

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7411

**ADOPTING THE CONSTRUCTION BUSINESS AND WORKFORCE EQUITY
POLICY**

WHEREAS, Prosper Portland is committed to advancing racial and social equity and to building an equitable economy;

WHEREAS, this commitment is reflected in Prosper Portland’s Equity Policy, which was initially adopted by the Prosper Portland Board of Commissioners (“Board”) on January 9, 2013 through Resolution No. 6988, and which was comprehensively updated and renewed on November 8, 2017 through Resolution No. 7256, and again on August 14, 2019 through Resolution No. 7335 (“Equity Policy”);

WHEREAS, pursuant to Administrative Procedures authorized by the Executive Director on May 1, 2015 (“Construction Equity Procedures”), Prosper Portland requires developers and contractors to take certain steps and engage in certain practices to advance equity in the construction context, including establishing goals for utilization of firms certified by the Oregon Certification Office for Business Inclusion and Diversity (“Certified Firms”) and participation by minority and women workers;

WHEREAS, the Prosper Portland Board wishes to reinforce values articulated in the Equity Policy in the context of construction, and intends to achieve this objective by:

1. Leveraging investments to increase access to contracting opportunities for businesses owned by members of historically underrepresented communities;
2. Advancing racial and economic equity through programs and investments that assist in providing career opportunities for women and Black, Indigenous, and People of Color (“BIPOC”) in the construction industry;
3. Engaging with the City of Portland, public agencies, construction industry stakeholders, and other partners to collaborate on additional opportunities to advance the participation of women and BIPOC individuals in the construction industry; and
4. Maintaining Prosper Portland’s Construction Wage Policy, as set forth in Resolution No. 6666, adopted January 29, 2009 (“Construction Wage Policy”).

WHEREAS, the Prosper Portland Board believes that, to maximize transparency and consistency, the key obligations of Prosper Portland staff, developers, and contractors in advancing construction equity should be outlined in a formal, Board-adopted policy of the agency;

WHEREAS, the Prosper Portland Board intends to adopt the Construction Business and Workforce Equity Policy attached to this Resolution as Exhibit A (“CBWE Policy”);

WHEREAS, the CBWE Policy makes certain substantive changes to the key terms and conditions of the Construction Equity Procedures, including, without limitation, the following:

1. Increasing the Certified Firm participation goal to 22 percent (from 20 percent), and implementing a sub-goal of 14% Minority Business Enterprise (“MBE”) and Disadvantaged Business Enterprise (“DBE”) participation;
2. Establishing a Construction Equity Fund to provide additional resources for business technical assistance and workforce development; and
3. Requiring that 0.25 percent of Hard Construction Costs (as defined in the CBWE Policy) for qualifying projects be set aside to the Construction Equity Fund, in addition to other sources; and

WHEREAS, the CBWE Policy calls for further study and outreach regarding the implementation of a project labor agreement or community workforce agreement policy.

NOW, THEREFORE, BE IT RESOLVED, that the CBWE Policy attached hereto as Exhibit A is adopted as the policy of Prosper Portland;

BE IT FURTHER RESOLVED, that consistent with Part Five of the CBWE Policy, Prosper Portland staff is directed to convene a working group to study and discuss adoption of a project labor agreement or community workforce agreement policy, and to return to the Prosper Portland Board within three months of the effective date of this resolution with a report or proposal;

BE IT FURTHER RESOLVED, that the CBWE Policy supersedes all prior administrative procedures and policies of Prosper Portland relating to construction equity on Prosper Portland projects or projects supported by Prosper Portland, except that the Construction Wage Policy remains in full force and effect;

BE IT FURTHER RESOLVED, that the Executive Director is authorized to amend the CBWE Policy from time to time in the Executive Director’s reasonable discretion, so long as such amendments are non-material in nature as determined in consultation with the General Counsel, certain examples of which are provided in the CBWE Policy;

BE IT FURTHER RESOLVED, that the CBWE Policy shall be effective prospectively, and does not apply to projects or investments previously approved by the Prosper Portland Board; and

BE IT FURTHER RESOLVED, that this resolution shall become effective immediately upon its adoption.



Construction Business and Workforce Equity Policy

Subject: Construction Business and Workforce Equity

Effective Date: April 14, 2021

Approved By: Kimberly Branam, Executive Director

Sponsor: Executive Director

Owner: Lisa Abuaf, Director of Development

The Construction Business and Workforce Equity Policy (this “Policy”) generally applies to Prosper Portland investments resulting in the design and implementation of construction, as more specifically described below. This Policy should be reviewed and used when planning new projects or programs and contracting for goods and services related to construction projects. Questions regarding this Policy can be directed to the Business and Workforce Equity Staff within the Development and Investment Department (“CBWE Staff”).

This Policy was approved by the Prosper Portland Board of Commissioners (the “Board”) through Resolution No. 7411, adopted April 14, 2021 (the “Authorizing Resolution”).

This Policy is organized as follows:

- PART ONE:** Policy Objectives and Authority
- PART TWO:** Business Equity Guidelines
- PART THREE:** Workforce Training and Hiring Guidelines
- PART FOUR:** Construction Equity Fund
- PART FIVE:** Community Workforce Agreements
- PART SIX:** General Provisions; Definitions
- PART SEVEN:** Modifications
- PART EIGHT:** Administrative Procedures and Specifications

PART ONE: POLICY OBJECTIVES AND AUTHORITY

1.1 Definitions. The capitalized terms found in this Policy are defined in Part Five.

1.2 Policy Objectives. The objective of Prosper Portland’s Construction Business and Workforce Equity Policy is to ensure Prosper Portland delivers on its strategic priorities of increasing access to quality employment; supporting equitable wealth creation; and fostering partnerships. Prosper Portland aims to achieve these objectives by:

- Reinforcing values articulated in Prosper Portland’s Equity Policy as approved by Resolution No. 7335, adopted August 14, 2019;
- Leveraging investments to increase access to contracting opportunities for businesses owned by historically underrepresented communities in Portland;
- Advancing racial and economic equity through programs and investments that assist in providing career opportunities for women and BIPOC in the construction trades; and,
- Complementing Prosper Portland’s Construction Wages Policy, adopted by Resolution No. 6666 on January 29, 2009, and Oregon’s prevailing wage law (ORS 279C.800 et seq), which provide rules and requirements regarding wages paid to workers on covered construction projects.

PART TWO: BUSINESS EQUITY GUIDELINES

Part Two of this Policy describes the Business Equity Guidelines (“BEG”) and other activities in support of equitable construction contracting opportunities. Questions on this section should be directed to CBWE Staff.

The Goal of Part Two is to ensure that Prosper Portland’s projects and programs provide professional, supplier, and construction contracting opportunities to businesses certified by the Certification Office for Business Inclusion and Diversity (or its successor) as: Disadvantaged (D), Minority (M), Women (W), Emerging Small Business (ESB), or Service Disabled Veteran-Owned Business Enterprises (SDVBE).

2.1 Applicability. The BEG apply to all of the following types of transactions:

- 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.*

*Prosper Portland may defer to another agency's business equity program either in whole or on a component-by-component basis if the program (or the applicable component being deferred to) is substantially equal to or more stringent than Prosper Portland’s program. CBWE Staff is responsible for evaluating and recommending such deferrals. If Prosper Portland defers to another agency's program, Prosper Portland staff should communicate to partner agencies the requirement for utilization reports. Deferrals will be set forth in

the applicable transaction documents and approved by the authorized signatory for such transaction documents.

2.2 Utilization Goals for Certified Firms. The following Utilization Goals will be periodically assessed by the construction equity staff and leadership; adjustments may be recommended to the Board from time to time, taking into consideration, among other appropriate factors, current regional availability and disparity studies:

- 22% of an applicable project’s total Hard Construction Costs 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 an applicable project’s Professional Services Costs allocated to Certified Firms.

2.3 Utilization Goals for Projects Already Underway. In an instance where a party receives notification of Prosper Portland's approval of the availability of Prosper Portland Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the BEG, Prosper Portland (through the Prosper Portland’s project manager, with assistance from the CBWE Staff) may negotiate a Certified Firm participation goal that is reasonable and may provide technical assistance to achieve that negotiated Utilization Goal.

2.4 Prompt Payment. For construction projects subject to the BEG, Prosper Portland will require that the contracting entity comply with applicable laws relating to prompt payment of contractors and subcontractors, including, without limitation, ORS 279C.570 if applicable.

2.5 Self-Performed Work. For construction contracts not subject to ORS 279C.305 (e.g., Sponsored Projects 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 CBWE Staff or their designee, who may approve a higher percentage based on the type, size, available subcontractors, and other relevant project criteria.

2.6 Joint Ventures. For large-scale and alternative contracting projects not subject to low bid requirements, Prosper Portland may provide incentives for joint ventures and mentor-protege partnerships that enhance BEG goals (e.g., additional points in the RFP evaluation process).

2.7 Alternatives to Low Bid. Alternatives to low bid (e.g., Design/Build, Construction Manager/General Contractor) that may enhance BEG goals should be pursued when feasible, legally permissible and appropriate in the circumstances on projects subject to the BEG.

2.8 Ineligibility. Contractors or subcontractors that are on the BOLI list of ineligible contractors cannot participate in Prosper Portland Owned or Prosper Portland-intergovernmental agreement (“IGA”) construction projects.

2.9 Insurance and Bonding. For Prosper Portland Sponsored Projects subject to BEG, Prosper Portland may provide incentives for the owner/developer/prime contractor to reduce insurance and bonding barriers for Certified Firms.

PART THREE: WORKFORCE TRAINING AND HIRING GUIDELINES

Part Three of this Policy describes the Workforce Training and Hiring Guidelines (“WTHG”) and other activities that support equitable construction workforce development. Questions on this section should be directed to CBWE Staff.

The Goal of the WTHG is to maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and Women. Prosper Portland also encourages the employment of veterans and people with disabilities on Direct Contracting, Land Transactions, and on work utilizing Prosper Portland resources.

3.1 Applicability. The WTHG apply to all of the following types of transactions:

- A Prosper Portland-Owned Construction Contract consisting of construction work greater than \$300,000.
- A Prosper Portland-Sponsored Project consisting of construction, the WTHG will apply if the project receives \$300,000 or more of Prosper Portland Resources to support a project with a Hard Construction Cost greater than \$1,000,000.
- 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 \$300,000.
- A Prosper Portland-Intergovernmental Agreement consisting of construction work greater than \$300,000.

If the WTHG apply, they apply to the prime contractor and all subcontracts with values of \$100,000 or greater, but not to subcontracts with values of less than \$100,000. **The WTHG also do not apply to Personal Services Contracts, Flexible Services Contracts, and services contracts or agreements not involving construction work.**

Prosper Portland may defer to another agency's workforce training and hiring program either in whole or on a component-by-component basis if the program (or the applicable component being deferred to) is substantially equal to or more stringent than Prosper Portland's program. CBWE Staff is responsible for evaluating and recommending such deferrals. If Prosper Portland defers to another agency's program, Prosper Portland staff should communicate to partner agencies the requirement for utilization reports. Deferrals will be set forth in the applicable transaction documents and approved by the authorized signatory for such transaction documents.

3.2 General Program Requirements. Projects subject to the WTHG shall:

- Ensure that a minimum requirement of twenty percent (20%) of labor hours in each apprenticeable trade performed by the prime contractor/subcontractor, are worked by State Registered apprentices if working an excess of 300 hours or more on any trade;

- Prime Contractors/subcontractors to whom the WTHG apply will be a registered training agent to a State of Oregon Bureau of Labor and Industries (“BOLI”) approved apprenticeship training program before commencing work.
- Work to achieve the following goals: (i) thirty percent (30%) of hours worked by minorities; and (ii) fifteen percent (15%) of hours worked by women. This goal will be measured in aggregate by combining both apprentice hours and journey hours. Although goals are measured in aggregate, Prosper Portland staff may nonetheless collect this data in a disaggregated manner (e.g., percentages for journey level specifically and for apprentice level specifically) to help inform policy development going forward.
- Encourage the employment of veterans and people with disabilities.
- Seek to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, community-based organizations, apprenticeship programs, and other community resources, both union-affiliated and non-union-affiliated.

3.3 Applying Requirements for Projects Already Underway. In an instance where a party receives notification of Prosper Portland’s approval of the availability of Prosper Portland Resources after it has bid a project, expended funds on a project, started construction, or taken other action that would impair its ability to comply with the WTHG, the Prosper Portland Project Manager, with assistance from the Prosper Portland Construction Equity Staff may negotiate a level of compliance that is reasonable and may provide technical assistance to achieve that negotiated Workforce Goal.

3.4 Equal Employment Opportunity Certification. Contractors and subcontractors subject to the WTHG must be certified by the City of Portland as an Equal Employment Opportunity employer.

3.5 Worksite Anti-Harassment and Culture Change. Prosper Portland staff will develop (or identify standards for) a comprehensive workplace harassment prevention strategy to ensure all employees, regardless of race, gender, or creed, are guaranteed a safe and respectful working environment. The strategy will include in-person (or otherwise interactive) training for supervisors and employees (permanent and temporary), as well as meaningful policies and procedures for employees in need of recourse. Once so developed or identified, Prosper Portland staff will require the Developer / Prime Contractor to implement the strategy on construction projects that otherwise trigger the BEG or WTHP.

PART FOUR: CONSTRUCTION EQUITY FUND

The Prosper Portland Construction Equity Fund (the “Fund”) is hereby established. The Fund shall be the repository for all monies contributed pursuant to this Part Four, and shall be used to fund programs consistent with the goals of this Part Four. CBWE Staff will develop and manage programs to effectuate these goals.

The Goal of this fund is to provide resources for the provision of technical assistance to minority and women owned construction businesses and Workforce Development to increase the number women and BIPOC in all stages of the construction trades, as well as funding business and workforce navigation / consulting services in the construction industry to assist with meeting the goals described in this Policy.

4.1 Sources of the Fund. There are three anticipated sources of funding for the Fund: (i) payments from companies participating in the E-Zone program; (ii) amounts received as liquidated damages due to violations of the BEG or WTHG, or corresponding provisions in contracts; and (iii) amounts received as part of the 0.25% set-aside.

4.2 Enterprise Zone. All E-Zone companies will make a payment of 3% of actual tax savings derived from participation in the Enterprise Zone program towards the Fund.¹

4.3 Prosper Portland Construction Set-Aside. Prosper Portland will contractually require developers or general contractors (as applicable) to contribute a percentage of Hard Construction Costs of all projects that trigger either or both of the BEG or the WTHG (pursuant to Sections 2.1 or 3.1 of this Policy). The percentage shall be established by the Executive Director subsequent to the effective date of the Authorizing Resolution, but the percentage shall not exceed 0.25% of Hard Construction Costs. The specific manner and timing of payment to the Fund shall be developed by CBWE Staff and the Legal Department. The Executive Director may further establish written limitations (e.g., minimum dollar thresholds for Hard Construction Costs) on the applicability of this Section 4.3 if, in the Executive Director’s judgment, it would be appropriate to do so.

4.4 Business and Workforce Equity Liquidated Damages. When Prosper assesses liquidated damages based on noncompliance with the Business and Workforce Equity Policy, those funds shall be appropriated to the Fund.

PART FIVE: COMMUNITY WORKFORCE AGREEMENTS

Prosper Portland will convene a working group including relevant staff, legal counsel, community stakeholders and others as appropriate, to study and discuss adoption of a project labor agreement or community workforce agreement policy for Prosper Portland-contracted construction and/or Prosper Portland-supported construction.

This working group should consider, among other things: (1) relevant local, regional, and national efforts to implement such policies, including the City of Portland’s Community Benefits Agreement policy set forth in City Council Resolution No. 37329; (2) Prosper Portland’s unique role in promoting public-private partnerships; (3) appropriate applicability thresholds for such a policy, if implemented; and (4) key elements of such agreements that should be identified in a policy, if implemented. Prosper Portland staff will report, or bring a proposal, to the Board on this subject within 3 months of the Effective Date of this Policy.

PART SIX: GENERAL PROVISIONS; DEFINITIONS

6.1 Incorporation into Contracts. Prosper Portland legal counsel shall take appropriate steps to incorporate the applicable terms of this Policy into contracts.

¹ Payment shall occur simultaneously with the 15% Workforce Business Development Fund payment, with the total payment equal to 18% of actual tax savings for all Enterprise Zone projects approved after April 1, 2020.

6.2 Damages. Contracts subject to the BEG and/or WTHG shall include appropriate remedies for violations. Without limiting any remedies that may be specifically negotiated as part of an applicable contract, in the event of a breach of this Policy, Prosper Portland may take any or all of the following actions:

- Withholding progress payments
- Liquidated damages (anticipated to be \$150,000 per program violated, but CBWE staff and legal counsel may utilize another measure, e.g., an amount based on pay for apprentice hours not achieved that would have been achieved had compliance occurred, if deemed appropriate)
- Notification of possible debarment

6.3 Accountability. Prosper Portland currently contracts with the City of Portland, Bureau of Revenue and Financial Services, pursuant to an IGA approved by the Board through Resolution No. 7340, adopted September 11, 2019 (the “Monitoring IGA”). Pursuant to the Monitoring IGA, the City’s Compliance Officer provides services and software access to Prosper Portland. Prosper Portland will require the Prime Contractor/Subcontractor to report monthly using the City’s compliance reporting software, currently LCP Tracker (for the WTHG) and B2Gnow (for the BEG), or other appropriate software from time to time. Prosper Portland, through CBWE Staff and the City’s Compliance Officer, or other appropriate compliance personnel from time to time, shall monitor projects monthly and report out to appropriate external stakeholders, internal staff, and on the Prosper Portland website. CBWE Staff will ensure that this monitoring approach, or another reasonably comparable monitoring approach, is diligently and continuously implemented.

6.4 Definitions

Capitalized terms in this Policy have the following meanings:

“Board” means the Prosper Portland Board of Commissioners.

“Business Equity Guidelines” means the program described in Part 2 of this Policy.

“Certified Firms” include Minority/Women/Emerging Small Business/Service-Disabled Veteran (M/W/ESB/SD-V) firms as certified by the State of Oregon Certification Office for Business Inclusion and Diversity; or a Disadvantaged Business Enterprise (DBE) as certified by the U.S. Department of Transportation.

“BIPOC” Black, Indigenous, and all People of Color. It is a term to make visible the unique and specific experiences of racism and resilience that the Black/African Diaspora and Indigenous communities have faced in the structure of race within the United States. BIPOC is a term that honors all people of color as well as creates an opportunity to lift up the voices particularly of those communities

“Direct Contracting” includes all professional, supplier, and construction services purchased directly by Prosper Portland (i.e., not through a developer, Intergovernmental Agreement, or any other third party).

“Enterprise Zone” is a five-year, 100% tax abatement program designed to encourage existing and new industrial firms to make new capital investments in certain designated areas. Participating firms are required to create or retain quality jobs while maximizing the economic benefits for residents of Portland who are currently earning at or below 80% Median Family Income.

“Equity” means everyone has access to opportunities necessary to satisfy their essential needs, advance their well-being, and achieve their full potential (see the Portland Plan).

“Flexible Service Contract” is a contract for services that has repetitive requirements on an as-needed basis and may include Personal Services Contracts.

“Hard Construction Cost(s)” are the costs to build improvements on a property, including all related construction labor and materials and fixed and built-in equipment costs. They are all costs except Soft Construction Costs.

“Intergovernmental Agreement” or **“IGA”** is an agreement between Prosper Portland and another government entity, including the City of Portland.

“Land Transaction” is the sale of real property by Prosper Portland at any price for the purpose of a private or public project.

“Project” means a discrete construction, reconstruction, renovation, demolition, or remediation undertaking. Prosper Portland staff, in consultation with the Legal Department, have authority to consider the totality of the circumstances in determining whether one “project” or multiple “projects” exist for purposes of analyzing whether applicability thresholds are met if there is ambiguity. Factors that could be considered by Prosper Portland staff in making this determination may include, but are not limited to, the timing of such undertakings, whether there are or may be different contractors, and whether the undertakings are conceptually and/or physically distinct.

“Prosper Portland-Owned Construction Contract” are those in which Prosper Portland has a direct contractual relationship with the prime contractor and where Prosper Portland is the owner of the project.

“Prosper Portland Resource(s)” include: (i) Prosper Portland funds in the form of grants, loans, or payments (for purposes of calculating Prosper Portland Resources, any Prosper Portland funds used by a single entity for a single project in the form of grants, loans, or payments will be combined to determine the total amount of Prosper Portland Resources); and (ii) the value of a Land Transaction (for purposes of calculating the value of a Land Transaction, the value will be the difference between the appraised value of the property and its sale price).

“Prosper Portland-Sponsored Project(s)” include all projects that are privately owned and constructed involving Prosper Portland Resources, or a property conveyance that includes Prosper Portland Resources.

“Personal Services Contract” is a contract for specialized skills, knowledge or unique resources that involve the application of highly technical or scientific expertise or the exercise of professional, artistic, or management discretion or judgment. Such services include, but are not limited to, those performed by architects, engineers, surveyors, attorneys, auditors, other licensed professionals, artists, designers, computer programmers, consultants, and property managers.

“Soft Construction Cost(s)” are the costs associated with designing and permitting a building or improvement including all professional services such as architectural or engineering. These costs also include those not

directly related to the construction of a building or improvement, such as overhead, administration, developer fees, or taxes. For the avoidance of doubt, real property acquisition costs are not Soft Construction Costs.

"Utilization Goal(s)" are percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.

"Workforce Equity Guidelines" means the program described in Part 3 of this Policy.

"Workforce Goal(s)" means the goals related to construction trades that utilize People of Color and Women as a percentage of total construction hours worked on a Prosper Portland -Sponsored Project.

PART SEVEN: MODIFICATIONS

As provided in the Authorizing Resolution, this Policy may be amended by the Executive Director from time to time in her reasonable discretion so long as such amendments are non-material in nature as determined in consultation with the General Counsel. Material amendments require prior Board approval.

Non-material amendments include, but are not limited to, the following: (i) adjustments to reporting requirements; (ii) adjusting dollar applicability thresholds for inflation, based upon change in CPI-U, West Region, or another comparable index selected by the Executive Director; (iii) changing titles of departments or roles to reflect current organizational structure; and (iv) clarification or resolution of ambiguities as needed.

PART EIGHT: ADMINISTRATIVE PROCEDURES AND SPECIFICATIONS

The Executive Director (or their designee) may develop administrative procedures and/or specifications to provide guidance to staff in implementing this Policy.