

**Appendix E-2**  
**CITY OF PORTLAND**  
**PORTLAND HOUSING BUREAU**  
**IMPLEMENTATION OF METRO HOUSING BONDS**  
**SUBCONTRACTOR EQUITY PROGRAM (Section 3)**

**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 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. Therefore, the City's Subcontractor Equity Program (the "Subcontractor Equity Program", "SEP", 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 also covered by the requirements of Section 3 of the HUD Act of 1968 (12 U.S.S. 1701u) (section 3). Section 3 requires that when employment of contracting opportunities are generated by HUD-funded projects that preference is given to low-income persons and businesses residing in the community where the project is located.*

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.

COBID firms includes 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).

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 Business Concern means a business that is 51% or more owned by Section 3 Residents; or whose permanent, full-time employees include a minimum of 30% current Section 3 Residents, or workers who were Section 3 Residents within 3 years of the date of their first employment with the business; or a business that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded on the project to Section 3 Businesses.

Section 3 Resident means a low-income individual whose household income does not exceed 80% of the area median income for the Portland Metropolitan area and who resides in Clark, Columbia, Multnomah, Clackamas, Washington, Skamania and Yamhill counties or an individual who lives in public or Indian Housing. A copy of the median family income limits can be found here: <https://www.portlandoregon.gov/brfs/article/426068>.

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

## II. ASPIRATIONAL GOALS

*The following contracting goals are applicable on this project:*

- *Thirty percent (30%) of Hard Construction Costs for subcontract utilization of COBID firms (the “Aspirational Goal”).* The City encourages contractors to attain 14 of the 30% of the Aspirational Goal by utilizing D/M/WBE firms. The City encourages Contractors to diversify their subcontractor utilization of COBID firms from all available divisions of work.
- Twenty percent (20%) of Soft Construction Costs or Professional Services for subcontract utilization of COBID firms on projects subject to the Program.
- Ten percent (10%) of construction dollars awarded to Section 3 Businesses (contracts and subcontracts of \$100,000 or more)
- Three percent (3%) of non-construction dollars awarded to Section 3 Businesses (contracts and subcontracts of \$100,000 or more)

To promote the aim of encouraging Contractors to diversify their subcontractor utilization and to avoid abuse of the City's Subcontractor Equity Program, for purposes of assessing the 30% aspirational goal for subcontractor utilization, Hard Construction Costs attributable to a subcontractor owned,

controlled or managed by the Contractor, or attributable to a subcontractor owned, controlled or managed by a relative of the person who owns, controls or manages the Contractor, shall not count toward the 30% aspirational goal and shall instead count toward the Hard Construction Costs attributable to the Contractor.

A directory of COBID firms can be found by visiting the State of Oregon’s COBID website at: <https://oregon4biz.diversitysoftware.com/>. A directory of Section 3 Business firms can be found on the City’s Contract Compliance Reporting system website at: <https://portlandoregon.diversitycompliance.com>.

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

- A. **SECTION 3 BUSINESS STATUS FORM** – due from all sub bidders at the time of bid submission. Any bidders not currently certified as Section 3 Business Concerns, who wish to be certified, must complete a Section 3 Business Application, which can be obtained from the City’s website at: <https://www.portlandoregon.gov/brfs/58369>.
- B. **UTILIZATION PLAN (UP) - DUE 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. The prime 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.
- C. **FORM 2 – COBID/Section 3 Business firms BIDS RECEIVED LOG: WITHIN 24 HOURS OF NOTIFICATION BY CITY OF PORTLAND.**
  - a. A completed Form 2 is required to be submitted electronically. If stated goals are met, Form 2 will be attached under *Step1: Provide Utilization Plan Information* by clicking in “Fill in Utilization Plan Details” and attaching a copy of Form 2, by clicking “Attach File”. If stated goals are not met, Form 2, is attached by clicking “Attach Waiver Files”. When finished click “Save Waiver Details” before leaving the plan or attempting to complete another step.
  - b. Supporting documentation (i.e. sub bids/quotes received from COBID/Section 3 Business firms, a copy of the contractor’s solicitation to firms, etc.) may also be requested to further demonstrate outreach efforts.
  - c. The prime contractor must have contacted COBID/Section 3 Business 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. The prime contractor must have obtained a minimum of three (3) written bids from COBID and Section 3 Business firms that specialize in the type of work that will be subcontracted. The prime contractor shall submit additional information and provide

clarification upon request.

#### **IV. REQUIREMENTS FOR ALL PROJECTS SUBJECT TO THE PROGRAM**

##### **A. MONTHLY SUBMITTAL OF SUBCONTRACTOR PAYMENTS: 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. 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. Subprime 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 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 COBID and Section 3 Business firms for the work to be performed.
2. The Contractor must contact COBID and Section 3 Business 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.
3. The Contractor must obtain a minimum of three (3) written bids from COBID and Section 3 Business firms 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 Compliance Manager.

##### **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 COBID or Section 3 Business firms, then the Contractor will use such COBID or Section 3 Business 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 the Subcontractor Equity Program. If the Contractor fails to comply with the provisions of Section 4.B and 4.C, 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 or Section 3 Business firm as identified in the UP, or to utilize any COBID or Section 3 Business 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 or Section 3 Business firm to complete work or having breached the subcontract, and substitution requests approved by the City.

**V. ATTACHMENTS:**

COBID/Section 3 Business firms Bids Received Log (Form 2)

All forms are available on the Procurement Services website at: <https://www.portland.gov/omf/brfs/procurement/additional-contractor-requirements-construction-only#toc-subcontractor-equity-program-sep->

CITY OF PORTLAND COBID/SECTION 3 FIRM BIDS RECEIVED LOG  
FORM 2

Bidder Name:

Project Name:

| Name of COBID Firm | Certification Type<br>(DBE, MBE, WBE, ESB,<br>SDVBE) | 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 |
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SAMPLE - Submit via Contract Compliance Reporting System