

**Resolution No. 3737**

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3 A RESOLUTION of the Port of Seattle Commission to establish a Diversity  
4 in Contracting Policy Directive to increase women and  
5 minority business opportunities and to repeal Resolutions  
6 No. 3506 and No. 3618.

7  
8 WHEREAS, the Port of Seattle mission is committed to create economic opportunity for  
9 all, steward our environment responsibly, partner with surrounding communities, promote  
10 social responsibility, conduct ourselves transparently, and hold ourselves accountable; and

11  
12 WHEREAS, the economic vitality of a community is strengthened and more resilient  
13 when opportunity is inclusive across our diverse communities;

14  
15 WHEREAS, the Port of Seattle is uniquely positioned among public agencies to lead in  
16 efforts of justice and equity by providing a level platform to all businesses including Women  
17 and Minority Business Enterprise (WMBE) firms to compete and succeed; and

18  
19 WHEREAS, the 1998 passage of Initiative 200 by Washington State voters prohibited  
20 racial and gender preferences by state and local government led to an underutilization of  
21 WMBE's at the Port and many other public agencies; and

22  
23 WHEREAS, In 2003, in response to I-200, the Port passed Resolution No. 3506 a race  
24 neutral approach "establishing a program to develop mutually advantageous business  
25 relationships with small businesses, and firms owned and operated by minorities, women and  
26 disabled"; and

27  
28 WHEREAS, In 2010, the Port of Seattle passed Resolution No. 3618, a race neutral  
29 approach to develop "a program to develop mutually advantageous business relationships with  
30 small businesses including those owned and operated by people of color, women, people with  
31 disabilities, veterans, and the socio-economically disadvantaged,"; and

32  
33 WHEREAS, the Port of Seattle efforts and programs as a result of Resolutions 3506 and  
34 3618 have increased small business participation but have not increased WMBE participation;  
35 and

36  
37 WHEREAS, it is a priority for the Port of Seattle to affirmatively expand its efforts to  
38 increase WMBE participation in Port Contracts and ensure that WMBEs are afforded fair and  
39 equitable opportunity to compete for Port Contracts, succeed as subcontractors, and do not  
40 face unfair and unnecessary barriers when seeking and performing on Port Contracts; and

41 WHEREAS, current data and the 2014 disparity study shows that WMBE participation in  
42 Port of Seattle opportunities has been and continues to be disparately low; and

43  
44 WHEREAS, this policy will strengthen Port of Seattle efforts to eliminate this disparity  
45 and result in more equity, diversity and inclusion for WMBE’s in Port opportunities; and

46  
47 WHEREAS, the Port of Seattle seeks to identify and change internal Port processes and  
48 standards to clearly establish program goals and create accountability; and

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50 WHEREAS, the Port of Seattle is committed to its values of conducting business with the  
51 highest ethical standards and our business practices shall reflect integrity, accountability,  
52 honesty, fairness and respect at all levels;

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

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56 **SECTION 1.** Resolution 3506 adopted May 27, 2003, is hereby repealed.

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58 **SECTION 2.** Transition from Resolution 3618. The Executive Director may continue to operate  
59 under Resolution No. 3618, as needed, to allow for transition to Resolution 3737, until  
60 September 1, 2018, at which time Resolution No. 3618 will be repealed and replaced with  
61 Resolution 3737.

62  
63 **SECTION 3.** The Diversity in Contracting Policy Directive as shown in Exhibit A is hereby  
64 established.

65  
66 **SECTION 4.** This Policy Directive shall be labeled and catalogued as appropriate, together with  
67 subsequent Policy Directives, and shall be made readily available for use by Port staff and  
68 members of the public as a governance document of the Port of Seattle.

69  
70 **ADOPTED** by the Port Commission of the Port of Seattle at a duly noticed meeting  
71 thereof, held this \_\_\_\_ day of \_\_\_\_\_, 2017, and duly authenticated in open session by  
72 the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

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Port of Seattle Commissioners

EXHIBIT A  
Diversity in Contracting Policy Directive

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**SECTION 1 Purpose.**

The Port finds that minority and women businesses are under-represented and have been under-utilized on Port Contracts. The purpose this Policy Directive is to provide the maximum practicable opportunity for increased participation by minority and women owned and controlled businesses. Port Contracting in public works, consulting services, supplies, material, equipment, other services creates the opportunity to leverage Port spend to increase WMBE utilization.

**SECTION 2 Definitions.**

For the purposes of this chapter:

"Affirmative Efforts" means documented reasonable attempts in good faith to Contract with Women and Minority Businesses.

"Availability" or "Available" as used in this chapter means a business that is: interested in and capable of performing the work within the time frame required and to the quality specified in the solicitation and Contract.

"Capability" or "Capable" as used in this section means that a business appears able to perform a Commercially Useful Function in performance of the work.

"Commercially Useful Function" means the performance of real and actual services in the discharge of any contractual endeavor.

"Contract" means an agreement for public works, consulting services, supplies, material, equipment, or other services.

"Contractor" means a business that has a Contract with the Port.

"Division" means any Port of Seattle organization structure that has a director that reports to the Executive Director.

"Women or Minority Business" (WMBE) means a business that is at least 51 percent owned and controlled by women and/or minority (including, but not limited to African Americans, Native Americans, Asians, and Hispanics) group members.

"Central Database" means an electronic database that collects aggregates and tracks monthly Port-wide, division and department-level utilization of small business, Women and

127 Minority Owned Business, and other classifications across various categories and Contract types  
128 and promotes transparency for the public.

129

130 “Relevant demographic data” is defined as characteristic information related to a business  
131 owner’s sex/gender, race, ethnicity or veteran status as self-reported and/or certified by  
132 another government entity.

133

134 “Utilization” is defined as both the percent of Contracting dollars paid to WMBE firms as  
135 well as the number of WMBE firms under Contract.

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### 137 **SECTION 3 Scope and Applicability.**

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139 This policy shall apply to all covered Contracts and other activities at the Port, including  
140 construction and consulting Contracts, purchased goods and services.

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### 142 **SECTION 4 Responsibilities.**

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144 The Executive Director shall pursue the Century Agenda goal to increase WMBE utilization in all  
145 Port Contracts and shall:

146

147 A. Within 120 days of passage of this Policy Directive, develop a Diversity in Contracting  
148 Program that identifies affirmative efforts to afford Women and Minority Businesses the  
149 maximum practicable opportunity to meaningfully participate on Port Contracts and  
150 achieve the goal to triple the number of WMBE firms that Contract with the Port and  
151 increase to 15% the percentage of dollars spent on WMBE Contracts, within five years of  
152 program implementation.

153

154 B. Incorporate these WMBE goals into the Port’s Long Range Plan (LRP) to the fullest extent  
155 reasonable, including incorporation into LRP scorecards, reports, and LRP updates.  
156 Further, the Executive Director shall prepare and publish an annual report each year titled  
157 Diversity in Contracting Annual Report.

158

159 C. Improve inclusion and outreach to sustain and improve WMBE participation in Port  
160 Contracts;

161

162 D. Take affirmative efforts to assure equality of Contracting opportunity through the  
163 development and application of Inclusion Plans or other tools as necessary;

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165 E. Expand opportunities for WMBE firms across Port functions, wherever practicable.

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### 167 **Section 5 Policy.**

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169 A. The Diversity in Contracting Program shall include:

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- 171 (1) Responsibilities, policies, practices, and processes that can change the Port  
172 procurement and contracting processes and provide a more receptive environment  
173 for the utilization of WMBE firms, and to ensure that businesses and contractors of all  
174 tiers working on Port Contracts and subcontracts utilize WMBE firms, wherever  
175 feasible or as required;  
176
- 177 (2) Development of a standard procedure for the Port-wide WMBE goal setting, and  
178 collection and reporting of relevant demographic data to be stored in a central  
179 database.  
180
- 181 (3) Categories of covered Contracts that will require WMBE Inclusion Plans and other  
182 tools that will be applied to other categories of Contracts Port-wide.  
183
- 184 (4) Clear lines of responsibility and accountability for implementation of the WMBE  
185 Program and a designated WMBE liaison for each division.  
186
- 187 (5) Make WMBE goal setting and affirmative implementation efforts part of the annual  
188 performance evaluation for each Port division director and their staff and require  
189 standardized WMBE program training, implementation and coordination for all  
190 Division leaders and their WMBE representatives.  
191
- 192 B. As instructed by the annual WMBE plan, the Port of Seattle Long Range Plan shall include  
193 as Priority Actions:  
194
- 195 (1) Specific measures the Contract awarding authority will undertake to increase the  
196 utilization of Women and Minority Businesses.  
197
- 198 (2) Specific goals by Division for WMBE utilization:  
199
- 200 (a) Each Port Division will review future procurements to identify available firms on  
201 upcoming Contracts to create a utilization goal that is justifiable, bold and  
202 challenging.  
203
- 204 (b) Construction goals, other than small works, based on historic utilization plus 2%,  
205 until such time that a disparity study or other valid internal data can  
206 demonstrate a reasonable level of utilization.  
207
- 208 C. Improve inclusion and outreach to sustain and improve WMBE participation in Port  
209 Contracts:  
210
- 211 (1) Support training and assistance to Port staff to increase participation in outreach and  
212 to learn about the internal and external resources available to include WMBE firms in  
213 their procurement and Contracting  
214

- 215 (2) Improve and expand technical assistance, including WMBE certification, business  
216 development, training and mentoring programs for WMBE firms to enhance bidding  
217 expertise and promote greater coordination with advocacy organizations, businesses,  
218 individuals and public agencies and other Port departments;  
219
- 220 (3) Create opportunities for members of the contracting and vendor community, Port and  
221 other stakeholders to work collaboratively on recommendations for how the Port can  
222 more effectively use the directives in this Policy Directive.  
223
- 224 (4) Assist contractors desiring to bid on Port covered Contracts to comply with the  
225 affirmative efforts provisions for such Contract, and offer information as to  
226 organizations and agencies available to assist such contractor in recruiting, mentoring,  
227 training, or otherwise preparing potential subcontractors.  
228
- 229 (5) Cooperate and establish formal and/or informal partnerships and mutual cooperation  
230 with other public agencies to carry out the purposes of this Policy Directive, as  
231 needed;  
232
- 233 D. Affirmative efforts to assure equality of contracting opportunity required:  
234
- 235 (1) Develop procurement tools, such as WMBE inclusion plans, and require bidders and  
236 proposers to comply with the WMBE solicitation requirement in order to sustain and  
237 improve participation of WMBE in Port covered Contracts;  
238
- 239 (2) Prepare and require that Port covered Contracts include specifications pertaining to  
240 equal opportunity affirmative efforts to assure equality in Contracting opportunity,  
241 and goals for subcontracting to Women and Minority Businesses. Any goals  
242 established under this chapter shall be reasonably achievable, however, no utilization  
243 requirements shall be a condition of Contracting, except as may be allowed by RCW  
244 49.60.400;  
245
- 246 (3) Identify and implement a Port-wide method to regularly monitor and measure the  
247 Port WMBE program and attainment of the goals by contractors.  
248
- 249 (4) May establish aspirational goals for the participation of Women and Minority  
250 Businesses in a particular Port Contract on a case-by-case basis.  
251
- 252 (5) Work closely with other divisions and departments to ensure all policies, practices and  
253 processes are consistent and complementary and make it easier for WMBE firms to  
254 pursue Port Contracts;  
255
- 256 (6) Define, implement, and monitor appropriate processes and procedures to ensure  
257 prompt payments and change order processing to address timely payment of  
258 contractors, supplier and subcontractors at all tiers. Review and recommend potential

259 for including prompt pay in performance goals.

260

261 E. Affirmative efforts in Subcontracting:

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263 (1) All Contractors, including WMBE firms, shall actively solicit bids for subcontracts to  
264 qualified, available, and Capable WMBE to perform Commercially Useful Functions.

265

266 (2) Contractors shall consider the grant of subcontracts to women and minority bidders  
267 on the basis of substantially equal proposals in the light most favorable to Women and  
268 Minority Businesses.

269

270 (3) At the request of the relevant Port Department, when inclusion plan are required,  
271 Contractors shall furnish evidence of the Contractor's compliance with these  
272 requirements of women and minority solicitation and will submit evidence of  
273 compliance with this section as part of any bid. Contractors shall provide records  
274 necessary to document affirmative efforts to subcontract with Women and Minority  
275 Businesses on Port Contracts; and

276

277 (4) Compliance with all requirements and past performance under this Policy Directive  
278 may be included in the evaluation of future procurements. .

279

280 (5) In applying the provisions of this Policy Directive to Contracts funded in whole or in  
281 part with federal funds and subject to 49 CFR Part 23, Subpart D, references to  
282 Women and Minority Businesses shall also include federally recognized disadvantaged  
283 business enterprises. In the event of a conflict between the provisions of this chapter,  
284 or the rules implementing this Policy Directive, and the requirements of 49 CFR Part  
285 23, Subpart D, or any other superseding applicable federal statute or regulation, the  
286 provisions of the federal statute or regulation shall control.

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288 F. Expanding Opportunity

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290 (1) The Port shall review and recommend how to expand opportunities for WMBE firms in  
291 other Port enterprise opportunities, for example real estate leases, to encourage and  
292 promote access to Port facilities by September 1, 2018.

293

294 (2) The Port shall develop a baseline utilization number for Veteran Owned businesses  
295 and propose a reasonable Port-wide goal and division goals to the Commission for  
296 inclusion in the Century Agenda by September 1, 2019.

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298 **SECTION 6 Program Evaluation.**

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300 A. Benchmarks and metrics to evaluate the Diversity in Contracting program shall include:

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302 (1) Incorporation of these WMBE goals into the Port's Long Range Plan (LRP) to the

303 fullest extent reasonable, including incorporation into LRP scorecards, reports, and  
304 LRP updates.

305  
306 (2) Specific measures the Contract awarding authority will undertake to increase the  
307 participation of Women and Minority Businesses; including the number of events or  
308 outreach activities conducted to ensure responsiveness to bid opportunities

309  
310 (3) Progress towards specific Division WMBE utilization goals, including the number of  
311 opportunities a division has available, the goals established for those opportunities  
312 and the actual utilization, including periodic review of Disparity Study results to  
313 determine reasonableness of goals.

314  
315 (4) Data reporting using the standard procedure identified in the WMBE Program for the  
316 Port-wide collection and reporting of relevant demographic data including percent of  
317 spend, number of businesses, and type of procurements.

318  
319 (5) Preparation and publication of an annual report titled Women and Minority Business  
320 Enterprise Utilization and Participation Annual Report

321  
322 B. The Internal Audit Director shall include the Diversity in Contracting Program in Internal  
323 Audit Department's 2019 Work Plan to determine adherence to this policy and include in  
324 future years as the Commission Audit Committee deems appropriate.

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### 326 **SECTION 7 Fiscal Implications**

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328 Fiscal implications shall be reviewed by the Executive Director annually, at a minimum, to ensure  
329 the implementation of the Policy Directive is adequately resourced and shall submit a budget  
330 request as appropriate.