

CHAPTER 2.04

METRO CONTRACT POLICIES

SECTION	TITLE
2.04.010	Definitions*
CONTRACTS IN GENERAL	
2.04.020	Authority to Award and Execute Contracts, Budget Limitations
2.04.022	Federal Law and Rules
2.04.024	Metropolitan Exposition Recreation Commission
2.04.026	Council Approval of Contracts
2.04.028	Council Information Reports
2.04.030	Regulations
2.04.032	Prohibition Against Doing Business With Certain Former Metro Officials (repealed Ord. 99-822 §2)
2.04.035	Contract Provisions Requiring Records Maintenance and Permitting Audits
PERSONAL SERVICES CONTRACTS	
2.04.040	Personal Services Contracts -- General
2.04.042	Procurement of Personal Services Contracts
2.04.044	Personal Services Contracts of More than \$50,000.00 (repealed Ord. 04-1065A §6)
2.04.046	Personal Services Contract Amendments
2.04.048	Notice of Award and Appeals of Personal Services Contracts
CONTRACT REVIEW BOARD	
2.04.050	Public Contract Review Board (repealed Ord. 04-1065A §8)
2.04.052	Public Contracts -- Public Improvement Contracts
2.04.053	Special Procurements
2.04.054	Competitive Bidding Exemptions for Public Improvements
2.04.056	Procurement of Public Contracts
2.04.058	Public Contract Amendments
2.04.060	Food Products (repealed Ord. 04-1065A §15)
2.04.062	Sole Source Procurements
2.04.064	Sale of Surplus Property
2.04.070	Notice of Award and Appeals
METRO ESB, MBE AND WBE PROGRAM	
2.04.100	Findings
2.04.105	Policy Statement
2.04.110	Definitions

*Note: Former sections 2.04.010 to 2.04.090 were repealed by Ordinance No. 96-635B, Sec. 3, which created existing sections 2.04.010 to 2.04.070.

- 2.04.115 Program Administration
- 2.04.120 Program Activities
- 2.04.125 Directory (repealed Ord. 97-692A §10)
- 2.04.130 Minority-Owned Banks
- 2.04.135 Affirmative Action and Equal Opportunity Procedures (repealed Ord. 97-692A §11)
- 2.04.140 Certification of Minority Business Eligibility (repealed Ord. 97-692A §11)
- 2.04.145 Annual Minority Business Goals (repealed Ord. 97-692A §11)
- 2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities
- 2.04.155 Contract Award Criteria (repealed Ord. 97-692A §13)
- 2.04.160 Definition and Determination of Good Faith Efforts (repealed Ord. 97-692A §13)
- 2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities
- 2.04.165 Replacement of ESB, MBE or WBE Subcontractors
- 2.04.170 Council Information Reports
- 2.04.180 Compliance (repealed Ord. 97-692A §18)
- 2.04.190 Severability and Intent
- 2.04.200-.290 (repealed Ord. 97-692A §22)

**METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR
FEDERALLY-FUNDED CONTRACTS**

- 2.04.300 Disadvantaged Business Enterprise Program (DBE Program) for Federally-Funded Contracts, Findings, Purpose and Authority
- 2.04.305 Policy Statement
- 2.04.310 Definitions
- 2.04.315 Notice to Contractors, Subcontractors and Sub-Recipients
- 2.04.320 DBE Liaison Officer
- 2.04.325 Directory
- 2.04.330 DBE-Owned Banks
- 2.04.335 Affirmative Action and Equal Opportunity Procedures
- 2.04.340 Certification of Disadvantaged Business Eligibility
- 2.04.345 Annual Disadvantaged Business Goals
- 2.04.350 Contract Goals
- 2.04.355 Contract Award Criteria
- 2.04.360 Determination of Good Faith Efforts
- 2.04.365 Replacement of DBE Subcontractors
- 2.04.370 Records and Reports
- 2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals
- 2.04.380 Compliance and Enforcement

METRO'S SUSTAINABLE PROCUREMENT PROGRAM**

- 2.04.500 Purpose and Intent
- 2.04.510 Definitions
- 2.04.520 Metro's Sustainable Procurement Administrative Rules
- 2.04.530 Metro's Sustainable Procurement Program Responsibilities
- 2.04.540 Report to Metro Council

** Note: Metro Code Chapter 2.04.500-580 formerly called Metro Recycled Product Procurement Program (Repealed Ord. 10-1247.)

Metro Code Chapter 2.04.500-540 now called Metro's Sustainable Procurement Program (Ordinance No. 10-1247, adopted 10/28/10, effective 01/26/11.)

2.04.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

(a) "Auditor" means the Metro Auditor provided for in Section 18 of the Metro Charter.

(b) "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.

(c) "Competitive bidding" means an advertised solicitation of sealed bids.

(d) "Contract Review Board" or "Board" means the Metro Council, sitting as a local Contract Review Board pursuant to the provisions of ORS 279A.060.

(e) "Council President" means the Council President provided for in Section 16(4) of the Metro Charter.

(f) "Emergency" means circumstances that: (A) could not have been reasonably foreseen; (B) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (C) require prompt execution of a contract to remedy the condition.

(g) "Emergency contract" means a contract whose purpose is limited to remedying an emergency situation.

(h) "Intergovernmental agreement" means a written agreement with any other unit or units of federal, state or local government providing for the acquisition of goods or services by Metro, for the provision of goods or services by Metro or for the payment or receipt of funds in order to promote or carry out a common purpose.

(i) "Notice of award" means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that Metro intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

(j) "Personal services contract" means any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which

are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.

(k) "Procurement Officer" means the person designated by the Chief Operating Officer to carry out the functions required of such person by this chapter.

(l) "Public agency" means any agency of the federal government, State of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(m) "Public contract" means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.

(n) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a contracting agency. "Public improvement" does not include (i) projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection, or (ii) emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

(o) "Request for Proposals or RFP" means the issuance of a request for offers that will be evaluated based on factors that are not limited to price alone.

(p) "Sole source contract" means a contract for which it can be documented that the goods or services or class of goods or services are available from only one source.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 02-966A, Sec. 1; Ordinance No. 04-1065A, Sec. 1.)

CONTRACTS IN GENERAL

2.04.020 Authority to Award and Execute Contracts, Budget Limitations

The Chief Operating Officer and Auditor have the authority to award and execute contracts that are necessary to carry out their administrative responsibilities. These officers may delegate authority to award and execute contracts on their behalf by doing so in writing. The Auditor shall be subject to the same limitations and have the same authority as provided for

the Chief Operating Officer by this Code Chapter. Unless the Council expressly approves a contract containing a requirement to the contrary, no contract may obligate Metro to the payment of funds not appropriated for that purpose by the Council.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 02-966A, Sec. 1.)

2.04.022 Federal Law and Rules

Notwithstanding any provision of this chapter, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of this chapter or require additional conditions in public or personal services contracts not authorized by this chapter.

(Ordinance No. 96-635B, Sec. 3.)

2.04.024 Metropolitan Exposition Recreation Commission

The Metro Council delegates to the Commission the authority to approve contracts, independent of the authority it has granted to the Chief Operating Officer pursuant to Section 2.04.020. The Commission may adopt rules or regulations which delegate to the Chief Operating Officer authority to enter into contracts on behalf of the Commission and may require Commission approval of contracts. The Metro Council is the local Contract Review Board for the Commission.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 02-966A, Sec. 1; Ordinance No. 04-1065A, Sec. 2.; and Ordinance No. 09-1229, Sec. 3.)

2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, the Chief Operating Officer, Metro Attorney, or Auditor must obtain authorization by the Council prior to execution of the following types of contracts:

- (1) Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
- (2) Any contract for the purchase, sale, lease or transfer of real property owned by Metro.

However, the Chief Operating Officer may execute options to purchase real property.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 1; Ordinance No. 02-966A, Sec. 1; Ordinance 04-1065A, Sec. 3; Ordinance No. 06-1123A, Sec. 1.)

2.04.028 Council Information Reports

(a) Prior to adoption of the annual budget, the Chief Operating Officer shall provide the Council with a list of proposed contracts and proposed applications of Metro for grant funding over \$50,000.00 to be entered into or sought during the next fiscal year. Following the adoption of the annual budget, if the Chief Operating Officer proposes (1) to enter into a contract that will commit Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000.00 that the Council has not considered during the annual budget process; or (2) to seek any individual grant funding in an amount greater than \$50,000.00 that the Council has not considered during the annual budget process, the Chief Operating Officer shall inform the Council President in writing of such contract or grant proposal.

(b) The Chief Operating Officer shall provide a monthly report to Council showing all contracts awarded, amended or completed during the preceding month, all Metro applications for grant funding greater than \$50,000.00, and all grants awarded by Metro greater than \$25,000.00.

(c) The Chief Operating Officer shall make available to the Council on request information showing the status of all contracts whether listed in the adopted budget or not.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 02-966A, Sec. 1, Ordinance No. 06-1123A, Sec. 2.)

2.04.030 Regulations

The Chief Operating Officer may establish by executive order additional regulations consistent with this chapter.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 02-966A, Sec. 1.)
(2.04.032 Prohibition Against Doing Business With Certain Former Metro Officials. Repealed Ord. 99-822 §2)

2.04.035 Contract Provisions Requiring Records Maintenance and Permitting Audits

(a) All Metro contracts of \$50,000.00 or more shall require contractors and subcontractors to maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, such contracts also shall require contractors and subcontractors to maintain any other records necessary to clearly document:

- (1) The performance of the contractor, including, but not limited to, the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
- (2) Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
- (3) Any cost and pricing data relating to the contract; and
- (4) Payments made to all suppliers and subcontractors.

(b) All Metro contracts of \$50,000.00 or more shall require contractors and subcontractors to maintain records for the longer period of (i) six years from the date of final completion of the contract to which the records relate or (ii) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.

(c) All Metro contracts of \$50,000.00 or more shall contain provisions requiring contractors and subcontractors to make records available to Metro and its authorized representatives, including, but not limited to, the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. Such contracts shall also provide that if the records are not made available within the boundaries of Metro, the contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro,

including, but not limited to, the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. Such contracts shall further provide that if the contractor elects to have such records outside these boundaries, the costs paid by the contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

(d) All Metro contracts of \$50,000.00 or more shall contain provisions by which contractors and subcontractors authorize and permit Metro and its authorized representatives, including, but not limited to, the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of any contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of subsection (e).

(e) All Metro contracts of \$50,000.00 or more shall contain provisions by which contractors and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

(f) All Metro contracts of \$50,000.00 or more shall contain provisions by which contractors and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such contracts shall further provide that such costs may be withheld from any sum that is due or that becomes due from Metro.

(g) Failure of the contractor or subcontractor to keep or disclose records as required by this code section or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in Metro Code Section 2.04.070(c), or may result in a finding that the contractor or subcontractor is not a responsible bidder or proposer as provided in Metro Code Section 2.04.052.

(Ordinance No. 04-1035, Sec. 2.)

PERSONAL SERVICES CONTRACTS

2.04.040 Personal Services Contracts -- General

(a) Disadvantaged Business Program. All contracting for personal services is subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(b) Substantive Requirements. All Metro personal services contracts shall contain all provisions required of local contracting agencies by ORS Chapter 279A and ORS Chapter 279B and shall be construed to be consistent with all relevant provisions of such chapters.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 04-1065A, Sec. 4.)

2.04.042 Procurement of Personal Services Contracts

(a) Any procurement of personal services not exceeding \$10,000.00 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of personal services exceeding \$10,000.00 but not exceeding \$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.070. 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) Any procurement of personal services exceeding \$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.060.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-692A, Sec. 20; Ordinance No. 99-822, Sec. 3; Ordinance No. 04-1065A, Sec. 5.; and Ordinance No. 14-1345, Sec. 1)

(2.04.044 Personal Services Contracts of More than \$50,000.00. Repealed Ord. 04-1065A §6)

2.04.046 Personal Services Contract Amendments

(a) Personal services contracts may be amended to increase the amount of the contract to no more than twice the original contract amount. The limit provided in this subsection is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this limit shall require approval by the Metro Council. The Metro Council

shall determine whether it is appropriate to amend the contract in light of the policies set forth in ORS 279A.015 and ORS 279B.010.

(b) Notwithstanding the provisions of subsection (a) of this section, personal service contracts may be amended to increase the amount of the contract to an amount more than twice the original contract amount if the original personal services contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 5; Ordinance No. 04-1065A, Sec. 7; Ordinance No. 06-1123A, Sec. 3.)

2.04.048 Notice of Award and Appeals of Personal Services Contracts

Notice of award and any appeal thereof shall be subject to the rules and procedures established in Section 2.04.070 except that the final determination of any appeal shall be made by the Council and not the Contract Review Board.

(Ordinance No. 96-635B, Sec. 3.)

(2.04.050 Public Contract Review Board. Repealed Ord. 04-1065A §8)

CONTRACT REVIEW BOARD

2.04.052 Public Contracts -- Public Improvement Contracts

(a) Procedural Requirements.

- (1) The procedures for sealed competitive bidding, sealed competitive proposals, and all other methods of procurement of public contracts used by Metro shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapters 279A and 279B.
- (2) The procedures for competitive bidding of all Metro public improvement contracts shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapter 279C.

- (3) Notwithstanding the provisions of subsections (a)(1) and (a)(2), and pursuant to ORS 279A.065(5), the model rules adopted by the Oregon Attorney General shall not apply to Metro.
- (4) The Chief Operating Officer may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the Chief Operating Officer may adopt in whole or in part the model rules of procedure established by the Oregon Attorney General pursuant to ORS 279A.065.

(b) Substantive Requirements.

- (1) All Metro public contracts shall contain all provisions required of local contracting agencies by ORS Chapters 279A and 279B and shall be construed to be consistent with all provisions of ORS Chapters 279A and 279B.
- (2) All Metro public improvement contracts shall contain all provisions required of local contracting agencies by ORS Chapter 279C and shall be construed to be consistent with all provisions of ORS Chapter 279C.

(c) Rejection of Bids and Proposals. The Chief Operating Officer may reject any bid, proposal or response not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids, proposals or procurement responses for personal service contracts and public contracts in accordance with the provisions of ORS 279B.100 and may reject all bids or proposals for public improvement contracts in accordance with the provisions of ORS 279C.395.

(d) Bonds. Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$150,000.00 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over \$150,000.00.

- (3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Chief Operating Officer determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 6; Ordinance No. 02-966A, Sec. 1; Ordinance No. 04-1065A, Sec. 9; and Sec. 1, Ordinance No. 11-1256; and Ordinance No. 14-1345, Sec. 2.)

2.04.053 Special Procurements

(a) Pursuant to ORS 279B.085, the following public contracts are approved as classes of special procurements based on the legislative finding by the Metro Contract Review Board that the use of a special procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, ORS 279B.060, ORS 279B.065, ORS 279B.070:

- (1) Food for zoo animals, the purchase and sale of zoo animals, and the purchase of zoo gift shop retail inventory and resale items.
- (2) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for sealed competitive Request for Proposals used by Metro for personal services contracts are followed.
- (3) Emergency contracts provided that the provisions of ORS 279B.080 are followed. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.

- (4) Purchase of food items for resale at facilities owned or operated by Metro.
- (5) Contracts for warranties, including but not limited to computer software warranties, in which the supplier of the goods or services covered by the warranty has designated an authorized provider for the warranty service.
- (6) Contracts for computer hardware, or computer software.
- (7) Contracts under which Metro is to receive revenue by providing a service.
- (8) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (9) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$100,000.00, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (10) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (11) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.
- (12) The procurement of utilities or any other services whose price is regulated by any governmental body, including but not limited to telephone service, electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.

- (13) Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.
- (14) Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.
- (15) The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.
- (16) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.
- (17) Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.
- (18) Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(n) in which a contractor provides a material and substantial portion of the funding for such project.
- (19) Contracts with any media outlet for the purchase of classified advertising, display advertising or the placement of public notices to publicize legal notices of public meetings and procurements.
- (20) Contracts not exceeding \$150,000 for personal services or for trade services (and not required as part of a public improvement project) when the provider of the procured services is a not -for-

profit organization, and the purpose of the services is to implement Metro programs and projects, provided the Metro Council has approved by resolution a process for awarding such contracts.

(21) Any contract exempt from competitive bidding under any statute of the state of Oregon.

(b) Description of procurement procedures for class special procurements: Procurements for each of the class special procurements described in subsection (a) shall be performed by means of procedures chosen by the Chief Operating Officer as an appropriate method tailored to and in light of the demands, circumstances and market realities associated with obtaining each of the enumerated goods and services. Such procurement procedures may include but shall not be limited to direct negotiations with individual or multiple vendors or suppliers; negotiations with ranked proposers; competitive negotiations; or multiple tiered competitions.

(c) Specific contracts not within the classes described in subsection (a) may be procured by special procurements subject to the requirements of ORS 279B.085.

(Ordinance No. 04-1065A, Sec. 11; Ordinance No. 06-1123A, Sec. 4; Ordinance No. 11-1256, Sec. 2; and Ordinance No. 14-1345, Sec. 3.)

2.04.054 Competitive Bidding Exemptions for Public Improvements

Subject to the policies and provisions of ORS 279A.015 and 279C.300 and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public improvement contracts shall be based upon competitive bids except:

(a) State Law. Classes of public improvement contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following class of public improvement contracts is exempt from the competitive bidding process based on the legislative finding by the Metro Council, sitting pursuant to ORS 279A.060 as a local Contract Review Board, that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemption will result in substantial cost savings: contracts for public improvements in which a contractor agrees to provide

a material and substantial portion of the funding for such public improvement project.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the Metro Council, sitting pursuant to ORS 279A.060 as a local Contract Review Board by resolution subject to the requirements of ORS 279C.335. The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-677B, Sec. 2; Ordinance No. 98-768, Sec. 2; Ordinance No. 99-822, Sec. 7; Ordinance No. 02-966A, Sec. 1; Ordinance No. 03-994A, Sec. 2; and Ordinance No. 04-1065A, Sec. 12.)

2.04.056 Procurement of Public Contracts

(a) Any procurement of a public contract not exceeding \$10,000.00 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of a public contract exceeding \$10,000.00 but not exceeding \$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.070. 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) Any procurement of a public contract exceeding \$150,000.00 shall be awarded in accordance with the provisions of either ORS 279B.055, ORS 279B.060, or ORS 279B.085.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-692A, Sec. 21; Ordinance No. 99-822, Sec. 8; repealed and replaced by Ordinance No. 04-1065A, Sec. 14; and Ordinance No. 14-1345, Sec. 4).

2.04.058 Public Contract Amendments

(a) The Chief Operating Officer may execute amendments to public contracts, provided that any one of the following conditions are met:

- (1) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided

that established the cost for the additional work and the original contract governs the terms and conditions of the additional work; or

- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a public contract or public improvement contract and the amendment does not materially add to or delete from the original scope of work included in the original contract; or
- (3) The amendment is for a public improvement contract and increases the total obligation of the contract by no more than 20 percent. In computing the dollar amount of any amendment for the purpose of this subsection, the amount of original contract obligation shall be used. In addition, only the amount of additional work or extra cost shall be considered and such work or cost may not be offset by the amount of any deletions; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or
- (4) The amount of the aggregate cost increase resulting from all amendments to a public contract other than a public improvement contract does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000.00 or 10 percent if the face amount is greater than \$1,000,000.00; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or
- (5) The amendment is for a change order to a public improvement contract in order to meet an emergency; or
- (6) The Metro Contract Review Board has authorized the extension of the contract amendment.

(b) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 9; Ordinance No. 02-966A, Sec. 1, Ordinance No. 06-1123A, Sec. 5; and Ordinance No. 11-1256, Sec. 3.)

(2.04.060 Food Products. Repealed Ord. 04-1065A §15)

2.04.062 Sole Source Procurements

A contract for goods or services may be awarded without competition when the Metro Council, sitting pursuant to ORS 279A.060 as a local Contract Review Board determines in writing by resolution and in accordance with the provisions of ORS 279B.075 that the goods or services or class of goods or services are available from only one source.

(Ordinance No. 96-635B, Sec. 3. Repealed and replaced by Ordinance No. 04-1065A, Sec. 17.)

2.04.064 Sale of Surplus Property

(a) Contracts for sale of surplus property may be executed without competitive sealed bids or proposals only when the Chief Operating Officer determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by bid will be such that a liquidation sale will result in substantially greater net revenue to Metro.

(b) Contracts for the sale of personal property shall be performed in accordance with ORS 279A.185.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 02-966A, Sec. 1; Ordinance No. 04-1065A, Sec. 18.)

2.04.070 Notice of Award and Appeals

(a) At least seven (7) days prior to the execution of any public contract over \$150,000.00 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$150,000.00. The appeal process for bids is the same as for a Request for Proposals. In the case of a Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the Procurement Officer at Metro's main office within seven (7) working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.
- (2) The Procurement Officer shall forthwith notify the appropriate Department Director and the Chief Operating Officer of the appeal. In the case of an appeal of an award by a Commission or the Metro Auditor, the appeal shall be forwarded to the Commission or Metro Auditor. Within 10 working days of the receipt of the notice of appeal, the Chief Operating Officer, Commission or Metro Auditor shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the Chief Operating Officer's, Commission's, or Metro Auditor's decision to reject the appeal in writing to the Board within five (5) working days from the postmarked date on the notice of rejection.
- (3) The Board will review the grounds for appeal, all pertinent information, and the Chief Operating Officer's, Commission's or Metro Auditor's recommendation, and make a decision. The decision of the Board is final.
- (4) No contract, which is the subject of a pending appeal, may be executed unless the Board shall have given its approval. The Chief Operating Officer, Commission or Metro Auditor may request the Board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event Council authorization of execution of the contract is required under Section 2.04.026 of this Code, the appeal shall be heard before the Council considers authorization of the contract.

(c) Appeals from Debarment or Denial of Prequalification

- (1) The Board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:
 - (A) Debarment of bidders and proposers pursuant to ORS 279B.130.
 - (B) Denial of prequalification to bid pursuant to ORS 279B.120 and 279B.125.
- (2) Any person who wishes to appeal debarment or denial of prequalification as a bidder shall, within three (3) business days after receipt of notice of disqualification, notify in writing the Metro Attorney that the person appeals the disqualification. The Metro Attorney shall promptly notify the Board of the appeal by providing notice to the Council President.
- (3) Promptly upon receipt of notice of appeal, the Council President shall notify the appellant and the Metro Attorney of the time and place of the appeal proceeding.
- (4) The Board shall conduct the appeal proceeding in accordance with the provisions of ORS 279B.425 and decide the appeal within 30 days after receiving notification of the appeal from the Metro Attorney. The Board shall set forth in writing the reasons for the decision.
- (5) Appeal Proceeding.
 - (A) The Council President shall preside over the appeal proceeding. The general order shall be as follows:
 - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
 - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.

- (B) Members of the Board shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
 - (C) Formal court rules of evidence shall not apply.
 - (D) The Board shall consider de novo the notice of debarment or denial of prequalification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the Council President that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
 - (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.
 - (F) The Board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision in accordance with the provisions of ORS 279B.425.
- (6) Metro may reconsider its determination with regard to the debarment or denial of prequalification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the Auditor shall be made directly to the Contract Review Board.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 10; Ordinance No. 02-966A, Sec. 1; Ordinance No. 04-1065A, Sec. 19; Ordinance No. 11-1256, Sec. 4.; and Ordinance No. 14-1345, Sec. 5.)

METRO ESB, MBE AND WBE PROGRAM

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.

(Ordinance No. 83-165, Sec. 1. Amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 1; replaced by Ordinance No. 97-692A, Sec. 2.)

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.

(Ordinance No. 83-165, Sec. 2. Amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 1; and Ordinance No. 10-1240, Sec. 1.)

2.04.110 Definitions

For purposes of Metro Code Sections 2.04.100 to 2.04.190, unless the context requires otherwise, the following definitions shall apply:

a) "Department" means the State of Oregon's Department of Business Development, Office of Minority, Women and Emerging Small Business 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" 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) "Public Improvement" has the meaning specified in Metro Code Section 2.04.010 (n).

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

(Ordinance No. 165, Sec. 3. Amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance

No. 96-635B, Sec. 4.; repealed by Ordinance No. 97-692A, Sec. 4; replaced by Ordinance No. 97-692A, Sec. 5; amended by Ordinance No. 10-1240, Sec. 2.)

2.04.115 Program Administration

(a) The Procurement Officer shall be responsible for administering this program on behalf of the Chief Operating Officer.

(b) In administering this program, the Procurement 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.

(Ordinance No. 83-165, Sec. 4. All previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 6; replaced by Ordinance No. 97-692A, Sec. 8; amended by Ordinance No. 02-966A, Sec. 1.; and amended by Ordinance No. 10-1240, Sec. 3.)

2.04.120 Program Activities

The Procurement Officer shall develop procedures in the following areas leading to increased business with ESBs, MBEs, and WBEs:

(a) Outreach. Such procedures may include electronic notices, annual contract lists, newsletters, attending regularly-scheduled contractor orientation programs, and participation in local and regional outreach opportunities.

(b) Technical Assistance. Provide information on feasible options for management assistance, bonding, insurance, certification 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. Additional advertising may be used in order to increase outreach to the MWESB community.

(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 \$10,000.00 and less than \$150,000.00. 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 public improvement construction opportunities for contracts more than \$10,000.00 and less than \$50,000.00 to be bid only by qualified ESBs, MBES and WBEs. The Procurement 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) Additional Activities. The Procurement Officer 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.

(Ordinance No. 83-165, Sec. 5. Amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 7; replaced by Ordinance No. 97-692A, Sec. 9; amended by Ordinance No. 02-966A, Sec. 1.; Ordinance No. 10-1240, Sec. 4.; and Ordinance No. 14-1345, Sec. 6.)

(2.04.125 Directory. Repealed Ord. 97-692A §10)

2.04.130 Minority-Owned Banks

Metro will seek to identify minority-owned banks and banks utilizing equal opportunity banking practices, including community reinvestment, and, to the greatest extent permitted by law, use their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on such banks.

(Ordinance No. 83-165, Sec. 7. Amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2.)

(2.04.135 Affirmative Action and Equal Opportunity Procedures. Repealed Ord. 97-692A §11)

(2.04.140 Certification of Minority Business Eligibility. Repealed Ord. 97-692A §11)

(2.04.145 Annual Minority Business Goals. Repealed Ord. 97-692A §11)

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

The Procurement Officer shall establish procedures relating to good faith opportunities for formal 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 subcontracting opportunities shall be required for construction contracts over \$150,000.00.

(b) At the discretion of the Procurement Officer, 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 or proposals 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 during the bidding process is required. Contractors failing to comply will be considered non-responsive.

(Ordinance No. 83-165, Sec. 11. Repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 12; Ordinance No. 02-966A, Sec. 1.; Ordinance No. 10-1240, Sec. 5.; and Ordinance No. 14-1345, Sec. 7.)

(2.04.155 Contract Award Criteria. Repealed Ord. 97-692A §13)

(2.04.160 Definition and Determination of Good Faith Efforts. Repealed Ord. 97-692A §13)

2.04.162 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 Procurement 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.

(Ordinance No. 97-692A, Sec. 14-15. Amended by Ordinance No. 02-966A, Sec. 1.; and amended by Ordinance No. 10-1240, Sec. 6.)

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 the prior written consent of 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.

(Ordinance No. 83-165, Sec. 14. Amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 28; and amended by Ordinance No. 10-1240, Sec. 7.)

2.04.170 Council Information Reports

On behalf of the Chief Operating Officer, the Procurement Officer shall provide an annual report to Council showing Metro's utilization of ESBs, MBEs and WBEs in the procurement and contracting process.

The Chief Operating Officer shall use MWESB utilization when evaluating the performance of this program and of Department Directors.

(Ordinance No. 83-165, Sec. 15. Amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 16; replaced by Ordinance No. 97-692A, Sec. 17; amended by

Ordinance No. 02-966A, Sec. 1.; and amended by Ordinance No. 10-1240, Sec. 8.)

(2.04.180 Compliance. Repealed Ord. 97-692A §18)

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.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 19.)

(2.04.200-.290 Repealed Ord. 97-692A §22)

METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR FEDERALLY-FUNDED CONTRACTS

2.04.300 Disadvantaged Business Enterprise Program (DBE Program) for Federally-Funded Contracts, Findings, Purpose and Authority

(a) It is the purpose of Metro Code Sections 2.04.300-.380 to establish and implement a program to encourage the utilization by Metro of disadvantaged businesses by creating for such businesses the maximum possible opportunity to compete for and participate in federally-funded Metro contracting activities. The DBE Program does not apply to locally-funded contracts, which are governed by 2.04.100 to 2.04.190.

(b) Metro Code Sections 2.04.300-.380 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.

(c) Metro Code Sections 2.04.300-.380 shall be known and may be cited as the "Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts," hereinafter referred to as the "DBE Program."

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 23.)

2.04.305 Policy Statement

(a) Through the DBE Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(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.

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

(d) The objectives of the DBE Program shall be:

- (1) To assure that provisions of the DBE Program are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors; and
- (2) To initiate and maintain efforts to increase DBE Program participation by disadvantaged businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43 (a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT-assisted contracts between Metro or USDOT subrecipients and any contractor.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 24.)

2.04.310 Definitions

For purposes of the DBE Program, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of the DBE Program a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the DBE Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantaged Business Enterprise or DBE" means a small business concern which is so certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more

socially or economically disadvantaged individuals; and

- (2) Whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it.

(g) "Executive Department" means the State of Oregon's Executive Department or such state agency, department or entity to which has been delegated the responsibility to certify a Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(h) "Joint venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE and non-DBE, the DBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE and a non-DBE must receive Metro approval prior to contract award to be counted toward any DBE contract goals.

(i) "Labor and materials contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) "Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the department on the recipient's or department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) "Oregon Department of Transportation or ODOT" means the State of Oregon's Department of Transportation.

(l) "Personal services contract" means a contract for services of a personal or professional nature.

(m) "Procurement contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) "Recipient" means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) "Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) "Socially or economically disadvantaged individuals or disadvantaged individuals" has the meaning established by ORS 200.005(2), (9), including the rebuttable presumption established by ORS 200.015(3), and the definitions supplied by ORS 200.005(7), (10).

(q) "USDOT-assisted contract" means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) "USDOT financial assistance" means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a deep water port.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 96-635B, Sec. 4.)

2.04.315 Notice to Contractors, Subcontractors and Subrecipients

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the DBE Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate.

(Ordinance No. 92-466A, Sec. 2.)

2.04.320 DBE Liaison Officer

(a) The Chief Operating 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 Chief Operating 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.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 25; Ordinance No. 02-966A, Sec. 1.)

2.04.325 Directory

A directory of DBEs as certified by ODOT or the Executive Department, as applicable, shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet DBE Program requirements.

(Ordinance No. 92-466A, Sec. 2.)

2.04.330 DBE-Owned Banks

Metro will seek to identify DBE-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE banks.

(Ordinance No. 92-466A, Sec. 2.)

2.04.335 Affirmative Action and Equal Opportunity Procedures

Metro shall use affirmative action techniques to facilitate DBE and participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications and delivery schedules so as to facilitate the participation of DBEs.

(b) Referring DBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the DBE Program to organizations and individuals concerned with DBE programs.

(e) Periodic reviews with Department Directors to ensure that they are aware of the DBE Program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE goals for department contracts shall be factors considered during annual performance evaluations of the Department Directors.

(f) Monitor and ensure that disadvantaged planning centers and likely DBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE participation.

(h) Distribution of lists to potential DBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE vendors that Metro does not certify DBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE participation in contracts. In an effort to become more knowledgeable regarding DBE resources, the committee shall also invite potential DBE contractors to attend selected meetings.

(l) Requiring that at least one DBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500.00 but not more than \$25,000.00 in the case of non-personal services contracts; and 2) for more than \$2,500.00 but not more than \$25,000.00 for personal services contracts. The liaison officer may waive this requirement if he/she determines that there are no DBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs in the business of providing the service(s) or item(s) required shall be mailed bid or proposal information.

(m) The Chief Operating Officer or his/her designee may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs in Metro contracting activities.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 94-554B; Ordinance No. 02-966A, Sec. 1.)

2.04.340 Certification of Disadvantaged Business Eligibility

(a) To participate in the DBE Program as a DBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE. A prospective contractor or subcontractor must be certified as a DBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE and be counted toward meeting goals. Metro will adhere to the recertification rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in

any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of the DBE Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.
- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged if the recipient determines:
 - (i) That there is no reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
 - (ii) That there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in

paragraphs (d), (4), (5) and (6) of this paragraph.

- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.
- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.
- (7) In making the determinations called for in paragraphs (d)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.
- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect. 49 CFR 23.69.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 02-966A, Sec. 1.)

2.04.345 Annual Disadvantaged Business Goals

(a) 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.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the DBE Program; and
- (4) Existing goals of other local USDOT recipients and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 26.)

2.04.350 Contract Goals

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.00.

(b) The liaison officer may set a contract goal for any contract other than construction contracts over \$25,000.00. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for

contracts other than construction contracts over \$50,000.00 shall be set at the discretion of the liaison officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE goals are established at the time that bid/proposal documents are drafted, the liaison officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.360, to achieve DBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.360 or 2.04.375. The extent to which DBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 92-466A, Sec. 2.)

2.04.355 Contract Award Criteria

(a) To be eligible for award of contracts containing a DBE goal, prime contractors must either meet or exceed the specific goal for DBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs certified by the Executive Department in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or Request for Proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.360 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a disadvantaged business program compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE utilization forms listing names of DBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five (5) working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed letters of agreement between the bidder/proposer and DBE subcontractors and suppliers to be utilized in performance of the contract. A sample letter of agreement will be provided by Metro. The DBE utilization forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two (2) working days of bid opening or proposal submission in accordance with Section 2.04.360. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two (2) days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The liaison officer, at his/her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 92-466A, Sec. 2.)

2.04.360 Determination of Good Faith Efforts

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any pre-solicitation or prebid meetings that were scheduled by Metro to inform disadvantaged business enterprises of contracting and subcontracting or material supply opportunities available on the project.
- (2) Advertisement in trade association, general circulation, disadvantaged and trade-oriented, if any and through a disadvantaged-owned newspaper or disadvantaged-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - (A) The names, addresses, telephone numbers of all DBE contacted;
 - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms.
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder.
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals.
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women and Emerging Small Business that provide assistance in the recruitment and placement of DBEs.

(Ordinance No. 92-466A, Sec. 2.)

2.04.365 Replacement of DBE Subcontractors

Prime contractors shall not replace a DBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE subcontractor shall replace such DBE subcontractor with another certified DBE subcontractor or

make good faith efforts as described in the preceding section to do so.

(Ordinance No. 92-466A, Sec. 2.)

2.04.370 Records and Reports

(a) Metro shall develop and maintain a record keeping system to identify and assess DBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs by number, percentage and dollar amount;
- (2) A description of the types of contracts awarded; and
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE records will be separately maintained. Required DBE information will be provided to federal agencies and administrators on request.

(c) The liaison officer shall prepare reports, at least semiannually, on DBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

(Ordinance No. 92-466A, Sec. 2.)

2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals

(a) DBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged business partner in the joint venture.
- (4) Metro shall count toward its goals only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to Metro to rebut this

presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.

- (6) A DBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE suppliers and manufacturers, provided that the DBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:
 - (A) Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.
 - (B) DBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors

shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts.

(b) DBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 27.)

2.04.380 Compliance and Enforcement

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE participation in the contract.

(b) The liaison officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE participation.

(Ordinance No. 92-466A, Sec. 2.)

METRO'S SUSTAINABLE PROCUREMENT PROGRAM

2.04.500 Purpose and Intent

Metro's Sustainable Procurement Program is created to achieve the following:

(a) Ensure that Metro's procurement activities meet the Sustainability goals established by the Metro Council.

(b) Ensure that Metro's procurement activities support the definition of Sustainability adopted by the Metro Council.

(c) Support a sustainable environment, economy, and community by:

- (1) Reducing the environmental impact of Metro government operations and setting the standard for sustainable public purchasing in the region;
- (2) Supporting businesses and markets located in the Portland Metro region; and
- (3) Ensuring equitable inclusion of diverse members of our community in our Sustainable Procurement efforts.

Metro's Sustainable Procurement Program applies to all purchases made by Metro.

(Ordinance No. 10-1247.)

2.04.510 Definitions

As used in Section 2.04.500 through the end of this chapter:

(a) "Certified Organic" means the item has been grown according to strict uniform standards that are verified by independent state or private organizations.

(b) "Contractor" means any person, group of persons, consultant, designing architect, association, partnership, corporation, or other business entity that has a contract with Metro (including suppliers) or serves in a subcontracting capacity with an entity having a contract with Metro for the provision of goods or services.

(c) "Designated Products" means Recovered and Sustainable Products designated in Metro's Sustainable Procurement Administrative Rules.

(d) "Ecolabel" means a label that identifies overall environmental preference of a product or service within a specific product/service category based on Life Cycle Cost Assessment considerations and that is awarded Third Party Certification.

(e) "Fair Trade" means a trading partnership, based on dialogue, transparency and respect, which seeks greater equity and contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers.

(f) "Green Building Practices" means a whole-systems approach to the design, construction, and operation of buildings and structures that helps mitigate the environmental, economic, and social impacts of construction, demolition, and renovation, and includes Third Party Certification.

(g) "Habitat Friendly" means development practices that reduce the impact of development on natural resources, look beyond the building envelope and focus on land development and site design that mimic nature's processes, and conserve the natural systems and hydrologic functions of a site.

(h) "Least Toxic" means that no additives that are chemicals of high concern to human or environmental health may constitute part of the product except at levels consistent with background levels in the environment.

(i) "Life Cycle Cost Assessment" means the comprehensive accounting of the total cost of ownership, including the initial costs, energy and operational costs, longevity and efficacy of service, and disposal costs.

(j) "Locally Available" means grown, manufactured, or assembled within 400 miles of the Metro Region or sold from a vendor located within 400 miles of the Metro Region.

(k) "Minimum Recovered Content Standards" means standards established by Metro's Sustainable Procurement Administrative Rules specifying the minimum level of Recovered Material necessary for designated products to qualify as Recovered and Sustainable Products.

(l) "Post-Consumer Material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-Consumer Material is a part of the broader category of Recovered Material.

(m) "Practicable" means satisfactory in performance and available at a fair and reasonable price.

(n) "Pre-Consumer Material" means material or waste remaining after manufacture of a product.

(o) "Product Stewardship" means whoever designs, produces, sells, or uses a product takes responsibility for minimizing the product's environmental impact throughout all stages of the product's life cycle.

(p) "Recovered Material" means waste material and by-products which have been recovered or diverted from solid waste and includes both Post-Consumer Material and manufacturing or Pre-Consumer Material.

(q) "Recovered Product" means a product manufactured using Recovered Material and meeting the Minimum Recovered Content Standards established by Metro's Sustainable Procurement Administrative Rules.

(r) "Recycled Paper" means paper meeting the Minimum Recovered Content Standards established by Metro's Sustainable Procurement Administrative Rules.

(s) "Supplier Diversity" means a Sustainable Business Practice that encourages the use of previously underutilized vendors as suppliers.

(t) "Sustainability" means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(u) "Sustainable Procurement" means purchasing materials, products, and services in a manner that integrates fiscal responsibility, social equity, and community and environmental stewardship.

(v) "Sustainable Products" means products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider Life Cycle Cost Assessment.

(w) "Third Party Certification" means an independent, objective assessment of a service or product completed by someone other than the service provider or product manufacturer.

(Ordinance No. 10-1247.)

2.04.520 Metro's Sustainable Procurement Administrative Rules

The Chief Operating Officer shall establish Sustainable Procurement Administrative Rules consistent with this Section to implement the Sustainable Procurement Program. The Sustainable Procurement Administrative Rules shall include:

(a) Guidance on maintaining or referencing lists of preferred Recovered and Sustainable Products as Designated Products.

(b) Guidance for procurement of goods that meet the Sustainability goals established by the Metro Council and that include without limitation where available and Practicable the following attributes:

- (1) Third Party Certification;
- (2) Product Stewardship;
- (3) Green Building Practices;
- (4) Least Toxic;
- (5) Waste Prevention and Reduction;
- (6) Recovered Material;
- (7) Habitat Friendly;
- (8) Certified Organic;
- (9) Greenhouse Gas Reduction;
- (10) Locally Available;
- (11) Supplier Diversity;
- (12) Fair Trade; and
- (13) Life Cycle Cost Assessment

(c) A Minimum Recovered Content Standard for Recycled Paper and Recovered Products.

(d) A schedule and process for implementation of the Sustainable Procurement Program and Administrative Rules.

(e) A schedule for reporting to the Metro Council on the status and performance of the Sustainable Procurement Program and Administrative Rules and the minimum requirements for the report, including the setting of goals to illustrate progress.

(f) A process for assigning Department personnel to evaluate whether it is Practicable to use a particular Recovered or Sustainable Product.

(g) A process for collecting data to evaluate the status and performance of the Sustainable Procurement Program and Administrative Rules.

(h) Direction to the Procurement Officer for revising procurement procedures to comply with the Sustainable Procurement Program and Administrative Rules.

(i) A plan for implementing the joint purchase of Recovered and Sustainable Products and Materials, within Metro and with other public agencies, to reduce the price of these goods.

(Ordinance No. 10-1247.)

2.04.530 Metro's Sustainable Procurement Program Responsibilities

(a) The Chief Operating Officer shall support and implement Metro's Sustainable Procurement Program and Administrative Rules.

(b) The Procurement Officer shall:

- (1) Ensure that procurement procedures are revised for consistency with the Sustainable Procurement Program and Administrative Rules.
- (2) Provide Departments with information to facilitate their evaluation and procurement of Recovered and Sustainable Products.
- (3) Inform and advise Departments of their responsibilities under the Sustainable Procurement Program and Administrative Rules;

provide training on and ensure compliance with the same.

- (4) Provide information to the Chief Operating Officer to assist with creating and revising Sustainable Procurement Administrative Rules to achieve Metro's Sustainability goals.
- (5) Ensure that Recovered and Sustainable Products are designated whenever Practicable.
- (6) Revise existing procurement standards and specifications to eliminate, where Practicable, discrimination against the procurement of Sustainable Products.
- (7) Transmit Sustainable Procurement Program and Administrative Rules to each Department.
- (8) Establish a strong connection between Metro's Sustainable Procurement Program and Metro's ESB, MBE, and WBE Program.
- (9) Ensure that all invitations to bid or requests for proposal comply with the Sustainable Procurement Program and Administrative Rules.
- (10) Ensure that when considering bids and proposals submitted by Contractors, Metro evaluates compliance with the Sustainable Procurement Program and Administrative Rules.
- (11) Develop a system for tracking Metro's compliance with its Sustainable Procurement Program and Administrative Rules.
- (12) Assist the Chief Operating Officer in compiling the report required in Section 2.04.540.

(c) Department Directors shall ensure that their departments comply with the Sustainable Procurement Program and Administrative Rules.

(Ordinance No. 10-1247.)

2.04.540 Report to Metro Council

Each year the Chief Operating Office shall submit a report to the Metro Council that details the status and performance of the Sustainable Procurement Program and Administrative Rules.

(Ordinance No. 10-1247.)
