

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNT, OREGON

ORDINANCE 518

An Ordinance amending the Public Contract Review Board Rules, Division 60, as adopted by Ordinance 289.

Multnomah County ordains as follows:

SECTION 1.

Section 1, Multnomah County Public Contract Review Board Rules, Division 60, is amended as set forth in Exhibit A.

ADOPTED this 19th day of June, 1986

(SEAL)

By Gretchen Kafoury
Gretchen Kafoury
Presiding Officer

AUTHENTICATED this 23rd day of June, 1986.

By Dennis Buchanan
Dennis Buchanan
County Executive

APPROVED AS TO FORM:

JOHN B. LEAHY, County Counsel
for Multnomah County, Oregon

By Peter Kostung
Assistant County Counsel

AUTHENTICATED this 23rd day of June, 1986.

By Dennis Buchanan
Dennis Buchanan
County Executive

APPROVED AS TO FORM:

JOHN B. LEAHY, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Paul G. Mackey
Paul G. Mackey
Assistant County Counsel

3679/mfw

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 and Women Business Enterprise participation in public works and other selected contracts let by Multnomah County, State of Oregon. Separate and distinct goals have been established for both Minority and Women Business Enterprises (see Section 60.031) and the intent of the Affirmative Action Program is to see that goals for each are pursued.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 7-19-86

60.020 Definitions

- (1) "Minority Business Enterprise" means a business concern which is at least 51% owned by one or more minority individuals, or in the case of a corporation, at least 51% of the stock which is owned by one or more minority individuals and whose management and daily business operations are controlled by one or more of the minority stockholders.
- (2) "Minority individual" means a person who is a citizen or lawful permanent resident of the United States and who also is a:
 - (a) Black American or person having origins in any of the Black racial groups of Africa.
 - (b) Hispanic American or person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish

culture or origin, regardless of race.

- (c) Native American or person who is an American Indian, Eskimo, Aleut or Native Hawaiian.
- (d) Asian-Pacific American or person whose origin is from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Phillipines, Samoa, Guam, the United States Trust Territories of the Pacific or the Northern Marianas.
- (e) Asian-Indian American or person whose origin is from India, Pakistan or Bangladesh.

- (3) "Women Business Enterprise" (WBE) means a business at least 51 percent of which is owned by women or, in the case of a corporation at least 51 percent of the stock of which is owned by women and whose management and daily business operations are controlled by one or more women stockholders.
- (4) "Set-aside Program" refers to contracts subject to bid and/or award to Minority Business Enterprises and Women Business Enterprises only. (See Section 60.050)
- (5) Hereinafter Minority Business Enterprises and Women Business Enterprises may be abbreviated to read MBE and WBE, respectively.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 12-17-81

Amended by PCRB and Eff. 7-19-86

60.030 Policy

An Affirmative Action Policy is hereby established to promote and insure Minority and Women Business Enterprise participation in procurement contracts related to competitively bid Public Works, Professional Services, and 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. 12-17-81

Amended by PCRB and Eff 7-19-86

60.031 Goals

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

	MBE	WBE
(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. 12-17-81

Amended by PCRB and Eff. 7-19-86

60.040 Certification

Effective January 1, 1987, it shall be the policy of Multnomah County to honor the Certification List of the Oregon Department of Transportation. All business entities wishing to qualify for MBE or WBE status with the County must be certified with the Oregon Department of Transportation. Certification must have been granted by the Oregon Department of Transportation prior to bid opening.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 12-17-81

Amended by PCRB and Eff. 7-19-86

60.041 Certification Prior to the Effective Date

Prior to January 1, 1987, the County will honor MBE and WBE certification by either the City of Portland or by the Oregon State Department of Transportation.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff 7-19-86

60.050 Set-Aside Program

Public works contracts, which in the judgment of the Director of Purchasing will have a contract price below \$50,000, may be subject to inclusion in the MBE and WBE set-aside program. There must be a minimum of three MBE/WBE vendors providing the particular commodity/service in order to designate a public works contract for an MBE/WBE set-aside.

Professional services, supplies and services contracts will not be subject to dollar limitations. There must be a minimum of two MBE/WBE vendors providing the particular commodity/service in order to designate a professional services, supplies or services contract for an MBE/WBE set-aside.

The designation of contracts to the set-aside program will be made by the joint determination of the initiating department 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,

12-17-81

Amended by PCRB and Eff. 7-19-86

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 \$50,000 shall be subject to competitive bid among MBE and WBE 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 WBE 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 WBE firms.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 3-1-81,

12-17-81

7-19-86

60.070 MBE/WBE Participation Program in Contracts

- (1) The County will make available a plan holders list of prime contractors prior to a bid opening.
- (2) MBE and WBE participation goals shall be set on a project-by-project basis.
- (3) MBE and WBE prime and sub-contractors shall be credited with participation goals in proportion to work they actually perform. (See Subsections 4 and 6)
- (4) Only expenditures to MBE/WBEs that perform a substantial and commercially useful function in the work of a contract may be counted by a bidder toward the bidder's MBE/WBE goal.
 - (a) An MBE/WBE is considered to perform a substantial and commercially useful function when it is responsible for execution of a distinct element of the work of a contract in carrying out its responsibilities by actually performing, managing, and supervising the work involved.
 - (b) In the event that questions arise, or an appeal or

protest is filed, the County, at its option, may determine whether an MBE/WBE is performing a substantial and commercially useful function by evaluating the amount of work subcontracted, industry practices, experience, key personnel and equipment, and other relevant factors, including without limitation whether the supplier is supplying items from an inventory owned by the MBE/WBE and whether the MBE/WBE is at a bona fide selling level in the normal line of distribution for the product supplied and has a written agreement with the manufacturer for items not normally held in inventory such as large pieces of equipment.

(c) It is possible for an MBE/WBE to be certified as MBE/WBE but engaged in activities that are not considered a substantial and commercially useful function by the County. When this occurs, the County will not consider participation by these MBE/WBEs as counting toward fulfillment of the bidder's MBE/WBE requirement.

(5) With submission of the bid, all bidders must identify MBE and WBE subcontractors to be utilized, the work to be performed and dollar amount of subcontracted work.

(6) Requirements for MBE and WBE participation is counted in accordance with the following:

(a) The total dollar value of a contract or subcontract awarded to MBE, prime contractors or subcontractors is counted toward the MBE goals. If an MBE firm subcontracts to a non MBE firm, only that portion of the work performed by the MBE will be counted towards the goal.

(b) The total dollar value of a contract or subcontract awarded to WBE, prime contractors or subcontractors is counted toward the WBE goals. If a WBE firm sub-

contracts to a non WBE firm, only that portion of the work performed by the WBE will be counted towards the goal. A business owned by minority women may be counted toward fulfillment of the goal for the participation of women business enterprises and/or minority business enterprises.

- (c) In joint venture contracts or subcontracts, the maximum dollar value counted toward the MBE or WBE goal is equal to the percentage of participation and control of the MBE/WBE partner.
 - (d) Expenditures for materials or supplies obtained from MBEs or WBEs will be counted 100%. Where a MBE or WBE acts as a broker or agent, only the commission or fee earned may be counted towards the contractor's goals. This commission or fee will not be counted if the MBE or WBE performs no substantive service.
- (7) The prime contractor shall be required to indicate MBE/WBE utilization equal to or greater than the project goal, or indicate good faith effort to attain the goal to be considered a responsive bidder. Performing all of the following actions by a bidder constitutes a rebuttable presumption that the bidder has made a good faith effort to satisfy the subcontracting requirement:
- (a) The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform minority business enterprises of contracting and subcontracting or material supply opportunities available on the project;
 - (b) The bidder identified and selected specific economically feasible units of the projects to be performed by minority business enterprises in order to increase the likelihood of participation by such enterprises;
 - (c) The bidder advertised in general circulation, trade association, minority and trade oriented publications,

if any, concerning the subcontracting or material supply opportunities;

- (d) The bidder provided written notice to a reasonable number of specific minority business enterprises, identified from a list of certified minority business enterprises provided or maintained by the State, soliciting bids for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;
- (e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested;
- f) The bidder provided interested minority business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- (g) The bidder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any minority business enterprises;
- (h) Where applicable, the bidder advised and made efforts to assist interested minority business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor; and
- (i) The bidder's efforts to obtain minority business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals or requirement of the public contracting agency.

(8) If a bidder has not met the MBE goal established by the County, the County shall evaluate the good faith effort of the bidder consistent with subsection (7) of this section. It shall be a rebuttable presumption that a bidder has made

a good faith effort to comply with the requirement for subcontracting or material supply described in subsection (7) of this section if the bidder has acted consistently with the actions described in subsection (7) of this section. It shall be a rebuttable presumption that the bidder did not make a good faith effort if the bidder has not acted consistently with the actions described in subsection (7) of this section.

- (9) No substitutions of subcontractors is allowed after bid opening until the bid has been awarded.

MBE/WBE subcontractors listed in the bid may be replaced after the bid award only with prior approval of the Purchasing Director. Failure to obtain the Purchasing Director's approval may be grounds for the County to cancel the contract and/or assess liquidated damages.

- (10) If a circumstance arises after the award that reduces MBE and WBE participation, the following procedures will be followed:

(a) The contractor shall contact the Director of Purchasing in writing within five working days and request a meeting with the Director. Failure to do so may result in the cancellation of the contract and/or assessment of liquidated damages.

(b) At the meeting, the contractor shall present the Purchasing Director with the circumstances which brought about the reduction in MBE and WBE participation and what actions are planned to bring the MBE and WBE participation back to the goal.

(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.

- (11) If the Purchasing Director assesses liquidated damages under Section (9 and 10), 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 WBE 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,

12-17-81

Amended by PCRB and Eff. 7-19-86

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), MBE/WBE Participation Program in Contracts.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 12-17-81

7-19-86

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), MBE/WBE Participation Programs in Contracts.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 12-17-81

Amended by PCRB and Eff. 7-19-86