



Portland Housing Bureau

Appendix D **Equity in Contracting, Section 3, and Apprentice & Workforce Diversity Program** **Requirements** *for Developers, General Contractor and Subcontractors* *Effective January 1, 2022*

I. Background

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 framework 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 firms certified by the Oregon Certification Office for Business Inclusion and Diversity (COBID) as: Disadvantaged (DBE), Minority (MBE), Women (WBE), Emerging Small Business (ESB), or Service-Disabled Veteran Owned Business Enterprises (SDVBE) (collectively, “COBID firms”) in order to address historic underutilization. A directory of COBID firms can be found by visiting the State of Oregon’s COBID website at: [COBID Certification Management System \(diversitysoftware.com\)](https://www.cobid.org/)

PHB is committed to advancing equity through contracting: all projects that did not financially close by January 1, 2022 are subject to the requirements listed herein. These requirements include Equity in Contracting, Section 3, and Apprentice and Workforce Diversity Programs (as applicable).

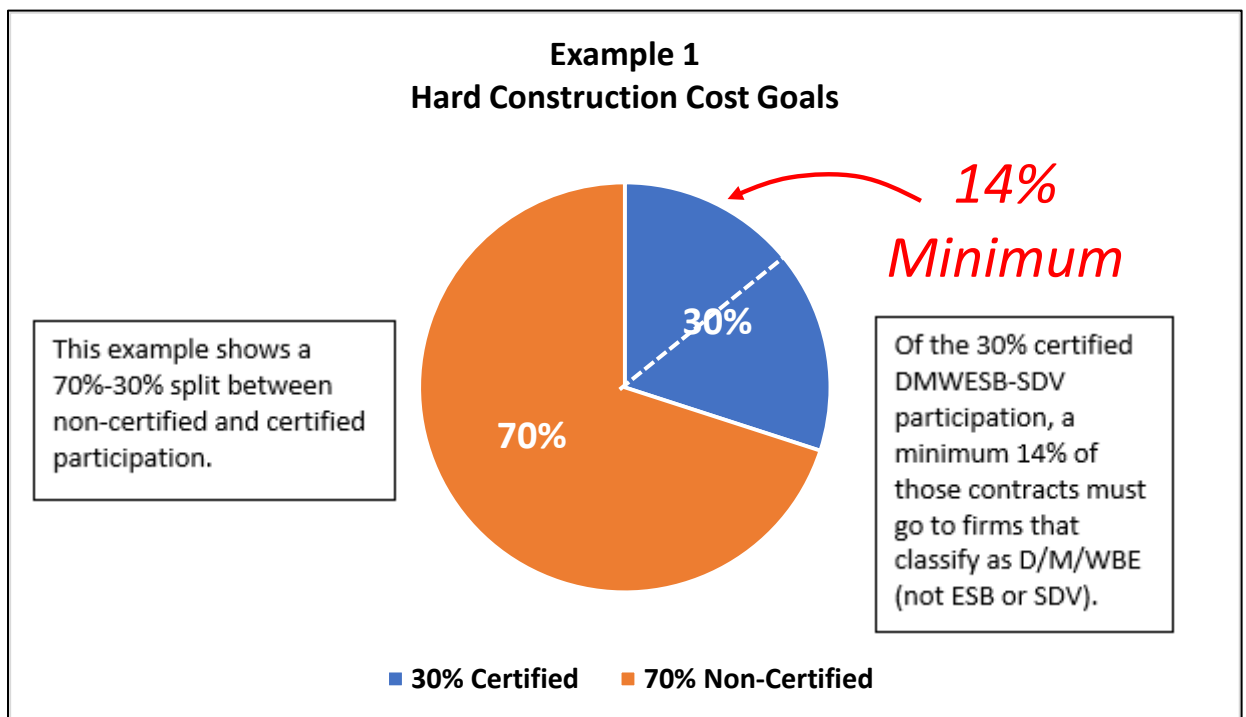
The intent of PHB’s Equity in Contracting Program is to promote best practices for broad outreach and networking to form new relationships in contracting. PHB expects owners/developers awarded PHB funds to understand and emphasize the following Aspirational Goals when selecting a General Contractor (“GC”) and professional service providers, and to clearly communicate the Aspirational Goals and Reporting Requirements to all contractors and subcontractors. The City will track and evaluate the performance of developers and contractors relative to these Aspirational Goals.

II. Aspirational Goals

PHB requires Developer/Owners awarded funds through 2022 Metro Bonds to make good-faith efforts to achieve the following:

Hard Cost Goal – a minimum of 30% of the total Hard Construction Costs shall be contracted to COBID firms (GC/Contractors or Subcontractors). The 30% Hard Cost Goal can be met by using COBID Certified Contractors’ self-performed work as well as Subcontractor utilization. (General Conditions and overhead costs do not count toward the Hard Cost goal for GC self-performed work).

Hard Cost Subgoal – a minimum of 14% of the 30% Hard Construction Costs shall be contracted to D/M/WBE firms (Contractors and Subs combined). See Example 1.



Professional Services Goal – a minimum of 20% of the total Professional Services budget shall be contracted to COBID firms.

Please refer to the requirements outlined in Attachment B: Equity in Contracting Program.

Apprentice and Workforce Diversity – a minimum of 20% of the hours worked, by trade, on contracts that exceed \$300,000 and jobsite work hours exceed 300 hours in any given trade, must be worked by state registered apprentices throughout the duration of the project.

Apprentice Level Aspirational Diversity Goals

- A minimum of 22% of the total apprentice hours shall be worked by BIPOC individuals
- A minimum of 9% of the total apprentice hours shall be worked by women

Journey Level Aspirational Diversity Goals

- A minimum of 22% of the total journey level hours shall be worked by BIPOC individuals
- A minimum of 6% of the total journey level hours shall be worked by women

Please refer to the requirements outlined in Attachment D: Apprentice and Workforce Diversity Program.

III. Other Requirements

Equal Employment Opportunity (EEO) Certification

The City of Portland requires EEO certification of all vendors and contractors doing business with the City and of all construction project subcontractors. In order to be EEO certified, your firm must fill out the online form here: [City of Portland | BuySpeed](https://portlandoregon.gov/buy-speed/) (portlandoregon.gov), stating that it does not discriminate against any employee or applicant on the basis of race, religion, color, sex, marital status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income. Your company must also take steps to ensure equal opportunity in all aspects of employment. These aspects include, but are not limited to, hiring, promotion, transfer, advertising, layoff, termination, rates of pay, training (including apprenticeship), and terms and conditions of employment.

HUD Section 3

On projects with \$200,000 or more in Federal Funds, Section 3 applies to every contractor and is no longer triggered by a contract amount threshold.

Please refer to the requirements outlined in Attachment C: HUD Section 3 Project Compliance and this [link](#).

Current Portland Business License

In order to do business with the City, your Portland Business License Tax Account must be current. This applies to both resident and non-resident vendors. Access a copy of your certificate of compliance or manage your business tax account (or register if you don't have an

account) on the Revenue Bureau Business Taxes website [Revenue | Portland.gov](https://revenue.portland.gov) or call their office at 503-823-5157.

IV. Acknowledgement of Receipt

By signature below, I am hereby acknowledging to the City of Portland that I have been provided with information regarding PHB’s applicable Equity in Contracting, Section 3, and Apprentice and Workforce Diversity Program requirements, which explain the obligations and requirements for any construction project funded in part or whole by the Portland Housing Bureau.

Project Name:

Date:

Print Name

Signature

ATTACHMENTS

- A. Definitions
- B. Equity in Contracting Program
- C. HUD Section 3 Project Compliance
- D. Apprentice and Workforce Diversity Program

Attachment A
PORTLAND HOUSING BUREAU
Effective Date: January 1, 2022
Definitions

BIPOC – Individuals or groups identifying as Black, Indigenous and/or People of Color.

COBID Certified firms - firms certified by the State of Oregon Certification Office for Business Inclusion and Diversity as either: Disadvantaged (DBE), Minority (MBE), Women (WBE), Emerging Small Business (ESB) or Service-Disabled Veteran Owned Business Enterprises (SDVBE).

The Contract – the contract awarded as a result of these bid specifications.

The Contractor – the Contractor to whom a Contract is awarded, and any subcontractors with subcontracts of \$300,000 or more.

HUD Income Limits – Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. See the following web link for applicable income limits: [Income, Rent, and Utility Limits | Portland.gov](https://www.portland.gov/development/contracts/contracting-equity/contracting-equity-requirements)

Good Faith Efforts – Intentional, sincere and result oriented actions taken by the Project Team to accomplish the goals and objectives of the Equity in Contracting, Section 3, and Apprentice and Workforce Diversity Program requirements.

Owner – the government agency that awarded the Contract or leveraged public involvement in the project through a loan or development agreement.

The Project – includes all work performed pursuant to the Contract.

Relative - means spouse, former spouse, domestic partner, former domestic partner, sibling, stepsibling, sibling-in-law, child, stepchild, child-in-law, niece, nephew, aunt, uncle, grandchild, step-grandchild, grandchild-in-law, parent, stepparent, parent-in-law, grandparent, step-grandparent, or grandparent-in-law.

Section 3 Worker – a worker who currently fits or when hired within the last 5 years fit at least one of the following categories: (1) met HUD’s income limits in the previous calendar year, (2) is employed by a Section 3 Business Concern, or (3) is a YouthBuild participant.

Section 3 Business Concern – a business meeting at least one of the following criteria, documented within the past year: (1) at least 51% owned and controlled by low-income persons, (2) over 75% of the labor hours over the previous 3-month period are performed by

Section 3 workers, or (3) at least 51% owned and controlled by current residents of public housing or Section 8 assisted housing.

Service Area – an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census. *Also known as the “neighborhood of the project.”*

Targeted Section 3 Worker – a Section 3 Worker who: (1) is employed by a Section 3 Business Concern **or** currently fits; or when hired within the last 5 years fit at least one of the following categories: (1) lives within the service area or neighborhood of the project or (2) a YouthBuild participant.

Utilization Plan (UP) – required document that lists all subcontractors and material suppliers that have been engaged to perform work on the project, completed by the General Contractor and due prior to the Notice to Proceed.

Attachment B
PORTLAND HOUSING BUREAU
Effective Date: January 1, 2022
Equity in Contracting Program

*This program applies to all Contractor Contracts for all projects not financially closed by
January 1, 2022*

I. PURPOSE

The intent of PHB’s Equity in Contracting Program is to promote best practices for broad outreach and networking to form new relationships in contracting. PHB expects owners/developers awarded PHB funds to understand and emphasize its Aspirational Goals when selecting a General Contractor (“GC”) and professional service providers, and to clearly communicate the Aspirational Goals and Reporting Requirements to all contractors and subcontractors. The City will track and evaluate the performance of developers and contractors relative to these Aspirational Goals, with the following results in mind:

1. Improved ability to contract with a more diverse pool of contractors, subcontractors, consultants, and suppliers.
2. Increased opportunity for firms owned by Black, Indigenous, People of Color (BIPOC) individuals and women to successfully participate in City contracts.

II. ASPIRATIONAL GOALS

The following Equity in Contracting goals are applicable on this project:

- Hard Cost Goal – a minimum of 30% of the total Hard Construction Costs shall be contracted to COBID firms (GC/Contractors or Subcontractors). The 30% Hard Cost Goal can be met by using COBID Certified GC/Contractors’ self-performed work as well as Subcontractor utilization. (General Conditions and overhead costs do not count toward the Hard Cost goal for GC self-performed work).
- Hard Cost Subgoal – a minimum of 14% of the 30% Hard Construction Costs shall be contracted to D/M/WBE firms (GC/Contractors and Subs combined).
- Professional Services Goal – a minimum of 20% of the total Professional Services budget shall be contracted to COBID firms.

To encourage General Contractors to diversify their subcontractor utilization and to avoid abuse of PHB’s Equity in Contracting Program, for purposes of assessing the 30% aspirational goal, Hard Construction Costs attributable to a subcontractor owned, controlled, or managed by the General Contractor, or attributable to a subcontractor owned, controlled, or managed by a relative of the person who owns, controls or manages the General Contractor, shall not count toward the 30% aspirational goal.

A directory of COBID firms can be found by visiting the State of Oregon’s COBID website at: <https://oregon4biz.diversitysoftware.com/>.

III. SUBMISSION OF REQUIRED DOCUMENTATION

A. UTILIZATION PLAN (UP) - DUE WITHIN TWO WEEKS OF BID OPENING OR PRIOR TO NOTICE TO PROCEED. A completed UP is required to be submitted electronically. On-screen instructions in the City’s Contract Compliance Reporting System (CCRS) in B2Gnow, will guide you through the UP submittal process. The UP must list ALL Subcontractors to be used on the project, their corresponding type of work, their subcontract amount, and COBID certification status, if applicable, regardless of the dollar amount.

If the UP does not meet the PHB Equity in Contracting Program goals, it may be rejected, or additional explanation may be required. The Contractor shall submit additional information and provide clarification upon request.

NOTE: Regardless of certification status, the contractor and all subcontractors are highly encouraged to specify company ownership ethnicity and gender in their vendor profile, for tracking and outreach purposes. The contractor also must identify all types of work that will be self-performed. After submission of the UP, you may review your Dashboard for status updates.

B. FORM 2: REQUIRED IF ASPIRATIONAL GOALS ARE NOT MET AT UTILIZATION PLAN SUBMISSION

- a. If the CCRS shows at the time of UP submission that any of the Aspirational Goals have not been met, the Contractor must submit Form 2 and additional documentation as required. The UP will become a part of the resulting contract for the project. To submit Form 2 and additional documentation, click Attach Waiver Files. When finished click Save Waiver Details before leaving the plan or attempting to complete another step.
- b. If requested, Form 2 is required to be submitted within 48 hours of notification by the City of Portland.
- c. The prime contractor must have contacted at least three (3) COBID firms 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.
- d. Supporting documentation (i.e., sub bids/quotes received from COBID firms, a copy of the contractor’s solicitation to firms, etc.) may also be requested to further demonstrate outreach efforts.

IV. REQUIREMENTS FOR ALL PROJECTS SUBJECT TO PHB’S EQUITY IN CONTRACTING PROGRAM

A. MONTHLY SUBMITTAL OF SUBCONTRACTOR PAYMENTS: DUE BY THE 15th OF EACH MONTH

The contractor shall submit subcontractor payments via the CCRS by the 15th of each month once work has commenced and shall ensure that subcontractors are confirming payments reported to them in the system. If a subcontractor fails to confirm payment by the end of the month, the City will assume the subcontractor has been paid, as reported, and will confirm payment on the subcontractor’s behalf. Subcontractor firms are also responsible for reporting participation of lower tier subcontractors.

If any changes occur to the subcontract value during the reporting period, the contractor shall contact the Contract Compliance Specialist no later than the 15th of each month.

B. SUBCONTRACTOR CHANGES AFTER BID SUBMISSION

1. The Contractor shall not add, delete, or replace any subcontractor without prior written consent of the Compliance Manager.
2. If any subcontractor is added or replaced after the bid is submitted or the contract is awarded, the Contractor must submit a Subcontractor Change Request Form. If the requested subcontractor change would cause the Contractor to not meet their Equity in Contracting Program goals, then the City may require additional outreach to obtain bids from COBID firms.
3. The Contractor must contact at least three (3) COBID firms 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.
4. The Subcontractor Change Request Form must be submitted via the CCRS and, upon request, will include supporting documentation. A tutorial for adding subcontractors can be found here:
<https://portlandoregon.diversitycompliance.com/Help/Tutorial/TutorialView.asp?XID=5666&TFL=RequestingASub>.

C. PENALTIES FOR NONCOMPLIANCE

A Contractor’s failure to comply with PHB’s Equity in Contracting Program requirements 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 Equity in Contracting 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 COBID certified firms, then the Contractor will use such COBID firms. 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 PHB's Equity in Contracting Program. If the Contractor fails to comply with the provisions of Section IV.B *Subcontractor Changes After Bid Submission* (above), 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 COBID firm as identified in the UP, or to utilize any COBID firm within twenty (20%) of the subcontract amount identified in the UP, the Contractor shall pay \$2,000 for each violation.
 - c. Exceptions to this requirement are for approved change orders, reductions in scope of work as requested by the City, failure of a COBID firm to complete work or having breached the subcontract, and substitution requests approved by the City.

ATTACHMENTS:

- Subcontractor Change Request Form
- Form 2

Attachment C
PORTLAND HOUSING BUREAU
Effective Date: January 1, 2022
HUD Section 3 Project Compliance

I. Policy

This policy has been developed to implement the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended to date. The Portland Housing Bureau (PHB) administers funding from the U.S. Department of Housing and Urban Development (HUD), which PHB uses to make loans to affordable housing developers and triggers Section 3 requirements on projects where the amount of PHB federal housing assistance exceeds \$200,000. Section 3 requires that when employment or contracting opportunities are generated by HUD-funded projects, preference is given to low and very low-income persons and businesses residing in the community where the project is located (i.e. to “Section 3 Workers”, “Targeted Section 3 Workers” and “Section 3 Business Concerns”). The Borrower/Developer and all contractor/subcontractors are responsible for ensuring compliance with Section 3.

II. Section 3 Goals and Priorities

For housing and community development financial assistance projects, contractors will need to prioritize efforts to hire and train Section 3 Workers, Targeted Section 3 Workers and contract with Section 3 Business Concerns.

Twenty-five percent (25%) or more of the total number of labor hours worked by *all workers* are to be worked by Section 3 Workers and five percent (5%) or more of the total number of labor hours worked by *all workers* are to be worked by Targeted Section 3 Workers. Any worker employed on the project will be required to submit a Section 3 Worker Eligibility Form to the City, prior to starting work on the project, if not previously submitted during the last year.

A directory of Section 3 Business Concerns can be found on the City’s Contract Compliance Reporting system website at: <https://portlandoregon.diversitycompliance.com>.

III. Efforts to Attain Goals

It is the responsibility of the Developer/Contractor to ensure that the above goals are met. If the goals are not met, the contractor must demonstrate why meeting the goal was not feasible. Contractors and subcontractors may be asked to demonstrate efforts to attain goals that include, but are not limited to the following:

1. Engaging in outreach efforts to identify and secure bids from Section 3 Business Concerns, which includes providing written notice of opportunities and contacting businesses that may qualify as Section 3 Business Concerns. A list of actively certified Section 3 Business Concerns is available here [City of Portland - Contract Compliance Reporting System \(diversitycompliance.com\)](https://diversitycompliance.com).
2. Providing technical assistance to help Section 3 Business Concerns understand and bid on contracts.
3. Dividing contracts into smaller jobs to facilitate participation by Section 3 Business Concerns.
4. Make all necessary and reasonable efforts to hire Section 3 Workers and Targeted Section 3 Workers and document efforts of available employment opportunities at the project site.
5. Provide appropriate signage at the project site and throughout the project area to inform eligible Section 3 Workers of employment opportunities.
6. Providing training or apprenticeship opportunities.
7. Sponsoring job informational meetings in the Section 3 Service area and conducting job interviews.
8. Entering “first source” hiring agreements/memorandums of understanding with organizations representing Section 3 Workers or Targeted Section 3 Workers.
9. Contacting Portland Youthbuilders and requesting their assistance in recruiting and hiring Portland Youthbuilders participants for employment positions.
10. Engaging in outreach efforts to generate job applicants who are Targeted Section 3 Workers.

IV. Reporting Requirements

This project is subject to compliance reporting requirements. The contractor and all subcontractors are required to provide all contract compliance-related data electronically in the [City of Portland - Contract Compliance Reporting System \(diversitycompliance.com\)](https://diversitycompliance.com) and workforce utilization in [LCPtracker](https://lcptracker.com). The contractor and all subcontractors are responsible for responding to any instructions or requests for information and should regularly check the CCRS and LCPtracker to manage information and records. The contractor is responsible for ensuring all subcontractors have completed all requested items and that their contact information is accurate and up-to-date. The City may require additional information be provided electronically through the systems at any time before, during, or after contract award. Information related to contractor access of the systems will be provided to a designated point of contact upon award of the contract.

Submission of Required Documentation for Section 3 Covered Projects:

1. The contractor must submit a Section 3 Plan to indicate their intended overall project goals, and plan to achieve those goals. The Section 3 Plan shall be submitted with the General Contractor's Utilization Plan.
2. All contractors working on the project must submit a Section 3 Business Eligibility Form unless a copy has been filed with the City within the last year.
3. Contractor must submit a completed Utilization Plan (UP) in the CCRS. On-screen instructions in the CCRS will provide guidance. The UP must list ALL Subcontractors to be used on the project, their corresponding type of work, their subcontract amount, and certification status, if applicable, regardless of the dollar amount.
4. The contractor shall submit subcontractor payments via the CCRS by the 15th of each month once work has commenced and shall ensure that subcontractors are confirming payments reported to them in the system. If a subcontractor fails to confirm payment by the end of the month, the City will assume the subcontractor has been paid, as reported, and will confirm payment on the subcontractor's behalf. Subcontractor firms are also responsible for reporting participation of lower tier subcontractors.
5. Contractor shall report any changes to subcontract values during the reporting period to the Contract Compliance Specialist no later than the 15th of each month.
6. All contractors working on the project must submit a Workforce Plan prior to submittal of first payroll report, or as otherwise designated.
7. All contractors working on the project must submit weekly certified payroll reports via LCPtracker no later than the 5th of each month. *Contractors wishing to use LCPtracker to file a certified copy of their payroll report (WH-38) must print a copy of the CPR Report by State, which can be found in the Reports tab in LCPtracker. Once printed, fill out the missing schedule information, sign the certified statement and submit as required to the City.*
8. All employees working on-site must complete a Section 3 Worker Eligibility Form and submit via LCPtracker, unless a copy has been filed with the City within the last year. Eligible Employees will receive approval in LCPtracker.
9. All contractors are required to use the Worker Request Form, when hiring, requesting, or replacing workers.

Attachments

- Section 3 Plan
- Section 3 Business Eligibility Form
- Section 3 Worker Eligibility Form
- Worker Request Form

Questions Regarding Section 3, contact:

- Cathleen Massier, Compliance Services Manager

503.823.6888

Cathleen.Massier@portlandoregon.gov

- Lisa Vanlue, Compliance Specialist

503.823.6910

Lisa.Vanlue@portlandoregon.gov

Attachment D
PORTLAND HOUSING BUREAU
Effective Date: January 1, 2022
Apprentice and Workforce Diversity Program

*This program applies to contracts valued at \$300,000 or greater
and jobsite labor greater than 300 hours in any given trade*

APPRENTICE AND WORKFORCE DIVERSITY PROGRAM

I. PURPOSE

The Portland City Council has directed that all Bureaus and Departments maximize apprenticeship and employment opportunities for BIPOC individuals, women, and economically disadvantaged workers in the construction trades. Their goals include a) ensuring that the City does business with contractors whose workforce reflects the diversity of the workforce found in the city of Portland and Multnomah County, and b) that their contracting dollars provide fair and equal opportunities to the jurisdictions' diverse populations. One way contractors can help to ensure that their workforce is diverse is to recruit, train and employ BIPOC individuals and women whenever possible.

The Apprentice and Workforce Diversity Program is administered for PHB by Procurement Services and applies to all projects that did not financially close by January 1, 2022.

CHECKLIST

For contracts of \$300,000 or more and with jobsite labor of 300 hours or more in any given trade, Contractors must:

1. Submit a Workforce Plan (Exhibit 2) prior to submittal of first payroll report, or as otherwise designated. A copy of the Workforce Plan should be downloaded, filled out and then uploaded into LCPtracker. The Plan should detail your approach and strategies to achieve the targeted apprentice and workforce diversity goals established by PHB.
2. Before starting work on this project confirm registration as a Training Agent with the Bureau of Labor & Industries (BOLI), Apprenticeship & Training Division. Not a BOLI registered training agent? Contact BOLI (971- 673-0760) for further information.
3. Ensure that a minimum of 20% of labor hours in each apprenticeable trade are worked by state registered apprentices. Contractors shall fulfill the 20% apprenticeship requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program.

4. For any new hires, document efforts to employ Section 3 Workers by seeking referrals as outlined in Attachment C.
5. Strive in good faith to meet the diversity goals of employing women and BIPOC individuals (both journey and apprentice level workers).
6. Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources, as described herein.
7. Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
8. When an apprentice is hired: Notify the City's Contract Compliance Specialist assigned to the project.
9. Submit weekly certified payroll reports via the LCPtracker system no later than the 5th of each month.

CONTRACT AMOUNT AND LABOR HOUR THRESHOLD EXAMPLES

Examples illustrating program thresholds of \$300,000 contract value and 300 jobsite hours in any given trade:

Example 1

- \$50,000 contract and the firm works more than 300 hours (in a given trade) on jobsite
- Triggers workforce requirements? **NO**

Example 2

- \$301,000 contract and the firm works less than 300 hours in a trade on jobsite
- Triggers workforce requirements? **NO**

Example 3

- \$301,000 contract and the firm works more than 300 hours in a trade on jobsite
- Triggers workforce requirements? **YES**

Example 4

- \$301,000 Tier 1 contract which subs out all labor to a Tier 2 subcontract of \$120,000
 - The Tier 2 firm works less than 300 hours in a trade on the jobsite
 - Triggers workforce requirements? **NO**
 - The Tier 2 firm works more than 300 hours in a trade on the jobsite
 - Triggers workforce requirements? **YES** (The Tier 1 contract amount combined with the Tier 2 work hours are the trigger)

For additional information or questions, please contact Lisa Vanlue at lisa.vanlue@portlandoregon.gov or 503-823-6910; or Cathleen Massier at cathleen.massier@portlandoregon.gov or 503-823-6888.

II. ACTIONS REQUIRED PRIOR TO BEGINNING THE PROJECT

The contractor shall thoroughly read this Apprentice and Workforce Diversity Program specification and commit to perform all requirements described herein. The contractor shall submit, before submittal of the first payroll report, a Workforce Plan, which demonstrates how the workforce on this project will fulfill all program requirements, including utilization of apprentices and targeted diversity goals. A copy of the Workforce Plan should be downloaded, filled out and then uploaded into LCPtracker.

III. ACTIONS REQUIRED TO SATISFY CONTRACTUAL OBLIGATIONS

A. APPRENTICE AND WORKFORCE DIVERSITY GOALS

The contractor must make all necessary and reasonable efforts to have a workforce that reflects the diversity of the city of Portland and Multnomah County and is reasonably consistent with the availability of qualified women and BIPOC individuals. This requirement is in addition to any other requirement of this portion of the Contract.

1. The contractor and its subcontractors with subcontracts of \$300,000 or more, at any tier level should strive to achieve the workforce diversity goals (including both journey level and apprentice workers) on the project, as follows:

Apprenticeship Aspirational Diversity Goals

- 22% of the total apprentice hours shall be worked by BIPOC individuals
- 9% of the total apprentice hours shall be worked by women

Journey Level Aspirational Diversity Goals

- 22% of the total journey level hours shall be worked by BIPOC individuals
 - 6% of the total journey level hours shall be worked by women
2. Contractors must provide written documentation of its good faith recruitment efforts.
 3. Contractors must follow the process for hiring, requesting, recruiting or replacing workers described in Section III, subsection F.

4. The failure by a union with whom the contractor has a collective bargaining agreement to refer either BIPOC individuals or women shall not excuse the contractor's obligations under this section of the specifications.

B. Ensure Compliance by Certain Subcontractors

1. The contractor shall ensure that each subcontractor having a subcontract of \$300,000 or more, at any tier, shall comply with all the provisions of the Apprentice and Workforce Diversity Program specifications. Contractors shall include in their price all costs associated with this requirement. No change order will be executed in order for the contractor to comply with the Apprentice and Workforce Diversity Program specifications.
2. The contractor shall provide a copy of these Apprentice and Workforce Diversity specifications to all subcontractors with contracts of \$300,000 or more executed for the project.

C. Register as a Training Agent

The contractor shall register with the Oregon Bureau of Labor and Industries (BOLI) as a Training Agent and ensure that all subcontractors who have contracts in the amount of \$300,000 or more are registered as Training Agents, prior to beginning work. Registration as a Training Agent in a specific trade is not required if there are no training opportunities in that trade on the project, based on the maximum ratio allowed by BOLI.

1. Training programs approved by and registered with BOLI may be used to fulfill training requirements under the Apprentice and Workforce Diversity Program specifications. Other training alternatives must be approved by the City's Compliance Manager.
2. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts, which are not apprenticeable occupations are exempt from the training requirements.
3. All requests to exempt all or any portion of work on the project must be approved by the Owner, in writing, 14 calendar days before work on the project begins. To submit an exemption request, complete the Exemption Form and submit along with a copy of the Workforce Plan. Written requests for exemptions related to the training requirements will be considered by the Owner only for extreme circumstances during the course of the project.

D. DOCUMENTATION

The contractor shall submit documentation regarding the following subjects to the Owner. The Owner's failure to object to documentation submitted by the contractor or subcontractor shall not relieve them of the requirements of the Apprentice and Workforce Diversity Program specifications.

1. Training Agent Status

The contractor and all required subcontractors listed on the Utilization Plan must submit proof to the Contract Compliance Specialist that they are registered Training Agents with BOLI prior to beginning any work on the project.

2. Subcontractor Workforce Information

A Workforce Plan must also be submitted for each subcontractor with a contract of \$300,000 or more, prior to submission of their first payroll report, or within 5 calendar days after the execution of the applicable subcontract, whichever occurs first. A copy of the Workforce Plan should be downloaded, filled out and then uploaded into LCPtracker. Work by a subcontractor shall not begin prior to submission of such documentation.

3. Contractor and Subcontractor Reporting After Work Begins

Weekly Certified Payroll Reports (CPRs) must be submitted by the contractor and any subcontractor having a subcontract of \$300,000 or more, via LCPtracker, no later than the 5th of each month and will be used to track attainment toward PHB's apprentice and diversity goals. All hours subject to prevailing wage rates on public projects, in addition to supervisors, foremen and superintendents, shall be reported.

Contractors wishing to use LCPtracker to file a certified copy of their payroll report (WH-38) must print a copy of the CPR Report by State, which can be found in the Reports tab in LCPtracker. Once printed, fill out the missing schedule information, sign the certified statement and submit as required.

E. USE OF APPRENTICES

The Contractor shall:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the project by the contractor, and subcontractors with subcontracts of \$300,000 or more and with jobsite labor of 300 hours or more, in any given trade, are worked by state registered apprentices throughout the duration of the project. The contractor and subcontractors shall fulfill the 20% apprenticeship requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program.

2. Pay all apprentices the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations.
3. Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions.
4. Notify the Contract Compliance Specialist when an apprentice is hired for this project.
5. Count apprentice hours as follows:
 - a. Hours worked on the project by apprentices enrolled in state-approved apprenticeship programs. If the contractor is unable to fulfill its 20% requirement, then the contractor may also use methods (b) and (c) below;
 - b. Hours worked on the project by apprentices who are required to be away from the job site for related training during the project, but only if the apprentice is rehired by the same employer after completion of training; and
 - c. Hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice's completion date.

F. HIRING, REQUESTING, RECRUITING, OR REPLACING WORKERS

Contractors must follow all of these steps when hiring, requesting, recruiting or replacing workers:

For Apprentices:

1. Using the Worker Request Form, contact the appropriate apprenticeship program or dispatch center to request apprentices who are enrolled in the apprenticeship program; and
2. Request female or BIPOC apprentices from the union or open shop apprenticeship program, if such an action will help remedy historical underutilization of in the contractor's workforce.
3. If the apprenticeship program is unable to supply an apprentice for dispatch and if the program is open for applications or allows direct entry from the Oregon Employment Division, make reasonable and necessary efforts to recruit apprentice applicants from WorkSource at the Oregon Employment Department, and seek to enroll them into an apprenticeship program.

WorkSource Oregon is Oregon's largest source for job-ready applicants:

- Recruitment Services are local, statewide, and nationwide
- Computerized job match system matches applicants to job qualifications
- On-the-job training resources available to offset cost of new hires
- Go to: www.imatchskills.org or call 503-257-HIRE

For All Workers:

1. Make reasonable and necessary efforts to employ a diverse workforce. Such actions should include requests for BIPOC and female applicants. Contractors are notified that direct hiring of employees (such as "walk-ons") without providing notification of that job opportunity may not be sufficient to establish the contractor's efforts to satisfy the diversity goals; and
2. Document employment efforts. Use the Worker Request Form to keep a written record of requests to:
 - a. Union halls for signatory contractors;
 - b. Union or open shop apprenticeship programs;
 - c. The Oregon Employment Department. Go to: www.imatchskills.org or call 503-257-HIRE;
 - d. State-registered pre-apprenticeship programs:
http://www.oregon.gov/BOLI/ATD/pages/a_ag_partners.aspx
3. Documentation will be requested by the Owner if a contractor is not following their Workforce Plan or meeting the apprentice and workforce diversity goals, or if it appears that the contractor has not made reasonable and necessary efforts. When requested, the contractor shall provide that documentation to the Contract Compliance Specialist within 7 calendar days.

NOTE: Contractors may contact the Contract Compliance Specialist for assistance related to any of the above issues.

IV. CONSEQUENCES OF NONCOMPLIANCE WITH APPRENTICE AND WORKFORCE DIVERSITY PROGRAM REQUIREMENTS

The Owner's commitment to this program is reflected, in part, by the cost of administering the program. Failure to meet the requirements of this section of the specifications negates such funding and impairs the Owner's efforts to promote workforce diversity and to provide fair and equal opportunities to the public as a whole as a result of the expenditure of public funds. Therefore, the parties mutually agree that failure to meet the requirements of this section of the specifications, including but not

limited to the submission of required documentation, constitutes a material breach of the Contract.

If a Project Team is unable to meet PHB Apprentice and Workforce Diversity Program Goals, they will be asked to submit an Exemption Form, see list of resources at the end of this document.

In the event of a breach of this section of the Contract, the Owner may take any or all of the following actions:

A. WITHHOLDING PROGRESS PAYMENTS

The Owner may withhold all or part of any progress payment or payments 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 said payments.

If a subcontractor(s) is responsible for noncompliance with the Apprentice and Workforce Diversity Program requirements, the Owner may choose to withhold only their portion of the progress payment.

B. DAMAGES FOR FAILURE TO COMPLY

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for the contractor's failure to comply with the Apprentice and Workforce Diversity Program specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Owner when workforce opportunities are not provided. Therefore, if the contractor fails to comply with the Apprentice and Workforce Diversity Program provisions of this Contract, the contractor agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours or until the breach of Contract is remedied. Damages may be assessed for failure to meet the 20% apprenticeship training requirements by the contractor and each required subcontractor in each trade employed. Damages will be calculated based on the training hours not provided at a rate of \$250 per day. For example, if the contractor was required to provide 200 hours of carpenter training (20% of 1,000 total carpenter hours), and the contractor only provided 150 training hours, then the difference (50 hours) is divided by 8 (one day of work) to determine the number of days of undelivered training. ($50/8 = 6.25 \times \$250 = \$1,562.5$).

Damages may also be assessed for failure to fulfill the inclusive hiring process described in Section III, subsection G.

These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by the contractor's failure to comply with the Apprentice and Workforce Diversity Program provisions of the Contract.

C. LIQUIDATED DAMAGES

The contractor agrees that any delay to the specified contract time as a result of the contractor's failure to comply with the requirements of these specifications shall subject the contractor to the amount of liquidated damages specified elsewhere in the Contract.

D. DEBARMENT

By executing this Contract, the contractor agrees that it has been notified that failure to comply with the requirements of this portion of the Contract may lead to the contractor's disqualification from bidding on and receiving other Owner contracts.

E. OTHER REMEDIES

The remedies that are noted above do not limit any other remedies available to the Owner in the event that the contractor fails to meet the requirements of the Apprentice and Workforce Diversity Program specifications.

V. REVIEW OF RECORDS

In the event that the Owner reasonably believes that a violation of the requirements of the Apprentice and Workforce Diversity Program specifications has occurred, the Owner is entitled to review the books and records of the contractor and any subcontractors employed on the project to which the requirements of these specifications are applicable to determine whether such a violation has or has not occurred.

In the event that the contractor or any subcontractor fails to provide the books and records for inspection and copying when requested, such failure shall constitute a material breach of this Contract and permit the imposition of any of the remedies noted in Section IV above, including the withholding of all or part of any progress payment.

ATTACHMENTS:

Recommended Recruitment & Retention Practices

RESOURCES:

Copies of all required forms, including the Workforce Plan, Worker Request Form and Exemption Form can be downloaded in the LCPtracker system at www.lcptracker.net or are available on the City's website at: <https://www.portlandoregon.gov/brfs/42255>

For information about Section 3, please visit: <http://www.portlandoregon.gov/brfs/58369>

For information on State-Approved Apprenticeship Programs visit the Bureau of Labor and Industries, Apprenticeship and Training Division's website: <http://www.oregon.gov/BOLI/ATD/pages/index.aspx>.

For procedures related to granting exemptions to the training requirements, please visit: <https://www.portlandoregon.gov/citycode/?c=26882&a=408189>.

For a list of community resources to help with the recruitment of women and BIPOC individuals, please visit: http://www.oregon.gov/BOLI/ATD/pages/a_ag_partners.aspx

If you have questions after reading the information contained herein and visiting the resources above, please contact Lisa Vanlue at lisa.vanlue@portlandoregon.gov or 503-823-6910; or Cathleen Massier at cathleen.massier@portlandoregon.gov or (503) 823-6888.

RECOMMENDED GOOD FAITH RECRUITMENT & RETENTION PRACTICES

A. Recruitment Efforts

Good faith recruitment efforts are those intense, aggressive, sincere, and result-oriented actions taken by the contractor designed to accomplish the objectives of the Apprentice and Workforce Diversity provisions. Good faith recruitment efforts include, but are not limited to:

1. Work aggressively with contractor's Joint Apprenticeship Training Committee (JATC) to recruit BIPOC individuals, women, and disadvantaged individuals. Provide evidence of these efforts.
2. Assist the JATC by conducting a workshop with BIPOC and women employees to enlist their assistance as recruiters and request their ideas on how to increase employment of underutilized groups.
3. Support the efforts of the contractor's JATC by giving all apprentices referred to the contractor a fair chance to perform successfully, allowing for possible lack of previous experience. Recognize that the contractor is responsible for providing on-the-job training, and that all apprentices should not be expected to have previous experience.
4. Participate in job fairs, school-to-work, and community events to recruit BIPOC individuals, women, and disadvantaged individuals into the construction trades.
5. Allow scheduled job site visits by participants in community programs, as safety allows, increasing awareness of job and training opportunities in the construction trades.
6. Keep applications of those not selected for an opening. Contact when opening occurs.

B. Retention Efforts

The contractor shall endeavor to retain BIPOC individuals, women, and disadvantaged individuals by implementing steps such as the following:

1. Maintain a harassment-free work place.
2. Ensure that employees are knowledgeable about the company's policies if they need to report a harassment problem.

3. Make reasonable attempts to keep apprentices working and train them in all work processes described in the apprenticeship standards.
4. Review and disseminate, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.
5. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
6. Take steps to reduce feelings of isolation among BIPOC individuals and women to curb hostile attitudes and behavior (e.g., have several BIPOC individuals and women at the job site, provide access to support group system).
7. Provide adequate toilet facilities for women on the job site.
8. Match BIPOC, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a journey-level mentor.