

POLICY – INCLUSION OF DISADVANTAGED BUSINESS ENTERPRISES AND METROPOLITAN COUNCIL UNDERUTILIZED BUSINESS PROGRAM

Section/Number: 3-4-6	Total Pages: <u>43</u>
Dept. Responsible: Office of Diversity and Equal Opportunity	Effective Date: <u>5/7/21</u>
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I. Policy

The Metropolitan Council recognizes its role as public policy makers in enacting policy that serve to eliminate the effects of illegal discrimination. The Council has previously approved several policies that clearly state its commitment to the prohibition of discrimination in employment and the provision of public services. This policy conveys the Council's commitment to create and support programs that result in the inclusion of women-owned, minority-owned and other small disadvantaged businesses in ~~all of~~ its procurement and contracting activities.

The Council will, in accordance with authority granted by federal regulations and state statute, act affirmatively to create a "level playing field" for woman-owned, minority-owned and other small disadvantaged business enterprises to achieve the goal of equal opportunity.

To help ensure equal opportunity, tThe Metropolitan Council will utilize ~~businesses owned and controlled by socially and economically disadvantaged individuals~~ small disadvantaged businesses in the procurement of goods and services, and the award of contracts. The Council will set inclusion goals on construction contracts and on contracts for consultant, professional, or technical services that feature subcontract opportunities. Where feasible, the Council will encourage its grant recipients to engage in efforts to solicit and include small disadvantaged businesses and to report to the Council the results of these efforts. The Council will set benchmarks to track and measure its efforts to include small disadvantaged businesses across its divisions.

~~The Council will, in accordance with authority granted by federal regulations, state statute, and local laws and ordinances, act affirmatively to create a "level playing field" for woman-owned, minority-owned and other small disadvantaged business enterprises to achieve the goal of equal opportunity.~~

~~**Whenever subcontracting is possible on a USDOT-assisted procurement over \$50,000,** the Council will set numeric goals no less than the Council's approved overall Disadvantaged Business Enterprise Program goal. On USDOT-assisted procurements less than \$50,000, the Council will require good faith efforts in the soliciting of bids or proposals from DBE firms.~~

~~**Whenever a procurement is funded by the Public Facilities Authority (PFA),** the bid or proposal solicitation will include a numeric goal no less than the PFA fair-share target percentage for women-owned and minority-owned business participation. The Council will require good faith efforts to meet the fair-~~



~~share target percentage for women and minority-owned business participation.~~

~~Whenever a procurement over \$100,000 is not funded with federal monies, the bid or proposal solicitation will include a numeric Metropolitan Council Underutilized Business (MCUB) goal. The MCUB goal will be determined on a per contract basis and be determined per the relative availability of MCUBs. The Council will require good faith efforts in the soliciting of bids or proposals from the MCUB firms.~~

II. Purpose of ~~policy~~Policy

This policy and its implementing procedures are intended to establish the following:

- To make ~~it~~ clear to staff, the public and anyone who expects to do business with the Council, that the ~~organization~~ Council is committed to providing opportunities to ~~disadvantaged small business disadvantaged enterprises~~ businesses;
- To provide guidance to staff on the solicitation, evaluation and award of contracts, ~~bids, proposals, quotes, or grants~~ to facilitate the inclusion of ~~small~~ disadvantaged businesses; enterprises;
- ~~To give notice to staff and the public that wherever the phrase "good faith efforts" appears in this policy, or its implementing procedures, the Council will assess whether the actions employed are of the amount and scope that would reasonably be expected to yield participation by disadvantaged businesses; and,~~
- ~~To implement additional mechanisms to facilitate the inclusion of small disadvantaged businesses, such as division-specific inclusion benchmarks;~~
- ~~To ensure that small disadvantaged businesses enterprises are not discriminated against in the award of Council contracts procurements.~~
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III. Background and reasons for policy

The Metropolitan Council has adopted this policy pursuant to ~~two federal programs and one Minnesota state statutes, each described below.~~

A. U.S. Department of Transportation (USDOT) and U.S. Environmental Protection Agency (Public Facilities Authority) Disadvantaged Business Enterprise (DBE) Programs

~~the authority of Chapter 49, Part 26 of the Code of Federal Regulations "Participation of Disadvantaged Business Enterprises in Department of Transportation Programs" and Chapter 40, Part 35 of the Code of Federal Regulations which establishes procedures for participation of woman-owned and minority-owned businesses in federally assisted transportation, water and wastewater programs.~~

~~Disadvantaged business enterprise programs include:~~

~~U.S. Department of Transportation Disadvantaged Business Enterprise (DBE) Program—Recipients of USDOT, e.g. Federal Transit Administration, The USDOT DBE program applies to the Council as a recipient of USDOT funding assistance ~~who that~~ reasonably expects to award \$250,000 or more of prime contracts are required to establish a Disadvantaged Business Program. The Council is required to establish an overall DBE program goal based on local~~

evidence of the actual availability of qualified DBEs. Key elements of the program are listed below.

The Public Facilities Authority DBE program applies when the Council receives funds via the revolving loan program that is administered by the Public Facilities Authority (PFA). The Council must have an EPA DBE program, which establishes program goals, or separate "fair share" target percentages for minority-owned DBE and women-owned DBE participation.

The Council administers the USDOT and Public Facilities Authority DBE programs in the same manner as described below.

- ~~• Quotas and set-asides are prohibited.~~
- ~~• Recipients must set goals based on local evidence of the actual availability of qualified DBEs. An overall program goal must be established. Contract goals may be set on individual contracts based on actual availability of qualified DBEs.~~
- ~~• Recipients must use race-neutral methods (such as outreach and technical assistance) to meet as much as possible of their overall goals.~~
- ~~• Business owners with a personal net worth of more than \$1,320,000 (excluding the value of the primary residence and the ownership interest in the business) may not participate in the program.~~
- ~~• Firms owned by socially and economically disadvantaged white males must be allowed to participate as DBEs. Determination of the eligibility of those firms owned by socially and economically disadvantaged white males will be made on a case-by-case basis according to criteria established by USDOT 49 CFR Part 26.~~
- ~~• Individual firms must graduate from the program if they exceed the small business size caps or if the firm's owner exceeds the personal net worth cap. The entire DBE program will expire at the point that it is not reauthorized by Congress.~~

~~To be eligible to participate in the Council's DBE program, a business must meet the certification standards in 49 CFR 26 and have completed a certification application and on-site review by one of the certifying member agencies of the MnUCP (Metropolitan Council, the Minnesota Department of Transportation or the Metropolitan Airports Commission).~~

Procurements Featuring DBE Goals & Good Faith Efforts By Prime Contractors or Consultants. The Council will apply DBE program inclusion goals and good faith efforts to USDOT and EPA assisted procurements that are \$50,000 and above, and include subcontracting opportunities. The Council will set goals in one of two ways. When procuring construction services, the Council will set contract-specific DBE goals and will require good faith efforts from prime contractors to meet those goals. When setting these contract-specific goals, the Council will consider the relative availability of DBE firms in the needed scopes of work, DBE achievements on similar projects, the type of and total subcontracting opportunities, use of DBE firms on other projects in the area, the season in which the project work is scheduled, and a review of the Council's overall DBE program goal. When procuring non-construction services, such as consultants, professional, and technical services; the Council will apply the overall DBE program goal, which is set every three years. These procurements will also require good faith efforts from bidders and proposers.

Procurements Featuring Business Inclusion Efforts Performed by Council Staff. The Council will require its staff to engage in efforts to solicit and include DBE firms in USDOT-assisted procurements up to \$50,000. These solicitation efforts will follow the inclusive strategies for the purchase of goods and services outlined in Council Procedure. The Council will also require its

staff to engage in efforts to solicit and include DBE firms in USDOT and EPA assisted procurements that are over \$50,000 but feature no subcontracting opportunities.

~~**U.S. Environmental Protection Agency (Public Facilities Authority) DBE Program** – The Metropolitan Council receives funds via the revolving loan program that is administered by the Public Facilities Authority (PFA). Program goals, or "fair share" target percentages for minority-owned DBE and women-owned DBE participation, are established by PFA. Municipalities that receive loan funding must comply with federal requirements concerning utilization of Disadvantaged Business Enterprises. These requirements are designed to encourage loan recipients and prime contractors to utilize minority / women DBE's whenever procurement opportunities occur. Requirements of the DBE Program are listed below.~~

- ~~• Loan recipients must include as part of their loan application a fair share statement proposing a "fair share" pre-determined target percentage for minority DBE and women DBE participation in the project for which the loan is requested.~~
- ~~• Recipients must take affirmative steps during all project procurement actions to meet the fair share target percentage for DBE participation.~~

~~To be recognized as a DBE under the U.S. Environmental Protection Agency (Public Facilities Authority) program, a firm must be certified as a Disadvantaged Business Enterprise (DBE) by the Minnesota Unified Certification Committee (MnUCP). To be eligible to participate in the Council's EPA/PFA DBE program, a business must meet the certification standards in 49 CFR 26 and have completed a certification application and on-site review by one of the certifying member agencies of the MnUCP (Metropolitan Council, the Minnesota Department of Transportation or the Metropolitan Airports Commission).~~

~~The Council is encouraged to purchase from DBE businesses when making EPA/PFA funded purchases that are not subject to the competitive bidding procedures.~~

B. Metropolitan Council Underutilized Business (MCUB) Program–

~~The Council receives funds from a numerous non-federal sources, and it is authorized by Minnesota state statute 473.142 to operate a targeted small business program. This statute gives the Council authority to adopt rules to facilitate the inclusion of small disadvantaged businesses in the Council's non-federally funded procurements. The Council has exercised this authority to create the Metropolitan Council Underutilized Business program. For all Council construction and design projects that are wholly funded by non-federal monies, \$100,000 or more, and contain subcontracting opportunities, the Council requires bidders and proposers to follow the prescribed actions to ensure opportunities for underutilized businesses. Key elements of the MCUB program are listed below.~~

~~Quotas and set-asides are prohibited~~

~~The Council's Office of Diversity and Equal Opportunity (ODEO) will set contract specific MCUB goals based on the relative availability of MCUB firms~~

~~ODEO will evaluate and pass/fail all proposals and the apparent low three responsive bidders~~

~~Firms are automatically defined as a MCUB if they are a Minnesota based business that are certified as either a 1) DBE by the MnUCP, 2) TGB by the Minnesota Department of~~

~~Administration, or 3) Veteran owned business identified by the US Department of Veteran Affairs at time of bid or proposal.~~

~~Bidders and proposers on Council contracts with MCUB goals will be required to commit to MCUB businesses equal or greater than the numeric contract goal.~~

~~Bidders and proposers who do not meet or exceed the MCUB goal may pass evaluation and receive a waiver based on good faith efforts.~~

~~The MCUB program will adopt existing DBE good faith effort standards found in 49 CFR 26.53~~

~~The Council's MCUB program adopts the following federal standards articulated in 49 C.F.R. 26: 26.39 (fostering small business participation, excluding the DOT approval requirement); 26.53 (good faith efforts procedures); 26.55 (counting participation towards inclusion goals); and Appendix A – GFE (good faith efforts guidance).~~

~~Procurements Featuring MCUB Goals & Good Faith Efforts. The Council will apply MCUB program inclusion goals and good faith efforts to non-federally assisted procurements for construction or consultant, professional, or technical services that are over \$100,000, and include subcontracting opportunities. Council staff will set contract-specific MCUB goals and will require good faith efforts from bidders and proposers to meet those goals. To set contract-specific goals, the Council will consider the relative availability of MCUB firms in the needed scopes of work, MCUB achievements on similar projects, the type of and total subcontracting opportunities available, use of MCUB firms on other projects in the area, and the season in which the project work is scheduled.~~

~~Procurements Featuring Business Inclusion Efforts Performed by Council Staff. Council staff must engage in efforts to solicit and include MCUB firms in non-federally assisted procurements up to \$100,000. These solicitation efforts will mirror the inclusive strategies outlined in Council procedure. Council staff must also engage in efforts to solicit and include MCUB firms in non-Federally assisted procurements that are over \$100,000 but feature no subcontracting opportunities.~~

C. Grants from Council Funds

~~The Council encourages recipients of grants of Council funds to solicit and include MCUB firms in all grant-funded activities involving scopes of work that MCUB firms can perform.~~

IV. Implementation/Accountability

~~All employees are responsible for complying with this policy when involved with purchasing and contracting goods or services on behalf of the Council. The ~~Council's~~ Director, ~~of the~~ Office of ~~Diversity and~~ Equal Opportunity, is responsible for developing procedures to fulfill the objectives of this policy. The Regional Administrator, General Managers and Division Directors are responsible for holding their staff accountable ~~and for adherence to this policy, persons under their supervision who purchase goods and services for the Council, and will ensure that relevant business item submittals to the Council include information on the inclusion of disadvantaged businesses.~~ satisfying the requirements of this policy. Approval to deviate from this policy must be documented and authorized by the Regional Administrator, or by other Council staff as delegated by the Regional Administrator in accordance with Council policies and procedures. ~~The Regional Administrator, or his/her designee, will make periodic reports to the Council on the utilization of disadvantaged business enterprises. Staff must collect and submit information and~~~~

documentation on the inclusion of small disadvantaged businesses to the Office of Equal Opportunity. The Regional Administrator, or his/her designee, will make periodic reports to the Council on the utilization of small disadvantaged businesses.

Implementing Procedures:

Links:

- Goal Setting and Good Faith Efforts [3-4-6a](#)
- Contractor Compliance and Monitoring for Disadvantaged Business and Affirmative Action Programs 3-4-6b
- [Metropolitan Council Underutilized Business \(MCUB\) Program 3-4-6c](#)

Revision/Review Tracking

Date	Revision No.	Review Only – No changes
	12	

POLICY – INCLUSION OF DISADVANTAGED BUSINESS ENTERPRISES AND METROPOLITAN COUNCIL UNDERUTILIZED BUSINESS PROGRAM

Section/Number: 3-4-6	Total Pages: 3
Dept. Responsible: Office of Equal Opportunity	Effective Date: 1/21/2016
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I. Policy

The Metropolitan Council recognizes its role as public policy makers in enacting policy that serve to eliminate the effects of illegal discrimination. The Council has previously approved several policies that clearly state its commitment to the prohibition of discrimination in employment and the provision of public services. This policy conveys the Council's commitment to create and support programs that result in the inclusion of women-owned, minority-owned and other small disadvantaged businesses in its procurement and contracting activities.

The Council will, in accordance with authority granted by federal regulations and state statute, act affirmatively to create a "level playing field" for woman-owned, minority-owned and other small disadvantaged business enterprises to achieve the goal of equal opportunity.

To help ensure equal opportunity, the Council will utilize small disadvantaged businesses in the procurement of goods and services, and the award of contracts. The Council will set inclusion goals on construction contracts and on contracts for consultant, professional, or technical services that feature subcontract opportunities. Where feasible, the Council will encourage its grant recipients to engage in efforts to solicit and include small disadvantaged businesses and to report to the Council the results of these efforts. The Council will set benchmarks to track and measure its efforts to include small disadvantaged businesses across its divisions.

II. Purpose of Policy

This policy and its implementing procedures are intended to establish the following:

- To make clear to staff, the public and anyone who expects to do business with the Council, that the Council is committed to providing opportunities to small disadvantaged businesses;
- To provide guidance to staff on the solicitation, evaluation and award of contracts, bids, proposals, quotes, or grants to facilitate the inclusion of small disadvantaged businesses;
- To implement additional mechanisms to facilitate the inclusion of small disadvantaged businesses, such as division-specific inclusion benchmarks;
- To ensure that small disadvantaged businesses are not discriminated against in the award of Council procurements.

III. Background

The Metropolitan Council has adopted this policy pursuant to two federal programs and Minnesota state statutes, each described below.



A. U.S. Department of Transportation (USDOT) and U.S. Environmental Protection Agency (Public Facilities Authority) Disadvantaged Business Enterprise (DBE) Programs

The USDOT DBE program applies to the Council as a recipient of USDOT funding assistance that reasonably expects to award \$250,000 or more of prime contracts. The Council is required to establish an overall DBE program goal based on local evidence of the actual availability of qualified DBEs.

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B. Metropolitan Council Underutilized Business (MCUB) Program

The Council receives funds from a numerous non-federal sources, and it is authorized by Minnesota state statute 473.142 to operate a targeted small business program. This statute gives the Council authority to adopt rules to facilitate the inclusion of small disadvantaged businesses in the Council's non-federally funded procurements. The Council has exercised this authority to create the Metropolitan Council Underutilized Business program.

The Council's MCUB program adopts the following federal standards articulated in 49 C.F.R. 26: 26.39 (fostering small business participation, excluding the DOT approval requirement); 26.53 (good faith efforts procedures); 26.55 (counting participation towards inclusion goals); and Appendix A – GFE (good faith efforts guidance).

Procurements Featuring MCUB Goals & Good Faith Efforts. The Council will apply MCUB program inclusion goals and good faith efforts to non-federally assisted procurements for construction or consultant, professional, or technical services that are over \$100,000, and include subcontracting opportunities. Council staff will set contract-specific MCUB goals and will require good faith efforts from bidders and proposers to meet those goals. To set contract-specific goals, the Council will consider the relative availability of MCUB firms in the needed scopes of work, MCUB achievements on similar projects, the type of and total subcontracting opportunities available, use of MCUB firms on other projects in the area, and the season in which the project work is scheduled.

Procurements Featuring Business Inclusion Efforts Performed by Council Staff. Council staff must engage in efforts to solicit and include MCUB firms in non-federally assisted procurements up to \$100,000. These solicitation efforts will mirror the inclusive strategies outlined in Council procedure. Council staff must also engage in efforts to solicit and include MCUB firms in non-Federally assisted procurements that are over \$100,000 but feature no subcontracting opportunities.

C. Grants from Council Funds

The Council encourages recipients of grants of Council funds to solicit and include MCUB firms in all grant-funded activities involving scopes of work that MCUB firms can perform.

IV. Implementation/Accountability

All employees are responsible for complying with this policy when involved with purchasing and contracting goods or services on behalf of the Council. The Director of the Office of Equal Opportunity is responsible for developing procedures to fulfill the objectives of this policy. The Regional Administrator, General Managers and Division Directors are responsible for holding their staff accountable for satisfying the requirements of this policy. Staff must collect and submit information and documentation on the inclusion of small disadvantaged businesses to the Office of Equal Opportunity. The Regional Administrator, or his/her designee, will make periodic reports to the Council on the utilization of small disadvantaged businesses.

Implementing Procedures:

Links:

- Goal Setting and Good Faith Efforts 3-4-6a
- Contractor Compliance and Monitoring for Disadvantaged Business and Affirmative Action Programs 3-4-6b
- Metropolitan Council Underutilized Business (MCUB) Program 3-4-6c

Revision/Review Tracking

Date	Revision No.	Review Only – No changes
	2	