

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO ) ORDINANCE NO 97-692A  
CODE CHAPTER 2.04, MODIFYING THE )  
MBE/WBE PROGRAM AND ESTABLISHING ) Introduced by Mike Burton, Executive  
AN ESB PROGRAM; AND DECLARING AN ) Officer  
EMERGENCY )

WHEREAS, in 1994 the Metro Council authorized expenditures for a Regional Disparity Study in association with other regional governmental partners; and

WHEREAS, the Study examined construction contracts to determine Metro's utilization of minority and women owned firms; and

WHEREAS, the Regional Disparity Study found no statistical disparity in terms of the dollar amounts of contracts that Metro had let to minority or women owned contractors, and made other recommendations, including establishing an emerging small business program; and

WHEREAS, improvements in the MBE/WBE program have been made; and

WHEREAS, additional changes to Metro's minority and women-owned business programs are needed to expand outreach to and utilization of minority and women owned businesses; and

WHEREAS, this Ordinance was submitted to the Executive Officer for consideration and forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 2.04.100 is repealed and Section 2 of this Ordinance is enacted in lieu thereof.

**SECTION 2.**

**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.

**SECTION 3.** Metro Code Section 2.04.105 is amended to read:

**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.

SECTION 4. Metro Code Section 2.04.110 is repealed and Section 5 of this Ordinance is enacted in lieu thereof.

SECTION 5.

2.04.110 Definitions

For purposes of Metro Code sections 2.04.110 to 2.04.140, unless the context requires otherwise, the following definitions shall apply:

(a) "Department" means the State of Oregon's Department of Consumer and Business Affairs 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.

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

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

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

SECTION 6. Metro Code Section 2.04.115 is repealed.

SECTION 7. Metro Code Section 2.04.120 is repealed and Sections 8 and 9 of this Ordinance are enacted in lieu thereof.

SECTION 8.

2.04.115 Program Administration

(a) The executive officer shall be responsible for administering this program. The executive 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 executive 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.

## SECTION 9.

### 2.04.120 Program Activities

The executive 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, regularly-scheduled contractor orientation programs, and participation in regional outreach opportunities.

(b) **Technical Assistance:** Provide information on feasible options for management assistance, bonding, insurance, 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.

(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 \$2,500 and less than \$25,000. 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 construction opportunities for contracts more than \$2,500 and less than \$25,000 to be bid only by qualified ESBs, MBEs and WBEs. The executive 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) The program coordinator 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.

SECTION 10. Metro Code Section 2.04.125 is repealed.

SECTION 11. Metro Code Sections 2.04.135, 2.04.140 and 2.04.145 are repealed.

SECTION 12. Metro Code Section 2.04.150 is amended to read:

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

The executive officer shall establish procedures relating to good faith opportunities for major 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 opportunities shall be required for construction contracts in an amount determined by the executive officer.

(b) At the discretion of the program coordinator, 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 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 is required. Contractors failing to comply will be considered in breach of contract.

SECTION 13. Metro Code Sections 2.04.155 and 2.04.160 are repealed.

SECTION 14. Section 15 of this Ordinance is added to and made part of Metro Code

Sections 2.04.100 to 2.04.190.

SECTION 15.

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 executive 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.

SECTION 16. Metro Code Section 2.04.170 is repealed, and Section 17 of this

Ordinance is enacted in lieu thereof.

SECTION 17.

2.04.170 Council Information Reports

The executive officer shall provide an annual report to council showing utilization of ESBs, MBEs and WBEs doing business with Metro.

The executive officer shall use utilization when evaluating the performance of this program and department directors.

SECTION 18. Metro Code Section 2.04.180 is repealed.

SECTION 19. Metro Code Section 2.04.190 is amended to read:

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.

SECTION 20. Metro Code Section 2.04.042 is amended to read:

2.04.042 Personal Services Contracts Up to \$25,000

(a) For personal services contracts of less than \$2,500, multiple proposals are not required, but shall be encouraged.

(b) For personal services contracts of \$2,500 or more but not more than \$25,000, proposals shall be

solicited from a minimum of three potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount

of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

SECTION 21. Metro Code Section 2.04.056 is amended to read:

2.04.056 Public Contracts Up to \$25,000

(a) Under \$2,500. For public contracts of less than \$2,500, competitive bids are not required but shall be encouraged.

(b) Between \$2,500 and \$10,000. For public contracts of \$2,500 or more but not more than \$25,000, Metro shall obtain a minimum of three competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Contracts under \$25,000 should be awarded on the basis of the least cost alternative available that is capable of performing the work required.

SECTION 22. Metro Code Sections 2.04.200, 2.04.205, 2.04.210, 2.04.215, 2.04.220, 2.04.225, 2.04.230, 2.04.235, 2.04.240, 2.04.245, 2.04.250, 2.04.255, 2.04.260, 2.04.265, 2.04.270, 2.04.280 and 2.04.290 are repealed.

SECTION 23. Metro Code Section 2.04.300(b) is hereby amended to read:

(b) Metro Code sections 2.04.300-.390 are intended to comply with all relevant federal regulations, including those adopted to 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, and Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

SECTION 24. Metro Code Section 2.04.305(b) is hereby amended to read:

(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, in accordance with Title VI of the Civil Rights Act of 1964. Metro and Metro contractors will 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.

SECTION 25. Metro Code Section 2.04.320 is hereby amended to read:

2.04.320 DBE Liaison Officer

(a) The executive officer shall, by executive order, designate a DBE liaison officer and, if necessary, other staff adequate to administer the DBE Program. The DBE liaison officer shall report directly to the executive officer on matters pertaining to the DBE Program.

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

SECTION 26. Metro Code Section 2.04.345(a) is hereby amended to read:

(a) The Metro council shall, by resolution each August, establish annual DBE 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 USDOT-assisted contracts regardless of type.

SECTION 27. Metro Code Section 2.04.375(a)(8) is repealed.

SECTION 28. Metro Code Section 2.04.165 is hereby amended to read:

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 prior notice 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.

SECTION 29. This Ordinance is necessary for the immediate preservation of public health, safety and welfare; an emergency is therefore declared to exist, and this Ordinance shall take effect immediately, pursuant to Metro Charter Sections 37(2) and 39(1).

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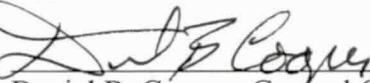


ADOPTED by the Metro Council this 19<sup>th</sup> day of June 1997.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

Approved as to Form:  
  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

MDF:kaj  
IAR-O'97-692A CLN  
6/20/97

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO ) ORDINANCE NO 97-692  
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MBE/WBE PROGRAM AND ESTABLISHING ) Introduced by Mike Burton, Executive  
AN ESB PROGRAM; AND DECLARING AN ) Officer  
EMERGENCY )

WHEREAS, in 1994 the Metro Council authorized expenditures for a Regional Disparity Study in association with other regional governmental partners; and

WHEREAS, the Study examined construction contracts to determine Metro's utilization of minority and women owned firms; and

WHEREAS, the Regional Disparity Study found no statistical disparity in terms of the dollar amounts of contracts that Metro had let to minority or women owned contractors, and made other recommendations, including establishing an emerging small business program; and

WHEREAS, improvements in the MBE/WBE program have been made; and

WHEREAS, additional changes to Metro's minority and women-owned business programs are needed to expand outreach to and utilization of minority and women owned businesses; and

WHEREAS, this Ordinance was submitted to the Executive Officer for consideration and forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 2.04.100 is repealed and Section 2 of this Ordinance is enacted in lieu thereof.

SECTION 2.

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.

SECTION 3. Metro Code Section 2.04.105 is amended to read:

2.04.105 Policy Statement

(a) ~~Through this MBE Program, Metro:~~

- ~~(1) Expresses its strong commitment to provide maximum opportunity to do business with ESBs, MBEs and WBEs in contracting; and~~
- ~~(2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement.~~

(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.

~~(c) The policies, practices and procedures established by the MBE Program shall apply to all Metro departments, commissions and project areas except as expressly provided herein.~~

~~(d) The objectives of the MBE Program shall be:~~

~~(1) To assure that provisions of the MBE Program are adhered to by all Metro departments, contractors and employees; and~~

~~(2) To initiate and maintain efforts to increase, to the greatest extent permitted by law, program participation by minority businesses.~~

SECTION 4. Metro Code Section 2.04.110 is repealed and Section 5 of this Ordinance is enacted in lieu thereof.

#### SECTION 5.

##### 2.04.110 Definitions

For purposes of Metro Code sections 2.04.110 to 2.04.140, unless the context requires otherwise, the following definitions shall apply:

(a) "Department" means the State of Oregon's Department of Consumer and Business Affairs 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.

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

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

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

SECTION 6. Metro Code Section 2.04.115 is repealed.

SECTION 7. Metro Code Section 2.04.120 is repealed and Sections 8 and 9 of this

Ordinance are enacted in lieu thereof.

SECTION 8.

2.04.115 Program Administration

(a) The executive officer shall be responsible for administering this program. The executive 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 executive 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.

SECTION 9.

2.04.120 Program Activities

The executive 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, regularly-scheduled contractor orientation programs, and participation in regional outreach opportunities.

(b) Technical assistance: Provide information on feasible options for management assistance, bonding, insurance, 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.

(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 \$2,500 and less than \$25,000. 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 construction opportunities for contracts more than \$2,500 and less than \$25,000 to be bid only by qualified ESBs, MBEs and WBEs. The executive 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) The program coordinator 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.

SECTION 10. Metro Code Section 2.04.125 is repealed.

SECTION 11. Metro Code Sections 2.04.135, 2.04.140 and 2.04.145 are repealed.

SECTION 12. Metro Code Section 2.04.150 is amended to read:

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

The executive officer shall establish procedures relating to good faith opportunities for major construction projects. Procedures shall be consistent in nature and scope to other local public bodies for ease in understanding for contractors.

(a) Good faith efforts ~~at for maximizing ESB, MBE and WBE opportunities~~ shall be required for construction contracts ~~over \$50,000~~ in an amount determined by the executive officer.

(b) At the discretion of the ~~liaison officer~~ program coordinator, good faith efforts ~~at maximizing MBE opportunities~~ may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids for such contract.

~~\_\_\_\_\_ (c) \_\_\_\_\_ Where good faith efforts are required, the liaison officer shall direct the inclusion of a clause in any RFP or bid documents which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts at maximizing MBE opportunities, as that term is defined in section 2.04.160.~~

\_\_\_\_\_ (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 is required. Contractors failing to comply will be considered in breach of contract.

SECTION 13. Metro Code Sections 2.04.155 and 2.04.160 are repealed.

SECTION 14. Section 15 of this Ordinance is added to and made part of Metro Code Sections 2.04.100 to 2.04.190.

SECTION 15.

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 executive 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.

SECTION 16. Metro Code Section 2.04.170 is repealed, and Section 17 of this Ordinance is enacted in lieu thereof.

SECTION 17.

2.04.170 Council Information Reports

The executive officer shall provide an annual report to council showing utilization of ESBs, MBEs and WBEs doing business with Metro.

The executive officer shall use utilization when evaluating the performance of this program and department directors.

SECTION 18. Metro Code Section 2.04.180 is repealed.

SECTION 19. Metro Code Section 2.04.190 is amended to read:

2.04.190 Severability and Intent

(a) The provisions of ~~the MBE Program~~ 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 ~~the MBE Program~~ 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 the ~~MBE Program~~ 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 the ~~MBE Program~~ Metro Code sections 2.04.100 to 2.04.190, or the validity of its ~~their~~ application to other persons or circumstances.

(b) ~~The MBE Program is~~ 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.

SECTION 20. Metro Code Section 2.04.042 is amended to read:

2.04.042 Personal Services Contracts Up to \$25,000

(a) For personal services contracts of less than \$2,500, multiple proposals ~~need not be obtained~~ are not required, but ~~are~~ shall be encouraged.

(b) ~~For P~~ personal services contracts of \$2,500 or more but not more than \$25,000, proposals shall be subject to the following process:

~~Proposals shall be solicited from at least a minimum of three potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person. Prior to selecting any contractor for a personal services contract greater than \$10,000 but not more than \$25,000, the procurement officer shall publish notice of the intent to solicit competitive proposals, and include a summary of the nature of the proposed contract, the estimated cost of the contract, and the name of a contact person. No contract selection may be made until at least five days after such publication and after consideration of all proposals received.~~

SECTION 21. Metro Code Section 2.04.056 is amended to read:

2.04.056 Public Contracts Under Up to \$25,000

(a) Under \$2,500. ~~For public contracts of less than \$2,500, C~~ competitive bids are not required for public contracts less than \$2,500. Metro should, where feasible, ~~obtain competitive quotes.~~ but shall be encouraged.

(b) Between \$2,500 and \$10,000. ~~For public contracts of \$2,500 or more but not more than \$25,000, Metro shall~~ Unless otherwise exempt from competitive bidding under section 2.04.054, when the amount of the contract is \$2,500 or more, but less than \$10,000, Metro must obtain a minimum of three competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not



available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

~~(c) Between \$10,000 and \$25,000. Unless otherwise exempt from competitive bidding under section 2.04.054, when the amount of the contract is \$10,000 or more, but not more than \$25,000, Metro must obtain a minimum of three competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person. The procurement officer shall publish notice of the intent to solicit competitive quotes, including a summary of the information supplied by the contracting department regarding the nature of the proposed contract. No contract selection may be made until at least five days after such publication and after consideration of all quotes received.~~

(dc) Contracts under \$25,000 should be awarded on the basis of the least cost alternative available that is capable of performing the work required.

SECTION 22. Metro Code Sections 2.04.200, 2.04.205, 2.04.210, 2.04.215, 2.04.220, 2.04.225, 2.04.230, 2.04.235, 2.04.240, 2.04.245, 2.04.250, 2.04.255, 2.04.260, 2.04.265, 2.04.270, 2.04.280 and 2.04.290 are repealed.

SECTION 23. Metro Code Section 2.04.300(b) is hereby amended to read:

(b) Metro Code sections 2.04.300-.390 are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. ~~Federal regulation 49 CFR 23 and its amendments including those adopted to~~ 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, and Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

SECTION 24. Metro Code Section 2.04.305(b) is hereby amended to read:

(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, in accordance with Title VI of the Civil Rights Act of 1964. Metro and Metro contractors will 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.

SECTION 25. Metro Code Section 2.04.320 is hereby amended to read:

2.04.320 DBE Liaison Officer

(a) The executive officer shall, by executive order, designate a ~~disadvantaged business-~~DBE liaison officer and, if necessary, other staff adequate to administer the DBE Program. The DBE liaison officer shall report directly to the executive officer on matters pertaining to the DBE Program.

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

SECTION 26. Metro Code Section 2.04.345(a) is hereby amended to read:

(a) The Metro council shall, by resolution each ~~June~~ August, establish annual DBE 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 USDOT-assisted contracts regardless of type.

SECTION 27. Metro Code Section 2.04.375(a)(8) is repealed.

SECTION 28. This Ordinance is necessary for the immediate preservation of public health, safety and welfare; an emergency is therefore declared to exist, and this Ordinance shall take effect immediately, pursuant to Metro Charter Sections 37(2) and 39(1).

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_ 1997.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

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4/21/97

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. **97-692** AMENDING METRO CODE CHAPTER 2.04; MODIFYING THE MBE/WBE PROGRAM AND ESTABLISHING AN ESB PROGRAM; AND DECLARING AN EMERGENCY

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Date: April 21, 1997

Presented by: Scott Moss

## PROPOSED ACTION

Adoption of amendments to Metro Code 2.04 making modifications to the Minority Business Enterprise Program, Women Business Enterprise Program, and Disadvantaged Business Enterprise Program

## FACTUAL BACKGROUND AND ANALYSIS

In 1992, Metro Council added to the Metro Code an MBE and WBE program. (Ordinance No. 92-466)

In 1994, the Council authorized Metro to contribute to a Regional Disparity Study. The Disparity Study was completed in July 1996, at which time staff provided a full report to Council. A follow up staff report was provided to Council in November, 1996.

After five years experience with Metro's MBE/WBE program and with the recommendations from the Disparity Study, staff recommends making changes to the MBE/WBE Program.

This ordinance makes the following proposed changes:

- Add flexibility to the MBE/WBE program while reducing the bureaucracy associated with the current program. Allows program coordinator to establish creative procedures within the limits of the policy to promote MBE/WBE/ESB utilization. Reduces the program from 47 pages to nine.
- Establish an emerging small business (ESB) program.
- Change advertising for informal bids and proposals to methods other than newspapers, saving approximately \$10,000 annually. (Funds will be used for other program enhancements such as the apprenticeship program.)
- Require an MBE, WBE and ESB to be contacted for bids and proposals over \$2,500.

- Provide for a sheltered market for construction contracts under \$25,000. This program provides first opportunity for MBEs, WBEs and ESBs to bid on informal construction projects.
- Modify the Good Faith Effort (GFE) program to allow flexibility. This would allow the Good Faith Effort program to be consistent with other local jurisdictions making adherence easier for prime and subcontractors.
- Toughen compliance and penalty for failure to perform good faith efforts or follow through on commitments made in the bid.
- Authorize apprenticeship programs for minorities and women on major Metro construction projects.
- Affirm Metro contractors from discriminating 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.
- Make housekeeping changes to Metro's Disadvantaged Business Enterprises section in accordance with Federal requirements.

The proposed changes have been forwarded to the M/WBE contracting community and minority and contractor organizations. Staff is available to respond to questions. Implementation would be July 1, 1997. No additional funding is requested for this ordinance.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. **97-692**.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO ) ORDINANCE NO 97-692A  
CODE CHAPTER 2.04, MODIFYING THE )  
MBE/WBE PROGRAM AND ESTABLISHING ) Introduced by Mike Burton, Executive  
AN ESB PROGRAM; AND DECLARING AN ) Officer  
EMERGENCY )

WHEREAS, in 1994 the Metro Council authorized expenditures for a Regional Disparity Study in association with other regional governmental partners; and

WHEREAS, the Study examined construction contracts to determine Metro's utilization of minority and women owned firms; and

WHEREAS, the Regional Disparity Study found no statistical disparity in terms of the dollar amounts of contracts that Metro had let to minority or women owned contractors, and made other recommendations, including establishing an emerging small business program; and

WHEREAS, improvements in the MBE/WBE program have been made; and

WHEREAS, additional changes to Metro's minority and women-owned business programs are needed to expand outreach to and utilization of minority and women owned businesses; and

WHEREAS, this Ordinance was submitted to the Executive Officer for consideration and forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 2.04.100 is repealed and Section 2 of this Ordinance is enacted in lieu thereof.

SECTION 2.

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.

SECTION 3. Metro Code Section 2.04.105 is amended to read:

2.04.105 Policy Statement

(a) ~~Through this MBE Program, Metro:~~

- ~~(1) Expresses its strong commitment to provide maximum opportunity to do business with ESBs, MBEs and WBEs in contracting; and~~
- ~~(2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement.~~

(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.

~~(c) The policies, practices and procedures established by the MBE Program shall apply to all Metro departments, commissions and project areas except as expressly provided herein.~~

~~(d) The objectives of the MBE Program shall be:~~

~~(1) To assure that provisions of the MBE Program are adhered to by all Metro departments, contractors and employees; and~~

~~(2) To initiate and maintain efforts to increase, to the greatest extent permitted by law, program participation by minority businesses.~~

SECTION 4. Metro Code Section 2.04.110 is repealed and Section 5 of this Ordinance is enacted in lieu thereof.

SECTION 5.

2.04.110 Definitions

For purposes of Metro Code sections 2.04.110 to 2.04.140, unless the context requires otherwise, the following definitions shall apply:

(a) "Department" means the State of Oregon's Department of Consumer and Business Affairs 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.

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

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

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

SECTION 6. Metro Code Section 2.04.115 is repealed.

SECTION 7. Metro Code Section 2.04.120 is repealed and Sections 8 and 9 of this

Ordinance are enacted in lieu thereof.

SECTION 8.

2.04.115 Program Administration

(a) The executive officer shall be responsible for administering this program. The executive 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 executive 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.

SECTION 9.

2.04.120 Program Activities

The executive 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, regularly-scheduled contractor orientation programs, and participation in regional outreach opportunities.

(b) Technical Assistance: Provide information on feasible options for management assistance, bonding, insurance, 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.

(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 \$2,500 and less than \$25,000. 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 construction opportunities for contracts more than \$2,500 and less than \$25,000 to be bid only by qualified ESBs, MBEs and WBEs. The executive 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) The program coordinator 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.

SECTION 10. Metro Code Section 2.04.125 is repealed.

SECTION 11. Metro Code Sections 2.04.135, 2.04.140 and 2.04.145 are repealed.

SECTION 12. Metro Code Section 2.04.150 is amended to read:

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

The executive officer shall establish procedures relating to good faith opportunities for major 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 ~~at for~~ maximizing ESB, MBE and WBE opportunities shall be required for construction contracts ~~over \$50,000~~ in an amount determined by the executive officer.

(b) At the discretion of the ~~liaison officer~~ program coordinator, good faith efforts ~~at maximizing MBE opportunities~~ may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids for such contract.

~~Where good faith efforts are required, the liaison officer shall direct the inclusion of a clause in any RFP or bid documents which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts at maximizing MBE opportunities, as that term is defined in section 2.04.160.~~

(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 is required. Contractors failing to comply will be considered in breach of contract.

SECTION 13. Metro Code Sections 2.04.155 and 2.04.160 are repealed.

SECTION 14. Section 15 of this Ordinance is added to and made part of Metro Code Sections 2.04.100 to 2.04.190.

SECTION 15.

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 executive 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.

SECTION 16. Metro Code Section 2.04.170 is repealed, and Section 17 of this Ordinance is enacted in lieu thereof.

SECTION 17.

2.04.170 Council Information Reports

The executive officer shall provide an annual report to council showing utilization of ESBs, MBEs and WBEs doing business with Metro.

The executive officer shall use utilization when evaluating the performance of this program and department directors.

SECTION 18. Metro Code Section 2.04.180 is repealed.

SECTION 19. Metro Code Section 2.04.190 is amended to read:

2.04.190 Severability and Intent

(a) The provisions of ~~the MBE Program~~ 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 ~~the MBE Program~~ 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 the ~~MBE Program~~ 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 the ~~MBE Program~~ Metro Code sections 2.04.100 to 2.04.190, or the validity of its their application to other persons or circumstances.

(b) ~~The MBE Program is~~ 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.

SECTION 20. Metro Code Section 2.04.042 is amended to read:

2.04.042 Personal Services Contracts Up to \$25,000

(a) For personal services contracts of less than \$2,500, multiple proposals ~~need not be obtained~~ are not required, but ~~are~~ shall be encouraged.

(b) ~~For P~~personal services contracts of \$2,500 or more but not more than \$25,000, proposals shall be subject to the following process:

~~Proposals shall be solicited from at least a minimum of three potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person. Prior to selecting any contractor for a personal services contract greater than \$10,000 but not more than \$25,000, the procurement officer shall publish notice of the intent to solicit competitive proposals, and include a summary of the nature of the proposed contract, the estimated cost of the contract, and the name of a contact person. No contract selection may be made until at least five days after such publication and after consideration of all proposals received.~~

SECTION 21. Metro Code Section 2.04.056 is amended to read:

2.04.056 Public Contracts Under Up to \$25,000

(a) Under \$2,500. ~~For public contracts of less than \$2,500, C~~competitive bids are not required for public contracts less than \$2,500. Metro should, where feasible, obtain competitive quotes, but shall be encouraged.

(b) Between \$2,500 and \$10,000. ~~For public contracts of \$2,500 or more but not more than \$25,000, Metro shall~~ Unless otherwise exempt from competitive bidding under section 2.04.054, when the amount of the contract is \$2,500 or more, but less than \$10,000, Metro must obtain a minimum of three competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not

available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

~~(c) Between \$10,000 and \$25,000. Unless otherwise exempt from competitive bidding under section 2.04.054, when the amount of the contract is \$10,000 or more, but not more than \$25,000, Metro must obtain a minimum of three competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person. The procurement officer shall publish notice of the intent to solicit competitive quotes, including a summary of the information supplied by the contracting department regarding the nature of the proposed contract. No contract selection may be made until at least five days after such publication and after consideration of all quotes received.~~

(dc) Contracts under \$25,000 should be awarded on the basis of the least cost alternative available that is capable of performing the work required.

SECTION 22. Metro Code Sections 2.04.200, 2.04.205, 2.04.210, 2.04.215, 2.04.220, 2.04.225, 2.04.230, 2.04.235, 2.04.240, 2.04.245, 2.04.250, 2.04.255, 2.04.260, 2.04.265, 2.04.270, 2.04.280 and 2.04.290 are repealed.

SECTION 23. Metro Code Section 2.04.300(b) is hereby amended to read:

(b) Metro Code sections 2.04.300-.390 are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. ~~Federal regulation 49 CFR 23 and its amendments including those adopted to 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, and Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991.~~ including those adopted to 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, and Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

SECTION 24. Metro Code Section 2.04.305(b) is hereby amended to read:

(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, in accordance with Title VI of the Civil Rights Act of 1964. Metro and Metro contractors will 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.

SECTION 25. Metro Code Section 2.04.320 is hereby amended to read:

2.04.320 DBE Liaison Officer

(a) The executive officer shall, by executive order, designate a ~~disadvantaged business-~~DBE liaison officer and, if necessary, other staff adequate to administer the DBE Program. The DBE liaison officer shall report directly to the executive officer on matters pertaining to the DBE Program.

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

SECTION 26. Metro Code Section 2.04.345(a) is hereby amended to read:

(a) The Metro council shall, by resolution each ~~June~~ August, establish annual DBE 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 USDOT-assisted contracts regardless of type.

SECTION 27. Metro Code Section 2.04.375(a)(8) is repealed.

SECTION 28. Metro Code Section 2.04.165 is hereby amended to read:

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 prior notice 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.

SECTION 2829. This Ordinance is necessary for the immediate preservation of public health, safety and welfare; an emergency is therefore declared to exist, and this Ordinance shall take effect immediately, pursuant to Metro Charter Sections 37(2) and 39(1).

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ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 1997.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

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