

Public Benefit Program Requirement - Construction Career Pathways Program

Description

The purpose of this Construction Career Pathways Program is to maximize apprenticeship and employment opportunities for workers identifying as women and/or persons of color in the construction trades, to increase the diversity of the available construction trade workforce in the Metro Region and increase the availability of construction trade workers overall. The goal of Metro's Construction Career Pathways Program is to provide equitable opportunities for workers identifying as women and/or persons of color to participate in construction trade employment created through Metro public improvement contracts.

Contractor and all subcontractors having subcontracts exceeding fifty thousand dollars and No/100 (\$50,000.00), must exert "Good Faith Efforts" to implement their Metro approved Construction Careers Pathways Plan and to achieve the apprentice and journey level utilization targets ("Utilization Targets"), set forth in the [Construction Career Pathways Plan Guidance](#) document, accepted and agreed to by Metro and Contractor via Contract Award. Contractor and all covered subcontractors agree to be bound by any and all representations made concerning their compliance with the program prior to Contract Award, including their Utilization Targets, and plan for achieving them, explained below, and any and all representations and covenants made by Contractor and covered subcontractors concerning their best efforts to meet the aforesaid promises and satisfy these requirements during the performance of this Contract.

Metro reserves the right, at all times during the period of this Contract, to monitor Contractors' and covered subcontractors' compliance with its covenants set forth these Public Benefits Program Requirements, and declare a breach of contract and enforce Metro's contract remedies set forth below for failure to comply with the Construction Career Pathways Program.

Registered Training Agent

Contractor and covered subcontractors must be registered as training agents with an Oregon Bureau of Labor and Industries (BOLI) approved apprenticeship training program, and must submit proof of same to Metro prior to beginning any Work on the Project. Only apprenticeship training programs approved by and registered with BOLI may be used to provide the apprenticeship training required to implement a Construction Careers Pathways Plan.

"Good Faith Efforts"

Contractor and covered subcontractors agree to exert "Good Faith Efforts" to ensure that they satisfy the terms these Public Benefit Program Requirements, including implementing their Construction Career Pathways Plan. Examples of "Good Faith Efforts" are further set forth in the [Construction Career Pathways Plan Guidance](#) document. However, at a minimum, Contractor and covered subcontractors must effectively implement the Construction Career Pathways Plan(s) proposed by Contractor, and covered subcontractors, as part of Contractor's bid for the Project and accepted by Metro, which by reference herein are made part of the Contract, together with changes and additions mutually agreed upon in writing in advance by Metro and Contractor and covered subcontractors to augment or improve plan effectiveness, or as required by applicable laws, ordinances, codes, regulations, rules, standards, or Metro Specifications. Work must not begin until Contractor's and covered subcontractors' Construction Career Pathways Plan(s) have been approved by Metro.

Construction Career Pathways Plan

Contractor's, and covered subcontractors', Construction Career Pathways Plan must include a narrative description committing to exerting "Good Faith Efforts" to meet the Utilization Targets set forth in the [Construction Career Pathways Plan Guidance](#) document including but not limited to the following:

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- i. A description of efforts proposed to be taken by the Contractor and covered subcontractors to enhance the diversity of the workforce on the entire project and what strategies will be used to maximize apprenticeship opportunities for workers identifying as women and/or persons of color on the jobsite, including, without limitation: directly requesting apprentices identifying as women and/or people of color from union or open shop apprenticeship programs in order to satisfy the Utilization Targets. Contractor and covered subcontractors must not use workers previously employed at the journey-level or those who have successfully completed a training course leading to journey-level status to satisfy apprentice utilization targets. Contractor and covered subcontractors must avoid direct hiring of employees (i.e., “walk-ons”) without using the apprentice program referral process set forth above or the recruitment process set forth in Section iii.
- ii. A description of workforce retention strategies proposed by the Contractor and covered subcontractors and how Contractor and covered subcontractors will invest in on-the-job training within the Contractor and covered subcontractors’ organizations to help ensure training completion and success in the industry as a Registered Apprentice by workers who identify as women and/or persons of color. Strategies may include mentoring and coaching.
- iii. A description of strategies proposed to be used by Contractor and covered subcontractors to engage community and industry partners to enhance the participation of apprentice workers who identify as women and/or persons of color on the jobsite, including without limitation: Contractor and covered subcontractors will actively recruit apprentice applicants from said organizations and seek to enroll them into an apprenticeship program(s), when the apprenticeship program(s) is unable to supply an apprentice, if the apprentice program is accepting applications or allows direct entry from said organizations.

Subcontractors

The Contractor must include the provisions of this Public Benefits Requirement Program in all contracts of subcontractors having a subcontract of fifty thousand dollars and No/100 (\$50,000.00) or more. The Contractor must ensure that each subcontractor having a subcontract of fifty thousand dollars and No/100 (\$50,000.00) or more, at all tiers, must comply with the provisions of these Public Benefit Program Requirements. Contractor must ensure that subcontractors include in their bids all costs associated with this requirement. No change order increasing the contract amount will be executed in order for Contractor and subcontractors to comply with this subsection.

Documentation and Reporting

Contractor shall track workforce diversity for every Worker on the jobsite through LCP Tracker. The information tracked and reported on includes, but is not limited to: total number of Workers as well as numbers and percentages of apprentices and journey level workers by race and gender.

Enforcement

Contractor and Metro agree that Contractor’s accepted bid includes the Contractor’s and covered subcontractor’s actual costs (plus profit and overhead) to comply with Metro’s policy to promote workforce diversity and provide equitable opportunities to the public set forth herein, including but not limited to Contractor’s and covered subcontractor’s implementation of their proposed and accepted Construction Career Pathways Plans. Metro’s progress payments to Contractor include Contractor’s and covered subcontractor’s actual costs plus profit and overhead to comply with these Public Benefit Program Requirements. Contractor’s or covered subcontractor’s intentional or neglectful failure to diligently comply with these Public Benefit Program Requirements while being paid by Metro to do is a conversion of Metro’s public funds. As such, Contractor’s and covered subcontractor’s failure to meet the requirements of the Construction Career Pathways Program, including but not limited to the diligent

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exertion of “good faith efforts” set forth above and the prompt submission of required documentation, constitutes a material breach of this Contract.

In the event that Metro determines, in the reasonable discretion of its Director of Capital Assets, that a material breach of these Public Benefit Program Requirements by any Contractor or covered subcontractor has occurred, upon written notice and ten days’ opportunity to cure, Metro may, in the sole discretion of the Director of Capital Assets, pursue remedies against Contractor, including but not limited to any or all of the following:

- iv. Reduce or Withhold Payment. It is a condition precedent to Contractor’s right to any progress payments that Contractor and any covered subcontractor continue to fulfill all the requirements of these Public Benefit Program Requirements. Contractor agrees that Contractor and covered subcontractors are not entitled to progress payments under the Contract if Contractor or covered subcontractors are not compliant with these Public Benefit Program Requirements. Metro may reduce or withhold all or part of any progress payment for non-compliance, until the Contractor or covered subcontractor has complied with the Construction Career Pathway Program requirements. If payments are so withheld, the non-compliant Contractor or covered subcontractor will in no event be entitled to interest on said payments when reinstated. Withheld sums will be paid promptly once non-compliance is remedied.
- v. Liquidated Damages. Metro may collect liquidated damages for Contractor’s and covered subcontractor’s failure to exert Good Faith Efforts, as defined above. Metro and Contractor agree that it is difficult, if not impossible, and prohibitively expensive, to determine the actual damage or cost that Metro and the public would suffer in the event of a Contractor’s or covered subcontractor’s failure to comply with these Public Benefit Program Requirements. Therefore, Metro and the Contractor agree that five hundred dollars and No/100 (\$500.00) per day is a fair and reasonable estimate of the actual damages that Metro and the public would experience in the event of a breach by Contractor or a covered subcontractor, and that said amount does not constitute a penalty to Contractor. Metro may adjust payments to Contractor by a sum equal to the collection of liquidated damages in the amounts set forth herein. These liquidated damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by a Contractor or covered subcontractor’s failure to comply with Construction Career Pathway Program requirements or that may otherwise be available to Metro under other provisions of the Contract.
- vi. Termination for Default. Metro may issue a notice of default and terminate the Contract in accordance with Section 15.1 of the General Terms and Conditions.
- vii. Debarment. Metro may issue a decision to debar Contractor from consideration for award of future Metro contracts for violation of these Public Benefit Program Requirements, including, but not limited, to unsatisfactory performance of Construction Career Pathways Program requirements. Such disqualification will extend for a minimum duration of one (1) year to and up to a maximum of three (3) years from the date of the decision, depending upon the severity of the violation.
- viii. Remedies Not Limited. The remedies set forth in this section are not exclusive of any other remedies available to Metro for unsatisfactory performance by Contractor or covered subcontractors, whether set forth in the Contract, at law or in equity.

Access to Records

In the event that Metro’s Director of Capital Assets believes, in its reasonable discretion, that Contractor or a covered subcontractor is in breach of these Public Benefit Program Requirements, Metro is entitled to inspect and copy Contractor’s and any covered subcontractor’s books and records related to the applicable project within seven (7) days of the date of Metro’s written request hereunder. In the event

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that a Recipient fails to promptly provide said books and records for inspection and copying, such failure will be deemed by Metro to be a material breach of these Public Benefit Program Requirements, resulting in enforcement as set forth in the Enforcement subsection.

Attachment D: Sample of Subcontractor Monthly Utilization Report



600 NE Grand Ave.
Portland, OR 97232-2736

Subcontractor Equity Program: Sample Monthly Utilization Report

Contractor Name:		0 Metro Contract #:		0 Project Name:		0				
Total Contract Amounts		Eligible MWESB Amounts		Actual MWESB Amounts						
Contract	0	Eligible MWESB Contract	-	Actual MWESB Contract	115,506					
Change Orders	0	MWESB Change Orders	-	Actual MWESB Change Orders	-					
Revised Contract	0	Rev. Eligible MWESB Con	-	Rev. Actual MWESB Amount	115,506			0%		
Non-Eligible Wor	0	Eligible MWESB %	#DIV/0!	Actual MWESB % of Eligible	#DIV/0!			0%		
Subcontractor:	Scope of Work:	Cert Type: Select from list	Original Contract Amount	Change Orders MWESB Firms	Revised Contract Amount	Current Payment	Current Payment Date	Previous Payments	Total Payments	Percent of Total Eligible
Example company	Paving	WBE	110259	5,247	115,506	-	-	40,089	40,089	#DIV/0!
1										
2										
3										
4										
5										
6										
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Totals				110,259	5,247	115,506	-	40,089	40,089	#DIV/0!
Contracts		1								