

Business Item

Management Committee



Committee meeting date: October 22, 2025

For the Metropolitan Council: October 22, 2025

Business Item: 2025-263 SW

2025 Policy Update: OEE0 5-1

District(s), member(s):	All
Policy/legal reference:	OEE0 5-1 Promoting Small Business Programs and Addressing Discrimination; MN Statute 473.129 Subd. 13; MN Statute 473.142
Staff prepared/presented:	Ashanti Payne, Assist. Director, Equity & Equal Opportunity, 612-349-7660
Division/department:	Regional Administration/Office of Equity & Equal Opportunity

Proposed action

That the Metropolitan Council adopt the attached updated version of the following policy:

- OEE0 5-1 Promoting Small Business Programs and Addressing Discrimination

Background

Changes to OEE0 5-1 are necessitated by multiple recent events including the Council's 2025 Disparity Study, and changes in Minnesota law and federal regulation. The Metropolitan Council recognizes the importance of the role of small businesses in the economic health of the region. The Council is committed to increasing small business participation and reducing racial, gender, and other disparities in its procurements, contracting, and spending. The Council's 2025 Disparity Study indicated that illegal discrimination has prevented and continues to prevent minority-owned and women-owned businesses from competing fairly as vendors or contractors for the Council's non-federally funded business and other governmental work in the Metropolitan region. This updated policy is intended to address these disparities.

The 2025 Regular Session of the Minnesota Legislature adopted changes to MN Statute 473.142, which increased the Metropolitan Council's thresholds and flexibilities for procuring from small, targeted group businesses and veteran-owned small businesses. This aligns the Metropolitan Council's authorities with those of State of Minnesota agencies, which were similarly expanded in 2023.

These increased tools which will be reflected in updated or new procedures include:

- Increasing the Metropolitan Council Underutilized Business (MCUB) Direct limit from \$25,000 to \$100,000;
- 1. Increasing the MCUB Preference from 6% to 12%;
- 2. Expanding the MCUB Select program to remove the \$175,000 threshold, include construction projects, and include veteran-owned small businesses.

On October 3, 2025, the U.S. Department of Transportation ("USDOT") issued an Interim Final Rule changing important provisions of the federal DBE regulations found at 49 CFR part 26. The Council adopted and relied upon the former federal regulations in setting forth the procedures for

administering the MCUB program. It desires to proceed with the MCUB program under the federal regulations as they were in effect on September 30, 2025.

Rationale

Through the implementation of this Policy, the Council will prioritize and utilize constitutional and legally authorized tools to reduce or eliminate the impacts of discrimination in our Metropolitan Council Underutilized Business (MCUB) Program and increase small business participation. The Council will track and measure its efforts.

Thrive lens analysis

On Feb. 12, 2025, the Council adopted Imagine 2050, which builds on policy direction in Thrive MSP 2040. Under the Thrive lens, this action advances the outcomes of Stewardship, Equity, and Prosperity.

Funding

No funding is tied to the proposed action.

Small business inclusion

The proposed changes will support small business inclusion in Council programs, projects, and activities. These changes will also expand the available tools for Council staff that promote small business program administration and contracting and ensure continued compliance with applicable constitutional, statutory, and regulatory standards.



POLICY

Promoting Small Business Programs and Addressing Discrimination

OEE0 5-1

Category: Regional and Foundational

Business Unit Responsible: RA: Office of Equity and Equal Opportunity

Policy Owner: Assistant Director, Office of Equity and Equal Opportunity

Policy Contact: Manager, OEE0 Small Business Unit

Synopsis: Provides guidance to Metropolitan Council staff on expected efforts to promote small businesses and remedy discrimination against small and disadvantaged businesses across its divisions.

POLICY

The Metropolitan Council (“Council”) recognizes the importance of the role of small businesses in the economic health of the region. The Council is committed to increasing small business participation and reducing racial, gender, and other disparities in its procurements, contracting, and spending. The Council’s 2025 Disparity Study indicated that illegal discrimination has prevented and continues to prevent minority-owned and women-owned businesses from competing fairly as vendors or contractors for the Council’s non-federally funded business and other governmental work in the Metropolitan region. The Council will prioritize and utilize constitutional and legally authorized tools to reduce or eliminate the impacts of this discrimination in our Metropolitan Council Underutilized Business (MCUB) Program and increase small business participation. The Council will track and measure its efforts.

On October 3, 2025, the U.S. Department of Transportation (“USDOT”) issued an Interim Final Rule changing important provisions of the federal DBE regulations found at 49 CFR part 26. The Council adopted and relied upon the former federal regulations in setting forth the procedures for administering the MCUB program. It desires to proceed with the MCUB program under the federal regulations as they were in effect on September 30, 2025. Staff is directed to update the Council’s MCUB procedures to reflect this change, incorporate all tools available under Minnesota law, and make such other changes as may be reasonably necessary to the efficient administration of the program.

PURPOSE & SCOPE

The Council’s Constitutional Authority to Remedy Past and Continuing Discrimination

The Council has authority to address discrimination through means that are either race- or gender-conscious or race- or gender-neutral. U.S. Supreme Court precedent provides that the Council may use race- or sex-conscious means so long as those means are narrowly tailored to address the Council’s compelling interest in remedying past or present discrimination. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (“It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to

finance the evil of private prejudice”); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); see also *Sherbrooke Turf, Inc. v. Minnesota DOT*, 345 F.3d 964, 969 (8th Cir. 2003). Judicial decisions have recognized that entities such as the Council may demonstrate an inference of discrimination through disparity studies showing significant statistical disparities between the number of qualified minority contractors available to perform work, and the number of such contractors actually engaged in the Council’s work. Anecdotal evidence may be used in combination with statistical evidence to establish a compelling governmental interest. The Council is committed to continuing to study its performance in this regard and conducted disparity studies in 2017 and 2025 to measure these disparities.

Substantial Disparities in the Council’s Vendors and Contractors

The Metropolitan Council’s 2025 Disparity Study specifically compared the Council’s utilization of minority-owned business (“MBEs”) and women-owned businesses (“WBEs”) to their availability in the relevant markets to perform work for the Council. Based on that analysis, the Disparity Study concluded that there were substantial disparities in the utilization of MBEs and WBEs compared to their availability, and that those disparities raised an inference of illegal discrimination against such vendors.

The Disparity Study also noted that but for the Council’s expansion of its Metropolitan Council Underutilized Business (“MCUB”) Program and use of direct and sheltered market purchasing, the Council would have exhibited even greater disparities in its utilization of MBEs and WBEs compared to their availability in the market. The Disparity Study further compared the Council to other jurisdictions in the region and concluded that, while jurisdictions without comparable MCUB programs exhibited even more substantial disparities than the Council, still other jurisdictions had significantly reduced disparities by adding additional programs including both race and gender neutral and race and gender conscious measures. The study concluded that additional efforts were needed for the Council to similarly reduce disparities and correct discrimination in its contracting and vendor pools.

The Council’s Tools to Address Discrimination

Both the federal and state governments have given the Council tools to address disparities in its use of WBEs and MBEs.

U.S. Department of Transportation and U.S. Environmental Protection Agency Disadvantaged Business Enterprise (DBE) Programs

The U.S Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) program was created by the U.S. Congress in order to remedy the effects of historical and ongoing discrimination in federally funded transportation. The U.S. Environmental Protection Agency (EPA) DBE program applies when the Metropolitan Council receives funds via the revolving loan program that is administered by the Public Facilities Authority. The Metropolitan Council adheres to federal USDOT DBE regulations set forth in 49 CFR Part 26 to administer the USDOT and EPA DBE programs. On October 3, 2025, the USDOT issued an Interim Final Rule amending portions of its DBE regulations contained in 49 CFR part 26.

Metropolitan Council Underutilized Business (MCUB) Program

The Minnesota legislature has given government bodies, including the Council, tools to enhance small business participation and address disparities. Minnesota Statutes section 473.142 authorizes the Metropolitan Council to facilitate the inclusion of small businesses, which the Council implements through its Metropolitan Council Underutilized Business (MCUB) program.

Metropolitan Council Small Business Spending

Minnesota law provides a variety of procurement tools to the Council. This includes the authority to direct specific parts of Council spending to small businesses under Minnesota Statutes section 473.142.

IMPLEMENTATION & ACCOUNTABILITY

All employees are responsible for complying with this policy when involved with purchasing and contracting for goods or services on behalf of the Metropolitan Council. The Office of Equity and Equal Opportunity is responsible for updating current and developing additional procedures to fulfill the objectives of this policy. The Procurement Department is responsible for ensuring that procurement-related policies, procedures, and thresholds are in alignment with this policy. The Regional Administrator, General Managers, and Executive Division Directors are responsible for holding themselves and their staff accountable for satisfying the requirements of this policy and meeting any reporting required under the corresponding procedures.

PROHIBITION AGAINST DISCRIMINATION

This Metropolitan Council policy and the related Council procedures may never be used to exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any Metropolitan Council contract or procurement activity on the basis of race, color, creed, religion, sex, national origin, disability, gender identity, sexual orientation, or status with regard to public assistance.

In administering Metropolitan Council programs, projects, and procurement activities the Council must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this policy with respect to individuals of a particular race, color, creed, religion, sex, national origin, disability, gender identity, sexual orientation, or status with regard to public assistance.

PROCEDURES

- [OEEO 5-1a Goal Setting and Good Faith Efforts – Federal DBE Program & Metropolitan Council Underutilized Business Program](#)
- [OEEO 5-1b Metropolitan Council Underutilized Business \(MCUB\) Program](#)
- [OEEO 5-1c Contractor Compliance and Monitoring for Federal Disadvantaged Business Enterprise and Metropolitan Council Underutilized Business Programs](#)
- [OEEO 5-1d Small Business Spending Procedure](#)

RESOURCES

Related Policies

- [Procurement Policy FM 14-1](#)

Statutory Resources

- [Minnesota Statutes section 473.129, subd. 13](#)
- [Minnesota Statutes section 473.142](#)
- [Minnesota Statutes section 16C.16](#)
- [49 C.F.R Part 26](#)

Internal Resources

- [Small Business Unit \(MetNet\)](#)

HISTORY

Version 4 – Update

10/22/2025 - Updated content to reflect the 2025 Disparity Study and updated federal regulations and Minnesota law

Version 3 – Template Update

10/12/2020 - Updated content into new template.

Version 2 – Approval Date

08/08/2018 – Policy amended to include MCUB select solicitation process.

Version 1 – Approval Date

01/20/2016

Last Reviewed Date

Not Set

Next Content Review Date

002/01/2026

Former Reference #

3-4-6

Version

4