

BEFORE THE BOARD OF COUNTY COMMISSIONERS
ACTING AS THE PUBLIC CONTRACT REVIEW BOARD
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 289

An Ordinance adopting rules of the Multnomah County Public Contract Review Board for affirmative action in public contracts.

Multnomah County ordains as follows:

Section. 1. Findings and Declarations.

A. The Board of County Commissioners has been established as the Local Contract Review Board for Multnomah County with authority to adopt rules and regulations relating to the award of County contracts.

B. There is a need to provide for consistent contracting practices to ensure compliance with ORS Chapter 279 as well as meet requirements for "Participation by Minority Business Enterprise in the Department of Transportation's Programs", issued April 31, 1980, 49 Code of Federal Regulations, Part 23.

C. Division 60 of the Rules of the Multnomah County Public Contract Review Board for Affirmative Action in Public Contracts, amended by Ordinance 268, previously promulgated by the Board, is in need to updating and revision because of certain changes in the U.S. Department of Transportation's requirements relating to Minority Business Enterprise Programs and for purposes of providing for an upgraded policy that is consistent with the County's goals and commitment to affirmative action.

D. The policies set forth in Division 60 will ensure conformance with new federal regulations for Department of Transportation-assisted contracts, and are designed to encourage and ensure participation by minorities and females in public works and other selected contracts let by Multnomah County, as authorized by ORS 279.053 (1981).

Section 2. Adoption of Rules.

The Multnomah County Public Contract Review Board Administrative Rules, Division 60, dated November 17, 1981, attached as Exhibit A and incorporated by reference herein, are hereby adopted and replace Division 60 of those administrative rules previously promulgated by the Board as part of Ordinance 268.

Adopted this 17th day of November, 1981, being the date of its second reading before the Board of County Commissioners of Multnomah County, Oregon, acting as the Public Contract Review Board for Multnomah County.

(SEAL)

BOARD OF COUNTY COMMISSIONERS
ACTING AS THE PUBLIC CONTRACT
REVIEW BOARD
FOR MULTNOMAH COUNTY, OREGON

By

Philip McCloy
Presiding Officer

AUTHENTICATED THIS 18th day of November, 1981.

Donald E. Clark
Donald E. Clark, County Executive
C612

APPROVED AS TO FORM:
JOHN B. LEAHY, County Counsel
for Multnomah County, Oregon

By

Larry Kressel
Deputy County Counsel

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES

DIVISION 60

AR 60.000 AFFIRMATIVE ACTION IN PUBLIC CONTRACTS

60.010 Purpose

The purpose of this Chapter is to establish procedures to promote and insure Minority Business Enterprise participation in public works and other selected contracts let by Multnomah County, State of Oregon.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

60.020 Definitions

- (1) "Minority Business Enterprise" (MBE) means a business at least 51 percent of which is owned by minorities or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minorities and whose management and daily business operations are controlled by one or more such individuals.
- (2) "Minority" or "Minorities," means Blacks, Hispanic Americans, Pacific Islanders, Asian Americans, American Indians, Aleuts, Eskimos, and members of other groups or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8 (a) of the Small Business Act, as amended (15 U. S. C. 637 (a)).

- (3) "Female Business Enterprise" (FBE) means a business at least 51 percent of which is owned by females or, in the case of a publicly owned business at least 51 percent of the stock of which is owned by females and whose management and business operations are controlled by one or more such individuals.
- (4) "Set-aside Program" refers to contracts subject to bid and/or award to Minority Business Enterprises and Female Business Enterprises only.
- (5) Hereinafter Minority Business Enterprises and Female Business Enterprises may be abbreviated to read MBE and FBE.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-71

Amended by PCRB and Eff.

AR 60.030 Policy

An Affirmative Action Policy is hereby established to promote and insure Minority and Female Business Enterprise participation in procurement contracts related to Public Works, Professional Services, Goods and Services let by Multnomah County, State of Oregon. This policy shall be equally applicable to all County Departments and shall be administered by the County Director of Purchasing.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff.

AR 60.031 Goals

Multnomah County establishes the following minimum overall goals for participation by MBE/FBE's in relation to the total contract dollars let by the County.

| | MBE | FBE |
|---------------------------|-----|-----|
| (1) Construction | 10% | 1% |
| (2) Supplies | .5% | 0% |
| (3) Services | 10% | 1% |
| (4) Professional Services | 7% | 2% |

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff.

° 60.040 Certification

It shall be the policy of Multnomah County to consider and use the Certification List of the City of Portland, Portland, Oregon.

All business entities wishing to qualify for MBE or FBE status with the County must furnish proof of certification or application for certification with the City of Portland. Such proof must be actually received or postmarked to Multnomah County by not later than 10 days prior to bid opening. Upon receipt of such proof the County Purchasing Director will review the application and advise the applicant of its status within thirty days of receipt.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff.

AR 60.050 Set-Aside Program

Contracts, which in the judgment of the Director of Purchasing will have a contract price below \$100,000, will be subject to inclusion in the MBE and FBE set-aside program. On a County-wide basis contracts designated to the set-aside program shall total at least the percent of the total dollar amount of contracts let in a fiscal year in each category established in AR 60.031 (Goals): Construction, Supplies, Services and Professional Services. The designation of contracts to the set-aside program will be made by the joint determination of the Department head and the Director of Purchasing or his/her appointed agent.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 5-1-81

60.060 Contract Award Set-Aside Program

- (1) Contracts designated to the set-aside program that are for an amount less than \$1,000 are subject to AR 10.120 (1), (2) and (3).
- (2) Contracts designated to the set-aside program that are in excess of \$1,000 but less than \$100,000 shall be subject to competitive bid among MBE and FBE firms. The procedure for bidding and awarding of contracts shall be consistent with AR 40.000, except for the restriction limiting competition to MBE and FBE firms.

- (3) Contracts let under this affirmative action plan are exempt from inclusion in the \$30,000 limitation set forth in AR 10.120, (1) (d), and the \$25,000 limitation of AR 10.120, (2) (d).
- (4) In addition, contracts assigned to the set-aside program may be divided into component parts for the purpose of making awards to MBE and FBE firms.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 3-1-81

AR 60.070 Participation Program Public Works Contracts

- (1) The County will publish a plan holders list of prime contractors prior to a bid opening. The list will be advertised in a publication of general circulation.
- (2) MBE and FBE participation goals shall be set on a project-by-project basis.
- (3) MBE and FBE prime contractors shall be credited with participation goals in proportion to work they actually perform.
- (4) MBE and FBE prime contractors shall meet the same AR 60.070 requirements, contained herein, as non-certified prime contractors.
- (5) The prime Contractor shall be required to indicate MBE/FBE utilization equal to or greater than the project goal; or, indicated best efforts to attain the goal to be considered a responsive bidder.

- (6) With submission of the bid, all bidders must identify MBE and FBE subcontractors to be utilized, the work to be performed and dollar amount of subcontracted work. Subcontractors listed in the bid shall not be replaced without prior approval of the County; doing so shall be grounds for a contract award to be refused by the County.
- (7) If a circumstance arises after the award that reduces MBE and FBE participation, the following procedures will be followed:
 - (a) The Contractor shall contact the Director of Purchasing within three working days and request a meeting with the Director.
 - (b) At the meeting, the Contractor shall present the Purchasing Director with the circumstances which brought about the reduction in MBE and FBE participation and what actions are planned to bring the MBE and FBE participation back to the goal.

In determining whether the Contractor has made an adequate good faith effort, the County shall require documentation of (1) the methods of MBE and FBE solicitation; (2) timing of MBE and FBE solicitation; (3) total number of MBE and FBE firms solicited; (4) a copy of information about plans, specifications and requirements of the contract as was made available to MBE and FBE firms; (6) what assistance the Contractor provided to interested MBE and FBE firms in obtaining bonding or insurance.

- (c) The Purchasing Director shall evaluate the circumstances that brought about the reduction and determine if the reduction warrants:
 - (i) Assessment of liquidated damages, or
 - (ii) Acceptance of the Contractor's circumstances as being beyond Contractor's control.
- (8) If the Purchasing Director assesses liquidated damages under Section (4), the amount will be determined at the completion of the contract, based on the difference between the contract qualifying percentage and the actual percentage of MBE and FBE participation. The percentage difference will be multiplied by the contract price, excluding change orders, and the product will be the amount of liquidated damages.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 5-1-81

Amended and Eff.

60.080 Goods, Services and Equipment

Procurement of Goods, Services and Equipment shall be subject to policy statements in (AR 60.030) and the goals set forth in (AR 60.031). Programs to govern the bidding and award of such contracts shall follow the procedures as set forth in (AR 60.060), and may also be subject to the procedures of (AR 60.070), Public Works Contracts.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended and Eff.

AR 60.081 Professional Services Contracts

Requests for Proposals and Purchase of Professional Services Contracts shall be subject to policy statements in (AR 60.030) and the goals set forth in (AR 60.031). Programs to govern the bidding and award of such contracts shall follow the procedures as set forth in (AR 60.060), and may also be subject to the procedures of (AR 60.070), Public Works Contracts.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended and Eff.