

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA – ACTION ITEM

Item No. 6a
Date of Meeting January 12, 2010

DATE: January 4, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Ralph Graves, Managing Director, Capital Development Division
 Elaine I. Ko, Director, Office of Social Responsibility

SUBJECT: Resolution No. 3618: First Reading, Small Contractors and Suppliers (SCS)
 Program

REQUESTED ACTION:

First Reading of Resolution No. 3618 - Small Contractors and Suppliers (SCS) Program.

SYNOPSIS:

On January 5, 2010 Port staff presented a staff briefing on Resolution No. 3618 which outlined the components of the Small Contractors and Suppliers (SCS) Program. The Program contained in the Resolution will assist the utilization of small businesses in the overall economy of the region, encourage competition within the supply chain and increase the pool of qualified small businesses through expanding outreach and opportunity to a broader pool of small firms. Public testimony was given in support of the Resolution.

BACKGROUND AND STRATEGIC OBJECTIVES:

The Small Business Initiative was established in 2003 with the adoption of Resolution No. 3506, to provide guidance in the solicitation and use of small businesses (including minority and women business enterprises) as suppliers, contractors and consultants throughout the Port. There was a 10% small business goal on all goods and services and the CEO was to establish annual targets for the use of small businesses. This initiative was created as a race and gender neutral program, due to the passage of Initiative 200 in 1999.

National and local data support the need for a small business program. In 2007, the Port of Seattle (“Port”) spent \$53.6 million on service and construction contracts with small businesses located within the state. 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).

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Nationally, 99.7% of all employer firms are small businesses and have generated 60-80% of new jobs annually over the last decade (US Department of Commerce, 2007); King County is home to nearly 60,000 small businesses and about 57,000 (96%) are businesses with less than 100 employees (Seattle Foundation, 2006). 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).

The number of minority-owned small businesses is growing at a faster rate than Caucasian-owned small businesses, and the number of women-owned firms grew by nearly two times the rate of all U.S. privately-held firms, according to the U.S. Small Business Administration (“SBA”) between 1997 and 2006.

The objective of the Program is to promote the utilization of small businesses in the overall economy of the region. The Program further seeks to support the Port’s economic interest and social responsibility 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. The Office of Social Responsibility (OSR) is engaged in and supports many efforts to enhance growth and capacity of local small businesses.

Specific goals of the SCS Program are:

- a. Increase opportunity and utilization of SCS firms in Port procurements;
- b. Identify and reduce barriers to equal participation by SCS firms in all Port procurements and contracts;
- c. Develop comprehensive outreach and communication strategies to provide SCS firms an opportunity to participate in Port procurements and contracts;
- d. Engage and partner with other public and private entities to enhance resources and gather best practices; and
- e. Develop, implement, and operate a system of data collection for the Program;

Key definitions related to this Program are found in the Resolution.

Establishing a Small Business Size Standard and Personal Net Worth Cap

Small businesses represent the majority of businesses operating in Washington State. According to “Small Business Survival: A Joint Report to the Governor” (2007), about 93% of businesses that register to pay taxes in Washington meet the definition of a small business, e.g., these firms employ 20 or fewer workers, are solely operated by the owner, and earn three million dollars or less in annual gross income.

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The SBA sets a size standard for small businesses that varies depending on the firm's North American Industry Classification System (NAICS) code, expressed in either millions of dollars or number of employees. For example, some size standards include: General & Heavy Construction: \$33.5M; Specialty Trade Contractors: \$14M; Truck Transportation: \$25.5M; Business and Professional Services: \$7M; Architectural, Engineering, Surveying, and Mapping: \$4.5M; and most commonly purchased goods and services: \$7M-\$18.5M. Given the wide range of standards, a one-size-fits-all standard for all businesses that contract with the Port would be impractical.

In addition, the national SBA size standard does not accurately reflect the size range of local small businesses because the size ranges for local businesses are smaller locally than they are nationally. For this reason, staff recommends that the Commission establish a maximum average revenue size standard that is 50% of the SBA size standards per NAICS code and establish a personal net worth cap of \$750,000 for the small business owner. The gross annual business revenues would be based on the average revenue of the small business over a three-year period.

In 2009, King County had over seven hundred businesses in their Small Contractor Supplier (SCS) certification program. Current discussions with King County staff indicate that both the Port and the County would like to develop a "reciprocity agreement" where each entity would recognize a small business certification conferred by the other entity. This collaborative approach offers consistency for small businesses in the community and reduces administrative expenses for both entities. Under this approach, OSR would administer a Port SCS certification program and would implement the personal net worth standard. This certification would begin with the implementation of the Port's new one-portal entry and enhanced roster system projected for completion in early 2011. An initial review of 2006 Port construction contractors indicated there were some firms that would no longer qualify as a SCS firm under this new size standard. Port staff will brief the Commission prior to implementation of the new certification program.

PROGRAM DESCRIPTION:

Price Incentive in Goods and Purchased Services:

A price incentive tool is being implemented in King County government to increase competitiveness of its certified SCS firms in goods and services. This tool is used in price bids wherein the small business is awarded the contract if its bid falls within a 5% range of the lowest non-small business bidder. The Port will consider a similar tool as it goes forth with updated goods and purchased services procedures.

Potential Costs: King County's Office of Business Relations and Economic Development (BRED) conducted a price preference analysis, canvassed both the public and the private sector, and found the competitive factor to be 5%. This competitive factor means that an owner was willing to invest up to 5% toward supporting small businesses and still receive the goods or services. King County estimated that in 2005, if it paid up to 5% more for goods and services provided by small businesses, these goods and services would cost up to \$70,000 more. This incentive was implemented in 2008.

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In order to indicate the possible costs to the Port of implementing a 5% incentive, staff conducted an analysis of the potential financial impact by examining the sixty-eight goods and services bids over the past three years (2006-2008). Of these sixty-eight bids, fifteen bids contained opportunities for small business participation. Of those fifteen bids, eleven bids had price as the only determining criterion. Port staff factored in an additional 5% onto the cost of those eleven price-based bids to give some indication of the potential expense to the Port of utilizing this tool. The resulting total was \$43,133.

Staff proposes that the pricing incentive be implemented in the first half of 2011, after the Port roster system has been updated and a new small business certification is in place. Port staff will track the impact of the pricing incentive and report back to the Commission.

Small Contractors and Suppliers Utilization Requirement:

This tool would allow use of a pass-fail requirement on major construction, professional and personal service, and purchased service contracts. If a firm does not meet the SCS utilization requirement, then the bid or proposal will be rejected. This requirement will be used on a case-by-case basis after careful review of each specific procurement, including whether there are sufficient subcontracting opportunities and whether sufficient qualified SCS firms are available in the specific industry or category. The use of this requirement will be made as part of the acquisition planning process for each major construction project.

Evaluation Points for Utilization of Small Contractors and Suppliers:

In a proposal evaluation selection process (as opposed to low bid), the Port may establish a SCS goal and use evaluation criterion to evaluate meeting the goal. This tool would allow the Port to use evaluation points for the participation of SCS as a factor in the award of a contract. This evaluation criterion will be developed in compliance with existing Port procurement procedures. This tool may apply to goods and purchased services, and professional and personal services.

Utilization Requirement for Small Businesses in Personal and Professional Services (“Category I”) Procurements

Port staff made a review of Port procurements of \$50,000 or less for 2008 and found that many procurements were awarded to small businesses. Smaller contracts present an ideal opportunity for small businesses to gain experience and build their business capacity. Staff recommends that small businesses be utilized for procurements less than \$50,000 if at least three qualified and interested small businesses are present on the consultant roster. If fewer than three qualified and interested small businesses appear on the consultant roster, there will be no small business requirement for a particular procurement.

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Implementation Roles and Responsibilities

All Port personnel will make reasonable efforts to increase the opportunity for small businesses to compete for opportunities with the Port. This Resolution explicitly outlines the significant roles responsible for the implementation and success of the Program. Specific roles are included for the Chief Executive Officer, Senior Executive Team, OSR, Central Procurement Office and Capital Development Division; however, all departments must participate fully if the Program is to be successful.

Monitoring and Reporting

Goal Setting:

Resolution No. 3506 states an annual Port goal of at least \$20 million or 10% of all goods and services from qualified small businesses beginning in year 2003. This Resolution No. 3618 does not state a specific Port-wide percentage or spending goal. OSR will take the lead in setting annual Port-wide small business participation goals and work with Port staff to set division and department-level goals. This approach will allow flexibility to adjust targets to match market trends, previous Port small business participation levels, and other factors.

Voluntary Goals for Women and Minority-Owned Business (M/WBE):

Because the SCS Program does not specifically address M/WBEs, the Port will implement voluntary M/WBE participation goals. In accordance with Initiative 200 (RCW 49.60.400), the Port shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public contracting. Initiative 200 prohibits the Port from awarding contracts based on race or gender preference. Therefore, if the Port establishes such goals for public contracting, these goals shall be voluntary goals only for certified M/WBE.

This Resolution does not prohibit the Port from tracking of M/WBE businesses that must be undertaken to establish or maintain eligibility for any federal program and thus avoid the loss of federal funds to the Port. Initiative 200 exempts from its provisions federally funded projects, such as those with the Environmental Protection Agency, Department of Homeland Security, and the U.S. Department of Transportation, including the Federal Aviation Administration, and the Disadvantaged Business Enterprise (DBE) program.

Studies show that Initiative 200 has had an impact on certified M/WBE companies. A study “The Impact of State Affirmative Action Procurement Policies on Minority and Women-Owned Businesses in Five States” indicated that M/WBEs did not grow as fast as similar businesses in other states when affirmative procurement policies ended or were interrupted such as in late 1998 when I-200 passed, compared with other states with affirmative procurement programs (*The Insight Center for Community Economic Development, 2007, www.insightcced.org*).

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In Washington State, the income for minority-owned businesses was only one third of Caucasian-owned business (University of Washington Minority Small Business Survey, 2008). In the study “State Policies and Programs for Minority and Women Business Development” (Insight, Dec. 14, 2007), WA State discretionary spending declined from 5.7% MBE and 5.2% WBE in 1997-98 to a low of 1% MBE and 0.7% WBE in 2004.

In 2007, small businesses accounted for 10% of all the Port spending, including 2.1% to MBE businesses, and 1.3% to WBE businesses. In 2008, small business accounted for 11.6% of all Port spending, including 2.5% on MBE businesses, and 1.4% on WBE businesses.

OSR may establish voluntary M/WBE business goals on major construction, professional, and personal service contracts on a project-by-project basis as appropriate. There will be no benefit or penalty to bidders or proposers if the voluntary M/WBE goals are not met.

Tracking:

The Port currently tracks self-identified small businesses and certified MBE and WBE participation on the prime and sub-contractor level for major construction projects, and tracks prime contractors only in professional/personal services and good/purchased services. On new procurements only beginning in 2010, OSR is proposing to track sub-contractor participation in personal/professional services and goods/purchased services. OSR will have lead responsibility for this sub-contractor tracking and will utilize existing staff resources to accomplish this task. In the future, the OSR is interested in tracking SCS participation by ethnic group as this will better focus outreach efforts.

The Port seeks to promote diversity and work with other socio-economically disadvantaged and diverse businesses such as veteran, veteran service disabled, persons with disabilities, and (LGBTBE) owned businesses. There shall be no voluntary goals for participation or tracking of these categories although the information may be included on roster applications for identification purposes only and to better focus outreach efforts.

Financial Implications

The primary cost to administer this Program will be OSR staff and resources. There does not appear to be a need for additional staff or budget to administer the Program at this time.

TRIPLE BOTTOM LINE:

The Port’s SCS Program supports economic development as increased opportunity for small businesses directly support many jobs within the region and contributes to our local tax base. The Program supports social responsibility and social equity in the community as small businesses are able to more fully participate in the varied economic activities of the Port. Many small businesses currently participate in the Port’s environmental efforts and continue to seek opportunities with the Port in furthering those efforts.

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ALTERNATIVES CONSIDERED:

1. Retain the current Small Business Initiative established by Resolution No. 3506. In its current form, the Initiative does not provide enough opportunities for small business and does not incorporate the incentives recommended in the proposed Resolution No. 3618. **This is not the recommended alternative.**
2. Adopt Resolution No. 3618 to establish a new Small Contractor and Suppliers Program which strengthens and expands the Small Business Initiative adopted in 2003. This program re-defines the definition of small business, develops tools to encourage SCS participation in Port contracts, monitors and reports on SCS participation and provides for voluntary goals for women and minority-owned business. **This is the recommended alternative.**

PREVIOUS COMMISSION ACTION AND BRIEFINGS:

Commission briefing of Resolution No. 3618 on January 5, 2010.

Commission briefing of Resolution No. 3618 on May 12, 2009.

Adoption of Resolution No. 3506 in 2003.