

## **RESOLUTION NO. 3618**

**A RESOLUTION** of the Port Commission of the Port of Seattle establishing a program to develop mutually advantageous business relationships with small businesses including those owned and operated by people of color, women, people with disabilities, veterans and the socio-economically disadvantaged.

**WHEREAS**, nationally, 99.7% of all employer firms are small businesses and have generated 60-80% of net new jobs annually over the last decade (US Department of Commerce, 2007); and

**WHEREAS**, King County is home to nearly 60,000 small businesses and about 57,000 or 96% are businesses with less than 100 employees (Seattle Foundation, 2006); and

**WHEREAS**, in 2007, the Port of Seattle (“Port”) spent \$53.6 million on service and construction contracts with small businesses located within the state, and these purchases from small businesses supported 366 jobs within the state with a total salary and wage impact of \$16.9 million (Port Economic Impact Study); and

**WHEREAS**, within King, Kitsap, Pierce, Snohomish Counties, there are approximately 31,600 minority owned businesses, generating \$8.8 billion in sales, and employing 62,300 people (Prosperity Partnership, 2008); and

**WHEREAS**, while the number of minority-owned small businesses is growing at a faster rate than Caucasian-owned small businesses, minority-owned businesses earns one third of the average Caucasian-owned business (University of Washington Minority Small Business Survey, 2008); and

**WHEREAS**, according to the U.S. Small Business Administration (“SBA”) between 1997 and 2006, the number of women-owned firms grew by nearly two times the rate of all U.S. privately-held firms; and

**WHEREAS**, minority and women-owned businesses did not meet expected growth in employee size in the years since the passage of I-200 compared with other states with affirmative procurement programs, according to a five-state study by INSIGHT Center for Community Economic Development (2007); and

**WHEREAS**, it is in the Port’s economic interest and social responsibility to encourage competition within the supply chain to increase the pool of qualified vendors; and

**WHEREAS**, the Port established the Office of Social Responsibility (“OSR”) in 2008, with a main focus on assisting small businesses and to engage community and stakeholders to inspire commitment and assure that all Port business actions are conducted within the framework of socially responsible values such as fairness, inclusion, openness, and economic development; and

**WHEREAS**, the Port is committed to further increase the utilization of small business through enhanced transparency and accountability and to protect equal opportunity in all areas of business;

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

## **Section 1.      SMALL BUSINESS PROGRAM PURPOSE**

It is within the public purpose for all port districts to engage in economic development programs (RCW 53.08.245). To the extent not expressly granted, we believe the Port's authority to pursue its Small Business Program, and to include the notion of social equity as one of the cornerstones of the Port of Seattle's mission, may be fairly implied in or incident to the powers expressly granted.

The intent of the Small Business Program ("Program") is to provide guidance and a formal method for the Port, and its contractors, to expand opportunities and use small businesses as prime contractors, second-tier contractors, and suppliers, as appropriate, across all Port business. The Program shall be conducted in compliance with state statutes, federal and grant requirements, and shall be consistent with all other Port policies and procedures.

The Program further seeks to encourage competition within the supply chain and to increase the pool of qualified small businesses through expanding outreach and opportunity to a broader pool of small firms and to support initiatives and programs that will enhance growth and strengthen capacity of small firms.

All competitive processes shall be conducted in a manner that is consistent, fair, transparent and conducive for small business utilization, including minority- and women-owned business enterprises. In addition, the Port is committed to diversity and strongly encourages the use of qualified small businesses to include socio-economically disadvantaged and diverse groups such as persons with disabilities, veteran, veteran service disabled, and lesbian, gay, bisexual, transgender (LGBT)-owned businesses.

## **Section 2.      SCOPE**

This Program applies to procurement in: (i) goods and services, (ii) major construction and small works, and (iii) professional and personal services. Objectives and elements of the Program shall include, but is not limited to:

- a. Increase opportunity and utilization of small businesses;
- b. Identify, and where practical, reduce barriers to equal participation by small businesses in all Port opportunities and contracts;
- c. Develop comprehensive outreach and communication strategies to provide small businesses an opportunity to participate in all Port opportunities and contracts;
- d. Engage and partner with other public and private entities to enhance resources and gather best practices;
- e. Establish means for stakeholder and customer input, both internal to the Port and external in the community;
- f. Develop, implement, and operate a system of data collection for the Program to include all tiers of contracting;
- g. Investigate complaints of violations of the Program with the assistance of the involved parties;
- h. Maintain and regularly update Port rosters.

### **Section 3.      DEFINITIONS**

- a. Small Business Enterprise (SBE) – Small businesses that the Port deems certified by a government entity or entity recognized by the Port that falls within an appropriate size standard and personal net worth cap as determined by the Port Chief Executive Officer (CEO).
- b. Minority Business Enterprise (MBE) – Businesses that are certified as a Minority Business Enterprise as defined by the Washington State Office of Minority and Women Enterprises (OMWBE) as set forth in WAC 326-02-030. "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the office. The minority owners must be United States citizens or lawful permanent residents.
- c. Women Business Enterprise (WBE) – Businesses that are certified as a Woman Business Enterprise as defined by OMWBE; "women's business enterprise," "women-owned business enterprise," or "WBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the office. The women owners must be United States citizens or lawful permanent residents.
- d. Non-Certified Minority- and Women-Owned Business – Non-certified or 'self-identified' firms shall not be officially counted in the Program, including those which have 'graduated' from OMWBE's program or which have not secured certification. The Port may consider identifying or tracking non-certified participation in Port contracts. The Port shall not view non-certified status as a barrier for those firms seeking opportunities with the Port.
- e. Disadvantaged Business Enterprise (DBE) – DBEs are for-profit small businesses where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged and other individuals can qualify as socially and economically disadvantaged on a case-by-case basis. DBEs must receive DBE certification from the state Uniform Certification Program (UCP), OMWBE.
- f. Small Business Certification – A document or process that certifies a business as a SBE by a government or entity recognized by the Port for verification of average annual revenues and personal net worth. MBE, WBE, DBE require certification through WA State OMWBE; the Port may recognize other national certifications for identification purposes only.
- g. Prime Contractors – Contractually responsible to the Port for all of the work under the prime contract, whether or not the prime actually performs the work.
- h. Second-Tier Contractors – Can be any tier below prime contractor and is contractually responsible to the Prime Contractor to perform a specific task as part of the overall prime contract.

### **Section 4.      SMALL BUSINESS SIZE STANDARD AND PERSONAL NET WORTH**

Many of the national SBA size limits are too large and do not accurately reflect the region's small business size ranges. The Commission authorizes the CEO to establish a small business revenue size standard along with a limit on personal net worth that is smaller than the SBA size standards as set forth in Title 13, Code of Federal Regulations, Part 121. Size standards and personal net worth may be adjusted over time to meet the needs of the Port.

## **Section 5. POLICIES RELATING TO PROCUREMENT**

OSR shall work with Divisions at the acquisition planning stage to establish appropriate small business strategies for competitive Port procurements including goods and services, professional and personal services, major construction, and small works, as appropriate. OSR shall also work with the Divisions to determine the appropriate small business strategy and establish procurement goals and/or utilization requirements.

### **Pricing Incentive for Goods and Purchased Services:**

The CEO may develop a policy to give a pricing incentive or an “evaluation credit” and/or award a contract to a qualified small business that is within a reasonable percentage of the fair market range of the lowest price submitted by a non-small business bidder. Depending on the availability of the qualified small businesses and other factors, the percentage can be adjusted as necessary. This incentive shall apply primarily to goods and services.

### **Small Business Utilization Requirement:**

The CEO shall be authorized to establish pass-fail (mandatory) small business utilization requirements on major construction projects, small works, and professional and personal service contracts as appropriate. Such requirement shall be a matter of responsibility, not bid responsiveness, and specific conditions and parameters for use of this requirement shall be defined.

### **Aspirational (Voluntary) Goals for Certified Minority- and Women - Owned Business Enterprises:**

The CEO shall be authorized to establish aspirational minority- and women - owned business enterprise goals on major construction projects, professional and personal service contracts, and goods and services as appropriate. There shall be neither benefit nor penalty that is attached to the success or failure to reach aspirational goals.

### **Evaluation Points for Utilization of Small Businesses:**

The Port may make evaluation points available for proposals that commit to use qualified small businesses to perform work or meet small business goals and may apply to goods and services and personal and professional services.

## **Section 6. ROLES AND RESPONSIBILITIES**

The Port shall make reasonable effort to provide small businesses an equal opportunity to compete for goods and services, personal and professional services, and construction as it relates to all areas and departments of the Port.

- a. CEO - The CEO, or his/her respective designee, shall be authorized to execute, deliver, perform, administer, modify and enforce the Small Business Program, to increase opportunities and utilization of small businesses. The CEO may establish additional, or amend existing procedures and goals to further the utilization of Small Businesses and shall provide Commission notification of any major change. The CEO may direct Port staff to develop and implement initiatives when it is in the Port’s best interest to expand opportunities for small businesses.
- b. Senior Executive Team – All direct reports to the CEO shall take necessary steps to educate all staff about policies and procedures related to the Program and ensure compliance through accountability measures.

- c. Office of Social Responsibility (“OSR”) – The CEO shall designate OSR to carry out the purpose of the Small Business Program, and shall be the centralized department to manage, execute, and monitor the Program. OSR shall take the lead in setting annual Port-wide small business participation goals and working with Divisions to set division-level goals and conducting education and training for Port managers and staff.
- d. Central Procurement Office (“CPO”) – The CPO shall work collaboratively with OSR in developing and implementing specific procedures to carry out the intent of the Program.
- e. Capital Development Division (“CDD”) – The CDD, which includes CPO, Engineering, Port Construction Services, Aviation Project Management, and Seaport Project Management, shall work collaboratively with OSR to promote the Small Business Program in Port procurement activities related to public work projects.
- f. Divisions: All Divisions shall work collaboratively with OSR to promote small business program in all Port procurement activities. The Divisions and OSR shall work together to identify specific project small business goals and/or utilization requirements and voluntary M/WBE goals.

## **Section 7 BUSINESS DEVELOPMENT ASSISTANCE**

The Port will offer and/or support business development and technical assistance through workshops, seminars, Port initiatives, and may collaborate with community-based organizations, educational institutions, business assistance and professional development programs.

## **Section 8. MONITORING AND REPORTING**

- a. Annual Goal Setting: OSR shall assist Divisions (including all departments) in establishing small business annual targets and goals, and shall review, propose, and track annual Port-wide targets and goals. OSR shall report to the CEO on the progress of Divisions in meeting annual goals.
- b. Monitoring and Reporting: The CEO shall require Port staff to establish the necessary tools to monitor and report activities associated with the Program. Port Divisions shall provide reports and respond to surveys on both qualitative and quantitative aspects of the Program, as determined by OSR. OSR shall provide reports to the CEO and Commission on the Program’s progress and results on an annual basis, which shall include information on outreach and other programmatic and partnering efforts.
- c. Tracking: It is the Port’s desire to track certified SBE, MBE, WBE, and DBE on prime and sub-tier levels. Currently sub-tier contracting is not being tracked on non-major construction procurements and contracts. Only transactions from firms that have been certified by Port-recognized agencies or OMWBE shall be counted towards small business utilization goals. The Port may recognize non-certified minority- and women-owned businesses, such as those who have graduated from OMWBE’s program, to fully capture minority- and women-business utilization. The Port also has an interest in tracking participation by ethnic group to assist in establishing baseline information on future disparity and availability studies that may be required.
- d. Rosters: The Port seeks to streamline and standardize its Rosters to assist contractors who are interested in doing business with the Port. All businesses, especially small businesses, benefit from a more consistent process across public agencies.

**Section 9.      EDUCATION AND TRAINING**

All Port directors, managers and procurement staff shall participate in education and training as required to implement the Program.

**Section 10.      PERFORMANCE MEASUREMENT**

The CEO shall evaluate each Senior Executive's performance in meeting the goals of the small business program on an annual basis or more frequently.

**Section 11:      FINANCIAL IMPLICATIONS**

The financial impacts of the proposed Program are not fully known at this time. As components of the Program are reviewed and financial costs assessed, this information will be evaluated and may impact the timing of the Program's full implementation.

**ADOPTED** by the Port Commission of the Port of Seattle this \_\_\_\_\_ day of \_\_\_\_\_, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.

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Port Commission