

RESOLUTION NO. ~~3166~~3668

A RESOLUTION of the Port Commission of the Port of Seattle repealing Resolution ~~Nos. 2818 and 2821~~No. 3166 and restating Port policy relating to ~~prohibition of d~~Discrimination and ~~Affirmative Action in equal e~~Employment in employment and subcontracting by Port of Seattle ~~c~~Contractors, and sSubcontractors, consultants, and suppliers and ~~e~~Establishing pPolicies, pProcedures, and rRequirements for cCompliance ~~Therewith.~~

WHEREAS, ~~the~~ Port of Seattle Commission adopted Resolution ~~Nos. 2818 and 2821~~No. 3166 on July 26, 1994, wherein a policy of commitment to ~~Equal~~Equal Employment Opportunity and Affirmative Action was incorporated and adopted in the exhibit thereto; and

WHEREAS, ~~minor~~ changes to Resolution ~~Nos. 2818 and 2821~~No. 3166 are required to ~~facilitate~~facilitate ~~comply with current state law and~~ administration and clarify Port requirements to ~~contractors, subcontractors, consultants and suppliers~~ doing business with the Port;

NOW THEREFORE, BE IT RESOLVED ~~by~~ the Port Commission of the Port of Seattle that Resolution ~~Nos. 2818 and 2821~~No. 3166 is ~~are~~ repealed; and

BE IT FURTHER RESOLVED ~~that~~ the following statement of policy, procedure and requirements is adopted by the Port Commission for the purpose of establishing uniformity and standardization ~~and confirming compliance~~ with respect to ~~non-discrimination and equal employment opportunity in employment and subcontracting by contractors, subcontractors, consultants and suppliers the affirmative action plans and statements of non-discrimination submitted by contractors~~ bidding and being awarded contracts for work projects of the Port of Seattle.

~~Contractors submitting bids on Port of Seattle work projects, may, in lieu of submission of an affirmative action plan, incorporate Resolution No. 3166 by reference and Certificate of Compliance in any bid proposal submitted to the Port of Seattle where bid specifications or other established procedures require the same.~~

~~SECTION 1: DEFINITIONS.~~

~~1. "Affirmative action" shall mean policies, procedures and programs designed to increase the representation of minorities and women in employment, applications for employment, and employment-related training programs (of minorities and women).~~

~~2. "Contractor" shall mean a person, firm, business, organization, company, consultant, supplier/vendors partnership or corporation contracting to do business with the Port of Seattle on work projects.~~

~~3. "Consultant" shall mean an impartial, objective advisor who renders professional opinions, findings, judgments and recommendations to the Port of Seattle.~~

~~4. "Supplier/Vendor" shall mean and outside supplier of goods and services to the Port of Seattle.~~

~~5. "Discrimination" shall mean differential treatment or pursuit of policies or practices that have a disproportionate impact upon persons due to their creed, race, color, sex, age, sexual orientation, marital status, national origin, or the presence of any sensory, mental or physical handicap, unless such policies or practices are necessary for the performance of the job and no less discriminatory alternatives are possible.~~

~~6. "Minority" shall mean a person who is a citizen, a lawful permanent resident of the United States, and who is black (all persons having origins in any of the black African racial groups not of Hispanic origins); Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race); Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands); American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).~~

~~7. "Underrepresentation" shall mean presence in a contractor's work force of minorities and women in proportionate numbers lower than the goals established for the contractor's business under this Resolution.~~

~~SECTION 2: NON-DISCRIMINATION POLICY.~~

~~No contractor, subcontractor, or union doing business with the Port of Seattle, hereinafter referred to as the Port, or furnishing workers or services in connection therewith, shall discriminate against any person on the basis of race, color, creed, sex, age, sexual orientation, nationality, marital status or the presence of any sensory, mental or physical handicap, (provided that such handicap does not hinder the performance of the job), or Vietnam veteran status, in employment, and no such contractor, subcontractor, or union shall violate any of the terms of Chapter 49.50 of the Revised Code of Washington, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state or local law or regulation regarding non-discrimination in employment.~~

~~It is the basic policy of the Port of Seattle to provide equal opportunity to the users of all Port services and facilities and all contracting entities. Specifically, the Port will not tolerate discrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistleblower status, military affiliation, marital status, workers' compensation use, transgender status, political beliefs, or any other protected status, as guaranteed by local, state and federal laws. The equal opportunity principles in employment and subcontracting described in this policy shall apply to the Port's employees, customers, consultants, contractors, subcontractors, unions and suppliers and vendors to the extent possible as required by law.~~

~~SECTION 3: GOALS AND TIMETABLES; AFFIRMATIVE ACTION REQUIRED.~~

~~1. Goals:~~

~~a. The Port of Seattle shall set goals and timetables for minority and female employment by contractors doing business with the Port, which goals shall be based on appropriate work force, demographic or other relevant data. The setting, monitoring, and evaluating of a contractor's performance in attempting to meet goals shall be based on total manhours of training and employment as a proportion of all manhours to be worked by the contractor's entire work force in that trade on Port of Seattle contracts. The percentage of manhours for minority and female work and training should substantially uniform throughout the length of the contract, for each of the trades. The~~

~~transfer of minority and female employees or trainees from employer to employer and from project to project for the sole purpose of meeting the contractor's or subcontractor's goals(s) shall be a violation of these requirements.~~

~~b. The goals for minority and female labor utilization required of contractors pursuant to this Resolution may be satisfied by the enrollment of minority and female workers in pre-apprenticeship, apprenticeship and journeyman training or similar programs; but such utilization of minority and female labor shall be apportioned as equally as possible to all such programs used or available for use. In order for non-working training hours to be counted in meeting the goals, such trainees must be employed by the contractor during the training period.~~

~~2. Affirmative Action Requirement. Where a contractor's employment statistics demonstrate that minorities and/or women are underrepresented in its work force in relationship to the goals established by the Port, contractors, subcontractors, and unions doing business~~

with the Port or providing workers or services in connection therewith, shall take affirmative action measures, as set out in this Resolution, to increase the representation of minorities and women at locations and establishments where projects and work are being done under contract with the Port. Affirmative action measures shall be based on what is reasonably required to achieve employment goals which will cure underrepresentation. Underrepresentation of minorities and women will not itself be deemed a violation of this Resolution where reasonable affirmative action measures are adopted and are being implemented in good faith.

SECTION 4. MINIMUM AFFIRMATIVE ACTION MEASURES FOR CONSTRUCTION CONTRACTORS.

Contractors shall take specific affirmative action measures to ensure equal employment opportunity. The contractor shall fully document its efforts and shall implement affirmative action measures at least as extensive as the following:

1. Policy Dissemination. Internal and external dissemination of the contractor's equal employment opportunity policy; posting of the nondiscrimination policies and the requirements of this Resolution on company bulletin boards accessible to all employees at each location where work is to be performed by contractors of the Port; notification to each subcontractor, labor union and representative of workers with which there is a collective bargaining agreement, contract, subcontract or understanding, that the contractor is committed to the requirements of Resolution No. 3166; inclusion of the Equal Employment Opportunity policy in all advertisements, policy manuals, company newspapers, annual reports, etc.; at least annual review of these policies with all management personnel, employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, and all minority and female employees of the company.

2. Recruiting. Direct recruitment efforts, both oral and written, to minority, female and community organizations to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs; encourage present minority and female employees to recruit other minority persons and women; where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force; and solicit bids for subcontracts from firms whose employment profile meets the affirmative action goals established under this Resolution.

3. Self-Assessment and Test Validation. Review of all employment policies and procedures, including review of tests, hiring and training practices and policies, performance evaluations, seniority policies and practices, job classifications and job assignments, to assure that they do not discriminate against, or have a discriminatory impact on minorities and women and validation of all tests and other selection requirements where there is an obligation to do so under state or federal law.

4. Record Referrals. Maintain a file of the names and addresses of each minority and female worker referred to him and what action was taken with respect to such referred worker; and if the worker was not employed, the reason therefor. If such worker was not sent to the union hiring hall for referral or if such worker was not employed by the contractor, the contractor's file should document this and the reasons therefor.

5. Notice of Union Non-cooperation. Provide immediate written notification to the Port when the union or unions with which the contractor has a collective bargaining agreement impeded the contractor's efforts to meet its obligations under this Resolution.

6. Training. Develop on the job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor; conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

7. Reporting. Designate a responsible official to monitor all employment related activity to ensure that the company EEO/Affirmative Action policy and the policies of Resolution No. 3166, are being carried out, to submit reports relating to the provisions hereof as may be required by the Port, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status, dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed.

8. Subcontract Bid Requirements. Solicit bids for subcontracts from available minority and women-owned business enterprises in the trades and document and maintain a record of all solicitations of offers from subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

SECTION 5. CONTRACT REQUIREMENTS.

1. Non-Discrimination Policy. The Port's policy as stated in Section 2 of this Resolution above requiring non-discrimination in contractor or subcontractor employment affirmative action and equal opportunity in employment and subcontracting for contractors, subcontractors, consultants, unions and suppliers; shall be included in all Port contracts.

2. Submission of a properly executed contract constitutes a contractual commitment to the terms of this Resolution. Any violation of the specific provisions of this Resolution, and of any term of the Certificate of Compliance required hereby, including reporting requirements, shall be deemed a violation of Resolution No. 3166. Any such violation shall be deemed a breach of a material provision of the contract between the Port and the contractor. Such breach shall be grounds for cancellation, termination, or suspension, in whole or in part, of the contract by the Port, or for invoking the enforcement provisions of

the contract providing for penalties, liquidated damages, or other remedies, and may result in the contractor's ineligibility for further Port contracts PROVIDED, that underrepresentation of minorities and women and the failure or inability of any contractor to achieve

employment goals will not be a violation where that contractor has adopted and pursued a reasonable affirmative action program in compliance with this Resolution. THE BURDEN IS ON THE CONTRACTOR TO DEMONSTRATE ITS COMPLIANCE WITH RESOLUTION NO. 3166.

SECTION 6. PRE-CONTRACT QUALIFICATION.

~~Prior to award of any Port contract, contractors must first be certified by the Port's Contract Compliance Officer or designee as having complied with the provisions of this section. The Port shall not contract with or receive services from an ineligible contractor who does not meet these provisions.~~

~~1. Work Force Data. All contractors per contract requirement shall submit to the Port a total personnel inventory employment profile providing employment data for all employees. The Port may determine the form in which this data shall be provided.~~

~~2. Compliance Affidavits and Union Statements. All contractors shall submit a Certificate of Compliance at the time of bid, in accordance with Bid/Quote/Proposal/Contract requirements in the form provided by the Port, a copy of which is attached and incorporated herein by reference as Addendum 1, 2, or 3. The Certificate of Compliance shall set forth the contractor's specific employment goals, minimum affirmative action requirements, reporting requirements and other such provisions as the Port deems necessary and appropriate for compliance with and enforcement of this Resolution. PROVIDED, that the Certificate of Compliance shall not require actions or goals inconsistent with the standards, guidelines and affirmative action measures set forth in this Resolution No. 3166.~~

~~SECTION 7. SUBCONTRACTORS.~~

~~Per contract requirement, the prime contractor shall be required to submit to the Port, along with its qualifying documents under this Resolution, Certificates of Compliance, and reports from its subcontractors in the same manner as these are required of the prime contractor. Reporting requirements of the prime contractor during the contract period will apply equally to all subcontractors. As a condition of their contract, prime contractors shall be responsible for both the submission of certificates and reports and for requiring their subcontractors and material suppliers to employ racial minorities and women. Any violation of this Resolution or the requirements of the certificate of compliance by the subcontractor will be deemed a violation by the prime contractor and subject to the sanctions and penalties set forth in the contract and this Resolution.~~

~~SECTION 8. COMPLIANCE MONITORING.~~

~~The Executive Director of the Port of Seattle or designee shall monitor compliance with this Resolution, and conduct such investigations as may be necessary to determine compliance on the part of any firm or organization with the requirements of this Resolution. It shall be the duty of each Port of Seattle department responsible for and initiating contracts subject to this Resolution, to assure that contractors are notified of their obligations hereunder. The Director, Diversity Programs or his/her designee shall have the direct responsibility and authority to insure that contractors are properly monitored and that each Port department is in full compliance with the provisions of this Resolution.~~

~~SECTION 9. REPORTING REQUIREMENTS.~~

~~In addition to the Certificate of Compliance, the contractor will, upon request, furnish all information and reports as reasonably required by the Port, to determine compliance with this Resolution. Additionally, contractor will, upon request, permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with the non-discrimination and affirmative action requirements of this Resolution. Unless otherwise required by law, all information, data, or records obtained pursuant to the monitoring and investigation activities authorized hereunder shall be kept confidential by the Port, except that the Port may release such information when requested to do so in cooperation with state and federal agencies administering and enforcing applicable laws against discrimination and in compliance with applicable laws governing public disclosures.~~

~~SECTION 10. SEVERABILITY.~~

~~Should any section, subsection, paragraph, sentence, clause, or phrase of this Resolution, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Resolution.~~

~~SECTION 11. GOALS.~~

~~The goal for minority and female employment with contractors doing business with the Port shall be as established by the Executive Director or designee.~~

~~SECTION 12.~~

~~Addendum 1, 2, 3 (Certificate of Compliance forms) are revised and incorporated herein by reference.~~

~~SECTION 13.~~

~~The Executive Director is authorized to modify the Addendum 1, 2, 3 or the Certificate of Compliance so long as such modification is not inconsistent with Resolution No. 3166.~~

EQUAL OPPORTUNITY ASPIRATIONAL GOALS.

Contractors, subcontractors, consultants and suppliers are encouraged to create a workplace that reflects the diverse communities in which we live and work and to ensure non-discrimination and equal opportunity in employment and subcontracting through application of the following guidelines:

Recruiting. Recruitment efforts, both oral and written, will ensure non-discrimination and equal opportunity in application and hiring practices, policies and procedures. An official may be designated to monitor employment related activity to ensure non-discrimination and equal employment opportunities.

Self-Assessment. Employment policies and procedures may be reviewed, including review of hiring and training practices and policies, performance evaluations, seniority policies and practices, job classifications and job assignments, to assure that they provide for non-discrimination and equal employment opportunities.

Training. On-the-job training e opportunities and/or participation in training programs that include non-discrimination and equal opportunity in employment and subcontracting may be developed.

VIOLATIONS.

Any violation of this Resolution shall be deemed a breach of a material provision of the contract between the Port and the contractor, consultant or supplier. Such breach shall be grounds for cancellation, termination, or suspension, in whole or in part, of the contract by the Port.

ADOPTED by the Port Commission of the Port of Seattle this 26th day of July, 1994-2012 and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission duly affixed.

PORT COMMISSION