

RESOLUTION NO. 3026

A RESOLUTION of the Commission of the Port of Seattle establishing a Women and Minority Business Enterprise Program, Sheltered Workshop and Private Disabled Entrepreneur Program, Affirmative Action and Equal Employment Opportunity requirements for the procurement of materials, supplies, consultant, professional, technical services, construction, other services by the Port of Seattle, and employment of personnel for the Port of Seattle.

WHEREAS, by Chapter 120 of the Laws of 1983, the Legislature of the State of Washington found that women-owned and minority-owned businesses are significantly under-represented and have been denied equitable competitive opportunities in contracting; and

WHEREAS, the Commission of the Port of Seattle has reviewed the statistical evidence set forth in Exhibit A, attached hereto, and incorporated by this reference which demonstrates that there is a need to provide enhanced business opportunities, affirmative action and equal opportunity employment for members of the identified protected classes (currently defined by R.C.W. 39.19 as Black, Hispanic, Native American, Asian, and Women) in order to increase their participation in Port contracting and employment; and

WHEREAS, the Commission of the Port of Seattle wishes to confirm its overall policy of firm commitment to the support of women-owned and minority-owned business enterprises, equal employment opportunity and affirmative action; and

WHEREAS, the Commission of the Port of Seattle recognizes the need for contract compliance activities to ensure use of women-owned and minority-owned business enterprises, equal employment opportunity, and affirmative action, in support of the aforementioned programs; and

WHEREAS, the Commission of the Port of Seattle is desirous of establishing policies, general procedures and requirements relating to non-discrimination, affirmative action and compliance therewith by the Port of Seattle, Port of Seattle contractors, consultants, subcontractors, service providers and suppliers; and to complement other related Port Resolutions.

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

Section 1. Purpose and Intent

The purpose and intent of this resolution is to achieve the goal of equitable utilization of women-owned and minority-owned (W/MBE's) businesses and to provide the maximum practicable opportunity for increased participation in contracting and purchasing with the Port of Seattle. Further, it is the purpose and intent of this resolution to ensure that neither the Port of Seattle nor its contractors, subcontractors, consultants, service providers or suppliers shall discriminate on the basis of race, creed, color, sex, age, sexual preference, marital status, national origin or the presence of any sensory, mental or physical handicap, in any of their employment practices, or the award and performance of contracts with the Port of Seattle.

Section 2. Scope

The provisions of this resolution shall apply to all contracts awarded by the Port of Seattle, and shall be liberally construed for the accomplishment of the policies and purposes of this resolution.

Section 3. Powers and Duties

A. The administrative and official authority to effectuate the policy of the Port as referenced in this resolution, is hereby delegated to the Executive Director.

B. The Executive Director is hereby authorized to take such actions as may be necessary to implement the policies of this resolution, including but not limited to the following:

1. Establish annual overall Port-wide goals for utilization of women-owned and minority-owned business enterprises (W/MBE's). In establishing these goals, the Executive Director will consider the following information:

a. The number and types of contracts and volume of purchases likely to be awarded by the Port;

b. The number and types of W/MBE's available to compete for such contracts, subcontracts or purchases;

c. The past levels of participation by W/MBE's in contracts with the Port of Seattle and other public entities in the Seattle-King County Metropolitan Statistical Area;

d. The level of participation recommended by governmental and private agencies in the Seattle-King County Metropolitan Statistical Area whose purpose is to promote the use of W/MBE's;

e. The population of minorities and women within the Seattle-King County Metropolitan Statistical Area; and

f. Any other information relevant to achieving the purposes of this resolution.

2. Establish specific project utilization requirements for W/MBE participation for construction projects on a project-by-project basis, depending on the opportunities to subcontract and the availability of W/MBE's ("utilization requirements"), and include such utilization requirements in the specifications for all applicable contracts.

3. Enter into cooperative agreements with other agencies, both public and private, for the purpose of increasing the participation of W/MBE's in the Port's contracting and purchasing endeavors.

4. Establish rules, regulations and procedures for implementing and administering this resolution.

5. Monitor and enforce the goals and utilization requirements set forth in this resolution.

6. Ensure that W/MBE's are solicited for Port contracts, where possible.

7. Implement alternatives for arranging contracts, by size and type of work, so as to enhance the possibility of participation by W/MBE's.

8. Establish employment goals for the hiring of women and minorities both for the Port and Port contractors.

9. Implement contract compliance procedures for ensuring the utilization requirements and employment goals are met.

10. Conduct pre-bid and pre-construction conferences, workshops and other instructional activities to aid contractors, consultants, subcontractors, service providers and suppliers in better understanding the requirements of this resolution.

11. Designate employees of the Port to assist in the administration and implementation of this resolution as may be required.

12. Initiate sanction processes for noncompliance by contractors.

#### Section 4. Certification

To ensure that this resolution benefits only businesses which are in both form and substance owned and controlled by minorities or women, or both, the Executive Director or designee shall utilize only the certification listings from the State of Washington Office of Women and Minority Business Enterprise (OMWBE), and shall consider only those businesses certified by the OMWBE as W/MBE's as complying with the goals and requirements established pursuant to this resolution.

#### Section 5. Employment Goals

The Executive Director of the Port of Seattle shall establish and implement employment goals for the utilization of minorities and women on Port contracts in accordance with federal, state and local laws. The employment goals shall be referenced in and become a part of all contracts and subcontracts, including subcontracts to W/MBE's.

#### Section 6. Participation with Federal Agencies

Should the Port of Seattle participate in any contract, agreement, construction project or similar venture involving the federal government or any of the federal agencies thereof, the Executive Director is hereby authorized to comply with any related the laws or regulatory requirements of such federal agencies regarding W/MBE participation.

## Section 7. Exclusions, Reductions and Waivers

A. It shall be within the power of the Executive Director to initiate and/or grant waivers or reductions of the utilization requirements for W/MBE's. The Executive Director may also grant waivers or reductions of the employment goals for either minorities, women or both. Port contracting departments must submit, in writing, their request for such waiver or reduction to the Executive Director.

B. In addition to the Executive Director's general powers to waive or reduce utilization requirements or employment goals set forth in section 7.A. above, the following types and contracts shall not require that utilization requirements be established:

1. Emergencies

Where it is determined that goods or services must be provided with such immediacy that neither the Port nor a contractor would be able to comply with the requirements of this resolution.

2. Foreign Procurements

Where purchases of equipment, materials or supplies are procured directly from a foreign source, not based in the United States.

3. Economic Burden or Risk

Where it is determined that compliance with the requirements of this resolution would impose an unwarranted economic burden or risk on the Port as compared with the degree to which the purposes and policies of this resolution would be furthered by requiring compliance.

4. Sole Source

Where it is determined that the needed goods or services are readily available from only one source and no subcontracting can be performed due to the nature of the goods or service.

5. Governmental Agency Purchasing

Where the Port is party to or included in a federal, state or local government purchasing agreement.

6. Lack of M/WBE's

Where it is determined that qualified W/MBE's are unavailable.

7. Executive Determination

When deemed by the Executive Director to be in the best interest of the Port.

These contracts will not require utilization requirements to be established and will not be considered in determining whether the Port's annual goals have been met.

Section 8. Use of Sheltered Workshops and Private Disabled Entrepreneurs

It is the intent of the Port of Seattle to utilize Sheltered Workshops as defined in RCW 82.04.385 and Private Disabled Entrepreneurs for the purchase of goods and services whenever practical. Such utilization is intended to complement other Port programs.

Section 9. Use of King County Residents and Local Businesses

All parties doing business with the Port of Seattle shall be encouraged to utilize King County residents and local businesses to the maximum extent possible, where qualifications and cost effectiveness are deemed competitive.

Section 10. Nondiscrimination

The Port of Seattle, its contractors, subcontractors, consultants, service providers or suppliers, shall not discriminate in employment or contracting with the Port of Seattle on the basis of race, creed, color, sex, age, sexual preference, marital status, national origin or the presence of any sensory, mental or physical handicap (provided that such handicap upon reasonable accommodation does not hinder the performance of the job or work), and shall not violate any of the terms of Chapter 49.60 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 nondiscrimination.

Section 11. Equal Opportunity

Equal opportunity shall be afforded by the Port of Seattle to women and minorities with respect to all terms and conditions of employment, including but

not limited to hiring, promotion, transfers, job assignments and wages. In addition, equal opportunity shall be provided with respect to users of all facilities and services and to all contracting entities.

#### Section 12. Affirmative Action

The Port of Seattle shall establish an Affirmative Action Plan with goals and timetables for achieving increased women and minority employment. Employment goals shall be based on appropriate work force, demographics, and other relevant data. Where employment statistics demonstrate that women and/or minorities are under-represented in a job category, affirmative action measures shall be taken to increase the representation of women and/or minorities at the Port or at such locations and establishments where work is being performed on behalf of the Port. Affirmative action measures shall be based upon what is reasonably required to achieve employment goals.

#### Section 13. Severability

The provisions of this resolution shall be effective in all cases unless otherwise provided for by state or federal law. The provisions of this resolution are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or other portion of this resolution or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this resolution or the validity of the application to other persons or circumstances.

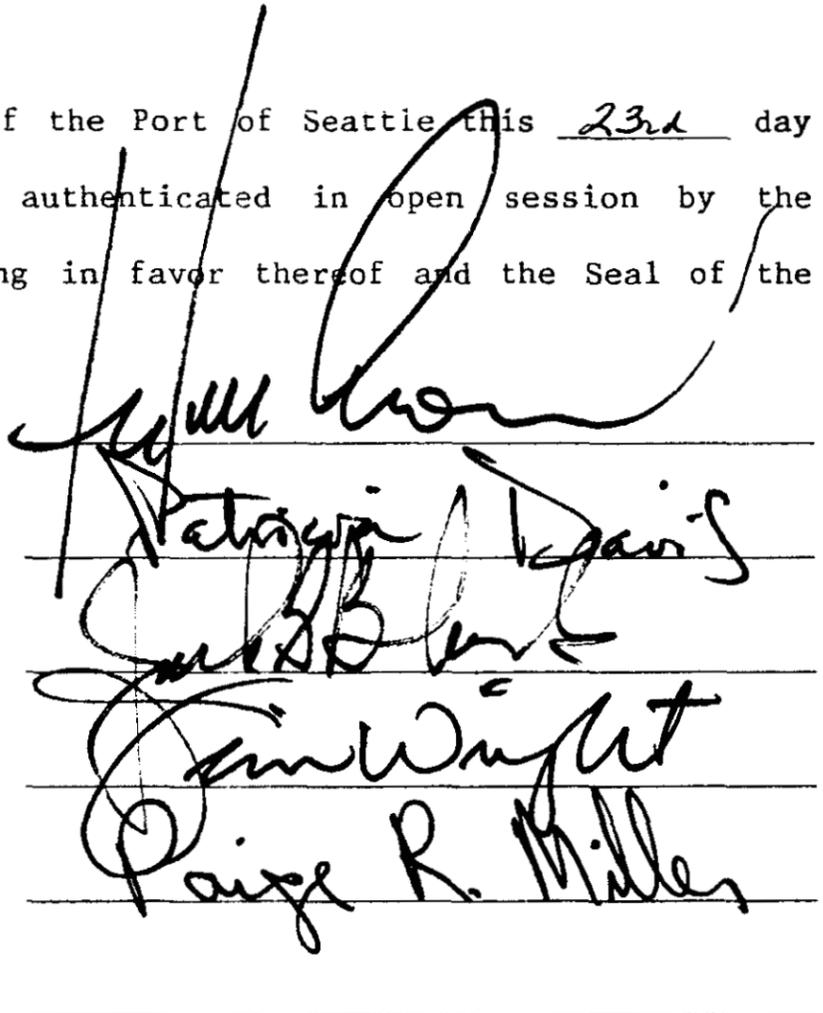
#### Section 14. Effective Date

The provisions of this resolution shall be effective as of the date adopted, and shall apply to all contracts for which bids or proposals are requested after said effective date. The procedures implementing this resolution may be reviewed annually by the Executive Director for applicability and need and may be adjusted accordingly.

Section 15. General Program Review

The Executive Director shall at least annually review and report on the status of all programs referenced by this resolution to the Port Commission. In addition to the annual reviews conducted by the Executive Director, the Port Commission of the Port of Seattle will conduct a general review of the program on or before December 30, 1992. This general review should analyze program effectiveness, continued need and overall applicability. The Port Commission may make changes or adjustments as warranted.

ADOPTED by the Port Commission of the Port of Seattle this 23rd day of August, 1988, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.

  
The block contains five handwritten signatures in cursive script, each written over a horizontal line. From top to bottom, the signatures appear to be: 1. A large, sweeping signature that is mostly illegible. 2. A signature that appears to be "Patricia Davis". 3. A signature that appears to be "Gail B. [illegible]". 4. A signature that appears to be "Jim Winget". 5. A signature that appears to be "Paige R. Miller".

Port Commissioners

**EXHIBIT A**  
**WOMEN AND MINORITY BUSINESS**  
**PARTICIPATION**  
**1981 THROUGH 1986**

YEAR	TOTAL DOLLARS	MBE DOLLARS	% MBE DOLLARS	WBE DOLLARS	% WBE DOLLARS
1981	\$33,759,504.00	\$1,022,967.00	3.03%	\$321,030.00	0.95%
1982	\$11,000,597.00	\$476,795.00	4.33%	\$120,776.00	1.10%
1983	\$35,622,920.00	\$2,212,012.00	6.21%	\$739,354.00	2.08%
1984	\$44,323,216.00	\$4,592,605.00	10.36%	\$1,998,558.00	4.51%
1985	\$41,381,336.00	\$6,360,364.00	15.37%	\$1,890,181.00	4.57%
1986	\$60,008,169.00	\$11,146,882.00	18.58%	\$7,203,453.00	12.00%
1987	\$58,418,190.00	\$6,965,466.00	11.92%	\$4,264,787.00	7.30%

## I. Background

On September 24, 1980, Resolution No. 2794 was enacted by the Port Commission. The resolution indicated that women-owned and minority-owned business enterprises (W/MBE's) would receive the maximum opportunity to contract with the Port. Goals were set for overall participation at 10% MBE and 3% WBE. Prior to this resolution only FAA or federally funded projects required W/MBE participation. The level of participation for both women and minority businesses was small, less than 4% for all federally funded projects and less than 1% for non-federal projects.

As indicated by the data provided in Attachment A, participation increased from 3% MBE and 0% WBE in 1981 to 18.5% MBE and 12% WBE in 1986. The above figures represent percentages of both federal and non-federal monies. Prior to the enactment of Resolution No. 2794, contracting with MBE's amounted to less than 1% in 1980 and no participation for WBE's. Of this minimal participation, the majority of the 1980 funds paid to MBE's were for federally-assisted projects, which specifically required MBE participation, with no appreciable expenditure of funds paid to MBE's on other non-federally assisted projects. It should also be noted that MBE participation was primarily on construction projects with no appreciable MBE participation for Port purchasing and consulting.

Even with the establishment of a W/MBE program in 1980, the Port did not achieve its own goals of 10% MBE and 3% WBE until 1984.

The City of Seattle enacted a similar program in 1980 and King County in 1981. Neither program produced sufficient increases in contracting opportunities for minorities or women in spite of the fact that the City, County, and the Port have a large portion of the same business population with almost identical areas of contracting.

As with the Port, utilization of women and minorities by other jurisdictions has significantly increased since 1981, however, none of the jurisdictions with W/MBE programs have achieved levels of participation commensurate with the availability of W/MBE's.

It is reasonable to conclude that, prior to the establishment of the Port's program, women and minority businesses were under utilized. While utilization has increased for the Port, as well as for other municipalities within King County, during the past few years the level of participation remains less than availability.

Therefore, based on the evidence available both in terms of the Port's program and those of other municipalities, women's and minority business contracting programs have improved, however, full equality of opportunity has not yet been achieved. Without the Port's contracting program, the gains that have been made over the last few years would be lost and the goal of the program, full equality in contracting without respect to differences in race and gender, cannot be accomplished.