

METRO
EQUITY IN CONTRACTING RULES
Procurement Administrative Rules

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

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

DEPARTMENT RESPONSIBLE: Finance Department
PROCUREMENT

DEPARTMENTS AFFECTED: All Metro Departments

DATE: May 7, 2020

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I. POLICY STATEMENT

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

II. DEFINITIONS

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

III. PROGRAM ADMINISTRATION

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

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

IV. GENERAL PROGRAM ACTIVITIES

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

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

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

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

VI. PROGRAM SOLICITATION AND SCORING REQUIREMENTS FOR PUBLIC IMPROVEMENT CONTRACTS

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

VII. COBID MARKETPLACE

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

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

VIII. SUBCONTRACTOR EQUITY PROGRAM

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

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

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

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

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

IX. PRESOLICITATION EQUITY STRATEGY MEETING

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