

1 **Resolution No. 3737**

2
3 A RESOLUTION of the Port of Seattle Commission establishing 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; and
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 and
17 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's efforts and programs as a result of Resolutions 3506 and
34 3618 have increased small business participation but have not increased WMBE participation; and
35

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

41 WHEREAS, current data and the 2014 disparity study show 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 WMBEs 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
49

50 WHEREAS, the Port of Seattle values a diverse workforce and has engaged in improving
51 diversity and inclusion focused on race and expects to develop a new equity process tool
52 designed to integrate explicit consideration of racial inequities and identification of
53 interventions for use in policy, program, and budget planning and implementation; and
54

55 WHEREAS, the Port of Seattle is committed to its values of conducting business with the
56 highest ethical standards and our business practices shall reflect integrity, accountability,
57 honesty, fairness and respect at all levels;
58

59 NOW, THEREFORE, BE IT RESOLVED by the Port of Seattle Commission as follows:
60

61 SECTION 1. Resolution 3506 adopted May 27, 2003, is hereby repealed.
62

63 SECTION 2. Transition from Resolution 3618. The Executive Director may continue to operate
64 under Resolution No. 3618, as needed, to allow for transition to Resolution 3737, until
65 September 1, 2018, at which time Resolution No. 3618 will be repealed and replaced with
66 Resolution 3737.
67

68 SECTION 3. The Diversity in Contracting Policy Directive as shown in Exhibit A is hereby
69 established.
70

71 SECTION 4. This policy directive shall be labeled and catalogued as appropriate, together with
72 subsequent policy directives, and shall be made readily available for use by Port staff and
73 members of the public as a governance document of the Port of Seattle.
74

75 ADOPTED by the Port Commission of the Port of Seattle at a duly noticed meeting
76 thereof, held this 9th day of January, 2018, and duly authenticated in open session by
77 the signatures of the Commissioners voting in favor thereof and the seal of the Commission.
78

79 

RYAN CALKINS

80 

COURTNEY GREGOIRE

81 

STEPHANIE BOWMAN

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PETER STEINBRUECK

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FRED FELLEMAN

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88
Port of Seattle Commissioners

89 EXHIBIT A

90 Diversity in Contracting Policy Directive

91
92 **SECTION 1. Purpose.**

93
94 The Port finds that minority and women businesses are under-represented and have been
95 under-utilized on Port contracts. The purpose of this policy directive is to provide the maximum
96 practicable opportunity for increased participation by minority and women owned and
97 controlled businesses in Port contracting for public works, consulting services, supplies,
98 material, equipment, and other services to create the opportunity to leverage Port spend to
99 increase WMBE utilization.

100
101 **SECTION 2. Definitions.**

102
103 For the purposes of this chapter:

104
105 “Affirmative efforts” means documented reasonable attempts in good faith to contract with
106 women and minority businesses.

107
108 “Availability” or “available” as used in this chapter means a business that is interested in and
109 capable of performing the work within the time frame required and to the quality specified in
110 the solicitation and contract.

111
112 “Capability” or “capable” as used in this section means that a business appears able to perform
113 a commercially useful function in performance of the work.

114
115 “Commercially useful function” means the performance of real and actual services in the
116 discharge of any contractual endeavor.

117
118 “Contract” means an agreement for public works, consulting services, supplies, material,
119 equipment, or other services.

120
121 “Contract awarding authority” means any individual, office, or division that is receiving the
122 benefit of the contract.

123
124 “Contractor” means a business that has a contract with the Port.

125
126 “Division” means any Port of Seattle organization structure that has a director that reports to
127 the Executive Director.

128
129 “Women or minority business” (WMBE) means a business that is at least 51 percent owned and
130 controlled by women and/or minority (including, but not limited to African Americans, Native
131 Americans, Asians, and Hispanics) group members.

133 “Central database” means an electronic database that collects, aggregates, and tracks monthly
134 Port-wide, division, and department-level utilization of small business, women and minority
135 owned business, and other classifications across various categories and contract types and
136 promotes transparency for the public.

137
138 “Relevant demographic data” is defined as, but not limited to, Asian-Pacific Americans, Black
139 Americans, Hispanic Americans, Native Americans, Asian, and Women, and other characteristic
140 information related to a business owner’s sexual orientation, sex/gender, race, ethnicity, or
141 veteran status as self-reported and/or certified by another government entity, as deemed
142 necessary or relevant to eliminating disparity in Port contracting.

143
144 “Utilization” is defined as both the percent of contracting dollars paid to WMBE firms as well as
145 the number of WMBE firms under contract.

146
147 **SECTION 3. Scope and Applicability.**

148
149 This policy shall apply to all contracts and other activities at the Port, including construction and
150 consulting contracts, purchased goods, and services.

151
152 **SECTION 4. Responsibilities.**

153
154 The Executive Director shall pursue the Century Agenda goal to increase WMBE utilization in all
155 Port contracts and shall:

- 156
157 A. Achieve the Century Agenda goal to triple the number of WMBE firms that contract with the
158 Port and increase to 15 percent the percentage of dollars spent on WMBE contracts, within
159 five years of the Diversity in Contracting Program implementation;
160
161 B. Within 120 days of passage of this policy directive, develop a Diversity in Contracting
162 Program that identifies affirmative efforts to afford women and minority businesses the
163 maximum practicable opportunity to meaningfully participate on Port contracts and to
164 achieve the Port-wide goals;
165
166 C. Incorporate these WMBE goals into the Port’s Long Range Plan to the fullest extent
167 reasonable, including incorporation into Long Range Plan scorecards, reports, and Long
168 Range Plan updates. Further, the Executive Director shall prepare and publish an annual
169 report each year titled Diversity in Contracting Annual Report;
170
171 D. Improve inclusion and outreach to sustain and improve WMBE participation and to reduce
172 disparity in Port contracting;
173
174 E. Take affirmative efforts to assure equality of contracting opportunity through the
175 development and application of Inclusion Plans or other tools as necessary; and
176

177 F. Expand opportunities for WMBE firms across Port functions, wherever practicable.

178

179 **SECTION 5. Policy.**

180

181 A. The Diversity in Contracting Program shall include:

182

183 (1) Responsibilities, policies, practices, and processes that can change the Port procurement
184 and contracting processes and provide a more receptive environment for the utilization
185 of WMBE firms, and to ensure that businesses and contractors of all tiers working on
186 Port contracts and subcontracts utilize WMBE firms, wherever feasible or as required.

187

188 (2) Development of a standard procedure for the Port-wide WMBE goal setting, and
189 collection and reporting of relevant demographic data to be stored in a central
190 database.

191

192 (3) Identify categories of contracts that will require WMBE inclusion plans and other tools
193 that will be applied to other categories of contracts Port-wide.

194

195 (4) Clear lines of responsibility and accountability for implementation of the WMBE
196 program and a designated WMBE liaison for each division.

197

198 (5) Make WMBE goal setting and affirmative implementation efforts part of the annual
199 performance evaluation for each Port division director and their staff and require
200 standardized WMBE program training, implementation, and coordination for all division
201 leaders and their WMBE representatives.

202

203 B. The Diversity in Contracting Annual Plan shall include:

204

205 (1) Specific measures the contract-awarding authority will undertake to increase the
206 utilization of WMBEs and to reduce disparity in Port contracting; and

207

208 (2) Specific goals by division for WMBE utilization:

209

210 (a) Each Port division will review future procurements to identify available firms on
211 upcoming contracts to create a utilization goal that is justifiable, bold, and
212 challenging.

213

214 (b) Construction goals, other than small works, based on historic utilization plus two
215 percent, until such time that a disparity study or other valid internal data can
216 demonstrate a reasonable level of utilization.

217

218 C. To improve inclusion and outreach to sustain and improve WMBE participation and to
219 reduce disparity in Port contracting, the Port shall:

220

- 221 (1) Support training and assistance to Port staff to increase participation in outreach and to
222 learn about the internal and external resources available to include WMBE firms in their
223 procurement and contracting;
224
- 225 (2) Improve and expand technical assistance, including WMBE certification, business
226 development, training, and mentoring programs for WMBE firms to enhance bidding
227 expertise and promote greater coordination with advocacy organizations, businesses,
228 individuals, and public agencies and other Port departments;
229
- 230 (3) Create opportunities for members of the contracting and vendor community, Port, and
231 other stakeholders to work collaboratively on recommendations for how the Port can
232 more effectively use the directives in this policy directive;
233
- 234 (4) Assist contractors desiring to bid on Port covered contracts to comply with the
235 affirmative efforts provisions for such contract, and offer information as to
236 organizations and agencies available to assist such contractor in recruiting, mentoring,
237 training, or otherwise preparing potential subcontractors; and
238
- 239 (5) Cooperate and establish formal and/or informal partnerships and mutual cooperation
240 with the Office of Minority and Women’s Business Enterprises and other public agencies
241 to carry out the purposes of this policy directive, as needed.
242

243 D. Affirmative efforts to assure equality of contracting opportunity required:
244

- 245 (1) Develop procurement tools, such as WMBE inclusion plans, and require bidders and
246 proposers to comply with the WMBE solicitation requirement in order to sustain and
247 improve participation of WMBE in Port covered contracts;
248
- 249 (2) Prepare and require that Port covered contracts include specifications pertaining to
250 equal opportunity affirmative efforts to assure equality in contracting opportunity, and
251 goals for subcontracting to women and minority businesses. Any goals established
252 under this chapter shall be reasonably achievable; however, no utilization requirements
253 shall be a condition of contracting, except as may be allowed by RCW 49.60.400;
254
- 255 (3) Identify and implement a Port-wide method to regularly monitor and measure the Port
256 WMBE program and attainment of the goals by contractors;
257
- 258 (4) May establish aspirational goals for the participation of women and minority businesses
259 in a particular Port contract on a case-by-case basis;
260
- 261 (5) Work closely with other divisions and departments to ensure all policies, practices, and
262 processes are consistent and complementary and make it easier for WMBE firms to
263 pursue Port contracts;
264

265 (6) Define, implement, and monitor appropriate processes and procedures to ensure
266 prompt payments and change order processing to address timely payment of
267 contractors, suppliers, and subcontractors at all tiers. Review and recommend potential
268 for including prompt pay in performance goals.
269

270 E. Affirmative efforts in subcontracting:
271

272 (1) All contractors, including WMBE firms, shall actively solicit bids for subcontracts to
273 qualified, available, and capable WMBE to perform commercially useful functions;
274

275 (2) Contractors shall consider the grant of subcontracts to women and minority bidders on
276 the basis of substantially equal proposals in the light most favorable to women and
277 minority businesses;
278

279 (3) At the request of the relevant Port department, when inclusion plans are required,
280 contractors shall furnish evidence of the contractor's compliance with these
281 requirements of women and minority solicitation and will submit evidence of
282 compliance with this section as part of any bid. Contractors shall provide records
283 necessary to document affirmative efforts to subcontract with women and minority
284 businesses on Port contracts;
285

286 (4) Compliance with all requirements and past performance under this policy directive may
287 be included in the evaluation of future procurements; and
288

289 (5) In applying the provisions of this Policy Directive to contracts funded in whole or in part
290 with federal funds and subject to 49 CFR Part 23, Subpart D, regarding Airport
291 Concessions Disadvantaged Business Enterprises (ACDBE) or 49 CFR 26, Subpart C,
292 regarding Disadvantaged Business Enterprises (DBE), references to Women and Minority
293 Businesses shall also include federally recognized ACDBEs or DBEs. In the event of a
294 conflict between the provisions of this chapter, or the rules implementing this policy
295 directive, and the requirements of 49 CFR 26, Subpart C, or 49 CFR Part 23, Subpart D, or
296 any other superseding applicable federal statute or regulation, the provisions of the
297 federal statute or regulation shall control.
298

299 F. Expanding Opportunity.
300

301 (1) The Port shall review and recommend how to expand opportunities for WMBE firms in
302 other Port enterprise opportunities, for example real estate leases, to encourage and
303 promote access to Port facilities by September 1, 2018.
304

305 (2) The Port shall develop a baseline utilization number for veteran owned businesses and
306 propose a reasonable Port-wide goal and division goals to the Commission for inclusion
307 in the Century Agenda by September 1, 2019.
308

309 **SECTION 6. Program Evaluation.**

310

311 A. Benchmarks and metrics to evaluate the Diversity in Contracting Program shall include:

312

313 (1) Incorporation of these WMBE goals into the Port's Long Range Plan to the fullest extent
314 reasonable, including incorporation into Long Range Plan scorecards, reports, and Long
315 Range Plan updates.

316

317 (2) Specific measures the contract awarding authority will undertake to increase the
318 participation of women and minority businesses and to reduce disparities, including the
319 number of events or outreach activities conducted to ensure responsiveness to bid
320 opportunities.

321

322 (3) Progress towards specific division WMBE utilization goals, including the number of
323 opportunities a division has available, the goals established for those opportunities and
324 the actual utilization, including periodic review of disparity study results to determine
325 reasonableness of goals.

326

327 (4) Data reporting using the standard procedure identified in the WMBE program for the
328 Port-wide collection and reporting of relevant demographic data including percent of
329 spend, number of businesses, and type of procurements.

330

331 (5) Preparation and publication of an annual report titled Diversity in Contracting Annual
332 Report.

333

334 B. The Internal Audit Director shall include the Diversity in Contracting Program in Internal
335 Audit Department's 2019 work plan to determine adherence to this policy and include in
336 future years as the Commission Audit Committee deems appropriate.

337

338 **SECTION 7. Fiscal Implications.**

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340 Fiscal implications shall be reviewed by the Executive Director annually, at a minimum, to ensure
341 the implementation of the policy directive is adequately resourced and shall submit a budget
342 request as appropriate.

