

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 907

✦ An ordinance amending the Public Contract Review Board Rules to add a provision barring employment discrimination by contractors providing goods and services to the County.

Multnomah County ordains as follows:

Section 1. Purpose

The purpose of this ordinance is to amend the Public Contract Review Board Rules to adopt a comprehensive policy barring employment discrimination by contractors who provide goods and services to the County supplementing existing anti-discrimination policy.

Section 2. Findings:

The Multnomah County Board of Commissioners finds:

- a. Each year the County spends tens of millions of dollars with vendors who operate within Multnomah County.
- b. Multnomah County has a compelling governmental interest in prohibiting discrimination in programs, activities, services, benefits and employment whether carried out by the County itself or through a contractor.
- c. Amending the Public Contract Review Board Rules will ensure that the County does not do business with contractors who are unwilling to make a clear commitment to provide equal employment opportunities to all.
- d. County contractors who provide goods or services in excess of \$50,000 per year are currently required to be certified as Equal Employment Opportunity Employers under a program administered by agreement with the City of Portland. Adoption of the policy described in Exhibit

A will facilitate monitoring of the employment practices of County contractors by the City. The City of Portland recently adopted an anti-discrimination policy substantially similar to the policy described in Exhibit A.

Section 3. Amendment: Adoption of Rule

MCC 2.20.250 (B) is amended to read:

The Multnomah County Public Contract Review Board Administrative Rules dated January 8, 1998 and amended in accordance with Exhibit A to Ordinance No. 907 dated May 7, 1998, are hereby adopted and replace those rules previously promulgated by the Board.

Dated this 7th day of May, 1998, being the date of its second reading before the Multnomah County Board of Commissioners.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

By


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By

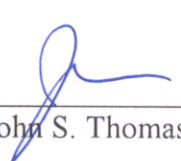

John S. Thomas, Assistant County Counsel

EXHIBIT A

NOTE: Amendments appear in Division 10 and Division 60 only. New material is highlighted, deleted material is in italics and brackets.

Division 60 is amended as follows:

60.000 AFFIRMATIVE ACTION IN PUBLIC CONTRACTS

60.010 Purpose

- (1) The purpose of this Chapter is to establish procedures to assure that Multnomah County contractors and vendors provide adequate opportunities for minority individuals, women, and MBE, WBE and ESB contractors and subcontractors to participate and compete for business and employment opportunities provided through contracts with Multnomah County, State of Oregon.

60.015 Affirmative Action Contracts

- (1) Public contracts may be awarded pursuant to a specific Affirmative Action plan. This rule sets forth the Multnomah County Affirmative Action Plan.

60.030 Policy

- (1) It is the intent of Multnomah County to provide opportunities for all segments of the business population to participate in the Multnomah County Purchasing Program. In order to assure opportunity, every County contract and/or subcontract for construction, maintenance, or services shall include provisions barring discrimination against or differential treatment of MBE's, WBE's and ESB's.
- (2) **Multnomah County has a compelling governmental interest in prohibiting discrimination in programs, activities, services, benefits and employment whether carried out by the County itself or through a contractor with whom the County arranges to carry out its programs and activities. Every County contract shall contain a provision prohibiting discrimination by the contractor based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits and employment.**
- ~~(2)~~(3) For all contracts designated by the Purchasing Manager, bid specifications shall require compliance with a "good faith effort" program.

60.031 Good Faith Effort Program

- (1) The activities described in ORS 200.045 are standards for good faith efforts to provide equitable opportunities for MBEs, WBEs, and ESBs to participate in subcontract opportunities created through Multnomah County contracts.

- (2) The Purchasing Manager shall implement a good faith effort program utilizing the standards described in ORS 200.045 that are determined to be effective to achieve the purpose of this section together with such other standards as are appropriate to such a program. Bid or proposal specifications for contracts requiring good faith effort shall state the requirements necessary to show that a good faith effort has been made and shall require documentation of such effort. The Purchasing Manager shall cooperate with other municipal and state agencies to design, to the maximum extent possible, a program that is uniform between agencies.

60.032 Evaluation of Good Faith Effort

- (1) The Purchasing Manager or his/her designee shall determine if the bid complies with bid specifications for good faith effort.
- (2) Failure of bidder to submit good faith effort documentation required by the bid specifications shall be determined "non-responsive" to the bid specifications. Non-responsive bids will be rejected by the Multnomah County Purchasing Manager.

60.040 Requirement for Certification as Equal Employment Opportunity Employer

- (1) No vendor shall furnish goods or services to the County in any year, whether by single contract or multiple contracts, for an amount in excess of the limit set for formal bids in AR 10.010 unless such vendor is certified as an Equal Employment Opportunity Employer. No County agency shall enter into a contract by which a vendor shall exceed such limitation unless the vendor is, at the time of such contract, certified by the Purchasing Manager as an EEO Employer.

60.041 Certification Procedure/Appeal

- (1) Vendors furnishing goods and services to the County in excess of the limits set forth in AR 60.040 shall apply for and obtain EEO certification from the City of Portland as an EEO employer. The Purchasing Manager shall maintain a list of certified vendors based upon City of Portland certification. A vendor may appeal from a decision to deny certification or revoke certification in accordance with the procedure prescribed in AR 40.090 for denial or revocation of prequalification.

60.050 Workforce Requirements in Construction Contracts

- (1) For all contracts designated by the Purchasing Manager as being appropriate for such a program, the Purchasing Manager shall establish specifications to be included in the bid specifications which require for such contracts that contractors make reasonable efforts to increase apprenticeship training and work opportunities for women and minority individuals, and, to ensure that their workforce reflects the diversity of Multnomah County and is reasonably consistent with the availability of qualified women and minority individuals. The specifications shall state the requirements necessary to show that a reasonable effort has been made, shall require documentation of such effort, and shall provide for remedies to the County for failure to comply with any of the specified requirements.

60.060 Sheltered Market Program

- (1) There is hereby established a Sheltered Market Program for MBE, WBE and ESB contractors performing public works contracts for Multnomah County. The purpose of the program is to provide prime contracting experience for small contractors in order to increase the number of contractors available to bid on Multnomah County public works projects, and to increase participation of MBE, WBE, and ESB contractors acting as prime contractors on county public works projects to ensure uniform access to public contracting dollars and to improve opportunities for minorities and women acting as business owners in the regional construction industry.
- (2) Contractors shall be selected for participation in the Sheltered Market Program based on an application developed by the Purchasing Manager. Criteria for selection shall include the following:
 - (a) Contractor shall be a state certified MBE, WBE or ESB.
 - (b) Contractor shall have prior experience performing construction work and shall be currently in business doing construction work.
 - (c) Contractor shall have gross receipts for the calendar year prior to the application of less than \$1,000,000 or if gross receipts for that year are greater than \$1,000,000, then the average gross receipts for the three calendar years prior to the application shall be less than \$1,000,000. The Purchasing Manager shall have the discretion to waive this requirement if waiver will advance the purposes of the program and if all other criteria are met.
 - (d) Contractor shall have reported that contractor has experienced barriers in the conduct of contractor's business based on race, gender or size of the business.

The Purchasing Manager may develop additional criteria for selection of contractors for participation in the program which further the purpose of the program.

- (3) A contractor may appeal from a decision to deny participation in the program to the Public Contract Review Board in accordance with the procedure prescribed in AR 40.090.
- (4) Contracts to be included in the Sheltered Market Program shall be selected by the Purchasing Manager from projects estimated at the time of bidding to result in a contract in excess of \$50,000 and less than \$200,000. The Purchasing Manager may include in the program additional contracts up to \$250,000 if inclusion will further the purposes of the program. In the selection of contracts to be included in the program, the Purchasing Manager shall consider the number of contractors in the program which have the qualifications and the capacity to perform the work. If necessary to assure that all Sheltered Market contractors have an opportunity to participate, contracts may be offered for bid to only selected contractors within the Sheltered Market Program.

- (5) Contracts selected for inclusion in the Sheltered Market Program shall be offered for bid only to contractors admitted to the Sheltered Market Program. Except as provided in subsection (6) below, the contract shall be awarded to the lowest responsive responsible bidder among those bidding.
- (6) For each project selected for the Sheltered Market Program, the project manager for the program shall forward to the Purchasing Manager a cost estimate for the project. If the lowest responsive responsible bid is more than the cost estimate, the Purchasing Manager shall have the option to re-bid the project within the Sheltered Market Program or open the bidding on the project to all bidders. If bidding is opened to all bidders, the contract shall then be awarded to the lowest responsible bid from among all bids received.
- (7) The Purchasing Manager shall promulgate rules setting forth conditions for continued participation in the program., and for graduation from the program. Participation in the Program shall be limited to three years absent extraordinary circumstances.
- (8) The Purchasing Manager shall prepare a report to the Board of County Commissioners on an annual basis which provides an evaluation of the program, including information on the subjects set forth in Section 4 of HB 2910. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.