

**CHAPTER 5.35 - COMMUNITY
OPPORTUNITIES AND ENHANCEMENTS
PROGRAM**

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5.35.010 Purpose.

It is the purpose of this Chapter and the Policy of the City of Portland to set aside and dedicate 1 percent of the total Hard Construction Costs of City of Portland Public Improvement Contracts for the Community Opportunities and Enhancements Program (COEP).

COEP funds will be dedicated to the support of greater equity in public contracting through the provision of Business Technical Assistance for Certified Firms and Firms Seeking Certification and the recruitment, training and retention of a diverse Workforce.

Use of Bureau of Environmental Services and Portland Water Bureau ratepayer funds for the COEP shall be reasonably related to the provision of water and sewer services in accordance with the City of Portland Charter.

5.35.020 Definitions.

- A. Business Technical Assistance:** Those activities that provide business support and development services to increase the ability of the organization to bid on, perform and complete public services contracts.
- B. Certified Firms and Firms Seeking Certification:** Companies that have been certified, or which are actively pursuing certification, by the State of Oregon Certification Office for Business Inclusion and Diversity (COBID), or its successor, as a minority-owned, woman-owned, emerging or a service-disabled veteran owned business. The City recognizes the following certifications: Disadvantaged Business Enterprise (DBE), Minority-owned Business Enterprise (MBE), Women-owned Business Enterprise (WBE), Emerging Small Business Enterprise (ESB), and Service-Disabled-Veteran-owned Business Enterprise (SDVBE).

- C. Community Benefits Agreement (CBA):** The CBA is applied to projects over \$25 million that use an alternative contracting method and is an agreement between the City of Portland (City), the Project Contractor (on behalf of all contractors and subcontractors of all tiers), the signatory unions, and the signatory community-based organizations with a strong record of accomplishment of serving racial and ethnic minorities, women and low income people and state approved pre-apprenticeship programs (CBOs).
- D. Community Equity and Inclusion Plan (CEIP):** A contractual document that is applied to all Public Improvement Contracts that utilize alternative contracting methods and have an estimated contract value between \$10 million to \$25 million. The CEIP addresses the historical disparities in contracting and provides a variety of strategies to increase opportunities for DBE/MBE/WBE/ESB/SDVBE firms and to increase opportunities and retention of a diverse Workforce.
- E. Community Equity and Inclusion Committee (CEIC):** The independent body that reviews the performance of City projects subject to a CEIP, provides guidance and advice to contractors to increase utilization, and advises the City on the Contractor's and Subcontractors' equity efforts to achieve the CEIP goals. The CEIC also advises the City on developing funding priorities for use of the COEP funding.
- F. COEP Fee:** The amount due, based upon 1 percent of the total Hard Construction Costs, as calculated using the methodology defined in Portland Policy Documents (PPD) Administrative Rule 1.25.
- G. Contractor:** A company with whom the City executes a contract for a Public Improvement.
- H. Hard Construction Costs:** The total original value of the Public Improvement Contract executed between the City of Portland and the Contractor.
- I. Labor-Management-Community Oversight Committee:** The Labor-Management-Community Oversight Committee discusses and advises on issues and/or concerns related to the implementation of Community Benefits Agreement.
- J. Participating Bureau:** A City of Portland Bureau that executes a Public Improvement Contract and which must contribute COEP Fees as required by this Chapter.
- K. Partners:** Organizations that will receive funding to implement the goals of the COEP.

- L. Public Improvement:** A project for construction, reconstruction or major renovation on real property by or for the City. Public Improvements do not include:
1. Projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection, or
 2. Emergency work, minor alterations, ordinary repair or maintenance necessary to preserve a Public Improvement.
- M. Public Improvement Contract:** A contract for a Public Improvement.
- N. Workforce:** The individuals in the construction trades, or who are seeking to join the construction trades, in trades that are typically utilized on Public Improvements.

5.35.030 Citizen Advisory Committee.

- A.** The City's Chief Administrative Officer, in coordination with the City's Director of the Office of Equity and Human Rights (OEHR) and one director from a Participating Bureau, must establish and appoint the CEIC as an independent advisory committee to serve as a review body and a resource for the City, its Contractors and the broader community.
- B.** The CEIC will be representative of the City's diverse communities and include community organizations, Certified Firms and non-COBID certified construction firms, building and contracting trades (union and non-union), trade associations and training providers for the construction trades.
- C.** The CEIC will review compliance and performance of City Public Improvement Contracts subject to a CEIP and provide guidance and advice to contractors' and subcontractors' regarding their equity efforts to achieve the CEIP goals.
- D.** The CEIC will also review projected Public Improvements and make recommendations to the Office of Management & Finance (OMF) and OEHR regarding how to generally prioritize the expenditure of COEP Fees on eligible activities, such as Business Technical Assistance and Workforce assistance.

5.35.040 Effective Dates.

The COEP is effective beginning July 1, 2020 and shall apply to Public Improvement Contracts executed after July 1, 2020.

5.35.050 Dedication.

- A.** Participating Bureaus are required to budget the full anticipated cost of the COEP Fees in the fiscal year in which it is anticipated those COEP Fees will be due.
- B.** The Office of Management and Finance (OMF) is required to budget the full cost of the COEP Fees backed and balanced against the COEP Fees budgeted by Participating Bureaus. OMF shall adopt administrative rules and procedures to implement this Section.
- C.** Compliance with the payment requirements defined in the Administrative Rules is required for Public Improvement Contracts to proceed and for the costs of those projects to be capitalized at the end of the project.

5.35.060 Administrative Rules.

OMF shall, after consultation with OEHR and Participating Bureaus, develop Administrative Rules to:

- A.** Provide for annual reporting to City Council on outcomes of the COEP;
- B.** Provide a method for the appointment of representatives to the CEIC;
- C.** Provide for the transactional process that Participating Bureaus need to follow to remit COEP Fees to OMF; and
- D.** Set forth any other matter appropriate for the administration of this Chapter.

5.35.070 Roles and Responsibilities.

OMF and OEHR shall be the responsible parties for administering the COEP on behalf of the City in close coordination with the City Attorney's Office and Participating Bureaus. Notwithstanding the above, the Chief Administrative Officer, in consultation with City Council, the Participating Bureaus and the Director of OEHR, has exclusive decision-making authority over the COEP. OMF may, after consultation with City Council, Participating Bureaus, and OEHR, decide to partner with other organizations to implement the COEP. Partnerships with other organizations for implementation of the COEP shall be bound by contract or intergovernmental agreement.

5.35.080 Legislative Authority.

Nothing in this Chapter, or in any administrative rules adopted hereunder, shall limit the authority of the City Council to waive the requirements of this Chapter or related administrative rules.

Title, Division and Section ADM 1.25

TITLE: Community Opportunities and Enhancements Program (COEP)

AUTHORITY: Binding City Policy

1. PURPOSE

These rules are intended to establish processes and procedures for implementing the COEP. The goals for the COEP are to increase diversity and equity in contracting through the provision of Business Technical Assistance for Certified Firms and Firms Seeking Certification and the recruitment, training and retention of a diverse Workforce.

2. DEFINITIONS

Terms defined in PCC 5.35.020 shall have the same meaning in these Administrative Rules.

3. POLICY

- 3.1. The rules and procedures contained herein shall apply to Participating Bureaus who execute Public Improvement Contracts, the Office of Equity and Human Rights (OEHR), and the Office of Management and Finance (OMF), Bureau of Revenue and Financial Services, Procurement Services Division. To achieve the intended outcomes of the COEP, Procurement Services and OEHR shall:
 - 3.1.1. Hire and retain staff to establish orderly, transparent, consistent, efficient, and accountable processes to implement the COEP and assist the CEIC.
 - 3.1.2. Maintain Bylaws for the CEIC in coordination with the Office of Community and Civic Life.
 - 3.1.3. Utilize the CEIC as an advisory committee to assist in developing funding priorities; review Participating Bureau Public Improvement Contracts; and review compliance and performance of contractors performing work on City Public Improvement Contracts between \$10 million and \$25 million.
 - 3.1.4. Establish annual performance metrics for the COEP performance and report to City Council.
 - 3.1.5. Oversee implementation and administration for the COEP to include contracts, grants, outreach, engagement, marketing and annual reporting.

- 3.1.6. Provide training on utilizing the CEIP and CBA to Bureau staff, contractors, subcontractors, and stakeholders.

4. ROLES AND RESPONSIBILITIES

- 4.1. OMF, through Procurement Services, shall be responsible for the following activities:
 - 4.1.1. Develop an annual budget in accordance with Section 5.2 contained herein.
 - 4.1.2. Work with Participating Bureaus to forecast Public Improvement Contracts as far in advance as possible to determine focused areas for deployment of COEP funds.
 - 4.1.3. Work with Partners to ensure that grant funds are deployed in a manner that is consistent with the needs projected for the forecasted Public Improvement Contracts to ensure the eligibility of the expenditures.
 - 4.1.4. Staff and assist the CEIC.
 - 4.1.5. Provide training for Participating Bureau staff, contractors, subcontractors and other stakeholders about the CEIP and CBA.
- 4.2. OEHR shall be responsible for the following activities:
 - 4.2.1. Provide the CEIC with information on racial and disability equity, human rights, diversity, and inclusion and strategies for implementation within public systems.
 - 4.2.2. Provide professional development to the CEIC on racial and disability equity, human rights, diversity, and inclusion.
 - 4.2.3. Provide the CEIC with the Citywide shared racial equity goals and strategies, as well as racial equity plans and strategies within bureaus, to achieve greater connectivity and stronger outcomes.
 - 4.2.4. Inform the CEIC about equity strategies and plans in other jurisdictions, including Multnomah County, Metro, and other jurisdictions.
 - 4.2.5. Engage with the CEIC to ensure inclusiveness and participation from all voices, supporting individuals on the CEIC with their involvement, and their inter-personal communications, providing mediation assistance if needed.
 - 4.2.6. Share the strategies with the CEIC for interrupting the dynamics of systemic oppression, racism, microaggressions, and explicit and implicit bias to ensure it is not perpetuated.

- 4.2.7. Collaborate with Procurement Services staff to share CEIC group observations, offering productive feedback to the CEIC, and maintaining clear lines of communication.
- 4.2.8. Ensure there are no conflicts of interest amongst the committee members.

5. BUDGETING & ACCOUNTING

5.1. COEP Fee Calculation

- 5.1.1. COEP Fees will be calculated based on two separate methodologies: One for the Portland Water Bureau, OMF Facilities Division, and Bureau of Environmental Services (hereafter “Activity Based Rate Methodology”) and one for the Portland Bureau of Transportation and Portland Parks & Recreation (hereafter “Fixed Rate Methodology”).
- 5.1.2. There are no exclusions to the calculation of the COEP Fee, notwithstanding Sections 5.1.3 and 5.1.4. Bureaus are expected to pay the COEP Fee with allowable resources, including but not limited to ratepayer revenue, General Fund, or other appropriate resources; provided, however, that the use of ratepayer revenue shall be reasonably related to the provision of water and sewer services in accordance with the Portland City Charter.
- 5.1.3. The Activity Based Rate Methodology sets the COEP Fee for the Portland Water Bureau (PWB), OMF Facilities (Facilities), and Bureau of Environmental Services (BES) as 1% of the original contract value for any Public Improvement Contract for which the original contract value exceeds \$500,000.
- 5.1.4. The Fixed Rate Methodology sets the COEP Fee in the first full fiscal year of the program for bureaus as 1% of the original contract value of historic Public Improvement Contracts as defined in Exhibit 1.
- 5.1.5. In the second fiscal year of the program and annually thereafter, the COEP Fees calculated under the Fixed Rate Methodology will follow the City Economist’s methodology for determining CAL targets. This applies to COEP Fees funded by both General Fund and non-General Fund sources.
- 5.1.6. Any bureau not addressed in this rule executing a Public Improvement Contract for which the original contract value exceeds \$500,000 shall follow Activity Based Methodology rules.

5.2. Budgeting

- 5.2.1. By December 1st during the annual budget development process, PWB, Facilities and BES shall provide OMF with a forecast of the COEP Fees they anticipate will be due during the upcoming fiscal year.
 - 5.2.2. All Participating Bureaus shall budget the full cost of the upcoming fiscal year's anticipated COEP Fees. These costs will be budgeted as an interagency expense, and OMF and Participating Bureaus will balance as per the City's interagency process.
 - 5.2.3. OMF shall budget all anticipated COEP Fee revenue, as well as any available beginning fund balance and other sources supporting the Program. OMF shall also budget a reasonably conservative contingency to mitigate against negative programmatic impacts caused by revenue actuals not meeting levels anticipated and budgeted.
 - 5.2.4. In advance of the Fall Budget Monitoring Process (BMP), should bureaus following Activity Based Methodology rules anticipate any significant changes to the amount of COEP Fees those bureaus will pay during that fiscal year, they shall communicate that to OMF, and coordinate to make needed interagency budget adjustments in the Fall BMP
 - 5.2.5. In advance of the Spring BMP, should bureaus following Activity Based Methodology rules anticipate any significant changes to the amount of COEP Fees those bureaus will pay during that fiscal year, they shall communicate that to OMF, and coordinate to make needed interagency budget adjustments in the Spring BMP as well as any needed adjustments in the Approved Budget for the following fiscal year.
- 5.3. Billing & Accounting**
- 5.3.1. Participating Bureaus shall supply OMF with one or more cost objects for OMF's use in billing Participating Bureaus for COEP Fees.
 - 5.3.2. For fees calculated under the Activity Based Rate Methodology, OMF shall bill the Participating Bureau for the entire COEP Fee associated with that Public Improvement Contract.
 - 5.3.3. For fees calculated under the Fixed Rate Methodology, OMF shall bill the Participating Bureaus for 100% of the budgeted COEP Fee during the first quarter of the fiscal year.
 - 5.3.4. OMF shall record COEP program expenditures and revenues in dedicated sub-funds.
- 5.4. Funding Eligibility & Uses**

- 5.4.1. The City Attorney's Office shall maintain a COEP Activity Based Rate Expenditure Rubric that delineates how PWB and BES funds can be used on COEP program expenditures to ensure the use of ratepayer revenue is reasonably related to the provision of water and sewer services in accordance with the City of Portland Charter.
- 5.4.2. COEP Fees will fund only the direct and indirect costs of delivering the services, outcomes and goals defined in City Code Chapter 5.35 Community Opportunities and Enhancements Program.
- 5.4.3. The Intergovernmental Agreement between OMF and Prosper Portland (Portland Development Commission) currently requires that the annual total of COEP Fees, minus administrative costs, shall be expended using the following breakdown: Seventy-five percent (75%) for Workforce development; and twenty-five percent (25%) for Business Technical Assistance. It is anticipated that the CEIC may recommend adjustments to this breakdown in the future based on its assessment of where needs exist and which Public Improvement Contracts are anticipated to arise in the near future. The breakdown for expenditure areas can be changed by agreement between the Chief Administrative Officer and the Director of OEHR.
- 5.4.4. Examples of possible Workforce development support services may include, but are not limited to, the following pre-apprenticeship and apprenticeship training programs and services.
 - 5.4.4.1. Pre-apprenticeship training to prepare candidates to enter apprenticeship.
 - 5.4.4.2. Stipend payments for individuals participating in a program, planning or development engagement.
 - 5.4.4.3. Trainers or teachers to provide training courses.
 - 5.4.4.4. Specific certifications [OSHA 10, Flagging, First Aide - CPR, Forklift training, driver's license], and/or any training that is expressly construction industry related that will reduce hiring barriers.
 - 5.4.4.5. Mentoring, networking and support services for pre-apprenticeship and apprentices to assist with their retention in industry.
 - 5.4.4.6. Materials for training including classroom supplies.
 - 5.4.4.7. Costs for individuals to maintain training and access jobs [bus passes, safety equipment, work clothing as needed].
 - 5.4.4.8. Costs for childcare coverage that will allow the employee to attend work or apprenticeship related training, or pre-apprentice to attend training.
 - 5.4.4.9. Graduation certificates and acknowledgement events.

5.4.4.10. Outreach activities and events to recruit underrepresented populations to apprenticeship and pre-apprenticeship.

5.4.5. Examples of possible Business Technical Assistance support services may include, but are not limited to, the following:

- 5.4.5.1. Consulting, advising, coaching or mentoring services.
- 5.4.5.2. Technical training for human resources, office, finance, or project management.
- 5.4.5.3. Business capacity building hard costs, including computers, monitors, software, and similar equipment.
- 5.4.5.4. Office & business tools that will provide measurable additional capacity for the company.
- 5.4.5.5. Assistance for DBE/MBE/WBE/ESB/SDVBE firms of performing City work with the fees and processes of becoming a Registered Training Agent with the Bureau of Labor Industries (BOLI).

6. ANNUAL REPORTING

OMF and OEHR will report annually and as requested City Council on the activities, expenditures and outcomes from the previous year.

Adopted by Chief Procurement Officer on _____

Filed for inclusion in _____

What Would A COEP Fee Have Been Over The Past Six Fiscal Years?

This analysis estimates the average annual revenue a 1% fee would hypothetically have generated for the COEP program over the the past six fiscal years, under five different methodological scenarios.

	If 1% Fee Had Been Applied To:				
	All Contracts	Contracts \$500k+ Only	Contracts \$1M+ Only	Contracts Between \$500k and \$25M	Contracts Between \$1M and \$25M
BES	484,059	459,821	435,930	459,821	435,930
Water	442,537	432,115	422,436	55,978	46,300
Ratepayer Subtotal	926,595	891,936	858,366	515,800	482,230
OMF	279,691	274,439	269,755	41,106	36,422
PBOT	180,310	173,345	143,529	173,345	143,529
Parks	110,119	99,132	73,634	99,132	73,634
Other Subtotal	570,121	546,917	486,918	313,584	253,584
Grand Total	1,496,716	1,438,853	1,345,284	829,384	735,814

Notes & Assumptions

1. Analysis is based on initial contract value for construction contracts with execution dates between FY 2013-14 and FY 2018-19.
2. Operations & maintenance projects and pre-construction contracts are excluded from data driving this analysis.
3. No exclusions were made to the analysis based on revenue source. However, the following potential eligibility issues apply:
 - BES and Water ratepayer funds could be deemed ineligible for the COEP program as the result of a legal decision.
 - PBOT projects are funded by multiple sources, most of which are ineligible for spending on the COEP program. PBOT's eligible sources are constrained, and a COEP contribution would add pressure to those funding sources.
 - Parks projects over this time period are funded substantially by the Parks Replacement Bond (i.e., a one-time source) and tax-exempt bond proceeds have been deemed ineligible for the COEP program by the City's bond counsel. The Portland Building Project (which represents the majority of the OMF data) was also funded primarily by tax-exempt bond proceeds. For these projects, the general fund or another other eligible source would have had to fund a 1% fee.
4. This analysis includes several projects and programs that are outliers in the data set due to their relative magnitude (e.g., the Portland Building project; Washington Park Reservoir; the Parks Replacement Bond-funded projects.)