



## **City of Portland**

### **Sheltered Market Program Description**

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#### **Definition**

The Sheltered Market Program is designed to maximize opportunities for qualified M/W/ESBs to obtain work from the City at a prime contractor level (formal construction contracts under \$200,000).

#### **Applicant Eligibility:**

- The application process is open to any firm certified by the State OMWESB office as a DBE, MBE, WBE or ESB.

#### **Application Process**

- Applications will be initially accepted on a semi-annual basis by the Contractor Development Division, Bureau of Purchasing, City of Portland. The opening of the application "window" will be accompanied by outreach efforts to obtain new firms into Program. A sample application form is attached.
- DBE/MBE/WBE certified firms will be asked to fill out some supplemental questions (Form A) in addition to their State Certification form. Form A will include questions now asked in the City Pre-qual form (including class code information) as well as questions regarding discrimination and contracting barriers.
- In addition to Form A, ESB firms will have additional questions (Form B) to complete. Form B will include additional information regarding equipment owned/leased, additional owner information, etc. not now covered on the State ESB form.
- Separate City Prequalification will not be required to bid on projects in the Sheltered Market Program. (Note: If a SMP firm wishes to bid on projects outside the SMP, separate Prequalification may be required.)
- Firms accepted into the Sheltered Market Program will also be eligible for Direct Services Contracting (Informal construction contracts bid directly to M/W/ESB firms that would otherwise be awarded as part of a larger project) opportunities.
- To ensure correct and complete information, copies of the State certification will be obtained by City staff in cooperation with the OMWESB office. City staff will be responsible for copying files on location at the OMWESB office.

### **Application Review Process**

- The application review process will be a three step process:

#### **Step A: Business Review**

Initial applications will be reviewed by a panel made up of:

Sheltered Market Program Coordinator  
M/W/ESB Liaison  
Procurement Specialist  
Two Project Managers/ Engineers  
City Attorney Representative  
Representative from the construction industry

#### **Step B: Technical Capacity Review**

Applications approved by the Business Review Panel will be transmitted to the pre-qualification reviewers. This group will determine capacity of each firm by class codes.

#### **Step C:**

The Sheltered Market Program Coordinator will receive the applications, following the Technical Capacity Review, with pre-qualification levels set by class codes. The Program Coordinator will review the dollar capacity limits set. If the dollar limits appear either too high or too low, the Program Coordinator has the discretion to recommend the application for further review by a joint meeting of the Business Review and Technical Review groups. The results of the application process will be reported to both groups by the Program Coordinator. Written notice of acceptance or denial into the Sheltered Market Program will also be sent to the applicant.

It is assumed that the technical capacity level will be open for "continuous" review. At the request of the applicant or upon contract completion, the Program Coordinator is responsible for asking for dollar limit review. Any change in the dollar limit will be communicated to the applicant in writing.

### **• Appeal Process**

- The application approval process may be appealed by:
  - any member of the Business Review Panel, based on a decision of the Technical Capacity Review group; or
  - any member of the Technical Capacity Review group, based on a decision of the

**Business Review Panel.**

In each case, the Program Coordinator will call a meeting of both groups to discuss concerns and attempt to reach consensus. If consensus cannot be reached, the Contractor Development Manager will make a final decision.

- An applicant may also appeal the outcome of the application process to the Contractor Development Manager. Following review of the application and discussions with affected parties, the Contractor Development Manager will make a decision on the appeal. The firm and all parties involved will be notified, in writing the basis for the decision.

**Technical Assistance**

- A needs assessment of required and/or desired technical assistance will be completed by each contractor following acceptance into program.
- Pre/post award contract specific technical assistance will be available as part of the Sheltered Market Program.

**Graduation Standards**

- Program will have the ability to rotate out firms who consistently receive bids.
- Program will have specific criteria which will trigger graduation from the Program, such as number of contracts received, length of time in Program, etc.

**Responsibility of Participating Contractor:**

- Program is intended to be a developmental/ education experience. Participants will be held responsible for:
  - Submitting bids to local governments
  - Participating, to the extent needed, in the technical assistance opportunities offered. (Participation in the Port Mentor program may substitute for this requirement.)
- Participants will be responsible for performing and completing work.

**Responsibility of the Contracting Agency**

- Projects will be selected for inclusion in the Sheltered Market Program.
  - Criteria will be developed to determine which formal construction projects will be included in the Sheltered Market Program based on the availability of contractors, by work class, accepted into the Program

**City of Portland**  
**Sheltered Market Program Description**  
**Page 4**

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- Construction projects may be bid outside the Sheltered Market arena if sufficient bids from Sheltered Market Participants are not available.
- Program will require computerized tracking of participant bid activity, participation start/end dates, Technical Assistance received; etc. Performance monitoring and tracking of progress toward graduation requirements will be performed.



## City of Portland Sheltered Market Program Application

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The Sheltered Market Program is designed to maximize opportunities for qualified construction firms which are State certified as a Disadvantaged, Minority, Women or Emerging Small Business Enterprise (D/M/W/ESB). The Sheltered Market Program provides a vehicle for certified D/M/W/ESB firms to compete against like firms in an effort to obtain prime contracting experience. The Sheltered Market Program has been designed and based on extensive statistical and anecdotal data which supports the need to ensure uniform access to public contracting dollars and improve opportunities for minorities and women acting as business owners in the regional construction industry.

A portion of the City construction projects which require a formal bidding process, but are under \$200,000 will be, to the extent possible, competitively bid to participants of the Sheltered Market Program. The Program will be administered and reviewed annually by the City of Portland Contractor Development Division, Bureau of Purchases. It is expected that the Program will be revised, as needed, following each annual review.

In addition, some Direct Services contracting opportunities may also be offered to participants of the Sheltered Market Program. Direct Services contracting opportunities are those contracts, normally included as a subcontract to a selected prime. The Direct Services Contractor (DSC) will be selected and paid directly by the City of Portland, but will be responsible for coordinating work with the prime contractor as part of a larger project. Direct Service contracts are usually smaller in size and bid informally.

### **Application Process**

- Applications are centrally accepted at least twice a year by the Contractor Development Division, Bureau of Purchasing, City of Portland. Availability of participants and construction projects may require additional application period openings.

The first application period or possibility for acceptance into the Sheltered Market Program will be: **August 25 - September 12, 1997.**

Application forms may be obtained from the following locations:

City of Portland, Bureau of Purchases  
1120 SW 5th, Suite 1313  
Portland, Oregon 97204  
Phone: (503) 823-6855

Multnomah County, Purchasing Section  
2505 SE 11th Ave.  
Portland, Oregon 97202  
Phone: (503) 248-5429

OAME  
4134 N. Vancouver  
Portland, Oregon 97217

IMPACT  
4300 NE Fremont, Suite 230  
Portland, Oregon 97213

- Applicants will be notified by mail, no later than four weeks following the close of the application period of their status in the Sheltered Market Program.

#### **To Qualify for Acceptance in the Sheltered Market Program**

- The applicant must be certified by the State of Oregon as a DBE, MBE, WBE or ESB firm.
- The applicant must agree to allow their State D/M/W/ESB application file to be copied for use in the Sheltered Market Program application process.
- The applicant must complete and return by the date indicated the Sheltered Market Application Form to: City of Portland, Bureau of Purchases, 1120 SW 5th, Portland, Oregon 97204.
- If accepted into the Sheltered Market Program, the firm must agree to an assessment of Technical Assistance needs by a consultant named by the City of Portland.

#### **Participation, Graduation and Dismissal Requirements of the Sheltered Market Program**

- ♦ The number of qualified firms accepted into the Program may be limited depending on available resources, program funding, and the amount of available work.
  - ♦ A firm may be removed from participation in Sheltered Market activities for non-performance or non-participation in the Technical Assistance Program.
  - ♦ Bidding opportunities may be rotated between firms accepted into the Sheltered Market Program.
  - ♦ A firm will graduate or be removed from the Sheltered Market Program three years from the date of initial acceptance into the Program.
  - ♦ The City may elect to create an optional extension in the Program beyond the three year time period. Factors used in determining if an extension is warranted may include:
    1. The availability of Sheltered Market contracts for which the firm had an opportunity to bid on during the three year period;
    2. The efforts of the firm to respond to and provide proposals on the available Sheltered Market bid opportunities;
    3. Other information relevant to the growth of the firm, including, but not limited to: participation in Technical Assistance opportunities, bidding activity outside the Sheltered Market Program, etc.; and
    4. Issues of non-performance.
  - ♦ Firms participating in either a Sheltered Market or Direct Services Contract must provide a commercially useful function.
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#### **Sheltered Market Application Checklist**

For your convenience, the following is a checklist of the required documents to be submitted for acceptance into the Sheltered Market Program. Incomplete applications will delay the process or result in denial of an application.

- ☐ A copy of a current notice of State Certification as a D/M/W/ESB firm.
- ☐ A signed and notarized application, including:
  - ☐ Supplemental Application Form A (All Firms)
  - ☐ Supplemental Application Form B (Firms Certified as an ESB Only)
  - ☐ Signed Affidavit (All Firms)

## **NOTICE TO SHELTERED MARKET APPLICANTS**

To enter into contracts with the City of Portland, all successful bidders are expected to meet certain contracting requirements. The list below, is intended as a *summary* of requirements. It reflects standard permits, licenses, certifications, insurance and/or bonding requirements. Additional requirements may be required as needed.

### **CERTIFICATION AS AN EEO AFFIRMATIVE ACTION EMPLOYER**

- Contractors and subcontractors must be certified as Equal Employment Opportunity Employers as prescribed by Chapter 3.100 of the Code of the City of Portland.

### **AMERICANS WITH DISABILITIES ACT COMPLIANCE**

- Bidders agree that if awarded a contract, the successful bidder will comply with all applicable provisions of the Americans with Disabilities Act of 1990.

### **BID SURETY**

- Unless otherwise stated, a bid deposit in the form of a surety bond, postal money order, cash, certified check, or cashier's check in an amount equal to ten percent (10%) of the amount of the bid shall be furnished by the Bidder.

### **CONSTRUCTION CONTRACTORS BOARD**

- Construction contractor must be licensed with the State of Oregon Construction Contractors Board in accordance with ORS 701.005 prior to submitting a bid.

### **PERFORMANCE AND PAYMENT BOND**

- A performance bond will be required for all public improvement contracts over \$50,000 unless the requirement for a performance bond shall be waived by the jurisdiction at the time of contract award.

### **INSURANCE - PROOF OF COVERAGE**

- Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with contracting entity.

### **INSURANCE - PUBLIC LIABILITY AND PROPERTY DAMAGE -**

- The Contractor shall provide and maintain public liability and property damage insurance as well as protect the Contractor and the jurisdiction from any and all claims for damage or personal injury, including death, which may arise from the operations or in connection with a contract, including operations of Subcontractors. Insurance shall provide coverage for not less than \$200,000 for one claim and \$500,000 for one occurrence for personal injury; and \$500,000 for one occurrence of property damage.

### **PERMITS AND LICENSES -**

- The successful Bidder shall obtain and shall include in his bid the cost for all permits and licenses which may be required to perform the contract.

### **PROMPT PAYMENT -**

- The Contractor agrees to make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided.

### **WORKERS' COMPENSATION INSURANCE -**

- The Contractor, its subcontractors, if any, and all employers are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. The Contractor is required to maintain workers' compensation insurance coverage for the duration of this Contract.

### **LAW OF STATE OF OREGON**

- This contract is entered into within the State of Oregon, and the law of said state, whether substantive or procedural, shall apply to this contract, and that all statutory, charter and ordinance provisions that are applicable to public contracts and the State of Oregon shall be followed with respect to this contract.



**City of Portland  
Sheltered Market Program Application**

**Supplemental Application Form A  
Completed By All Applicants**

Deliver completed forms to:

Sheltered Market Program  
City of Portland, Bureau of Purchases  
1120 SW 5th, Suite 1313

1. Name of firm: \_\_\_\_\_

Corporation name (if applicable): \_\_\_\_\_

Business address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing address (if different): \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (    ) \_\_\_\_\_ Fax: (    ) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Owner's full name: \_\_\_\_\_ Title: \_\_\_\_\_

2. How did you become involved in the construction industry? (i.e. Through a family business, friends, apprenticeship program, trades work, military training, etc.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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3. Please list barriers to developing or conducting your business which you believe were based on your race, ethnicity, gender or small business size.

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4. How or why do you think participation in this Program will help you overcome barriers, as identified in Question #3, to the growth and development of your business?

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5. Please list Technical Assistance/ Training that you have received in the last three years.  
(Attach additional pages as needed.)

Type of Technical Assistance	Organization/ Entity Providing Training	Estimated Hours of Technical Assistance

6. A. How many years has your organization been in business under your present business name? \_\_\_\_\_

B. How many years experience in construction work has your organization had:

(1) As a prime contractor? \_\_\_\_\_ (2) As a subcontractor? \_\_\_\_\_

C. Has your organization ever failed to complete any work?

If so, please provide the following information.

Where	Date	Owner and Prime	Reason for Non-Completion

7. Insert the maximum dollar amount for each class of work which the applicant is requesting works and declares it is capable of performing.

- |   |   |
|---|---|
| 2. _____ Street Improvements                | 17. _____ Traffic Signalization                                   |
| 3. _____ Concrete Paving & Flatwork         | 18. _____ Outdoor Illumination                                    |
| 4. _____ Reinforced Concrete                | 19. _____ Building Construction                                   |
| 5. _____ Bridge & Overcrossing Construction | 20. _____ Building Alteration & Repair                            |
| 6. _____ Dredging & Piledriving             | 21. _____ Structural Demolition & Related Excavation and Clearing |
| 7. _____ Site Excavation & Grading          | 22. _____ Painting of Buildings & Structures                      |
| 8. _____ Sewer Construction                 | 23. _____ Plumbing  |
| 9. _____ Sewage Treatment Plants            | 24. _____ Heating   |
| 10. _____ Sewage Pumping Stations           | 25. _____ Roofing   |
| 11. _____ Water Lines                       | 26. _____ Air Conditioning  |
| 12. _____ Water Pumping Stations            | 27. _____ Irrigation & Sprinkling System                          |
| 13. _____ Water Reservoirs                  | 28. _____ Drainage  |
| 14. _____ Water Tanks - Steel               | 29. _____ Landscaping   |
| 15. _____ Water Tanks - Concrete            | 30. _____ Park Improvements                                       |
| 16. _____ Electrical Wiring                 | 31. _____ Other* _____  |

\* Note; Broad terminology such as general construction or public improvements, etc. is not acceptable.

8. What is the total amount of work, expressed in dollars, which you consider you are capable of undertaking at any one time? \$ \_\_\_\_\_

9. Please describe your experiences bidding work in the last three years. (Attach additional pages as needed.)

[illegible]

**10. Equipment: List Only Major Items. Lump together small equipment and tools.**

Quantity, Description and Capacity of Items	Leased (L) or Owned (O)	Age in Years	Condition

**11. What is the construction experience of the principal individuals of your organization?**

Individual's Name	Present Position or Office	Years of Construction Experience	Magnitude and Type of Work	In What Capacity



**City of Portland  
Sheltered Market Program Application**

**Supplemental Application Form B  
Completed By Applicants That Are ESB Certified Only**

Deliver completed forms to:

Sheltered Market Program  
City of Portland, Bureau of Purchases  
1120 SW 5th, Suite 1313  
Portland, Oregon 97204

1. Name of firm: \_\_\_\_\_  
Corporation name (if applicable): \_\_\_\_\_  
Owner's full name: \_\_\_\_\_ Title: \_\_\_\_\_
2. Ownership (list **all** individuals who have an ownership interest in this business. **If not a U.S. citizen, proof of legal residence must be submitted**):

Name	Years of Ownership	Ownership & voting percent	Hours worked weekly	U.S. resident or citizen
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No

3. List officers and directors (corporations only):

Name/ Title	Director	# of Years with Corporation
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

4. Management and control of firm ( identify by name and title of all individuals (owners and non-owners) who are responsible for the day-to-day operation and policy decision-making, including those with primary responsibility):

Responsibility	Name/ Title	Annual Salary
<b>Financial decisions</b>		
<b>Estimating</b>		
<b>Marketing/ Sales</b>		
<b>Personnel Decisions</b>		
<b>Purchasing Equipment</b>		
<b>Field Supervision</b>		
<b>Signatory on Major Documents</b>		

5. Bonding: Name of surety agent: \_\_\_\_\_  
Contact person: \_\_\_\_\_ Phone no.: \_\_\_\_\_  
Bonding limit: \$ \_\_\_\_\_

6. Insurance coverage: Name of insurance company: \_\_\_\_\_  
Agent: \_\_\_\_\_ Phone no.: \_\_\_\_\_  
Amount and type of coverage: \_\_\_\_\_

7. Number of employees, including owner(s):  
Full-time \_\_\_\_\_ Part-time \_\_\_\_\_

8. List other businesses in which you or any other owners have ownership:

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**City of Portland  
Sheltered Market Program Description**

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**Please read the following affidavit carefully and sign in the presence of a certified notary public:**

**Affidavit**

I do solemnly declare and affirm, under penalty of perjury as defined in ORS 162.065, that the contents of the foregoing documents are true and correct and include all information necessary to identify and explain the operation of \_\_\_\_\_ (name of firm), as well as the ownership thereof. The undersigned, in addition, provides permission for the OMWESB, State of Oregon to release copies of any material pertaining to the administration of this firm and its application process for D/M/W/ESB certification, to the City of Portland and/or Multnomah County for the purposes of Sheltered Market or Direct Services Program application review. Any material misrepresentation or unreported changes in State Certification may be grounds for denial or revocation from the Sheltered Market Program and initiation of action under federal or state laws concerning false sworn statements.

I understand that I may be dropped from the Sheltered Market Program for reasons of non-performance such as, but not limited to, repeated non-submission of bids on opportunities afforded under the Sheltered Market Program or non-participation in opportunities for receipt of technical assistance. I also understand participation in the Sheltered Market Program is limited to a three year time period.

Signature of owner/ applicant: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Notary Seal Here**

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
before me appeared \_\_\_\_\_, who being duly  
sworn did execute the foregoing affidavit, and did state that she/he was  
properly authorized by \_\_\_\_\_ (name of firm) to  
execute the affidavit and did so as her/his free act and deed.

State of: \_\_\_\_\_

Notary public: \_\_\_\_\_

Commission expires: \_\_\_\_\_



## Report and Findings on the Sheltered Market Program and Exemption

The Portland City Council having reviewed the Oregon Regional Disparity Study and City Purchasing Data specifically referenced herein finds:

1. The proposed Sheltered Market Program is intended to rectify the disparity found to exist in the awarding of City of Portland contracts to prime contractors. The Disparity Study found that from July 1, 1991 to June 30, 1994, 260 contracts were awarded by the City, worth \$144,638,852. However, only six (6) of those contracts (2.31%) were awarded to non-Caucasian prime contracting firms. Of the six (6) contracts awarded, two (2) contracts were awarded to Asian-American prime contractors. The other four (4) contracts were awarded to Hispanic American prime contractors. No contracts were awarded to African-American or Native American prime contractors.
2. The above utilization data is to be contrasted with Disparity Study findings which documented the existence of approximately 221 available minority construction firms interested in doing business with the City and other public agencies in the metropolitan area, or 11.67 % of the total number of available firms.
3. The Study also found that from July 1, 1991 to June 30, 1994, only 10 of 260 contracts (3.85%) were awarded to Caucasian Female firms although there were approximately 218 available Caucasian Female firms interested in doing business with the City and other public agencies in the metropolitan area, or 11.51 % of the total number of available firms.
4. The Disparity Study found that from July 1, 1991 to June 30, 1994, 244 out of 260 contracts were awarded to Caucasian male prime contractors.
5. The Study identified that many barriers to participation in public contracting at a subcontractor and prime level exist, leading to statistically significant disparities between the numbers of available minority and women-owned construction firms and the actual utilization of such firms by the City and other public agencies operating in the metropolitan area. Further, the Study documented that substantial portions of the dollars or contracts going to minority or women-owned firms were captured by an even smaller number of individual companies. Thus, participation in City of Portland contracting by minority and women-owned companies was not diverse or representative. For that reason, among others, the Study concluded that a Sheltered Market Program would "correct the documented disparity and build the capacity of minority and women-owned business to bid as primes."

6. The City of Portland has a compelling governmental interest to ensure that all citizens of Portland have an equal opportunity to participate in City contracting, and that its contracting dollars are not tainted by race or gender discrimination. The Sheltered Market Program, directly aimed at fostering the growth of minority, women-owned businesses as prime contractors, is one method by which the City can create and maintain a level playing field for all contractors in the City.

7. The Sheltered Market Program is narrowly tailored remedy to address the disparity found by the Study. The program will include a maximum of only half of all formal construction contracts awarded by the Bureau of Purchases between the informal purchasing limit of \$44,584 and the sum of \$200,000. Therefore, approximately 5% of the City's overall construction contracting dollars will be involved at this time so the program does not exceed the capacity of firms eligible to participate. Moreover, it leaves 95% of the remaining contracting dollars fully open to all bidders, including minority and women owned businesses.

8. The City's program is consistent with, but broader than, actions taken by the State of Oregon. ORS 279.053 permits the City to engage in bidding and contracting practices designed to accomplish affirmative action for disadvantaged or minority groups, which is defined to include programs to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability. In carrying out such a policy, ORS 279.053 permits local governments to limit or eliminate competitive bidding on contracts of \$50,000 or less.

9. Although the Sheltered Market Program will assist in remedying the underutilization of minority and women-owned businesses identified in the Disparity Study, that study also highlighted that many of the burdens and problems faced by minority and women-owned companies were also serious obstacles to the business development and participation of emerging small businesses generally. Therefore, it is appropriate to include emerging small businesses, certified as such by the State of Oregon, into the Sheltered Market Program. That addition will foster additional competition within the Sheltered Market and lead to reduced prices on City contracts.

10. Creation of the Sheltered Market Program and exemption of certain City contracts from full competitive bidding such that the program can operate is consistent with requirements of ORS 279.015, which requires that exemption of a class of contracts such as the one contemplated be unlikely to establish favoritism or substantially diminish competition and additionally result in substantial cost savings.

11. The common sense notion that increased competition through development of additional minority, women-owned and emerging small businesses as a result of the Sheltered Market Program will lead to lower prices is confirmed not only by the Bureau of Purchases' expert opinion but by documentation it maintains regarding contract awards. In the 1996-1997 fiscal year, only 30% of construction contracts were awarded at an amount below the City's cost estimate when there were three or fewer bids received. In contrast, 69.4% of construction contracts were awarded at an amount below the City's cost estimate when more than three bids were received.

12. Similarly, there is trend data showing that the greater the number of bids received by the City, the greater the difference between the amounts of the low and high bids received. In the 1996-97 fiscal year, the percentage difference between the low and high bids was 22% when only two bidders submitted bids, but 61% when five bidders submitted bids. This suggests that the increased number of bidders causes increased competition and invites bidders to find ways to reduce their prices. Observations of the City's long-term Purchasing Agent summarized in the memorandum attached to this Report suggest that this is particularly true when bidders know that only a few firms are likely to bid on a particular project.

13. The Bureau of Purchases has examined additional contracting and bidding patterns since 1991 and has found that for contracts in the size range of the proposed exemption (contracts \$200,000 and below), from 1991 through the present it is clear that very significant numbers of projects received three or fewer bids. Based on the findings noted in paragraph 11 above, the large numbers of contracts for which three or fewer bids were received suggests that the City did not receive the benefits of full price competition. The Purchasing data specifically revealed:

Year	# of Projects	% of projects w/ 3 bids or less
91/92	51	35%
92/93	40	33%
93/94	36	56%
94/95	40	58%
95/96	58	43%
96/97	57	40%

14. The City of Portland awards some of its contracts by virtue of its "informal" bidding process. This process, authorized by Portland voters in 1978, permits the City to award some contracts without formal competitive bidding and public advertisement so long as competitive price quotations are obtained from different sources. The Bureau of Purchases routinely obtains three such price quotations whenever possible. The informal process allows the City to avoid advertisements and the preparation of contract specifications, thus saving money in situations where those costs would exceed any savings that might result from formal bidding. During the current fiscal year, the ceiling for the informal bidding process, established by the City Auditor, is \$44,584. That amount is adjusted annually based on the average inflation rate for the Portland Metropolitan Area as determined from U.S. Department of Labor statistics.

15. The class of contracts specifically exempted for inclusion in the Sheltered Market Program will be limited to no more than one-half of the contracts that exceed the informal purchasing limit and which are less than \$200,000. In the current year, that the informal purchasing limit will be \$44,584, but in future years the size of the class will be adjusted to correspond to any increase or decrease in the informal purchasing limit.

16. In order to maximize cost savings, the City will focus on the capability and expertise of firms who apply to participate in the Sheltered Market Program and thereafter ensure that contracts eligible for inclusion within the program match up with the talents of those who participate. Cost savings will also occur because the City will not have to formally advertise contracts in the Sheltered Market Program, but can distribute proposed contracts to Sheltered Market members for bid.

17. This exemption will not establish favoritism in the award of such contracts or substantially diminish competition. Firms that participate in the Sheltered Market Program will compete for the contracts that are available, sealed bids will be solicited from those firms, and contracts will be awarded to the firm submitting the lowest responsible and responsive bid. If no bids are received which are within competitive limits in reference to the engineer's estimate, the project may be reopened for full competitive bidding.

18. Participation in the program is not indefinite. Unless extraordinary circumstances exist, firms will be in the program for a period of three years, after which they will graduate and provide additional competition on other City contracts. Finally, not all City contracts will be included within the program. In summary, the Sheltered Market Program will ultimately enhance competition in the Portland marketplace.



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF PURCHASES

Vera Katz, Mayor  
Carlton Chayer  
Purchasing Agent  
1120 S.W. Fifth Avenue  
Portland, Oregon 97204  
(503) 823-6855  
FAX (503) 823-6865

August 15, 1997

**To:** Mayor Vera Katz and City Council

**From:** Carlton Chayer  
Purchasing Agent *C Chayer*

**Subject:** Sheltered Market Program and Exemption

On August 20, 1997 the City Council will consider granting an exemption from the competitive bidding requirements of the State of Oregon for a Sheltered Market Program to create more consistent opportunities for Minority- owned, Women-owned and Emerging Small Businesses (M/W/ESB). I believe that these actions, over time, will increase competition and lower contracting costs for the city.

Because I will be out of town and thus unable to testify in person, I want to provide a brief review of my experiences regarding the benefits of competition for the City.

I have served in the City's Bureau of Purchases for over twenty-one (21) years. For nine (9) of those years I held the position of Assistant Purchasing Agent. During the past nine (9) years I have served as the City's Purchasing Agent and Director of the Bureau of Purchases. I held responsible purchasing management positions in the private sector for six years prior to my service with the City.

Public policy, common sense, and personal experience lead me to conclude that an increase in the pool of available bidders will lead to long-term price advantages for the City and the taxpayers. Private sector purchasing officers are also aware of the advantages of increased competition. It is generally understood, both in the private sector and in public contracting offices, that minimally acceptable competition begins with the receipt of at least three (3) bids or quotations, preferably more, and that cost reductions continue to correlate closely to the number of bids received. For example, City of Portland data for 1996/97 showed that only 30% of construction contracts were awarded at an amount below the City's cost estimate when three or fewer bids were received. In contrast, 69.4% of construction contracts were awarded at an amount below the City's cost estimate when more than three bids were received. Therefore, it is financially beneficial to the City if more than three bids are received for its construction projects.

## **Sheltered Market Program and Exemption**

**August 15, 1997**

**Page 2**

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A recent Parks Bureau project illustrates this relationship very well. We advertised a park improvement project and received only one bid. That bid was for \$348,400 which was 31% over the project estimate of \$265,000. The bid was rejected and the project was rebid. The rebid resulted in the City receiving five (5) bids. This time, the low bid was \$301,000, or 13.5% lower than the previous single bid we had received. In my experience, this example of adequate price competition occurring only when a significant number of bids are received for the project is extremely common. While this example shows that we are sometimes able to achieve that competition through a rebid process, unfortunately, this is not always the case. Moreover, the rebid process itself costs the City and its taxpayers substantial sums.

During the past six fiscal years, the percent of awarded formal projects in the under \$200,000 range that received three bids or less has ranged from 33% to 58%. Data for 1996/97 shows a 5% greater number of such projects than existed in 1991/92. My experience in the last five years has been that we are seeing an increasing number of projects for which inadequate (at times even two or fewer) bids are being received for projects in all size ranges. This has resulted in many instances where inadequate competition has led to prices which are significantly above the City's cost estimate.

We see the problems with diminished competition quite clearly in situations where bidders are also aware that there will be few involved in bidding a given project. This can happen where mandatory prebids are necessary, or where bidders obtain information about how many potential competitors have picked up plans for the projects - thereby having specific information regarding who their competitors will be and how many there are.

Based on my experience and the considerations noted above, I believe a Sheltered Market Program for M/W/ESB firms will benefit the City by increasing the number of contractors available and capable of bidding on City projects as primes in the future. The increased competition will provide the City with lower project costs. I believe that a contracting community which is provided the opportunity to build experience and financial stability will be most advantageous to the City in the years to come.

Therefore, I respectfully request the City Council adopt this ordinance, and immediately proceed to implement the Sheltered Market Program.

# ORDINANCE No. 17 15 19

\*Adopt Sheltered Market Program and Establish Exemption For Sheltered Market Contracts.  
(Ordinance)

The City of Portland ordains:

Section 1: The Council finds:

1. The Oregon Regional Consortium Disparity Study (hereinafter "Study"), prepared by Mason Tillman Associates, Ltd., reviewed, among other things, the City's public contracting methods for construction contracts to determine whether these processes were affected by race or gender discrimination. The entire Study, which has been the focus of previous Council sessions, and was accepted by the Council through Ordinance No. 170278, is incorporated by reference into these findings.
2. The Study directed a number of recommendations to the City, including the need to adopt a Sheltered Market Program which would provide small prime contracting opportunities for developing firms to work directly with the City. The program concept was described in the City's Fair Contracting and Employment Strategy, adopted by the Council earlier this year, which also is incorporated herein by reference.
3. The City, working collaboratively with Multnomah County, has developed the Sheltered Market Program described in Exhibit A. Disparity Study findings particularly relevant to the need for the Sheltered Market Program and Basis for the Exemption are detailed in the Report and Findings on the Sheltered Market Program and Exemption, Exhibit B.
4. ORS 279.015 permits a Local Contract Review Board to exempt certain classes of contracts from the competitive bidding requirements of law that would otherwise be applicable if (a) it is unlikely that the exemption would establish favoritism in the award of such contracts or substantially diminish competition; and (b) substantial cost savings will result. The Board may take into account the type, cost, amount of the contract, the number of persons available to bid and other appropriate factors in reaching this latter conclusion. The City Council is the Local Contract Review Board for the City of Portland.
5. The necessary exemption from full competitive bidding required to implement the Sheltered Market Program is authorized by ORS 279.015. As is detailed more fully in the Report and Findings on the Sheltered Market Program and Exemption, increased competition historically has led to lower contract prices for the City. Further, substantial percentages of City contracts have been let during the time period (1991-1994) covered by the Disparity Study and since, without sufficient bidding to ensure rigorous price competition. Increasing the capacity of minority, women-owned, and emerging small businesses to bid and perform on public construction contracts will foster such competition, with a resulting reduction in price.

6. Contracts awarded under the Sheltered Market Program described in Exhibit A will be based on open competitive bidding within the program, which will maintain price competition for exempted projects.

NOW, THEREFORE, the Council directs:

- a. The Sheltered Market Program, in a form substantially similar to that represented by Exhibit A, is hereby adopted.
- b. One-half of all City contracts between the informal purchasing limit and \$200,000 are exempt from the full competitive bidding process and are hereby directed towards competitive bidding within the Sheltered Market Program.

Section 2: The Council declares that an emergency exists because the City needs to foster competition, achieve lower prices and remedy the disparity found by the Study as soon as possible. Therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: **AUG 20 1997**  
Mayor Vera Katz  
Jim Van Dyke/Madelyn Wessel:br  
August 15, 1997

**BARBARA CLARK**  
Auditor of the City of Portland

By: 

Deputy



**1269**

Agenda No.

ORDINANCE NO. **171519**

Title

\*Adopt Sheltered Market Program and Establish Exemption For Sheltered Market Contracts. (Ordinance)

INTRODUCED BY	Filed: <b>AUG 15 1997</b>
Mayor Vera Katz	Barbara Clark Auditor of the City of Portland
NOTED BY COMMISSIONER	
Affairs	
Finance and Administration <i>vk JJJ</i>	By: <i>Britta Olson</i>
Safety	
Utilities	
Works	
BUREAU APPROVAL	of: _____ For Meeting
Bureau: <b>SLK</b>	ACTION TAKEN
Prepared by: Van Dyke/Wessel:br Date: 8/15/97 atwessel.wrk/sm.ord <i>mw</i>	
Budget Impact Review:	
___ Completed ___ Not Required	
Bureau Head: _____ Name of Bureau Head	

Agenda		Four Fifths Agenda	Commissioners voted as follows		
Consent	Regular			YEAS	NAYS
NOTED BY		Francesconi	Francesconi	✓	
City Attorney	<i>mw</i>	Hales	Hales	✓	
City Auditor		Kafoury	Kafoury	✓	
City Engineer		Sten	Sten	✓	
		Katz	Katz	✓	