

Port of Seattle Commission
Diversity in Contracting Policy Directive
As adopted January 9, 2018

SECTION 1. Purpose.

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

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

“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 minority owned business, and other classifications across various categories and contract types and promotes transparency for the public.

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

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

SECTION 3. Scope and Applicability.

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

SECTION 4. Responsibilities.

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

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

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

SECTION 5. Policy.

A. The Diversity in Contracting Program shall include:

- (1) Responsibilities, policies, practices, and processes that can change the Port procurement and contracting processes and provide a more receptive environment for the utilization of WMBE firms, and to ensure that businesses and contractors of all tiers working on Port contracts and subcontracts utilize WMBE firms, wherever feasible or as required.
- (2) Development of a standard procedure for the Port-wide WMBE goal setting, and collection and reporting of relevant demographic data to be stored in a central database.
- (3) Identify categories of contracts that will require WMBE inclusion plans and other tools that will be applied to other categories of contracts Port-wide.
- (4) Clear lines of responsibility and accountability for implementation of the WMBE program and a designated WMBE liaison for each division.
- (5) Make WMBE goal setting and affirmative implementation efforts part of the annual performance evaluation for each Port division director and their staff and require standardized WMBE program training, implementation, and coordination for all division leaders and their WMBE representatives.

B. The Diversity in Contracting Annual Plan shall include:

- (1) Specific measures the contract-awarding authority will undertake to increase the utilization of WMBEs and to reduce disparity in Port contracting; and
- (2) Specific goals by division for WMBE utilization:
 - (a) Each Port division will review future procurements to identify available firms on upcoming contracts to create a utilization goal that is justifiable, bold, and challenging.
 - (b) Construction goals, other than small works, based on historic utilization plus two percent, until such time that a disparity study or other valid internal data can demonstrate a reasonable level of utilization.

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

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

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

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

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

E. Affirmative efforts in subcontracting:

- (1) All contractors, including WMBE firms, shall actively solicit bids for subcontracts to qualified, available, and capable WMBE to perform commercially useful functions;
- (2) Contractors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposals in the light most favorable to women and minority businesses;
- (3) At the request of the relevant Port department, when inclusion plans are required, contractors shall furnish evidence of the contractor's compliance with these requirements of women and minority solicitation and will submit evidence of compliance with this section as part of any bid. Contractors shall provide records necessary to document affirmative efforts to subcontract with women and minority businesses on Port contracts;
- (4) Compliance with all requirements and past performance under this policy directive may be included in the evaluation of future procurements; and
- (5) In applying the provisions of this Policy Directive to contracts funded in whole or in part with federal funds and subject to 49 CFR Part 23, Subpart D, regarding Airport Concessions Disadvantaged Business Enterprises (ACDBE) or 49 CFR 26, Subpart C, regarding Disadvantaged Business Enterprises (DBE), references to Women and Minority Businesses shall also include federally recognized ACDBEs or DBEs. In the event of a conflict between the provisions of this chapter, or the rules implementing this policy directive, and the requirements of 49 CFR 26, Subpart C, or 49 CFR Part 23, Subpart D, or any other superseding applicable federal statute or regulation, the provisions of the federal statute or regulation shall control.

F. Expanding Opportunity.

- (1) The Port shall review and recommend how to expand opportunities for WMBE firms in other Port enterprise opportunities, for example real estate leases, to encourage and promote access to Port facilities by September 1, 2018.
- (2) The Port shall develop a baseline utilization number for veteran owned businesses and propose a reasonable Port-wide goal and division goals to the Commission for inclusion in the Century Agenda by September 1, 2019.

SECTION 6. Program Evaluation.

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

- (1) Incorporation of these WMBE goals into the Port's Long Range Plan to the fullest extent reasonable, including incorporation into Long Range Plan scorecards, reports, and Long Range Plan updates.
- (2) Specific measures the contract awarding authority will undertake to increase the participation of women and minority businesses and to reduce disparities, including the number of events or outreach activities conducted to ensure responsiveness to bid opportunities.
- (3) Progress towards specific division WMBE utilization goals, including the number of opportunities a division has available, the goals established for those opportunities and the actual utilization, including periodic review of disparity study results to determine reasonableness of goals.
- (4) Data reporting using the standard procedure identified in the WMBE program for the Port-wide collection and reporting of relevant demographic data including percent of spend, number of businesses, and type of procurements.
- (5) Preparation and publication of an annual report titled Diversity in Contracting Annual Report.

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

SECTION 7. Fiscal Implications.

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