



Business Equity Program Specifications Exhibit

In furtherance of Prosper Portland’s commitment to social and racial equity, the Prosper Portland Board of Commissioners adopted the *Construction Business and Workforce Equity Policy* on April 14, 2021 through Resolution No. 7411 (the “**CBWE Policy**”). The CBWE Policy establishes two different programs: (i) the Workforce Training and Hiring Program; and (ii) the Business Equity Program (the “**BEP**”). These specifications (these “**Specifications**”) relate to the BEP, and identify specific requirements that contractors, developers, borrowers, grantees, purchasers, or other parties with whom Prosper Portland does business and to whom the BEP applies (each a “**Recipient**”) must meet to comply with its contractual obligations. By attaching these Specifications to the contract, agreement, or instrument to which they are an exhibit (the “**Contract**”), the requirements of these Specifications are incorporated into the Contract.

The goal of the BEP is to improve outcomes for local small businesses and support the growth of construction and development firms owned by people of color and women by providing opportunities for State of Oregon Certified Firms. “Certified Firms” are Disadvantaged/Minority/Women/Emerging Small Business and Service-Disabled Veteran (sometimes abbreviated as “**D/M/W/ESB/SDV**”) firms as certified by the State of Oregon’s Certification Office for Business Inclusion and Diversity (“**COBID**”).

1. PROGRAM APPLICABILITY

These Specifications apply to the construction project described in the Contract (the “**Project**”), including construction-related professional services, such as design and engineering, associated with the Project, except to the extent otherwise expressly stated in the Contract.¹ Notwithstanding anything to the contrary in these Specifications, where a Recipient is not directly undertaking construction (e.g., a developer is instead contracting with a prime contractor to undertake construction), the Recipient must see to it that applicable requirements in these Specifications are passed through to its contractor and subcontractors, and ensure that any contractor / subcontractors comply with these Specifications and thereby enable Recipient to comply with these

¹ Pursuant to the CBWE Policy, the BEP applies in the following circumstances (this footnote is for informational purposes only; if these Specifications are attached to the Contract, or the Contract otherwise indicates the BEP applies, the BEP applies to the Project):

- A Prosper Portland Personal Services Contract in the construction context for any amount.
- A Prosper Portland Flexible Services Contract in the construction context for any amount.
- A Prosper Portland-Owned Construction Contract with Hard Construction Costs greater than \$200,000.
- A Prosper Portland Sponsored Project receiving more than \$300,000 of Prosper Portland Resources to support a project with Hard Construction Costs greater than \$200,000.
- A sale of Prosper Portland real property to a private party with a purchase price greater than \$300,000 that is expected to involve Hard Construction Costs greater than \$200,000.
- An Intergovernmental Agreement with Hard Construction Costs greater than \$200,000, whether project is contracted by Prosper Portland or another agency.

Specifications.

2. PROGRAM GOALS

The overall goal of the BEP is to ensure Prosper Portland projects and programs provide meaningful professional, supplier, and construction contracting opportunities for Certified Firms. The BEP's goals for the utilization of Certified Firms are as follows:

- 22% of the Project's total Hard Construction Costs (as defined in the CBWE Policy) allocated to Certified Firms, and 14% of Hard Construction Costs (which counts towards the overall 22% goal) allocated to any combination of DBE and/or MBE firms.
- 20% of the Project's professional services² costs allocated to Certified Firms.

Prosper Portland strongly encourages Recipients to promote their prime contractors to utilize Certified Firms for all divisions of work. A directory of Certified Firms can be found by visiting the State of Oregon's COBID website at: <https://oregon4biz.diversitysoftware.com/>

For construction contracts not subject to ORS 279C.305 (e.g., Sponsored Projects (as defined in the CBWE Policy) and Prosper Portland-Owned alternative contracts), Prosper Portland encourages opportunities for smaller contractors and Certified Firms. Prime contractors who intend to self-perform more than 10% of the trade work to complete a project or an entire Construction Specifications Institute (CSI) Master Format trade division (e.g., excluding superintendence, supervision, mobilization, etc.) will be required to have the written authorization of Prosper Portland, who may approve a higher percentage based on the type, size, available subcontractors, and other relevant project criteria.

3. STANDARDS OF COMPLIANCE

Recipients shall document all good faith efforts taken to contract with Certified Firms. If a Recipient, or a prime contractor/ consultant thereof, has difficulty in achieving BEP goals, it is such Recipient's and prime contractor's/consultant's obligation to immediately notify Prosper Portland and seek guidance. The following tasks are minimum reasonable and necessary steps to comply with BEP goals:

a. Initial meeting

Recipients shall attend an initial kickoff meeting with Prosper Portland Project Staff and Compliance Team at the earliest possible opportunity. Recipients of Prosper Portland project support on BEP applicable projects shall bring the following to the initial meeting:

- Project Description;
- Project Design/Construction Schedule; and
- Professional Services Team List (A/E, Survey etc.).

The purposes of the initial meeting are:

- To answer questions the Recipient may have regarding compliance with BEP and Prosper Portland's equity goals;
- For the Recipient to obtain information from Prosper Portland regarding resources the

² For purposes of this goal, the term "professional services" means services within the scope of the professional practice of architecture, engineering, or registered land surveying, or those services performed by any architect, landscape architect, professional engineer or registered land surveyor in a professional capacity.

- Recipient may utilize in meeting its obligations under the BEP;
- For the Prosper Portland Compliance Team to explain the Utilization Plan (as explained below);
 - To explain the Ongoing Compliance Report Requirements in the City of Portland's Contract Compliance Reporting System (CCRS) with the City of Portland Compliance Staff,
 - To explain how the projects utilization is reported on Prosper Portland's website, and
 - To explain the ramifications of noncompliance with this guidance, including debarment and liquidated damages.

If Hard Construction Costs are \$1,000,000 or more, the Recipient and its prime contractor shall attend an additional meeting with Prosper Portland's Compliance team and agency partners to review the scopes of work and determine a potential Outreach Plan at the earliest possible time, and **no later than two (2) months before bidding on construction contracts and the Project begins.**

b. Outreach Methods - Additional Assistance

Recipients, with and through their prime contractor, shall conduct outreach so that Certified Firms have at least fifteen (15) business days after the conclusion of such outreach to respond to any bidding deadlines and be considered for construction contracts on the Project. Any changes to this schedule must be approved by Prosper Portland. Recipients, with and through their prime contractor, consultant are encouraged to engage in additional outreach methods to ensure maximum participation by Certified Firms, including but not limited to:

- i. Working with the assistance of Prosper Portland's Partners (See list of partnering organizations in section 6, below) to develop an outreach plan; and
- ii. Hold Outreach events at Partnering Organizations meetings or spaces.

c. Reporting Requirements (CCRS)

BEP applicable projects are subject to compliance reporting requirements. Recipients are required to provide all contract compliance-related data electronically in the City of Portland's Contract Compliance Reporting System (CCRS).

All parties identified are responsible for responding to any instructions or requests for information from the City of Portland's Compliance Officer and Prosper Portland's Compliance Coordinator (see Section 5) and should regularly check the CCRS to manage contact information and contract records.

Recipients, with and through their prime contractor, consultant are responsible for ensuring all subcontractors/subconsultants have completed all requested items and that their contact information is accurate and up to date. Prosper Portland may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award.

Information related to contractor/ consultant access of the system will be provided to a designated point of contact upon notification. The CCRS is web-based and can be accessed at the following internet address: <https://portlandoregon.diversitycompliance.com/>

i. **Utilization Plan (UP)**

The UP is due to Prosper Portland from a Recipient, with and through their prime contractor, consultant at the **beginning of the project for soft costs and one (1) month before construction begins** for hard costs. A completed UP is required to be submitted electronically in the CCRS. On-screen instructions in the CCRS will guide you through the UP-submittal process. The UP must list ALL subcontractors/subconsultants to be used on the project, their corresponding type of work, their subcontract amount, and their Certified Firm status, if applicable, regardless of the dollar amount. After submission of the UP, you may review your Dashboard for status updates.

ii. **Monthly Reporting**

Recipients, or any prime contractor thereof, shall submit records of subcontractor/subconsultant payments via the CCRS by the 15th day of each month once work has commenced and shall ensure that subcontractors/subconsultants are confirming payments reported to them in the system. Subprime firms are also responsible for reporting participation of lower tier subs.

iii. **Subcontractor Changes**

If any subcontractor/subconsultant is added or replaced after the UP is submitted, the Recipient, and any prime contractor/ consultant thereof, shall make good faith efforts to solicit bids from Certified Firms for the work to be performed.

All subcontractor/subconsultant changes/requests shall be made in the CCRS and will include supporting documentation of the foregoing prior to making any changes. A tutorial for adding subcontractors can be found here:

<https://portlandoregon.diversitycompliance.com/Help/Tutorial/TutorialView.asp?XID=5666&TFL=RequestingASub>

A Recipient, or any prime contractor/ consultant thereof, shall not add, delete, or replace any subcontractor without prior written consent from Prosper Portland.

iv. **Good Faith Effort Documentation**

D/M/W/ESB/SDV BIDS RECEIVED LOG: Recipient shall provide upon request if BEP program goals are not met:

- (1) If the CCRS shows that the program goals have not been met, the Recipient, with and through their prime contractor, must submit Form 2 and additional documentation as required. **To submit Form 2 and additional documentation, click Attach Waiver Files. When finished click Save Waiver Details before leaving the plan or attempting to complete another step.**
- (2) Any of Recipient's bidders must have contacted Certified Firm subcontractors/subconsultants in writing to advise them of potential subcontracting/subconsulting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors/subconsultants the same information and informing them of the date and time that sub-bids are due.
- (3) Any Recipient, with and through their prime contractor/consultant, must have obtained a minimum of three (3) written bids from Certified Firms that specialize in the type of work that will be subcontracted/sub consulted. Bidders shall submit additional

information and provide clarification upon request.

v. Final Reporting

All reporting is due in the **CCRS** 60 days after the Project is complete.

The Project's Business Equity Utilization will be posted on Prosper Portland's website (<https://www.prosperportland.us>) during the life of the project.

4. CONSEQUENCES OF NON-COMPLIANCES WITH BEP

Prosper Portland's commitment to construction business equity is reflected, in part, by the cost of administering and promoting the BEP and of Prosper Portland's initiatives to advance equity in the context of the construction industry. Failure of any Recipient to meet BEP requirements deprives Prosper Portland of the benefits of these costs and efforts, and impairs Prosper Portland's attempts to promote contractor diversity and to provide equitable opportunities to the public. A Recipient's failure to meet the requirements of these Specifications, including but not limited to the timely submission of required documentation, constitutes a material breach of these Specifications and thus the Contract. In the event of a material breach of these Specifications by any Recipient or an entity for whom a Recipient is responsible (e.g., a contractor or subcontractor performing work on the Project), in the sole discretion of Prosper Portland, Prosper Portland may take any or all the following actions (without limiting any other rights or remedies Prosper Portland may have under the Contract):

a. Withholding Progress Payments

If the Contract provides for progress payments, Prosper Portland may withhold all or part of any payments until the breach is remedied to Prosper Portland's reasonable satisfaction. If payments are so withheld, the Recipient shall in no event be entitled to interest on said payments, if reinstated, unless otherwise required by applicable law.

b. Liquidated Damages

It would be difficult, if not impossible, to assess actual damages or costs incurred by Prosper Portland for a Recipient's failure to comply with the Specifications. Therefore, for violations of these Specifications, Prosper Portland reserves the right to assess an amount of liquidated damages of up to \$150,000 based upon the seriousness of the violation, as determined by Prosper Portland. These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by a Recipient's failure to comply with the Specifications or that may otherwise be available to Prosper Portland under any other agreement with the Recipient.

c. Notification of Possible Debarment

Recipient's acknowledge that failure to comply with the Specifications may lead to the Recipient's disqualification from bidding on and receiving other Prosper Portland contracts for a minimum of two years and a maximum of three years based on the violation.

d. Other Remedies

The remedies that are noted above do not limit any other remedies available to Prosper Portland under the Contract, at law, or in equity in the event that the Recipient fails to meet the requirements of the Specifications.

5. REVIEW OF RECORDS

Prosper Portland shall be entitled to inspect and copy any books and records of any such Recipient related to its compliance or non-compliance with the Specifications within 7 days of the date

when a Recipient receives a request under this provision. In the event that a Recipient fails to provide its books and records for inspection and copying when requested under this provision, such failure shall constitute a material breach of the Specifications and permit the imposition of any of the remedies set forth above. This provision does not limit any other audit or inspection rights Prosper Portland may have under the Contract.

6. CONTACTS

Compliance Team

Wendy Wilcox- (Business and Workforce Equity Compliance Coordinator)
wilcoxw@prosperportland.us | 503.823.3236

Ay Saechao – City of Portland Compliance Officer (Reporting Liaison)
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Partnering Organizations

COBID-Certification Office for Business Inclusion and Diversity-
<https://oregon4biz.diversitysoftware.com/>

PBDG-Professional Business Development Group
<http://pbdgweb.com/>

NAMC-National Association of Minority Contractors of Oregon
<http://namc-oregon.org/>

Latino Built
<https://latinobuilt.org>

OAME-Oregon Association of Minority Entrepreneurs
<https://oame.org/>

CCRS Links

Contract Compliance Reporting System
<https://portlandoregon.diveristycompliance.com>

Changing a subcontractor
<https://portlandoregon.diversitycompliance.com/Help/Tutorial/TutorialView.asp?XID=5666&TFL= RequestingA>