

### Management Committee

For the Metropolitan Council meeting of August 8, 2018

**Subject:** Met Council policy 3-4-6 Inclusion of Disadvantaged Business Enterprises and Metropolitan Council Underutilized Business Program.

#### Proposed Action

That the Metropolitan Council approve changes to the Metropolitan Council Policy 3-4-6 Inclusion of Disadvantaged Business Enterprises and Metropolitan Council Underutilized Business Program, and that the Metropolitan Council expand the MCUB program in order to increase the inclusion of small disadvantaged businesses in the Council's procurement activities as articulated in Council policy and procedures.

#### Summary of Committee Discussion/Questions

Aaron Koski, Interim Director of The Office of Equal Opportunity, Micky Gutzmann, Procurement Director, and Elaine Ogilvie, Equal Opportunity Consultant, presented Business Item 2018-159.

Council Member Rummel asked the anticipated volume of opportunity for the Sheltered Market Program. Procurement Director Gutzmann stated it cannot be determined at this time how many of the procurements would be eligible for this program. Council Member Cunningham shared thoughts and concerns regarding the Council's utilization of woman and minority owned firms and asked that the OEO staff provide quarterly reports on the progress of the program. Chair Chavez agreed with Member Cunningham's request.

Council Members had no further questions.

It was moved by Cunningham, second by Barber, consent to Council.

## Management Committee

Meeting date: July 25, 2018

For the Metropolitan Council meeting August 8, 2018

**Subject:** Met Council policy 3-4-6 Inclusion of Disadvantaged Business Enterprises and Metropolitan Council Underutilized Business Program.

**District(s), Member(s):** All

**Policy/Legal Reference:** MN Statutes Section 473.142; 3-4-6 Inclusion of Disadvantaged Business Enterprises and Metropolitan Council Underutilized Business Program

**Staff Prepared/Presented:** Aaron Koski, Interim Director, Office of Equal Opportunity (651-602-1426), Micky Gutzmann, Director of Procurement, (651-602-1741)

**Division/Department:** Office of Equal Opportunity, Regional Administration

### Proposed Action

That the Metropolitan Council approve changes to the Metropolitan Council Policy 3-4-6 Inclusion of Disadvantaged Business Enterprises and Metropolitan Council Underutilized Business Program, and that the Metropolitan Council expand the MCUB program in order to increase the inclusion of small disadvantaged businesses in the Council's procurement activities as articulated in Council policy and procedures.

### Rationale

The current policy authorizes the Council to administer two small business inclusion programs: the Disadvantaged Business Enterprise (DBE) program and the Metropolitan Council Underutilized Business (MCUB) program. The revised policy expands the procurement activities to which the MCUB program applies. These activities include applying a sheltered market solicitation process that the Council can use to increase the inclusion of small disadvantaged businesses in the Council's procurement activities.

The revised policy authorizes the Council to apply a sheltered market solicitation process to applicable procurements, when at least three (3) small, targeted group businesses, as designated under Minnesota Statute section 16C.16, or three (3) veteran owned small businesses as designated under Minnesota Statute section 16C.16, are available and capable of performing the scope of work identified within the solicitation.

### Thrive Lens Analysis

Thrive MSP 2040 and Governor Mark Dayton's Executive Order 15-02 both stress the importance of equity for the region's continued prosperity. This policy change would provide small disadvantaged businesses with more opportunities to benefit from the Council's procurement activities.

### Funding

No funding required

### Known Support / Opposition

No known opposition

**POLICY – INCLUSION OF DISADVANTAGED BUSINESS ENTERPRISES (DBEs) AND METROPOLITAN COUNCIL UNDERUTILIZED BUSINESSES (MCUBs)**

Section/Number: 3-4-6	Total Pages: <u>43</u>
Dept. Responsible: Office <u>of</u> Equal Opportunity	Effective Date: <u>1/20/2016</u>
Special Note:	Last Revision Date: <u>August 8, 2018</u>
	Last Review Date: <u>August 8, 2018</u>
	Revision No. <u>54</u>

**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 utilize a sheltered market solicitation approach, and 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 business;
- 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 programs 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.

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.

#### 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.

#### **B. Metropolitan Council Underutilized Business (MCUB) Program**

The Council receives funds from 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 businesses in the Council's non-federally funded procurements.

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 Sheltered Market Solicitations – MCUB Select Program. The Council will apply a sheltered market solicitation process (MCUB Select) when at least three (3) small, targeted group businesses, designated under Minnesota Statutes section 16C.16, or three (3) veteran-owned small businesses designated under Minnesota Statutes section 16C.16, are available and capable of performing the scope of work identified within the solicitation. The sheltered market solicitations will be conducted under normal procurement policy and process for procurements between \$5,000 and \$100,000. The Office of Equal Opportunity, in consultation with Council staff, may identify certain projects as appropriate for the sheltered market initiative.

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 OEO 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 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:**

- 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	

**POLICY – INCLUSION OF DISADVANTAGED BUSINESS ENTERPRISES (DBEs) AND METROPOLITAN COUNCIL UNDERUTILIZED BUSINESSES (MCUBs)**

Section/Number: 3-4-6	Total Pages: 4
Dept. Responsible: Office of Equal Opportunity	Effective Date: 1/20/2016
Special Note:	Last Revision Date: August 8, 2018
	Last Review Date: August 8, 2018
	Revision No. 5

**I. Policy**

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