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City of Portland, Oregon

**PRIME CONTRACTOR
DEVELOPMENT PROGRAM
(PCDP)**

Prepared by the
Office of Management and Finance,
Bureau of Revenue and Financial Services
Procurement Services

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2016





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BACKGROUND:

On June 22, 2011 City Council adopted Resolution No. 36868 directing Procurement Services to work with the Fair Contracting Forum (FCF), other interested organizations, City bureaus and the Portland Development Commission (PDC) to review the guidance provided by the 2009 Disparity Study and bring forward recommendations that would expand and strengthen the City's equity programs.

Phase 1 of the Disparity Study Implementation Project began in August 2011 and continued through January 2012. This effort brought together various community stakeholders including contractors, consultants, and representatives from interested organizations as well as City and PDC staff, thus creating a small business program workgroup, to develop program-specific recommendations on five programmatic areas: workforce training and hiring; good faith efforts; prequalification; and new small business programs for construction.

AUTHORITY:

ORS §279A.100 (permitting contracting practices designed to promote affirmative action goals, policies or programs for disadvantaged or minority groups); Portland City Council Resolution No. 36944 (passed on June 28, 2012; authorizing the adoption of rules and procedures to implement the Social Equity Contracting Strategy including the Prime Contractor Development Program).

The Chief Procurement Officer shall have the authority to waive minor irregularities and make situational exceptions that may be in the best interest of the individual program Prime Contractor or will provide the best outcome on behalf of the City.

PROGRAM OVERVIEW:

The work to be provided by the City will be within five distinct work categories: sewer and water construction, street improvements, park improvements and building alteration.

The program includes personalized education, business coaching, technical assistance and training to better equip the Contractors in their work as Prime Contractors with the City of Portland. Contractors will participate in a number of different training classes, some are mandatory while others may be optional.

By applying to be a Prime Contractor of this Program, the applicant is making the commitment to abide by the policies and procedures governing the operation of this Program and to operate in accordance with State law and City Code.

Participants of the Prime Contractor Development Program are expected to bid on other governmental agency and private industry projects. The program is not intended to sustain Prime Contractors businesses.



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GOALS AND OBJECTIVES:

Goals:

- Increase Minority and Disadvantaged prime contractor's participation on the City's public works and improvement projects.
- Address and correct the historical underutilization of minority prime contractors on City projects.
- Comply with City's Equity Goals.

Objectives:

- Develop MWDBEs capacity to successfully complete City of Portland projects.
- Create a Roster of MWDBEs to support City of Portland objective to increase utilization of MWDBEs.

PROGRAM PERFORMANCE MEASURES:

The following performance measures will be tracked in the Prime Contractor Development Program:

1. Number of minority contractors: All Tiers (Goal is 5)
2. Number of women-owned contractors: All Tiers (Goal is 2)
3. Number of projects placed into Program compared to projects of the same dollar value placed in Open Market, based on availability/skill
4. Percentage of minority and women contractors obtaining contracts that they bid on in the PCDP. (Goal is 50%)
5. Number/Percentage contractors successfully completing the Program's Business Development program (Goal is 80%)

6. Number of Prime Contractors reporting an increase in their gross annual receipts after one year in the Program (Goal is 10%)
7. Number of contracts obtained by Program Prime Contractors from other sources government agencies or private industry) (Goal is 60%)

EQUITY LENS:

In conjunction with the City's focus on Social Equity in Contracting, an Equity Lens will be utilized to evaluate the Prime Contractor Development Program and ensure that equity in Contracting is accomplished. The City will review and report in its progress and mitigate any equity challenges that arise as the program progresses. The following is the Equity Lens:

1. Does the Program expand opportunity for minority and women contractors?
2. Does the Program effect systemic change?
3. The 2009 Disparity Study provided evidence of disparities in the utilization of minority and women as prime contractors on City construction contracts. Does the Program address this disparity?
4. Does the Program have any unintended consequences for certain populations and/or communities?



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STANDARDS AND PROCESSES



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GENERAL APPLICATION REQUIREMENTS:

To be eligible for the Prime Contractor Development Program, all applicants shall:

- ✓ Be identified by the State as a Contractor within one of the City's five (5) specific categories:
 - ✓
 - Sewer construction
 - Water construction
 - Street improvements
 - Building alteration/construction
 - Park improvements
- ✓ Hold a State of Oregon MBE, WBE or ESB certification
- ✓ Have been in business a minimum of three (3) years
- ✓ Be able to provide the necessary financial statements to the City's third-party consultant and be found financially solvent
- ✓ Be able to pass the City's Commercially Useful Function Review
- ✓ Not Listed on the BOLI Ineligibility List

APPLICATION PROCESS:

The City's application's multi-step process is designed to provide the necessary information about the Applicant, his/her business and the areas in which the applicant might need to concentrate. The original application must be mailed to the City's Program Manager. Applications are not accepted via fax or email transmission.

- A. **Written Application:** The written application is divided into eight (8) distinct sections as follows:
- ✓ Construction Equipment -
 - ✓ Experience of Company Owners/Principals
 - ✓ Bonding
 - ✓ Banks, Equipment Suppliers and Material Suppliers
 - ✓ Experience Questionnaire
 - ✓ Business Entity Information
 - ✓ Additional Business Information
 - ✓ Affidavit



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APPLICATION PROCESS cont'd:

B. Commercially Useful Function: A CUF identifies the areas listed below to qualify as a Prime Contractor.

1. Is responsible for the execution of a distinct element of the work of the contract
 2. Carries out its obligation by actually performing, managing or supervising the work involved
 3. Performs work that is normal for its business, services and function
 4. Is not subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices
- ✓ The CUF Review will be performed by a Third Party Consultant who will conduct on-site reviews as well as if the Contractor is in conformance with the written application.
 - ✓ The CUF criteria will be part of the determination for an applicant's acceptance into the program.

C. Third Party Review of Applicant's Financial Statements: Financial review confirms Contractor's solvency.

- ✓ Financial review will be performed by a Third Party Consultant. No financial documents will be received by, nor retained by the City.
- ✓ Failure to pass the Third-Party Review will render the contractor ineligible for participation in the Prime Contractor Development Program.
- ✓ Upon review, the documents will be returned to the Prime Contractor.



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GENERAL PROGRAM REQUIREMENTS:

The Prime Contractor must remain in good standing throughout his/her involvement in the Prime Contractor Development Program.

The following are the general requirements that must be followed:

- a. Must maintain Oregon State licensed, i.e. CCB License and committed to performing as a Prime Contractor.
- b. Must maintain State Certification as a MBE, WBE or ESB firm.
- c. Must be able to perform the full percentage of work that would be normal under industry standards and practices, per Tier level criteria.
- d. Must bid on three (3) projects in their listed category (ies) of work within one fiscal year. (June thru June)
- e. Shall adhere to the terms of the Oregon Administrative Rules (OAR); Section 445-050-0020.
- f. Must comply with all state and local contracting laws, policies and procedures.
- g. Must commit to soliciting bids from other M/W/ESB contractors for sub-contracting opportunities, and will be required to demonstrate and document its good faith efforts to utilize M/W/ESB contractors.
- h. Must meet the business requirements and Terms and Conditions of all City of Portland contracts.
- i. Prime Contractors must immediately notify the Program Coordinator should the encounter payment issues regarding their project with the City.
- j. Prime Contractor cannot be on the BOLI ineligibility list.
- k. Participate in annual and project requested commercially useful function (CUF) reviews. Program Manager can request a review at any time.
- l. Must participate in mandatory training and any one-on-one technical assistance requested by the Program Manager.
- m. Contractor must participate in the Business Development Program sponsored by the City of Portland. Failure of the contractor's business owner(s) to participate in and complete this program shall be grounds for dismissal from the Prime Contractors Development Program.
- n. Must be able to prequalify with the City of Portland
- o. Shall participate in a rotation process for bidding depending on the number of projects available and the availability of Prime Contractors.



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PROGRAM BY TIER:

- The goal of the Program is to provide increasing levels of work experience for the Prime Contractors through successful progression in four programmatic tiers.
- Work and activities for this Program will be determined by the tier to which each Prime Contractor is assigned.
- City projects will be incorporated into the tiers based upon the estimated construction value of each project.
- Prime Contractors will be evaluated annually for their eligibility and capacity to progress to the next higher tier.

The following tier structure shall apply to the Prime Contractor Development Program:

	<i>TIER 1</i>	<i>TIER 2</i>	<i>TIER 3</i>	<i>TIER 4</i>
2Yr-Gross Annual Receipt	<1,700,000	>1,700,000	>3,000,000	TBD
Time Not To Exceed	3 years	2 years	2 years	TBD
Project Value Range	\$5,000 to \$150,000	\$ 150,001 to \$350,000	\$350,001 to \$500,000	\$500,001 to \$1,000,000
Minimum Self-Perf Required	51%	51%	40%	35%

Note: The Prime Contractor Development Program is not intended to sustain Prime Contractors' businesses, thus participants are expected to bid on and work on other government agency and private industry projects.



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CRITERIA FOR REMOVAL:

At the sole discretion of the City, a Prime Contractor may be permanently removed from the Prime Contractor Development Program for any one of the following:

- a. Is no longer a State Certified MBE, WBE or ESB firm
- b. Failure to attend mandatory training
- c. Violation of state and/or local contracting laws (i.e., failure to pay subcontractors for work performed on a project after receiving payment, violating any Oregon Administration Rule, etc.), i.e. BOLI Contractors Ineligibility List.
- d. Failure to submit required documentation as requested by the city within the specified time frame.
- e. Failure to participate in technical assistance when required by the City
- f. Subcontracting work to others in excess of the allowable limit as identified in Table 1.
- g. Failure to provide competitive bid on three (3) projects in one (1) fiscal year if invited to bid
- h. Establishing a pattern of poor work performance
- i. Failure to maintain a safe worksite.
- j. Failure to pass a CUF Review at any time throughout Contractor's participation in the Program
- k. Failure, in the City's sole good faith judgment, to remain an appropriate or viable participant in the Program

NOTE: Prior to the Prime Contractor's firm being permanently removed from the Prime Contractor Development Program, the Prime Contractor will be counseled regarding the issues at hand.

If the issue persists, a Notice to Cure will be sent to contractor providing for correction within 7 calendar days. If over a period of 7 business days, the issues have not, in the sole judgment of the City, improved substantially or been mitigated, the prime contractor will be removed from the Program.



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EDUCATIONAL OPPORTUNITIES AND TECHNICAL ASSISTANCE



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TRAINING AND EDUCATIONAL OPPORTUNITIES:

Training and education can be valuable to the Prime Contractor to better facilitate successful project awards and completion. The mandatory listing of coursework is designed to further the Prime Contractor's knowledge and understanding within the City of Portland's contracting processes and procedures.

Failure to attend a scheduled mandatory course will place the Prime Contractor's standing within the Program in jeopardy. The following listing of training and educational classes may be provided to PCDP Contractors and may be waived by the PCDP coordinator.

To ensure the contractors' success in the PCDP, the City is providing training and educational opportunities to help contractors further their business goals.

The following classes are part of the required classes throughout the duration of your PCDP participation and are not listed in a particular required time line.

- Quarterly Lessons Learned
- Business Development Program
- City of Portland required Safety Certifications
- State and City Certifications

Course offerings are subject to change and availability.

TECHNICAL ASSISTANCE:

In addition to the above listed mandatory training, the City may also provide the following unique assistance in the form of one-on-one training and consulting, as a way to provide an intensified training in one specific area where the Prime Contractor is challenged.

The training may be provided as the need arises but may be limited by time, budgetary restraints, etc. Such training may include but not be limited to:

- Job Costing
- Critical Path Method Scheduling
- Bidding and Estimating assistance
- Project Management assistance
- Accounting/Bookkeeping
- Back Office Administration
- Other assistance/training deemed necessary



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BUSINESS DEVELOPMENT PROGRAM

University accredited business program, is mandatory for PCDP prime contractors in the program, taught by a local industry expert and industry panellists throughout the 9 month course.

Mandatory for all Contractors who have matriculated into 2nd tier or have been in the program for more than 3 years.

The course focuses on:

- business development strategies
- strategic planning
- budgeting and financial management
- marketing and sales
- human resources
- accessing capital
- government contracts



The City of Portland, also partners with the Portland Development Commission. This partnership provides a component of professional service providers, creating a diverse mix of the Construction community, including architects, engineers, technicians and Outreach/Diversity practitioners.

This partnership creates networking opportunities for greater project opportunities.



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CLARIFICATIONS, APPEALS AND PUBLIC RECORDS REQUESTS



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CLARIFICATIONS AND/OR APPEAL PROCESS:

Questions and clarifications:

Questions and clarifications may be sought by a Prime Contractor involved within the Program at any time. A Prime Contractor may also at any time seek additional clarification or debriefing, request an opportunity to review their work within the Program with City staff or review bidding procedures with City staff. To request additional clarification or information, the Prime Contractor should contact the City's Program Coordinator.

Appeals for Application Decision:

If a Prime Contractor's application is denied at any stage of the application process, the denial may be appealed as set forth herein. The applicant must submit a written appeal to the City within seven (7) calendar days after issuance of the City's notification denying the applicant. Appeals must include the basis for the appeal and be addressed and delivered to the Chief Procurement Officer. The Chief Procurement Officer will review all appeals and will issue a written decision. The decision of the Chief Procurement Officer is final and concludes any further administrative remedy.

Appeals for Permanent Removal:

Following receipt of the City's Notice to Cure, a Prime Contractor shall have seven (7) calendar days in which to file an appeal if they feel adversely affected or aggrieved by the action. The appeal must be submitted to the Chief Procurement Officer in writing and must specifically address all of the issues identified within the Notice to Cure, and it shall include any additional information that may be pertinent to the appeal. The Chief Procurement Officer shall review all appeals and issue a written determination. Alternatively, the Chief Procurement Officer may forward the appeal to the Purchasing Board of Appeals. The decision of either the Chief Procurement Officer or the Purchasing Board of Appeals is final and concludes any further administrative remedy.

Board of Appeals:

In accordance with Portland City Charter Section 2-103, City Council created the Purchasing Board of Appeals to provide for the prompt, effective and efficient resolution of appeals and protests of Affected Persons in regard to City decisions. The City Council delegates its authority to conduct a hearing to the Chief Procurement Officer.

PUBLIC RECORDS:

The Prime Contractor's personal information may be made available to the Prime Contractor at any time, however the personal records of other contractors will not be immediately open to inspection and will be subject to the Oregon Public Records Act and may be opened in a manner to avoid disclosure of contents to competing contractors. The City is entitled to withhold from disclosure any materials defined as exempt or conditionally exempt from disclosure pursuant to the Oregon Public Records Act.

Prime contractors involved within the Prime Contractor Development Program shall designate the information they consider exempt or conditionally exempt from disclosure by stamping the word "Confidential" on such documents or by otherwise indicating the documents are considered to be confidential. Materials so designated and meeting the requirements for exempt or conditionally exempt information will not be disclosed unless the Multnomah County District Attorney determines that disclosure is required after appeal. However, the City reserves the right to disclose materials inappropriately marked as exempt or conditionally exempt and to withhold from disclosure materials that meet standard but which were inadvertently not marked as confidential.

Any information provided to the City shall be subject to the Oregon public records laws ORS §192.410 to 192.505 and, except as provided above, shall be subject to public disclosure. See also PCC §5.33.470.