

BEFORE THE METRO LOCAL CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AMENDING METRO'S)	RESOLUTION NO. 20-5099
RULES OF PROCEDURE TO ADVANCE)	
EQUITY IN PUBLIC CONTRACTING)	Introduced by Chief Operating Officer
)	Marissa Madrigal in concurrence with
)	Council President Lynn Peterson

WHEREAS, the Metro Council is the Local Contract Review Board for Metro, and as such is authorized to adopt rules of procedure for public contracting; and

WHEREAS, on June 15, 2017 (Resolution 17-4814), the Metro Local Contract Review Board adopted rules of procedure to advance equity in public contracting at Metro ("Equity in Contracting Rules"); and

WHEREAS, on October 25, 2018 (Resolution 18-4940), the Metro Local Contract Review Board amended its Equity in Contracting Rules; and

WHEREAS, the Metro Local Contract Review Board has directed procurement staff to periodically review Metro's Equity in Contracting Rules to ensure that such rules contain optimal business practices that provide opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses; and

WHEREAS, procurement staff now proposes revisions to Metro's Equity in Contracting Rules to achieve such purposes; now therefore

BE IT RESOLVED that the Metro Local Contract Review Board adopts the revisions to the Equity in Contracting Rules attached hereto as Exhibit A, Metro Equity in Contracting Rules, Procurement Administrative Rules.

ADOPTED by the Metro Local Contract Review Board this 7th day of May, 2020.



Lynn Peterson, Council President

Approved as to Form:

DocuSigned by:



Carrie MacLaren, Metro Attorney

METRO
EQUITY IN CONTRACTING RULES
Procurement Administrative Rules

SUBJECT: Rules and Requirements for Metro's Equity in Contracting Program

PURPOSE: To adopt rules of procedure to advance equity in public contracting that promote economic growth of disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses

DEPARTMENT RESPONSIBLE: Finance Department
PROCUREMENT

DEPARTMENTS AFFECTED: All Metro Departments

DATE: May 7, 2020

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I. POLICY STATEMENT

Metro expresses its strong commitment to provide contracting opportunities to State of Oregon certified minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses (collectively referred to herein as “COBID Certified Businesses”). Metro hereby creates its Equity in Contracting Program (the “Program”) to advance equity in public contracting, promote economic growth of COBID Certified Businesses and provide additional competition for Metro contracts. The Program is intended to function in addition to the general rules and procedures applicable to Metro procurements.

II. DEFINITIONS

- A. **COBID** - The State of Oregon’s Certification Office for Business Inclusion and Diversity, created within the Oregon Business Development Department or such state agency, department or entity to which has been delegated the responsibility to certify minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses.
- B. **Department** - A Metro Department or any unit or staff within a Department that has responsibilities for procuring public contracts.
- C. **Emerging small business** - Meaning set forth in ORS 200.005(5).
- D. **“Minority-owned business”, “woman-owned business” or “business that a service-disabled veteran owns”** - Meanings set forth in ORS 200.005(7).
- E. **Oregon Procurement Information Network (ORPIN)** - The online procurement solicitation system operated by the State of Oregon, and utilized by the State and other local governments and political subdivisions to issue procurement and contracting opportunities and information.
- F. **Procurement Officer** - The Metro Director of Finances and Regulatory Services, or the Procurement Manager as his/her delegatee.

III. PROGRAM ADMINISTRATION

The Procurement Officer shall be responsible for administering and implementing the Program on behalf of the Chief Operating Officer. Procedural rules created to implement the Program shall be promulgated for Department comment prior to their adoption by the Metro Local Contract Review Board. When deemed appropriate by the Metro Chief Operating Officer, Metro may seek public input before adopting, amending, or repealing such rules.

In administering the Program, the Procurement Officer shall advise all potential contractors that COBID is the sole agency that may certify enterprises and businesses as minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses. In the event the Procurement Officer determines that ORPIN is no longer the preferred electronic procurement system to solicit COBID Certified Businesses, all references to ORPIN in these Administrative Rules shall be construed to mean whatever replacement electronic procurement solicitation system chosen by the Procurement Officer.

IV. GENERAL PROGRAM ACTIVITIES

The Procurement Officer shall engage in the following activities with the goal of increasing Metro business with COBID Certified Businesses:

- A. **Outreach** - Engage in additional outreach procedures, including electronic notices of public contract solicitations, newsletters, attending regularly-scheduled contractor orientation programs, open houses, and participation in local and regional outreach opportunities.
- B. **Technical Assistance** - Provide technical assistance and information to outside third parties on feasible options for management assistance, bonding, insurance, certification, and Metro procurement processes.
- C. **Package Contracting Opportunities** - Examine alternatives for arranging public contract solicitations by type of work, subcontracting opportunities and partnerships so as to enhance the possibility of participation by COBID Certified Businesses.
- D. **Internal Education** - Provide periodic training and continuing education to Departments to ensure awareness of Program objectives and desired activities.

V. PROGRAM SOLICITATION AND SCORING REQUIREMENTS FOR PUBLIC CONTRACTS OTHER THAN PUBLIC IMPROVEMENTS

- A. **Small Procurements** - For small procurements (\$10,000 and under), Departments are strongly encouraged to review the COBID certification directory for firms in the category of work being solicited before awarding the contract.
- B. **Intermediate Procurements** - For intermediate procurements (exceeding \$10,000 but not exceeding \$150,000), Departments are required to directly solicit at least one minority-owned business, one woman-owned business, one business that a service-disabled veteran owns and one emerging small business. The Procurement Officer may waive the foregoing direct solicitation requirement if, upon review of the COBID certification directory, there are no such businesses qualified in the category of work being solicited. As an alternative to the direct solicitation requirement, Departments may instead advertise the intermediate contracting opportunity broadly on ORPIN.
- C. **Formal Procurements** - For formal procurements (over \$150,000), Departments are required to broadly advertise the competitive contracting opportunity on ORPIN. In addition, all formal procurements shall also be advertised in at least one minority-focused publication.
- D. **Proposal Scoring** - For requests for proposals procuring contracts for goods and services or personal services, 20% of the total available scoring points shall be based on the following Program criteria: COBID certification, firm demographics, support for workforce diversity, and, if applicable, utilization of COBID-certified subcontractors.
- E. **Exceptions to Requirements** - The Program solicitation and scoring requirements set forth in this Section V are not applicable to emergency procurements, sole source procurements, or any other special procurements that allow for direct award of a contract without competitive solicitation.

VI. PROGRAM SOLICITATION AND SCORING REQUIREMENTS FOR PUBLIC IMPROVEMENT CONTRACTS

- A. **Small Procurements** - For procurements of small public improvement contracts (\$5,000 and under), Departments are strongly encouraged to review the COBID certification directory for firms in the category of work being solicited before directly awarding the contract.
- B. **Intermediate Procurements (Competitive Quotes)** - Subject to the applicable Mandatory COBID Marketplace rule provided for below in Section VII(B), for intermediate procurement of public improvement contracts based off competitive quotes (exceeding \$5,000 but not exceeding \$100,000), Departments are required to directly solicit at least one minority-owned business, one woman-owned business, one business that a service-disabled veteran owns and one emerging small business. The Procurement Officer may waive the direct solicitation requirement if, upon review of the COBID certification directory, there are no such businesses qualified in the category of work being solicited. As an alternative to the direct solicitation requirement, Departments may instead advertise the intermediate contracting opportunity broadly on ORPIN.
- C. **Formal Procurements** - For formal procurements of public improvement contracts (over \$100,000), Departments are required to advertise the competitive contracting opportunity broadly on ORPIN. In addition, all formal procurements of public improvement contracts (over \$100,000) shall also be advertised in at least one minority-focused publication.
- D. **Proposal Scoring** - For public improvement contracts procured through alternative contracting methods, 20% of the total available scoring points will be based on the following Program criteria: COBID certification, firm demographics, support for workforce diversity, and, if applicable, utilization of COBID-certified subcontractors.
- E. **Exceptions to Requirements** - The Program solicitation and scoring requirements set forth in this Section VI are not applicable to emergency procurements or any other special/alternative procurements that allow for direct award of a public improvement contract without competitive solicitation.

VII. COBID MARKETPLACE

- A. **Elective Direct Award for Personal Services Contracts** - Departments may directly award a personal services contract that exceeds \$10,000 without following otherwise required competitive solicitation procedures if (i) the contractor is a COBID Certified Business, and (ii) the contract is for an amount that does not exceed \$150,000. All other rules and procedures applicable to personal services procurements set forth in the Metro Personal Services Contracting Manual remain applicable (e.g., contractor compliance, insurance, non-conflict of interest, etc.). A Department cannot enter into more than one direct award contract with an individual COBID Certified Business at a time. Once a Department has awarded a direct contract to a COBID Certified Business, they cannot award another direct contract to the same contractor until the work of the first directly-awarded contract is completed.
- B. **Mandatory Procedures for Public Improvement Contracts Under \$50,000** - For public improvement contracts that exceed \$5,000 but are less than \$50,000, Metro shall only consider competitive quotes, bids, and proposals from COBID Certified

Businesses. The Procurement Officer may waive this requirement after making a written determination that there is not a competitive pool of businesses on COBID's certification list available and qualified to perform the work in accordance with reasonably required standards. The mandatory procedures set forth in this Section VII(B) shall not apply to emergency procurements or any other alternative procurements that allow for direct award of a public improvement contract without competitive solicitation.

VIII. SUBCONTRACTOR EQUITY PROGRAM

Metro's Subcontractor Equity Program is intended to incorporate the standards for good faith efforts described in ORS 200.045. The purpose of the Subcontractor Equity Program is to provide equitable opportunities for COBID Certified Businesses to participate in subcontract opportunities created through Metro public improvement contracts.

Prime contractors who intend to subcontract any portion of the project work are required to fulfill the following actions in order to comply with the Subcontractor Equity Program:

- A. Contractor contacts all COBID Certified Businesses who attend the project's presolicitation or prebid meeting and who indicated an interest in any subcontracting to solicit bids for subcontracting or material supply opportunities;
- B. Contractor identifies and selects specific economically feasible units of the public improvement contract that COBID Certified Businesses may perform in order to increase the likelihood that COBID certified subcontractors will participate in the public improvement contract;
- C. Contractor provides written notice of the subcontracting opportunities to a reasonable number of specific COBID Certified Businesses in sufficient time to allow such enterprises or businesses to participate effectively;
- D. Contractor follows up on initial solicitations of interest to determine with certainty whether the COBID certified businesses are interested in the subcontracting opportunities;
- E. Contractor provides interested COBID Certified Businesses with adequate information about plans, specifications and requirements for subcontracting or material supply work in connection with the public improvement contract;
- F. Contractor negotiates with interested COBID certified subcontractors, and does not without justifiable reason reject as unsatisfactory bids or proposals that COBID enterprises or businesses prepare;
- G. Contractor advises and assists interested COBID certified subcontractors to obtain, when necessary, bonding, lines of credit or insurance that the contracting agency or contractor requires; and
- H. Contractor uses the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations that Metro identifies as providing assistance in recruiting COBID Certified Businesses for participation in public improvement contracts.

The Procurement Officer shall determine if any offer or proposal complies with requirements of the Subcontractor Equity Program. If the Subcontractor Equity Program documentation submitted by the offeror fails to substantially comply with the requirements of the solicitation document, the bidder/proposer shall be deemed non-responsible and shall be rejected by the Procurement Officer. Contractor is required to complete a monthly utilization report tracking progress toward

the subcontracting plan outlined in the offer. Compliance with the Subcontractor Equity Program must be maintained during the entire period of the contract. Non-compliance may constitute a breach of contract.

IX. PRESOLICITATION EQUITY STRATEGY MEETING

For all formal, competitive procurements (personal services contracts and goods and services contracts over \$150,000; public improvement contracts over \$100,000), the Department project manager shall meet with the Procurement Officer prior to releasing a solicitation to discuss opportunities for setting aspirational goals for equity and diversity. Such aspirational goals may include, but are not limited to, focus on COBID certified prime contracting, subcontractor utilization, workforce diversity, mentorship, training, and any other areas identified by the Procurement Officer which will likely result in the advancement of equity and diversity related to the procurement.

IN CONSIDERATION OF RESOLUTION NO. 20-5099, FOR THE PURPOSE OF
AMENDING METRO'S RULES OF PROCEDURE TO ADVANCE EQUITY IN PUBLIC
CONTRACTING

Date: 4/23/2020
Department: Finance and Regulatory
Services
Meeting Date: 5/7/2020

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Presenters:
Tracy Fisher and Riko Tannenbaum
Length: 10 minutes

ISSUE STATEMENT

Procurement Services seeks to provide COBID-certified firms with simplified access to Metro's intermediate personal services contracts. For that purpose, staff seek to increase the limit for the COBID Marketplace Personal Services procurement method from \$50,000 to \$150,000.

ACTION REQUESTED

Act as Local Contract Review Board to update Metro's Equity in Contracting Administrative Rules section VII.A. to increase the limit for COBID Marketplace Elective Direct Award for Personal Services Contracts to \$150,000.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

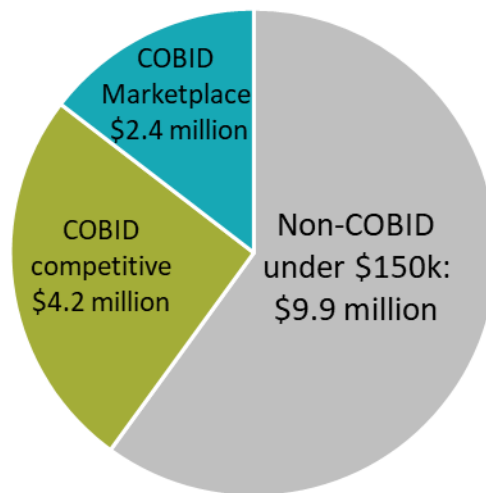
Legal context:

State law allows Local Contract Review Boards to determine procurement methods for personal services (ORS 279A.055 and ORS 279A.070). Metro's existing Equity in Contracting Administrative Rules provide an optional COBID Marketplace Personal Services method up to \$50,000. The Certification Office of Business Inclusion and Diversity (COBID) certifies firms as minority-owned, woman-owned, service disabled veteran-owned and emerging small businesses. This procurement process allows staff to replace lengthy competitive processes with a direct award to a COBID certified firm with a few restrictions. The project must be low risk and each firm can only hold one open COBID Marketplace contract per department at Metro. These restrictions help to ensure that opportunities are available to multiple firms and help prevent favoritism. This update would align the optional COBID Marketplace Personal Services method with the intermediate procurement threshold of \$150,000. It would not change competitive methods for formal personal services procurement above \$150,000.

Opportunity:

The COBID Marketplace Personal Services method was introduced in 2017. This method has proven very successful at the current limit of \$50,000. Since introduced, nearly 70 contracts valued at just over \$2.4 million have been awarded to COBID certified firms using this simple procurement method. There is additional opportunity to expand this program by increasing the dollar value limit. Over the same time, COBID firms were awarded 40 contracts under \$150,000, totaling \$4.2 million, through competitive processes. Yet, 103 contracts totaling \$9.9 million were awarded to non-certified firms. This amounts to a success rate just under 30% for COBID certified firms. By allowing the COBID Marketplace procurement method up to \$150,000, many of these non-COBID contracts could have been awarded directly to COBID certified firms.

COBID Marketplace Personal Services Opportunity



Equity in Contracting:

Metro’s Strategic Plan to Advance Racial Equity Diversity and Inclusion identifies procurement as a core method to advance racial equity in Goal E: Metro’s resource allocation advances racial equity. This request directly addresses one of the challenges identified in the Strategic Plan: “Barriers in Metro contracting processes prevent COBID-certified firms and community partners from realizing contracting opportunities.” As shown in the figure above, COBID certified firms were able to access fewer than 30% of competitively solicited personal services contracts under \$150,000. By allowing this process that reduces the barriers to those contracts, staff expect to see more COBID certified firms realizing contracting opportunities. Additionally, providing experience with intermediate contracts is an effective way to increase small business capacity by better preparing firms for success in competitive procurement of higher value contracts.

ATTACHMENTS

Resolution No. 20-5099 for the purpose of amending Metro’s rules of procedure to advance equity in public contracting

Redlined updates to Equity in Contracting Administrative Rules

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