

# NAMC-OREGON CONTRACTING CODE OF CONDUCT

## *Preamble*

Recognizing that NAMC-Oregon places high expectations for utilization on public agencies and prime contractors, including our partners, we, the Members, must ask for nothing less from ourselves. Moreover, NAMC-Oregon does not support companies that work to manipulate the system by engaging in business ownership flipping, impermissible pass-throughs or other potentially fraudulent activities. Such activities take away opportunities from those for whom certification programs are intended to benefit and are playing by the rules, and defeats the purpose of the certification programs.

Integrity in our dealings amongst ourselves is essential in order for us to demand integrity from our partners, prime contractors, and throughout the construction contracting system. Our chief goal is to level the playing field and grow the businesses of our member firms. For that reason, we implement this member code of conduct (“Code of Conduct”).

## *Member Utilization Goals*

*Goals.* NAMC-Oregon Member’s working as prime contractors (“Member Primes”) shall subcontract at least 30% (“Member Utilization Goal”) of total hard constructions costs to NAMC-Oregon Members where feasible on any projects undertaken with a value of at least \$500,000.00 (“Goal Project”).

*Member Utilization Efforts.* In order to achieve the Member Utilization Goal on Goal Projects, Member Primes will engage in the following minimum efforts:

1. **Solicitation.** Disseminate information about potential projects with a value of \$500,000.00 for which a Member Prime submits a proposal in a timely manner by, among other things, taking full advantage of posting on NAMC-Oregon website and otherwise solicit participation from all NAMC-Oregon Members on Goal Projects.
2. **Unbundling.** Select portions of work on Goal Projects to break out into economically feasible units to facilitate Member participation, even when the Member Prime might otherwise prefer to perform these work items with its own forces.
3. **Negotiation.** Negotiate in good faith with all interested Members. Member Primes are not, however, required to accept higher quotes from Members if the price difference is excessive or unreasonable. An excessive price difference shall be one that is 5 % or more about the average for the scope of work. Member Primes, however, will not engage in bid shopping by sharing subcontracting proposals and the related numbers received from Members with other Members.

4. **Subcontractor Rotation.** All Member Primes shall ensure that subcontractor relationships remain fresh and utilize a variety of subcontractors on Goal Projects. Such a commitment will ensure that more Members are exposed to a broad variety of owners and project types.

### ***Utilization Reporting***

NAMC-Oregon shall implement a series of reporting requirements for Member Primes addressing efforts made to maximize utilization of NAMC-Oregon member firms on their projects, including Goal Projects. For purposes of this Code of Conduct, NAMC-Oregon does not consider amounts paid to firms **not** certified by the Office of Minority, Women and Emerging Small Business (“OMWESB”) as MBE or minority-owned DBE for purposes of calculating utilization. Reports shall include at a minimum name of Members utilized, amounts paid, and total project hard costs and shall be in form approved by the Board of Directors. Utilization reporting shall consist of the following for Member Primes:

1. Post-project utilization reports for all Goal Projects within 60 days of project completion;
2. Quarterly utilization reports due January 31st, April 30th, July 31st, and October 31st
3. Annual utilization report due January 31<sup>st</sup>; and
4. Cooperation in preparation of NAMC-Oregon utilization report to reflect the aggregate utilization for the membership.

Member Primes shall submit all utilization reports to the Board of Directors by the appropriate due dates. Utilization reporting will be used by the Board of Directors to assess members’ ongoing commitment to “enhancing the status of minority individuals in the building and construction trades”, not just the growth and utilization of a member’s own firm.

### ***Joint Ventures***

Joint venture arrangements present unique opportunities for Members to grow their businesses and expand their experience. They also, however, represent great opportunities to deprive Member firms of opportunities to compete when they operate as no more than pass-through arrangements. For that reason, NAMC-Oregon adopts the following principles for Members participating in Joint Ventures:

1. This Code of Conduct shall apply to any joint venture arrangements in which a Member participates. Members shall incorporate this Code of Conduct into their joint venture agreement.
2. Members participating in a joint venture as the majority-owner shall perform a commercially useful function<sup>1</sup> on all projects where the joint venture serves as a

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<sup>1</sup> A Member performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the Member must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the

prime contractor by, among other things, performing or exercising responsibility for at least 30 percent of the total cost of the joint venture’s contract with its own work force.

### ***Workforce Development***

A diverse construction workforce is critical to the development of certified minority and disadvantaged businesses. For that reason, Members shall commit to not only achieving all apprenticeship goals for their projects, but shall strive to exceed those goals by at least 10% where possible.

Additionally, members will exercise their best efforts to amply reflect diversity in their workforce, again with the recognition that future business owners have to have that first training opportunity. Particular focus on areas of underutilization should be taken into account as much as possible.

### ***Partner Expectations***

Partners serve an important role in assisting NAMC-Oregon in achieving its mission. The privilege of partnership status, however, requires that Partners show their commitment to “enhancing the status of minority individuals in the building and construction trades” through their contracting practices and engagements with Members. Partners are therefore expected to endeavor to maximize participation by Members on their projects. Among other things, Partners are expected to:

1. Develop working relationships with all NAMC-Oregon Members by, among other things, creating subcontracting opportunities and mentor-protégé relationships;
2. Developing and supporting contracting practices, both in the public and private sectors, designed to maximize opportunities for certified firms, with particular emphasis on utilization of NAMC-Oregon Members;
3. Share upcoming contracting opportunities with NAMC-Oregon Members regularly and allowing ample time for Members to express their interest in participation and/or submitting bids;
4. Setting utilization goals for Members on all projects with a value of \$500,000;
5. Provide NAMC-Oregon Members information about training and other opportunities to increase familiarity with the Partner’s working conditions and expectations;
6. Meet utilization reporting standards set for Member Primes;

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material, and installing (where applicable) and paying for the material itself.

7. Provide Members access to project plans and specifications at minimal cost;
8. Advocate with owners for implementation of a policy and practice of twice monthly payments and otherwise pay subcontractors through a payment process that exceeds statutory “Prompt Payment” requirements where reasonably possible; and
9. Not require retention for Member firms on projects where the owner does not require retention under the prime contract.

### ***NAMC-Oregon Annual Recognition Program***

Annually, NAMC-Oregon will recognize Members and Partners displaying an exemplary commitment to “enhancing the status of minority individuals in the building and construction trades” as represented by their reported utilization efforts and utilization numbers as the “NAMC-Oregon Member Contractor of the Year” and “NAMC-Oregon Partner of the Year.” Members working as subcontractors may choose to provide similar reporting on a voluntary basis and compete for honors as well.

### ***Membership/Partnership Review***

Members failing to show an ongoing commitment to “enhancing the status of minority individuals in the building and construction trades” or being found to violate any rule, practice or law related to the utilization of certified firms shall be subject to having their membership terminated in accordance with the organization’s bylaws. Partners failing to show similar commitment or otherwise failing to meet the requirements of this Code of Conduct may be placed on a plan of corrective action by the Board of Directors.

**Approved by Board of Directors – June 12, 2012**