

Resolution No. 3737

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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;
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

49
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.

57
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 _____, 2018, 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.

136

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.

141

142 **SECTION 4 Responsibilities.**

143

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;

164

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

166

167 **Section 5 Policy.**

168

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.

287

288 F. Expanding Opportunity

289

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.

297

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.

325
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.

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