractors (including MWESBs) they intend to use. Metro should require additional reporting during contract performance to assure that the MWESB subs actually receive the amount of work promised. Reporting could also serve to identify additional opportunities for replacement subcontractors, should the need arise during the course of the project.

Package construction projects to fit within our sheltered market program

We believe that small construction projects can be planned better so that they fall within our sheltered market program (up to \$50,000). Departments should consider this in their annual contracts planning and even consider pulling out pieces of larger contracts to make them more attractive for small business. Local minority business representatives cite this continually as a key approach to providing opportunity to MWESBs.

Include diversity as an evaluation criteria in all agency RFP’s

Metro has used the criteria of Diversity in Employment and Contracting in its selection of major RFPs for services. Recent examples include the transfer station operation, zoo master planning and food distribution. However, we feel that this should become standard criteria for all agency RFPs, even when a specific service area does not have strong MWESB capacity. It still sends the right message for Metro and promotes diversity in the workplace.

Increase the MWESB training program throughout the agency

Training on our MWESB program is currently provided once a year, and this needs to be increased. The committee suggests that MWESB program training be offered at least twice a year and that all program, project and procurement staff throughout the agency be required to attend. As has been done in the past, the Office of Metro Attorney will participate with Procurement Services in hosting these classes.

Better coordinate MWESB and FOTA programs

The MWESB and First Opportunity Target Area (FOTA) programs historically have operated independently. These programs should be coordinated more closely, and bids and RFPs issued by the MERC venues should include appropriate language for both programs. Additionally, the annual reporting to the Metro Council should include utilization data for MWESB and FOTA.

Expand agency outreach to other minority business groups

Metro is highly involved with some minority business associations and has had minimal involvement with others. For example, the agency has been active with the Oregon Association of Minority Entrepreneurs (OAME) and the National Association of Minority Contractors of Oregon (NAMCO), but has not given other organizations adequate time and resources. We feel Metro could benefit by becoming more involved in the Asian, Native American and Hispanic business communities. This includes attendance, participation and sponsorship (when practical) of their minority business events, and communication with each group on current contracting opportunities.

Provide a forum for agency project managers to network with MWESB's

In order to do a better job of reaching out to local MWESBs, Metro should host a minimum of two "meet and greet" events each year. This will provide certified firms the opportunity to network with agency project and program managers, learn more about how Metro does business and become more aware of future contracting opportunities. Metro procurement staff has attended minority business forums consistently (OAME, NAMCO, etc.), but the committee believes that the added presence of project managers at these events would be beneficial.

Actively engage Metro legal counsel in order to maximize MWESB activity

In order for Metro to promote the use of MWESB firms, and stay in full compliance with state and local laws, it is imperative that the Office of Metro Attorney (OMA) be involved. It is recommended that OMA collaborate with the legal counsels of other public agencies to determine what MWESB practices are legally permissible and enforceable. This will allow Metro management to determine the most appropriate level of risk for the agency in strengthening the MWESB program.

Create an electronic notification system for MWESB's

The committee believes that an electronic notification system should be developed that provides automated notice to MWESBs on upcoming bids and RFPs. Other area agencies (TriMet, City of Portland, Port of Portland) are currently utilizing such systems with success. Procurement Services should work with Information Services to develop and implement an online registration and notification system.

Include employee compensation in the selection of contractors

Metro has used employee wages and benefits as a factor in evaluating responses to select RFPs (i.e. waste transfer stations operation), and the committee feels that this criteria should be included in all RFP solicitations. This method allows for best value selection, in that both cost and non-cost factors are used in determining the top ranked contractor. This provides local employment opportunities that include competitive wages and benefits, and also rewards responsible contractors who have established high labor standards.

STAFF REPORT

FOR THE PURPOSE OF ADOPTING METRO'S MWESB CONTRACTING RECOMMENDATIONS AND AUTHORIZING THE METRO CHIEF OPERATING OFFICER TO IMPLEMENT THE RECOMMENDATIONS

Date: November 8, 2010

Prepared by: Darin Matthews
Procurement Officer
797-1626

BACKGROUND

The agency's contracting policies on the use of minority-owned, women-owned and emerging small businesses (MWESB) are set out in Metro Code 2.04.100 to 2.04.190. These policies were originally established as a result of the regional disparity study conducted by state and local governments in 1996.

Like other local governments, Metro found that the opportunity for MWESB firms to participate in the public 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 firms.

Recent Code Changes

In April of this year, the Metro Council adopted resolution 10-1240 in an order to strengthen the MWESB program. The thresholds for the agency's sheltered market program and informal purchasing increased from \$25,000 to \$50,000. All construction related projects up to \$50,000 fall within the sheltered market program and are bid only among qualified MWESB contractors. Additionally, for all other types of purchases up to \$50,000 the agency must contact one MBE, one WBE and one ESB to provide a quote. These changes became effective July 21, 2010.

Senior Leadership Committee

At the request of the Metro Council and the Chief Operating Officer, a committee of senior managers was convened in order to recommend improvements to the agency's MWESB program. This was in part due to Metro's low utilization of MWESB's during the last two fiscal years (6% of contract dollars awarded in both 2008 and 2009), as well as recent criticism of our program from the small business community. The senior management team included the following representatives: Margo Norton, Dan Cooper, Teri Dresler, Cheryl Twete, Marv Fjordbeck, Jim Desmond and Darin Matthews.

The committee evaluated current Metro rules, as well as the programs of other local agencies. These included City of Portland, Multnomah County, Port of Portland, Portland Development Commission, and Housing Authority of Portland. Based on identified best practices in the region, the committee brought forth several recommendations that sought to improve the MWESB program at Metro.

The Metro Code grants authority to the COO to implement additional measures that the COO deems appropriate. These program improvements can be made without additional revisions to the Metro Code and can be implemented promptly. Through the active participation of the Office of Metro Attorney (OMA) on the committee, it was determined that all recommendations are in compliance with state and local rules on competitive bidding.

There has also been recent attention given to Metro's selection of contractors and how wages and benefits are factored into the contract decision. The senior leadership committee believes that this issue should be addressed in our contracting improvements. This step represents equity and fairness in the contracting process.

The recently published annual report of MWESB utilization noted an increase in both the amount of contracts awarded to MWESB contractors, and the dollar amounts of those contracts. Agency utilization increased from 6% (fiscal years 2008 and 2009) to 18% (fiscal year 2010). The hope is that the recent Code changes by the Metro Council and the implementation of these recommendations will allow the agency to continue on this track.

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 and supports the attached program recommendations to the agency's MWESB procurement program.