

# CITY OF PORTLAND

## SUBCONTRACTOR EQUITY PROGRAM

### I. 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).

This project is subject to compliance reporting requirements. The prime contractor and all subcontractors are required to provide all contract compliance-related data electronically in the Contract Compliance Reporting System (CCRS). The prime contractor and all subcontractors are responsible for responding to any instructions or requests for information, and should regularly check the CCRS to manage contact information and contract records. The prime 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 related to the contract to be provided electronically through the system at any time before, during, or after contract award.

Information related to contractor access of the system will be provided to a designated point of contact upon award of the contract. The CCRS is web-based and can be accessed at the following Internet address: <https://portlandoregon.diversitycompliance.com/>.

City-Owned Projects means projects that have an engineer’s estimate of \$150,000 or more.

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.

Utilization Plan (UP) includes all subcontractors and material suppliers that have been engaged to perform work on the project.

## **II. 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/>.

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

- A. UTILIZATION PLAN (UP) - DUE from the apparent low bidder WITHIN 24 HOURS OF NOTIFICATION BY CITY OF PORTLAND. A completed UP is required to be submitted electronically for the Subcontractor Equity Program. On-screen instructions in the CCRS 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 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 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 – D/M/W/ESB BIDS RECEIVED LOG: DUE UPON REQUEST FROM APPARENT LOW BIDDER IF ASPIRATIONAL GOALS ARE NOT MET
1. If the CCRS shows that the Aspirational Goal has not been met, the apparent low bidder must submit Form 2 and additional documentation as required. The UP will become a part of the resulting contract for the project. Failure by the apparent low bidder to complete and submit the UP in the time specified, will result in the bid being non-responsive and the bid will be rejected. 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.
  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 required to submit their UP and upon review a determination will be made as to the need of a Form 2 submittal.

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

**A. UTILIZATION PLAN (UP) - DUE from the apparent low bidder WITHIN 24 HOURS OF NOTIFICATION BY CITY OF PORTLAND.** A completed UP is required to be submitted electronically for the Subcontractor Equity Program. On-screen instructions in the CCRS 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 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 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 – D/M/W/ESB BIDS RECEIVED LOG: DUE UPON REQUEST FROM APPARENT LOW BIDDER IF ASPIRATIONAL GOALS ARE NOT MET**

- a. If the CCRS shows that the Aspirational Goal has not been met, the apparent low bidder must submit Form 2 and additional documentation as required. The UP will become a part of the resulting contract for the project. Failure by the apparent low bidder to complete and submit the UP in the time specified, will result in the bid being non-responsive and the bid will be rejected. 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. 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.
- c. 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.
- d. If for any reason the apparent low bidder is not awarded the contract or its bid is rejected, the next apparent low bidder required to submit their UP and upon review a determination will be made as to the need of a Form 2 submittal.

**V. 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 submit subcontractor payments via the CCRS by the 15<sup>th</sup> of each month once work has commenced and shall ensure that subcontractors are confirming payments reported to them in the system. Subprime firms are also responsible for reporting participation of lower tier subs.

A Subcontractor Report will be provided to the Contractor on the first of the month. If any changes occur to the subcontract value during the reporting period, the contractor shall correct the Subcontract Value on the Report and submit this information to the Contract Compliance Specialist via the CCRS no later than the 15<sup>th</sup> of each month.

**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. All subcontractor changes/requests shall be made in the CCRS and will include supporting documentation of the foregoing prior to making any changes. A tutorial for adding subcontractors can be found here: <https://portlandoregon.diversitycompliance.com/Help/Tutorial/TutorialView.asp?XID=5666&TFL=RequestingASub>.
5. The Contractor shall not add, delete, or replace any subcontractor without prior written consent of the Chief Procurement Officer or designee.

#### **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 the UP, or in its Contracting Plan, 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 D/M/W/ESB subcontractor to complete work or having breached the subcontract, and substitution requests approved by the City.

**VI. ATTACHMENTS:**

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>

CITY OF PORTLAND  
DMWESB BIDS RECEIVED LOG  
FORM 2

Bidder Name:

Project Name:

| Name of DMWESB Subcontractor | Certification Type<br>(DBE, MBE, WBE, ESB) | Division of Work | Date of Written<br>Contact | Date of Phone<br>Contact | Bid Amount | Reason Not Used<br>(Price, Scope, or Other.<br>If Other, explain in Notes) | Notes |
|------------------------------|--|------------------|----------------------------|--------------------------|------------|--|-------|
|                              | DBE ▼                                      |                  |                            |                          |            | Scope ▼  |       |
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SAMPLE - Submit via Contract  
Compliance Reporting System