

RESOLUTION NO. 3549, as Amended

A RESOLUTION of the Port Commission of the Port of Seattle extending the Port's non-discrimination policy to Port contractors for the provision of domestic partner benefits.

WHEREAS, in 1994 the Port of Seattle adopted a policy to extend the same employee benefits to domestic partners as are available to employee spouses and to extend non-discrimination principles to extend to sexual orientation; and

WHEREAS, in recent years the City of Seattle and King County have adopted policies that extend their non-discrimination requirements to public contracting with respect to the provision of equal benefits for domestic partners of contractor employees; and

WHEREAS, it appears that benefits for domestic partners have become broadly available; and,

WHEREAS, this Resolution will serve to protect and further a more just government by requiring that public funds be expended so as to prohibit Port contractors from discrimination in the provision of employee benefits between employees with spouses and employees with domestic partners;

NOW, THEREFORE, BE IT RESOLVED, by the Port Commission of the Port of Seattle, as follows:

By this resolution the Port of Seattle hereby adopts an equal benefits policy for Port contractors as set forth in the attached Exhibit A.

ADOPTED by the Port Commission of the Port of Seattle at a regular meeting held this 25th day of October, 2005 and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

Bob Edwards
K. G. M. H.
Steve M. W.
Patricia David
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Port Commissioners

EXHIBIT “A” to Resolution No. 3549, as Amended

Domestic Partner Benefits for Port Contractors

1. DEFINITIONS:

1.1 “Contract” means an agreement to perform public works, consulting services including professional and technical services, or the purchase of goods and services, as set out in Port Policies PUR 1 and PUR 2, that entails a legally binding obligation of Twenty-Five Thousand Dollars (\$25,000) or more, or such other threshold dollar amount as the Port of Seattle Commission may require in the future. A Contract does not include: a contract between the Port and a public entity; a contract for the purchase, lease or rent of real estate; banking and other financial services; concession agreements; or a collective bargaining agreement.

1.2 “Contract Award” means any notice of selection, notice of intent to award or acceptance of a bid/proposal mailed or otherwise furnished to the successful contractor that is intended to result in an executed contract. Until the contract is executed, any work done on the project or commitment of any funds is at the contractor’s risk.

1.3 “Contractor” means any person or persons, firm, partnership, corporation, or combination thereof, including a “vendor” or a “consultant”, who submits a bid, proposal, and/or enters into a Contract with a Contract Awarding Authority.

1.4 “Domestic Partner” means any person who is a Domestic Partner, same sex or opposite sex, and is registered with the employee’s employer as the employee’s Domestic Partner or, in the absence of such an employer-provided registry, is registered as a Domestic Partner with a governmental body in accordance with the state or local law authorizing the registration. Any internal employer registry of domestic partnership must comply with the criteria for domestic partnerships as specified herein.

1.5 Legally domiciled member of household means any person who currently lives in the same primary residences as the employee; intends to continue living in the same primary residence as the employee; is jointly responsible with the employee for the basic living expenses of the household; is eighteen years of age or older; and is not married; or is an adult, dependent relative living in the same primary residence as the employee and is claimed as the employee’s tax dependent.

1.6 “Employee Benefits” or “Benefits” means any plan, program or policy provided by a Contractor to its employees as part of the employer’s total compensation package. “Employee Benefits” includes, but is not limited to: pension and retirement benefits, medical, dental and vision plans or other health benefits; bereavement, family medical, parental and other leave policies; disability, life, and other types of insurance; employee assistance programs; memberships or discounts; moving expenses; access to facilities, services and events; travel and relocation expenses; incentive, stock option, and profit

sharing plans and other compensation programs; vacation; travel benefits; and other benefits given to employees, provided that it does not include benefits to the extent that the application of the requirements of these rules to such benefits may be preempted by federal or state law.

1.7 “Non-discrimination in Benefits” means the provision of the same or equivalent benefits to employees with spouses and employees with Domestic Partners, to spouses of employees and Domestic Partners of employees, and to dependents and family members of spouses and dependents and family members of Domestic Partners. Non-discrimination in Benefits is also referred to as provision, or implementation, of “Equal Benefits” elsewhere within these rules.

1.8 “Reasonable Measures” means a determination by the Port of Seattle that a reasonable amount of effort has been taken by the Contractor to provide the same or equivalent benefits to employees with spouses and employees with Domestic Partners, and that no form of substantial compliance as defined in Section 2.6 applies to the Contractor.

1.9 “Roster” means a list of qualified consultants or Contractors maintained by the Port.

2. **POLICIES:**

2.1 Contracts: All Contracts awarded by the Port and covered by Resolution 3549 shall contain provisions developed by the Port requiring compliance with these procedures and prohibiting discrimination in the provision of employee benefits, except as exempted herein, and all covered contractors shall submit an affidavit of compliance with Resolution 3549 at the time of contract award.

2.2 Subcontracts and Subcontractors: The Non-discrimination in Benefits requirement does not apply to subcontracts or subcontractors.

2.2.1 Covered Entity: The scope of work, goods, or services as outlined in the Contract will define which entity or part of the legal structure of the contracting company must comply with Resolution 3549. Separate corporate entities, including parents and subsidiaries of the entity that contracts with the Port, are not required to comply. In the case of a joint venture, all joint venture members are required to comply with Resolution 3549.

2.3 Location: Contractors are encouraged to end discrimination in benefits throughout their operations in the U.S. The Non-discrimination in Benefits requirement applies to a Contractor in all of its operations located:

2.3.1 Within King County:

2.3.2 On real property outside of the County if the property is owned by the Port or if the Port has a right to occupy the property, and if the Contractor's presence at that location is connected to a Contract with the Port; or

2.3.3 Elsewhere in the United States where the Contractor performs work relating to a Port Contract.

The determination of where compliance is required shall be based upon a consideration of factors which include but are not limited to:

2.3.3.1 The nature of the work being performed in locations other than King County;

2.3.3.2 The degree of connection between the contract at issue and the work being performed in locations other than King County;

2.3.3.3 The amount of contact and communication that persons performing work in locations other than King County have with other persons performing work related to the contract.

2.4 Covered Benefits: A Contractor must not discriminate in all benefits offered to married employees or employees with Domestic Partners, and in all benefits offered to employees' spouses or employees' Domestic Partners.

2.4.1 Employee benefits covered by the federal Employment Retirement Income Security Act of 1974 ("ERISA") must be offered on a non-discriminatory basis under Resolution 3549. ERISA-covered benefits include benefits provided under employee welfare plans (such as medical insurance) and employee pension plans.

2.5 Employee Benefit Policies – Options for Compliance: Provided that a Contractor does not discriminate in the provision of benefits between employees with spouses and employees with Domestic Partners and between the spouses and Domestic Partners of employees, the following employee benefit policies are in compliance with the requirements of Resolution 3549:

2.5.1 The Contractor provides benefits to legally domiciled members of households in addition to employees with spouses and employees with Domestic Partners and the spouses and Domestic Partners of employees; or

2.5.2 The Contractor provides benefits on a basis independent of marital or Domestic Partner status by allowing all employees to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent benefits; or

2.5.3 The Contractor provides benefits neither to the spouse or domestic partner of an employee.

2.6 **Substantial Compliance** – Non-Discriminatory Discrepancies in Benefits: A Contractor will not be deemed to be discriminating in the provision of benefits where, upon approval by the Port, the implementation of policies ending discrimination in benefits is delayed, or cash equivalent is offered to the employees with a Domestic Partner in lieu of ending discrimination. The Port shall not enter into a contract with a Contractor unless they have received authorization from the Port to delay implementation, or offer cash equivalent. The Contractor is responsible for submitting a request for a finding of substantial compliance for the reasons set forth in this paragraph in a timely manner.

Before the first award of a Contract to a Contractor, delays are considered for Open Enrollment, Administrative Steps, and Collective Bargaining Agreements. Cash Equivalent is also a consideration for Substantial Compliance.

2.6.1 Open Enrollment. The Contractor must submit evidence that a reasonable amount of effort has been taken to end discrimination in benefits and can illustrate that Equal Benefits will be offered upon the first effective date after the first open enrollment process following the date the Contract with the Port begins. This delay may not exceed twelve (12) months from the date the Contract with the Port is entered, and only applies to benefits for which an open enrollment process is applicable.

2.6.2 Administrative Steps. The Contractor must submit evidence that additional time is needed in order to fully incorporate nondiscriminatory benefits into its infrastructure. The time allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three (3) months. An extension of this time may be granted at the discretion of the Port upon the written request of the Contractor.

2.6.3 Collective Bargaining Agreement. The Contractor must submit evidence of a current collective bargaining agreement(s) where all of the following conditions have been met:

2.6.3.1 The provision of benefits is governed by one or more collective bargaining agreement(s); and

2.6.3.2 The Contractor makes a reasonable amount of effort to end discrimination in benefits by requesting that the union(s) involved agree to either reopen the agreement(s) in order for the Contractor to take whatever steps are necessary to end discrimination in benefits or the union ends discrimination in benefits without reopening the collective bargaining agreement(s).

2.6.4 Cash Equivalent Payment. In limited circumstances, the Port may authorize a contractor to provide eligible employees with a cash equivalent payment in lieu of benefits that are unavailable due to circumstances outside of the contractor's control. Where a Contractor is unable to end discrimination in benefits by the date of the Contract and, further, does not anticipate being able to end discrimination in benefits at any time during the term of the Contract, the Contractor must provide to employees with a Domestic Partner a Cash Equivalent Payment.

The Cash Equivalent Payment shall be the amount of money paid by the Contractor for the benefit given to a similarly situated employee during the term of the Contract. Cash Equivalent is only what the company pays, and does not include what the employee contributes. To the extent that a Contractor limits the availability of any benefit to the spouses of employees, or vice versa, the availability of a Cash Equivalent Payment may be similarly limited. The Cash Equivalent Payment shall be made either on the same schedule as the Contractor uses for the benefit given to employees with spouses, or, if no such schedule exists, on another schedule so long as such payment is made no less than once per month. No Cash Equivalent Payment will be required where making such a payment would violate federal or state law.

2.7 Waivers: The Port, after encouraging a non-compliant prospective Contractor to comply with Resolution 3549, may issue a waiver of certain Equal Benefit requirements where:

2.7.1 Award of a Contract or amendment to a Contract is necessary in an emergency;

2.7.2 The Contract is for a proprietary purchase from a sole source;

2.7.3 There are no Contractors capable of responding to the Port's requirements that comply with the provisions of Resolution 3549;

2.7.4 The Contractor, despite taking all reasonable measures to do so, demonstrates it is unable to extend a particular employee benefit to Domestic Partners;

2.7.4.1 The Port will determine whether a Contractor has taken all Reasonable Measures upon the review of a Contractor's written request for a waiver that shall include documentation provided by the Contractor that demonstrates that it is not possible for the Contractor to end discrimination in benefits. Determinations shall be based upon the following factors:

2.7.4.1.1 All forms of Substantial Compliance as outlined in these rules have been reviewed by the Contractor and they are still unable to meet the requirements; and

2.7.4.1.2 The Contractor has contacted and identified, in writing, a number of alternate benefit providers and provided documentation that these providers will not provide benefits to Domestic Partners. The Port's final determination will also be based on the discovery, or existence of benefit providers willing to offer these benefits to the Contractor; and

2.7.4.1.3 The existence of federal or state laws, which preclude the Contractor from ending discrimination in benefits.

2.7.5 The requirements are inconsistent with a grant, subvention or agreement with a public agency; or

2.7.6 The Port is purchasing goods and/or services through a cooperative or joint purchasing agreement.

2.8 Requests for Waivers: Requests for waivers of these provisions are to be made by the manager of the Port Department responsible for the contract work to the Chief Executive Officer or his or her designee prior to the award of the Contract. The written justification requesting a waiver must provide information on the following factors:

2.8.1 A description of the item or service to be purchased and the name of contractor, vendor or consultant;

2.8.2 A clear statement of the kind of waiver being requested (i.e. emergency, single source, etc);

2.8.3 Reference to what section of Equal Benefit Resolution 3549 is applicable to the requested waiver;

2.8.4 An indication of reasons or rationale for the request for waiver and the special circumstances;

2.8.5 A description of what efforts have been made to comply with Resolution 3549 and the results of these efforts;

2.8.6 A description of the steps taken to identify other qualified Contractors or methods of purchasing and an explanation of the rationale for selecting the Contractor or proposed method of purchasing.

2.8.7 The decisions by the Port to issue or deny Waivers are final.

2.9 Sanctions and Remedies: The Port shall determine and impose appropriate sanctions or remedies, or both, for a Contractor's breach of a Contract subject to the requirements of Resolution 3549 including, but not limited to:

2.9.1 Debarment of the Contractor from bidding on or being awarded a Contract for up to five (5) years, provided however, the Contractor shall be given reasonable notice and reasonable opportunity to be heard;

2.9.2 Remedies allowable by Contract including, but not limited to, liquidated damages and termination of the Contract;

2.9.3 Other appropriate civil remedies and sanctions allowable by law;

2.9.4 Allowance for remedial action after a finding of non-compliance. Where the Port determines that the best resolution of non-compliance would be remedial action by the Contractor, the Port may take such action in lieu of Contract termination or disqualification. The Port may require other appropriate remedial action, including expedited implementation of equal benefits, provided that any remedial action authorized under Resolution 3549 must be taken with sixty (60) days of the date of the finding of non-compliance. Circumstances that would favor remedial action include:

2.9.4.1 Where the Contractor's non-compliance was nominal or unintentional; or

2.9.4.2 Where the Contractor believed in good faith that its benefits policies were in compliance with the requirements of Resolution 3549; or

2.9.4.3 Where the Port determines that remedial action is superior to other authorized sanctions or remedies in ensuring the provision of equal benefits to eligible employees.

2.10 Internal Domestic Partnership Registry: For purposes of administering non-discriminatory benefits, a Contractor may choose to recognize as valid domestic partnerships registered pursuant to any state or local law authorizing such registration. For example, the City of Seattle maintains a Domestic Partnership Registry that has no residency requirements, and any citizen, regardless of where they are located, may register their Domestic Partnership with the City of Seattle. In addition, a Contractor may institute an internal Domestic Partnership registry to allow for the provision of equal benefits to employees with Domestic Partners. For employees who are located in a jurisdiction where no governmental Domestic Partnership registry is available, and the Contractor chooses not to utilize the City of Seattle's registry, the Contractor must utilize an internal registry of Domestic Partnerships in order to administer Equal Benefits.

2.11 Verification of Domestic Partnership or Marriage: A Contractor may verify the existence of a domestic partnership or marriage to the extent such verification is undertaken equally for employees with Domestic Partners and employees with spouses. If eligibility for employee benefits extended to the spouse of a married employee requires the employee to provide a copy of a marriage license, the Contractor may also require an employee seeking benefits for a Domestic Partner to also provide a Certificate of Domestic Partnership.

2.12 Excess Cost: In the event that the actual cost of providing a particular benefit to an employee with a Domestic Partner or an employee's Domestic Partner exceeds that of providing the benefit to an employee with a spouse or to an employee's spouse, or vice versa, the Contractor may condition its provision of equal benefits upon the employee agreeing to pay the excess costs. The excess costs the Contractor may pass on to the employee may include only the actual costs of the benefit for that employee and may not include implementation or administrative costs, any tax consequence to the employer, or additional costs to other employees.

2.13 Taxation: The withholding of income tax from an employee for income associated with the provision of benefits is permissible to the extent the taxation is required by state or federal law. A Contractor is not required to compensate employees for any employee tax obligations associated with receipt of Domestic Partner benefits and the application of federal or state tax law.

2.13.1 Nothing in these rules is intended to require a Contractor to take any action that would jeopardize the tax-qualified status of a benefit plan.

2.14 Notification: Notification by a Contractor to its employees regarding the provision of benefits to employees with spouses and employees with Domestic Partners must be conducted so that all employees are given equal notice of all available benefits.

2.15 Application to Small Works and Other Roster Programs: The requirements of Resolution 3549 apply to Contractors that enter into Contracts pursuant to a small works or consultant roster program.

2.16 Investigative Authority: Upon the Contractor's entry into a Contract with the Port or upon the Port's receipt of a Contractor's Bid Form or any other document in which the Contractor asserts its compliance with the Non-discrimination in Benefits requirement, the Port shall have the authority to inspect all supporting evidence reasonably necessary to validate the Contractor's compliance with Resolution 3549. Supporting evidence may include but is not limited to: documentation that defines or outlines benefit plans and policies, reports, and information (including interviews) from Contractors, Contractor employees, bidders, and others as necessary. Such investigation may be made subsequent to a report of non-compliance or pursuant to a random audit of a Contractor's employee benefits policies.

A Contractor's failure to provide information requested pursuant to the Port's investigative authority, will be a material breach of the Contract and subject the Contractor to sanctions and/or remedies, as authorized by Contract and these rules.

2.17 Registering a Complaint of Non-Compliance: A covered employee may report to the Port any alleged breach by a Contractor of Resolution 3549. All complaints under Resolution 3549 from a covered employee shall be submitted to the Port. Other Contractors, other covered employees, or other parties on behalf of a specific covered employee may also make complaints, however they will not be considered to be protests. Protests must follow the formal Bid Protest procedure. To the extent permitted by state law, the Port will maintain the confidentiality of all complainants who register a complaint pursuant to this provision (See, RCW Ch. 42.17, Washington State Public Disclosure Act). Complainants will have the opportunity to request confidentiality when registering their complaint.

2.18 Commission authority: Nothing in these provisions shall limit the right of the Port Commission to waive the requirements of Resolution 3549 or these rules and procedures.

3. RESPONSIBILITIES:

3.1 The Contractor is responsible for taking all reasonable measures to provide the same or equivalent benefits to employees with spouses and employees with Domestic Partners.

3.2 The Chief Executive Officer or his or her designee is responsible for:

3.2.1 Adopting administrative procedures establishing standards and procedures to implement Equal Benefits Resolution 3549;

3.2.2 Receiving, reviewing and approving all appropriate waivers associated with Resolution 3549;

3.2.3 Receive, investigate and resolve Equal Benefits complaints.

3.3 An aggrieved contractor may appeal a decision made by the Chief Executive Officer or his or her designee. An appeal must be submitted in writing to the Chief Executive Officer or his or her designee within ten working days of the decision to be appealed. The Chief Executive Officer or his or her designee shall consider the appeal. The Chief Executive Officer or his or her designee shall issue a decision in writing to the contractor within twenty days of the submittal of the appeal that contains findings upon which the decision was made.