

# CITY OF PORTLAND SUBCONTRACTOR EQUITY PROGRAM

## 1. PROGRAM DESCRIPTION

The Portland Plan as adopted by Resolution 36918 was developed to make Portland a prosperous, educated, healthy and equitable city, recognizing that advancing equity must be at the core of our plans for the future. The Portland Plan includes a frame work for equity to guide plan implementation and improve City operational and business practices, support actions that promote accountability, close disparity gaps and increase community engagement. It is the intent of the City Council to achieve equity in City government policies, procedures and practices. Equity in contracting and workforce opportunities in the City are essential to achieving the vision of the Portland Plan.

As such, the City has a compelling governmental interest to ensure that its projects and resources provide employment opportunities for Oregon State certified disadvantaged, minority, women, and emerging small businesses (collectively, "D/M/W/ESBs") in order to address historic underutilization. Therefore, the City's Subcontractor Equity Program (the "Subcontractor Equity Program" or "Program") applies to all City-Owned Projects and all City-Sponsored Projects as described below. On projects subject to the Program, the entity responsible for subcontractor selection (the "Contractor") shall be obligated to comply with the Program for all subcontracting opportunities (regardless of value).

City-Owned Projects means contracts that have \$150,000 or more of Hard Construction Costs.

City Resources means funds provided by the City (regardless of the source) in the form of loans, grants or payments. City Resources also include the difference between the purchase price paid by a private entity and the fair market value of such property.

City – Sponsored Projects means contracts that provide for the disposition of the city-owned property and/or provide City Resources that result in a privately-owned project that has \$150,000 or more of Hard Construction Costs.

## 2. ASPIRATIONAL GOALS

The Program has an aspirational goal of twenty percent (20%) of Hard Construction Costs for D/M/W/ESB subcontractor utilization on projects subject to the Program (the "Aspirational Goal"); within the Aspirational Goal, a further goal of 14% D/M/WBE utilization is desired. The City encourages Contractors to diversify their D/M/W/ESB subcontractor utilization from all available divisions of work.

A directory of D/M/W/ESBs can be found by visiting the State of Oregon's Office of Minority, Women and Emerging Small Business website at: <http://www4.cbs.state.or.us/ex/dir/omwesb/>.

## 3. SUBMISSION OF REQUIRED DOCUMENTATION FOR CITY-OWNED PROJECTS SUBJECT TO COMPETITIVE BIDDING

- A. **FORM 1 - SUBCONTRACTOR COMMITMENT CERTIFICATION: DUE DAY AFTER BID OPENING BY 2:00 PM FROM ALL BIDDERS.**

1. If a bidder meets the Aspirational Goal, a completed and signed Form 1 is all that is required for submission for the Subcontractor Equity Program. The City will verify whether the Aspirational Goal has been met. If the City finds that the Aspirational Goal has not been met, the bidder will be notified and must submit additional documentation, or Form 2 as required.
2. Form 1 must list ALL Subcontractors to be used on the project, their corresponding type of work, the subcontract amount, and certification status, if applicable, regardless of the dollar amount. If the project includes bid alternates for additional work, bidders shall list ALL first-tier subcontractors that will be used if the City elects to do such additional work. Bidders must identify all types of work that will be self-performed. Form 1 will become a part of the resulting contract for the project. Failure by the apparent low bidder to complete and submit Form 1, will result in the bid being non-responsive and the bid will be rejected.

**B. FORM 2 – D/M/W/ESB BIDS RECEIVED LOG: DUE UPON REQUEST FROM APPARENT LOW BIDDER IF ASPIRATIONAL GOALS ARE NOT MET**

1. If a bidder does not meet the Aspirational Goal, both a completed Form 1, as well as Form 2 will be required. A completed Form 2 will be due upon the City's request.
2. Bidders must have contacted D/M/W/ESB subcontractors in writing to advise them of potential subcontracting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors the same information and informing them of the date and time that sub-bids are due.
3. Bidders must have obtained a minimum of three (3) written bids from D/M/W/ESB subcontractors that specialize in the type of work that will be subcontracted. Failure to obtain three (3) written bids from D/M/W/ESB subcontractors may result in bid rejection. Bidders shall submit additional information and provide clarification upon request.
4. If for any reason the apparent low bidder is not awarded the contract or its bid is rejected, the next apparent low bidder shall be reviewed and a determination will be made as to the need of a Form 2 submittal.

**4. SUBMISSION OF REQUIRED DOCUMENTATION FOR CITY-SPONSORED PROJECTS NOT SUBJECT TO COMPETITIVE BIDDING**

**A. FORM 1 - SUBCONTRACTOR COMMITMENT CERTIFICATION: DUE WITHIN 14 DAYS OF BID OPENING, UNLESS OTHERWISE SPECIFIED**

1. If a Contractor meets the Aspirational Goal, a completed and signed Form 1 is all that is required for submission for the Subcontractor Equity Program. The City will verify whether the Aspirational Goal has been met. If the City finds that the Aspirational Goal has not been met, the Contractor will be notified and must submit additional documentation, or Form 2 as required.
2. Contractor must identify all types of work that will be self-performed. Form 1 must list ALL Subcontractors to be used on the project, their corresponding type of work, the subcontract amount, and certification status, if applicable, regardless of the dollar amount. Form 1 will become a part of the resulting contract for the project.

**B. FORM 2 – D/M/W/ESB BIDS RECEIVED LOG: DUE UPON REQUEST FROM CONTRACTOR, IF ASPIRATIONAL GOALS ARE NOT MET**

1. If a Contractor does not meet the Aspirational Goal, both a completed Form 1, as well as Form 2 will be required. A completed Form 2 will be due upon the City's request.
2. Contractor must have contacted D/M/W/ESB subcontractors in writing to advise them of potential subcontracting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors the same information and informing them of the date and time that sub-bids are due.
3. Contractor must have obtained a minimum of three (3) written bids from D/M/W/ESB subcontractors that specialize in the type of work that will be subcontracted. Failure to obtain three (3) written bids from D/M/W/ESB subcontractors may result in bid rejection. Contractor shall submit additional information and provide clarification upon request.

**5. REQUIREMENTS FOR ALL PROJECTS SUBJECT TO THE PROGRAM**

**A. MONTHLY SUBCONTRACTOR PAYMENT AND UTILIZATION REPORT (MUR): DUE BY THE 15<sup>th</sup> OF EACH MONTH**

The Contractor shall complete and submit the Monthly Subcontractor Payment and Utilization Report ("MUR") by the 15<sup>th</sup> of each month once work has commenced. The MUR must list the contract amounts and payment amounts to **ALL** Subcontractors (including D/M/W/ESB subcontractors) and second-tier subcontractors. All first-tier subcontractors with second-tier subcontractors must also submit a MUR on a monthly basis. The City will provide a copy of the MUR electronically prior to the due date of the first MUR.

**B. SUBCONTRACTOR CHANGES AFTER BID SUBMISSION**

1. If any subcontractor is added or replaced after the bid is submitted or the contract is awarded, the selected Contractor shall make good faith efforts to solicit bids from D/M/W/ESBs for the work to be performed.
2. The Contractor must contact D/M/W/ESB subcontractors in writing to advise them of potential subcontracting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors the same information and informing them of the date and time that sub-bids are due.
3. The Contractor must obtain a minimum of three (3) written bids from D/M/W/ESB subcontractors that specialize in the type of work that will be subcontracted. The Contractor shall submit additional information and provide clarification upon request.
4. The Contractor shall complete and submit to the Contract Compliance Specialist the Subcontractor Change/Request Form and include supporting documentation of the foregoing prior to making any changes.
5. The Contractor shall not add, delete, or replace any subcontractor without prior written consent of the Chief Procurement Officer.

**C. REVIEW OF RECORDS**

In the event that the City reasonably believes that a violation of the requirements of the Subcontractor Equity Program has occurred, the City may review the records and pertinent documentation of the Contractor, as well as any subcontractor, to determine whether a violation has occurred.

**D. PENALTIES FOR NONCOMPLIANCE**

A Contractor's failure to comply with the Subcontractor Equity Program may result in a breach of contract, possible disqualification of the Contractor's ability to bid on or receive future contracts, including as provided under Portland City Code 5.34.530, and/or the assessment of penalties. In the event of a breach of contract, in addition to any other remedies that the City may have, the City may take any or all of the following actions:

1. The City may withhold all or part of any progress payment(s) until the Contractor has remedied the breach of contract. In the event that progress payments are withheld, the Contractor shall not be entitled to interest on such payments. If a subcontractor has not complied with the Subcontractor Equity Program, the City may elect to withhold only such subcontractor's portion of the progress payment.
2. The City has an expectation that if a Contractor is awarded a contract, and identifies that it intends to subcontract with D/M/W/ESB subcontractor(s), then the Contractor will actually use such D/M/W/ESB subcontractor(s). Therefore, the contract will include the following provisions:
  - a. The Contractor acknowledges and agrees that it would be difficult, if not impossible, to assess the actual damage incurred by the City for the Contractor's failure to comply with the Subcontractor Equity Program. If the Contractor fails to comply with the provisions of Section 5.B, the Contractor agrees to pay the sum of \$2,000 for each violation. These penalties are independent of any liquidated damages that may be assessed under other provisions of the contract.
  - b. If the Contractor fails to utilize any D/M/W/ESB subcontractor as identified on Form 1, or in its Contracting Plan, the Contractor shall pay \$2,000 for each violation.

Exceptions to this requirement are for approved change orders, reductions in scope of work as requested by the City, failure of a D/M/W/ESB subcontractor to complete work or having breached the subcontract, and substitution requests approved by the City.

**ATTACHMENTS:**

Subcontractor Commitment Certification (Form 1)  
D/M/W/ESB Bids Received Log (Form 2)

All forms are available on the Procurement Services website at: <http://www.portlandoregon.gov/bibs/45307>





