

1 **Resolution No. 3737**

2  
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; and  
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 and  
17 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's efforts and programs as a result of Resolutions 3506 and  
34 3618 have increased small business participation but have not increased WMBE participation; and  
35

36 WHEREAS, it is a priority for the Port of Seattle to affirmatively expand its efforts to  
37 increase WMBE participation in port contracts and ensure that WMBEs are afforded fair and  
38 equitable opportunity to compete for port contracts, succeed as subcontractors, and do not  
39 face unfair and unnecessary barriers when seeking and performing on port contracts; and  
40

41 WHEREAS, current data and the 2014 disparity study show 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 WMBEs 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 values a diverse workforce and has engaged in improving  
51 diversity and inclusion focused on race and expects to develop a new equity process tool  
52 designed to integrate explicit consideration of racial inequities and identification of  
53 interventions for use in policy, program, and budget planning and implementation; and  
54

55 WHEREAS, the Port of Seattle is committed to its values of conducting business with the  
56 highest ethical standards and our business practices shall reflect integrity, accountability,  
57 honesty, fairness and respect at all levels;  
58

59 NOW, THEREFORE, BE IT RESOLVED by the Port of Seattle Commission as follows:  
60

61 SECTION 1. Resolution 3506 adopted May 27, 2003, is hereby repealed.  
62

63 SECTION 2. Transition from Resolution 3618. The Executive Director may continue to operate  
64 under Resolution No. 3618, as needed, to allow for transition to Resolution 3737, until  
65 September 1, 2018, at which time Resolution No. 3618 will be repealed and replaced with  
66 Resolution 3737.  
67

68 SECTION 3. The Diversity in Contracting Policy Directive as shown in Exhibit A is hereby  
69 established.  
70

71 SECTION 4. This policy directive shall be labeled and catalogued as appropriate, together with  
72 subsequent policy directives, and shall be made readily available for use by Port staff and  
73 members of the public as a governance document of the Port of Seattle.  
74

75 ADOPTED by the Port Commission of the Port of Seattle at a duly noticed meeting  
76 thereof, held this 9<sup>th</sup> day of January, 2018, and duly authenticated in open session by  
77 the signatures of the Commissioners voting in favor thereof and the seal of the Commission.  
78

79   
RYAN CALKINS

80   
COURTNEY GREGOIRE

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STEPHANIE BOWMAN

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PETER STEINBRUECK

83   
FRED FELLEMAN

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86  
87  
88 Port of Seattle Commissioners

89 EXHIBIT A

90 Diversity in Contracting Policy Directive

91  
92 **SECTION 1. Purpose.**

93  
94 The Port finds that minority and women businesses are under-represented and have been  
95 under-utilized on Port contracts. The purpose of this policy directive is to provide the maximum  
96 practicable opportunity for increased participation by minority and women owned and  
97 controlled businesses in Port contracting for public works, consulting services, supplies,  
98 material, equipment, and other services to create the opportunity to leverage Port spend to  
99 increase WMBE utilization.

100  
101 **SECTION 2. Definitions.**

102  
103 For the purposes of this chapter:

104  
105 “Affirmative efforts” means documented reasonable attempts in good faith to contract with  
106 women and minority businesses.

107  
108 “Availability” or “available” as used in this chapter means a business that is interested in and  
109 capable of performing the work within the time frame required and to the quality specified in  
110 the solicitation and contract.

111  
112 “Capability” or “capable” as used in this section means that a business appears able to perform  
113 a commercially useful function in performance of the work.

114  
115 “Commercially useful function” means the performance of real and actual services in the  
116 discharge of any contractual endeavor.

117  
118 “Contract” means an agreement for public works, consulting services, supplies, material,  
119 equipment, or other services.

120  
121 “Contract awarding authority” means any individual, office, or division that is receiving the  
122 benefit of the contract.

123  
124 “Contractor” means a business that has a contract with the Port.

125  
126 “Division” means any Port of Seattle organization structure that has a director that reports to  
127 the Executive Director.

128  
129 “Women or minority business” (WMBE) means a business that is at least 51 percent owned and  
130 controlled by women and/or minority (including, but not limited to African Americans, Native  
131 Americans, Asians, and Hispanics) group members.

133 “Central database” means an electronic database that collects, aggregates, and tracks monthly  
134 Port-wide, division, and department-level utilization of small business, women and minority  
135 owned business, and other classifications across various categories and contract types and  
136 promotes transparency for the public.

137  
138 “Relevant demographic data” is defined as, but not limited to, Asian-Pacific Americans, Black  
139 Americans, Hispanic Americans, Native Americans, Asian, and Women, and other characteristic  
140 information related to a business owner’s sexual orientation, sex/gender, race, ethnicity, or  
141 veteran status as self-reported and/or certified by another government entity, as deemed  
142 necessary or relevant to eliminating disparity in Port contracting.

143  
144 “Utilization” is defined as both the percent of contracting dollars paid to WMBE firms as well as  
145 the number of WMBE firms under contract.

146  
147 **SECTION 3. Scope and Applicability.**

148  
149 This policy shall apply to all contracts and other activities at the Port, including construction and  
150 consulting contracts, purchased goods, and services.

151  
152 **SECTION 4. Responsibilities.**

153  
154 The Executive Director shall pursue the Century Agenda goal to increase WMBE utilization in all  
155 Port contracts and shall:

- 156  
157 A. Achieve the Century Agenda goal to triple the number of WMBE firms that contract with the  
158 Port and increase to 15 percent the percentage of dollars spent on WMBE contracts, within  
159 five years of the Diversity in Contracting Program implementation;  
160  
161 B. Within 120 days of passage of this policy directive, develop a Diversity in Contracting  
162 Program that identifies affirmative efforts to afford women and minority businesses the  
163 maximum practicable opportunity to meaningfully participate on Port contracts and to  
164 achieve the Port-wide goals;  
165  
166 C. Incorporate these WMBE goals into the Port’s Long Range Plan to the fullest extent  
167 reasonable, including incorporation into Long Range Plan scorecards, reports, and Long  
168 Range Plan updates. Further, the Executive Director shall prepare and publish an annual  
169 report each year titled Diversity in Contracting Annual Report;  
170  
171 D. Improve inclusion and outreach to sustain and improve WMBE participation and to reduce  
172 disparity in Port contracting;  
173  
174 E. Take affirmative efforts to assure equality of contracting opportunity through the  
175 development and application of Inclusion Plans or other tools as necessary; and  
176

177 F. Expand opportunities for WMBE firms across Port functions, wherever practicable.  
178

179 **SECTION 5. Policy.**  
180

181 A. The Diversity in Contracting Program shall include:  
182

183 (1) Responsibilities, policies, practices, and processes that can change the Port procurement  
184 and contracting processes and provide a more receptive environment for the utilization  
185 of WMBE firms, and to ensure that businesses and contractors of all tiers working on  
186 Port contracts and subcontracts utilize WMBE firms, wherever feasible or as required.  
187

188 (2) Development of a standard procedure for the Port-wide WMBE goal setting, and  
189 collection and reporting of relevant demographic data to be stored in a central  
190 database.  
191

192 (3) Identify categories of contracts that will require WMBE inclusion plans and other tools  
193 that will be applied to other categories of contracts Port-wide.  
194

195 (4) Clear lines of responsibility and accountability for implementation of the WMBE  
196 program and a designated WMBE liaison for each division.  
197

198 (5) Make WMBE goal setting and affirmative implementation efforts part of the annual  
199 performance evaluation for each Port division director and their staff and require  
200 standardized WMBE program training, implementation, and coordination for all division  
201 leaders and their WMBE representatives.  
202

203 B. The Diversity in Contracting Annual Plan shall include:  
204

205 (1) Specific measures the contract-awarding authority will undertake to increase the  
206 utilization of WMBEs and to reduce disparity in Port contracting; and  
207

208 (2) Specific goals by division for WMBE utilization:  
209

210 (a) Each Port division will review future procurements to identify available firms on  
211 upcoming contracts to create a utilization goal that is justifiable, bold, and  
212 challenging.  
213

214 (b) Construction goals, other than small works, based on historic utilization plus two  
215 percent, until such time that a disparity study or other valid internal data can  
216 demonstrate a reasonable level of utilization.  
217

218 C. To improve inclusion and outreach to sustain and improve WMBE participation and to  
219 reduce disparity in Port contracting, the Port shall:  
220

- 221 (1) Support training and assistance to Port staff to increase participation in outreach and to  
222 learn about the internal and external resources available to include WMBE firms in their  
223 procurement and contracting;  
224
- 225 (2) Improve and expand technical assistance, including WMBE certification, business  
226 development, training, and mentoring programs for WMBE firms to enhance bidding  
227 expertise and promote greater coordination with advocacy organizations, businesses,  
228 individuals, and public agencies and other Port departments;  
229
- 230 (3) Create opportunities for members of the contracting and vendor community, Port, and  
231 other stakeholders to work collaboratively on recommendations for how the Port can  
232 more effectively use the directives in this policy directive;  
233
- 234 (4) Assist contractors desiring to bid on Port covered contracts to comply with the  
235 affirmative efforts provisions for such contract, and offer information as to  
236 organizations and agencies available to assist such contractor in recruiting, mentoring,  
237 training, or otherwise preparing potential subcontractors; and  
238
- 239 (5) Cooperate and establish formal and/or informal partnerships and mutual cooperation  
240 with the Office of Minority and Women’s Business Enterprises and other public agencies  
241 to carry out the purposes of this policy directive, as needed.  
242

243 D. Affirmative efforts to assure equality of contracting opportunity required:  
244

- 245 (1) Develop procurement tools, such as WMBE inclusion plans, and require bidders and  
246 proposers to comply with the WMBE solicitation requirement in order to sustain and  
247 improve participation of WMBE in Port covered contracts;  
248
- 249 (2) Prepare and require that Port covered contracts include specifications pertaining to  
250 equal opportunity affirmative efforts to assure equality in contracting opportunity, and  
251 goals for subcontracting to women and minority businesses. Any goals established  
252 under this chapter shall be reasonably achievable; however, no utilization requirements  
253 shall be a condition of contracting, except as may be allowed by RCW 49.60.400;  
254
- 255 (3) Identify and implement a Port-wide method to regularly monitor and measure the Port  
256 WMBE program and attainment of the goals by contractors;  
257
- 258 (4) May establish aspirational goals for the participation of women and minority businesses  
259 in a particular Port contract on a case-by-case basis;  
260
- 261 (5) Work closely with other divisions and departments to ensure all policies, practices, and  
262 processes are consistent and complementary and make it easier for WMBE firms to  
263 pursue Port contracts;  
264

265 (6) Define, implement, and monitor appropriate processes and procedures to ensure  
266 prompt payments and change order processing to address timely payment of  
267 contractors, suppliers, and subcontractors at all tiers. Review and recommend potential  
268 for including prompt pay in performance goals.  
269

270 E. Affirmative efforts in subcontracting:

- 271
- 272 (1) All contractors, including WMBE firms, shall actively solicit bids for subcontracts to  
273 qualified, available, and capable WMBE to perform commercially useful functions;  
274
- 275 (2) Contractors shall consider the grant of subcontracts to women and minority bidders on  
276 the basis of substantially equal proposals in the light most favorable to women and  
277 minority businesses;  
278
- 279 (3) At the request of the relevant Port department, when inclusion plans are required,  
280 contractors shall furnish evidence of the contractor's compliance with these  
281 requirements of women and minority solicitation and will submit evidence of  
282 compliance with this section as part of any bid. Contractors shall provide records  
283 necessary to document affirmative efforts to subcontract with women and minority  
284 businesses on Port contracts;  
285
- 286 (4) Compliance with all requirements and past performance under this policy directive may  
287 be included in the evaluation of future procurements; and  
288
- 289 (5) In applying the provisions of this Policy Directive to contracts funded in whole or in part  
290 with federal funds and subject to 49 CFR Part 23, Subpart D, regarding Airport  
291 Concessions Disadvantaged Business Enterprises (ACDBE) or 49 CFR 26, Subpart C,  
292 regarding Disadvantaged Business Enterprises (DBE), references to Women and Minority  
293 Businesses shall also include federally recognized ACDBEs or DBEs. In the event of a  
294 conflict between the provisions of this chapter, or the rules implementing this policy  
295 directive, and the requirements of 49 CFR 26, Subpart C, or 49 CFR Part 23, Subpart D, or  
296 any other superseding applicable federal statute or regulation, the provisions of the  
297 federal statute or regulation shall control.  
298

299 F. Expanding Opportunity.

- 300
- 301 (1) The Port shall review and recommend how to expand opportunities for WMBE firms in  
302 other Port enterprise opportunities, for example real estate leases, to encourage and  
303 promote access to Port facilities by September 1, 2018.  
304
- 305 (2) The Port shall develop a baseline utilization number for veteran owned businesses and  
306 propose a reasonable Port-wide goal and division goals to the Commission for inclusion  
307 in the Century Agenda by September 1, 2019.  
308

309 **SECTION 6. Program Evaluation.**

310

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

312

313 (1) Incorporation of these WMBE goals into the Port's Long Range Plan to the fullest extent  
314 reasonable, including incorporation into Long Range Plan scorecards, reports, and Long  
315 Range Plan updates.

316

317 (2) Specific measures the contract awarding authority will undertake to increase the  
318 participation of women and minority businesses and to reduce disparities, including the  
319 number of events or outreach activities conducted to ensure responsiveness to bid  
320 opportunities.

321

322 (3) Progress towards specific division WMBE utilization goals, including the number of  
323 opportunities a division has available, the goals established for those opportunities and  
324 the actual utilization, including periodic review of disparity study results to determine  
325 reasonableness of goals.

326

327 (4) Data reporting using the standard procedure identified in the WMBE program for the  
328 Port-wide collection and reporting of relevant demographic data including percent of  
329 spend, number of businesses, and type of procurements.

330

331 (5) Preparation and publication of an annual report titled Diversity in Contracting Annual  
332 Report.

333

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

337

338 **SECTION 7. Fiscal Implications.**

339

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





