

EXHIBIT A

Guidelines for MBE Utilization Program

These special guidelines and bid conditions specifically address the utilization of Minority Business Enterprises in the awarding of construction contracts by the City of Portland.

All bidders are therefore specifically advised that these conditions require a 10% of bid amount Minority Business Enterprise utilization commitment by the contractor as a condition to the award of contract.

1. Definitions:

- (a) "Minority" or "Minorities", means Blacks, Spanish Americans (Hispanics), Asians, American Indians, Aleuts and Eskimos.
- (b) "Minority Business Enterprise" (MBE) means a business of at least 50 percent of which is owned by minorities or, in case of a publicly owned business, at least 51 percent of the stock of which is owned by minorities.

In addition, ascertaining ownership as it relates to the type of business entity shall include but not be limited to close examination of such factors as:

- (c) whether or not those minority group members manage and control the MBE as distinguished from being passive or even merely paper owners; and
- (d) whether or not the MBE is to (or does) perform substantial and commercially useful functions as distinguished from acting as a mere "front" for, or "conduit" to or from, a nonminority firm; and
- (e) whether or not the minority group owners or stockholders possess control over management, interest in capital, and interest in earnings commensurate with the claimed minority ownerships, etc.

2. Certification:

The objective of MBE Certification is to provide a mechanism enabling the City to identify and evaluate MBE's, and to provide a means to establish their conformance with the City's MBE definition.

This process requires alleged MBE's to complete a form requesting information related to firm name, location, services performed, prior contract activity and dollar value, and time in existence.

In addition, applicants shall be required to document time in operation, persons having economic interest in the business, their individual percentage ownership, racial classification and duties within the business. (See Exhibit 1).

Any firm that has previously gone through a racial identity and ownership process by the U. S. Government, or State of Oregon, or their agencies, and has been certified as a bona fide Minority Business Enterprise may be certified by the City by submitting this proof of acceptance. The City shall not be obligated to accept certification from a Federal or State agency, and may, at its own discretion, conduct its own independent review of MBE certification.

Certification as an MBE shall be required prior to the bid opening for projects where MBE participation is required, in order for the Minority Business to participate on that project. In order to provide the City sufficient time to complete their investigation and certification process, application for MBE certification should be made to the Contract Compliance Office at least five (5) days prior to the bid opening date for the project on which they wish to participate. (Prime contractors are encouraged to check with the Contract Compliance Office prior to bid opening to ensure that the MBEs they are proposing to utilize are certified.) See Bidder Non-Compliance on Page 4.

Certification will be applicable for one year after submission and approval by the City.

The City reserves the right to revoke, for cause, any certification.

The Purchasing Division, Bureau of Financial Affairs will maintain a list of certified MBE's. A copy of this list may be obtained from the Purchasing Division, Room 113, City Hall. The furnishing of this information is neither a recommendation nor a representation of the qualifications or availability of the firms listed.

3. MBE Utilization Documentation:

To document the intent to fulfill the MBE utilization requirement, all bidders are required to complete a "Minority Business Enterprise Utilization Form" (Exhibit 2), and include it with the bid documents. All bidders are advised that these conditions require a 10% of bid amount Minority Business Enterprise utilization commitment, either by use of certified MBE subcontractors or certified MBE suppliers of materials, services, equipment or supplies.

At a pre-award conference to be held within five (5) days after bid opening, the apparent low bidder shall cause all selected subcontractors to execute, and to be submitted by the apparent low bidder, copies of all letters of agreement with Minority subcontractors or suppliers, contingent upon award of contract.

Although it is not made a requirement herein for City approval of a contract that a bidder in fact meet or exceed these goals in its contracting, it is a requirement for contract approval that a bidder objectively demonstrate to the City that it has exerted positive efforts to meet these goals. Notwithstanding the fact that a bidder may have the capability to complete the total project with its own workforce and without the use of subcontractors, each bidder will still be required to take positive efforts to subcontract to minority firms a share of the work consistent with the goals set forth above. These requirements are also applicable to bidders who are themselves minority-owned enterprises.

Methods: Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of minority-owned firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from minority business enterprises, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from minority firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow minority firms sufficient opportunity to develop quotes or proposals for the work described. Bidders are encouraged to follow-up such letters with telephone calls to determine the degree of interest the minority firms have in the work.

Procurement from Minority Subcontractors: Requirements for positive efforts for minority-owned subcontractor participation may be satisfied by the following methods. (Other equivalent methods taken by a bidder which are set forth and described in its bid may also be considered appropriate.)

- a. First Method: THE JOINT VENTURE ARRANGEMENT: The prospective bidder may utilize minority firms on a joint venture arrangement and bid jointly with the minority firms for the construction services required in the plans and specifications.
- b. Second Method: THE NEGOTIATED SUBCONTRACT ARRANGEMENT: The bidder may utilize firms on a negotiated subcontract basis.
- c. Third Method: THE COMPETITIVE BID METHOD: The bidder in using this method must establish the scope of work in sufficient detail consistent with the capability of minority firms. BIDDERS ARE CAUTIONED NOT TO RELY SOLELY ON THE COMPETITIVE BIDDING PROCESS TO FULFILL THEIR AFFIRMATIVE EFFORT OBLIGATIONS TO UTILIZE MINORITY FIRMS. MOST MINORITY CONTRACTORS ARE SMALL, WITH LIMITED RESOURCES, EXPERIENCE, AND BONDING CAPACITY AND CANNOT BE EXPECTED TO COMPETE WITH THE MORE EXPERIENCED AND SPECIALIZED NON-MINORITY SUBCONTRACTORS.

Each bidder on a prime contract shall contact no less than three (3) minority contractors to ascertain their interest and availability to participate in any or either of the above three (3) methods. The names of minority firms contacted and an indication of those to be utilized or the reason for non-utilization shall be identified as part of the Minority Business Enterprise Utilization Form (Exhibit 2) and submitted with the bid.

Procurement From Minority Suppliers: Bidders may also demonstrate that they have taken positive efforts to meet the 10% MBE utilization requirement through the purchase of construction materials, equipment, or supplies from minority suppliers. Bidders shall document these efforts in the Minority Business Enterprise Utilization Form (Exhibit 2). It is recognized that prices for supplies and equipment may fluctuate from time to time and it may not be possible for bidders to issue firm fixed price purchase orders to minority suppliers for quantities of supplies to be delivered in the

future. If this is not possible, the requirement may be satisfied by the bidder's submission of open purchase orders (requirements agreements) to minority firms identifying quantities and descriptions of supplies for which the setting of prices are deferred until the order is actually placed. Such open purchase orders must be signed by both the bidder and the minority firm and submitted prior to contract award to bidder.

Bidder Non-Compliance: A bidder which does not objectively demonstrate in its bid the required positive efforts (i.e., that it has attempted to achieve the City's goals by contacting minority contractors or suppliers in an attempt to engage them) or a bidder who uses a non-certified MBE at the time of bid opening to meet the utilization requirements will not, for these reasons alone, have their bids rejected as non-responsive. In the event such a bidder is recommended for contract award by the City, however, the Purchasing Manager will inform the bidder in writing of the non-compliance and the basis for such determination. The bidder will then be given an adequate opportunity to explain in writing (or at a conference or informal hearing) the reasons therefor to the Purchasing Manager. If the bidder continues to exhibit a lack of compliance with the positive effort requirements herein or if a bidder's reasons for non-compliance are unsatisfactory, or if it does not satisfy the above goals without an adequate explanation, the bidder may be required by the Purchasing Manager to make additional positive efforts to utilize certified minority-owned firms prior to being approved for contract award. Where a bidder's efforts continue to be unsatisfactory to the Purchasing Manager for a period of ten (10) working days following its receipt of initial notification of non-compliance, the bidder may be rejected on the basis of non-responsibility, or in the alternative a determination of non-responsibility may be made by the Purchasing Manager. A determination of non-responsibility on one contract will not prejudice the right of the bidder to submit bids on other City projects as long as the bidder complies with the positive-effort requirements of this insert in their other bids.

Exception: In very limited situations where circumstances otherwise justify approval of a contract to a bidder which has not satisfactorily complied with the positive-effort requirements (e.g., sole bidder, where delay incident to re-solicitation will cause substantial harm to the grantee), the City in its discretion may concur in the recommended award conditioned upon the inclusion of satisfactory contract provisions which require: (1) specific and defined positive efforts toward minority business utilization during contract performance, and/or (2) a penalty, such as agreed upon liquidated damages, for failure to undertake and complete these efforts and/or (3) the withholding of progress payments until such time as the positive effort requirements have been satisfactorily complied with and approved by the Purchasing Manager.

Any minority subcontractor substitutions by the contractors, after award of contract, shall be approved in writing by the Purchasing Manager. Such acceptable substitutions shall only be from the City MBE certified list, or other approved alternative list. If a substitution of an MBE supplier is necessary, and if the contractor is unable to find an MBE subcontractor

or supplier, and adequate positive actions have been used, and this finding is concurred in by the Purchasing Manager, the City in its discretion may revert to the exception process described above.

The City reserves the right to monitor compliance with the M.B.E. requirement throughout all phases of construction and shall require documentation of actual M.B.E. utilization upon forty percent (40%) project completion.

In all references above, the title Purchasing Manager is defined as the Manager or the Manager's designated representative.

ORDINANCE No. 149959

An Ordinance amending and clarifying the Minority Business Enterprise Utilization Guidelines as adopted by Ordinance No. 147629.

The City of Portland ordains:

Section 1. The Council finds:

1. Ordinance No. 147629, passed by Council May 2, 1979, established special bid conditions on all construction contracts let by the City for the purpose of increasing minority business utilization.
2. This ordinance also directed the Purchasing Agent to follow the guidelines and special conditions in substantial conformance with Exhibit A, attached to the original only of this ordinance, for the purpose of compliance with the MBE utilization requirement.
3. Over the past twelve months the utilization requirements have been met, resulting in over \$2.5 million in minority sub-contract awards; but sections of the guidelines relative to the timing of the MBE certification requirement have been found to be confusing.
4. The Purchasing Agent has recommended that these guidelines be amended at this time to clearly require MBE certification by the City prior to bid opening in order for the MBE to participate on that specific contract.
5. Exhibit A, attached hereto, contains the necessary revised language to clearly require MBE certification prior to bid opening in order for the MBE to participate on that specific contract, and should be approved by Council.

NOW, THEREFORE, the Council directs:

- a. The Purchasing Agent to follow the guidelines and special conditions in substantial conformance with the revised Exhibit A, attached hereto, for the purpose of compliance with the MBE utilization requirement of Ordinance No. 147629.

Passed by the Council, JUL 2 1980

Mayor Connie McCready
RML/me
June 13, 1980

George J. Johnson
Auditor of the City of Portland

2417

Calendar No. ~~2417~~

ORDINANCE No. 149959

Title

An Ordinance amending and clarifying the Minority Business Enterprise Utilization Guidelines as adopted by Ordinance No. 147629.

JUN 26 1980

PASSED TO THIRD READING JUL 2 1980

JUN 19 1980

Filed

GEORGE YERKOVICH

Auditor of the CITY OF PORTLAND

By

Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	1	
Jordan	1	
Lindberg	1	
Schwab	1	
McCready	1	

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

INTRODUCED BY
Mayor Connie McCready

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration <i>CMC</i>
Safety
Utilities
Works

BUREAU APPROVAL
Bureau:
Financial Affairs
Prepared By: R.M. Lappi/me Date: 6/13/80
Budget Impact Review:
<input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: <i>R.M. Lappi</i> Ron Lappi, Finance Officer

CALENDAR	
Consent	Regular

NOTED BY
City Attorney
City Auditor
City Engineer <i>[Signature]</i>