

RESOLUTION NO. 2821

A RESOLUTION of the Port Commission of the Port of Seattle amending Resolution No. 2818 relating to Discrimination and Affirmative Action in Employment by Port of Seattle Contractors and Subcontractors and Establishing Policies, Procedures and Requirements for Compliance Therewith.

WHEREAS, the Port of Seattle Commission adopted Resolution No. 2818 wherein a policy of commitment to Equal Employment Opportunity and Affirmative Action was incorporated and adopted in the exhibit thereto; and

WHEREAS, minor changes to Resolution No. 2818 are required to facilitate administration and clarify Port requirements to contractors doing business with the Port;

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Seattle that Resolution No. 2818 is amended as follows:

SECTION 1. Exhibit "A" and Addendum 1 (Affidavit and Certificate of Compliance form) are revised as provided by the revised Exhibit "A" and Addendum 1, copies of which are incorporated herein by reference.

SECTION 2. The Executive Director is authorized to modify Exhibit "A" or the Affidavit and Certificate of Compliance so long as such modification is not inconsistent with Resolution No. 2818 as amended.

ADOPTED by the Port Commission of the Port of Seattle this 14th day of July, 1981 and duly authenticated in open session by the signatures of the Commissioners voting and the seal of the Commission duly affixed.

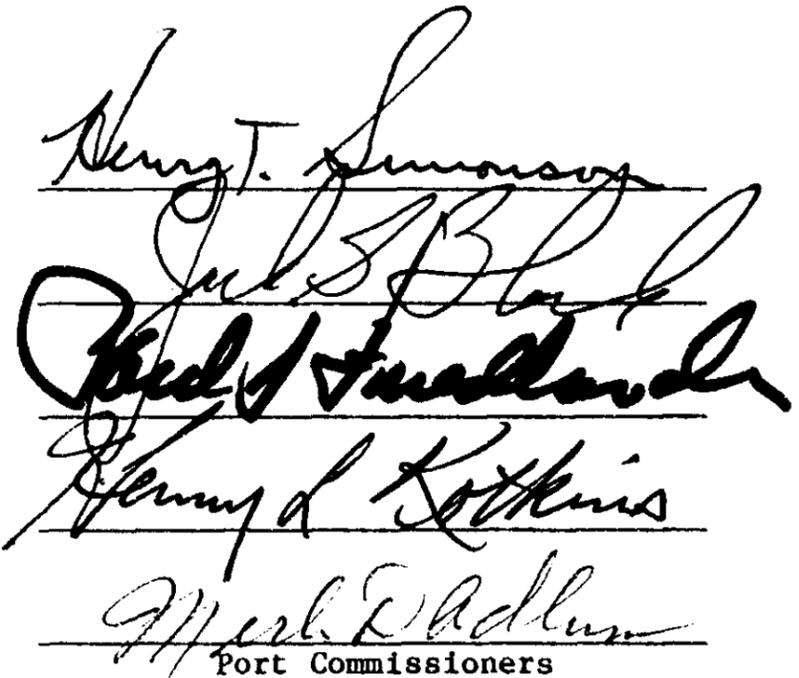

Port Commissioners

EXHIBIT "A" TO RESOLUTION NO. 2818
As Amended by Resolution No. 2821

Port of Seattle Commission Policy, Procedure and Requirements Relating to Discrimination and Affirmative Action in Employment by Port of Seattle Contractors and Subcontractors.

The following statement of policy, procedure and requirements is adopted by the Port Commission for the purpose of establishing uniformity and standardization with respect to 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 2818 as amended by reference and Affidavit 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

a. "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).

b. "Contractor" shall mean a person, firm, business, organization, company, partnership or corporation contracting to do business with the Port of Seattle on work projects.

c. "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, 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.

e. "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 America and maintaining identifiable tribal affiliations through membership and participation or community identification).

f. "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 ordinance.

Section 2. NONDISCRIMINATION

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, 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 49.60 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 in employment.

Section 3. GOALS AND TIMETABLES: AFFIRMATIVE ACTION REQUIRED

a. Goals.

(1) The Port of Seattle shall annually 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. These goals shall be set forth in the Port's Affirmative Action Plan and shall be adopted for compliance with this section. 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 be 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 goal(s) shall be a violation of these requirements.

(2) The goals for minority and female manpower utilization required of contractors pursuant to these conditions may be satisfied by the enrollment of minority and female in pre-apprenticeship, apprenticeship, and journeyman training or similar programs; but such utilization of minority and female manpower shall be apportioned as equally as possible to all such programs used or available for use. In order that the nonworking training hours for trainees may be counted in meeting the goals, such trainees must be employed by the contractor during the training period.

b. 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 stipulated in Resolution 2818, as amended, 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 steps 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

Contractors shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its action. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following.

a. Policy Dissemination. Internal and external dissemination of the contractor's equal employment opportunity policy; posting of the nondiscrimination policies and the requirements of Resolution 2818, as amended, 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, 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 2818, as amended; 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.

b. Recruiting. Direct recruitment efforts, both oral and written to minority, female and community organizations, to schools with minority and female students and 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 Resolution 2818.

c. 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.

d. 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 each 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.

e. Notice of Union Noncooperation. Provide immediate written notification to the Port when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or women sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations under Resolution 2818.

f. Training. Develop on-the-job training opportunity 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 at least 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.

g. Reporting. Designate a responsible official to monitor all employment related activity to ensure that the company EEO policy and the policies of Resolution 2818, as amended, 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.

h. Subcontract Bid Requirements. Solicit bids for subcontracts from available minority and women-owned business enterprises in the trades covered by Resolution 2818, as amended, and to document and maintain a record of all solicitations of offers for 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

The Port's policy, as stated in Section 2 of this Exhibit A requiring nondiscrimination in contractor or subcontractor employment and affirmative action shall be included in all Port contracts. Any violation of the specific provisions of Resolution 2818, as amended, and of any term of the Affidavit of Compliance required herein, including reporting requirements, shall be deemed a

violation of Resolution 2818. Any such violation shall be further 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 Resolution 2818, as amended. THE BURDEN IS ON THE CONTRACTOR TO DEMONSTRATE ITS COMPLIANCE WITH RESOLUTION 2818, as amended.

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.

a. Work Force Data. All contractors entering into contracts with the Port valued at \$5,000 or more shall submit to the Port a total personnel inventory employment profile providing minority and female employment data. The Port may determine the form in which this data shall be provided.

b. Compliance Affidavits and Union Statements. All contractors entering into contracts for more than \$30,000 with the Port shall submit an Affidavit of Compliance at the time of bid, in the form provided by the Port, a copy of which is attached and incorporated herein by reference as Addendum 1. The Affidavit 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 Affidavit of Compliance shall not require actions or goals inconsistent with the standards, guidelines and affirmative action measures set forth in Resolution 2818, as amended, PROVIDED FURTHER, that in lieu of the Affidavit the Port may accept a statement pledging adherence to an existing contractor affirmative action plan which must be found by the Port's Contract Compliance Officer to substantially fulfill the requirements of Resolution 2818, as amended.

Section 7. SUBCONTRACTORS

For projects and contracts over thirty thousand dollars, the prime contractor shall be required to submit to the Port, along with its qualifying documents under Resolution 2818, as amended, Affidavits 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 affidavits and reports and for requiring their subcontractors and material suppliers to employ racial minorities and women. Any violation of Resolution 2818 or the requirements of the affidavit 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 Resolution 2818, as amended.

Section 8. COMPLIANCE MONITORING

The Executive Director of the Port of Seattle or designee shall monitor compliance with Resolution 2818, as amended, and conduct such investigations as may be necessary to determine compliance on the part of any firm or organization with the requirements of Resolution 2818, as amended. It shall be the duty of each Port of Seattle department responsible for and initiating contracts subject to Resolution 2818, as amended, to assure that contractors are notified of their obligations hereunder. The Director of Human Resources or his 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 Resolution 2818, as amended.

Section 9. REPORTING REQUIREMENTS

The contractor will, upon request, furnish all information and reports as reasonably required by the Port, to determine compliance with Resolution 2818, as amended, and the Affidavit of Compliance, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with the nondiscrimination and affirmative action requirements of Resolution 2818, as amended. 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.

Section 10. SEVERABILITY

Should any section, subsection, paragraph, sentence, clause, or phrase of Resolution 2818, as amended, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of Resolution 2818, as amended.

Section 11. GOALS

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

2. **Statement from Union or Worker Referral Agency:** This statement affirms that the signee(s) organization has no practices and policies which discriminate on the basis of race, color, creed, sex, age, marital status, etc., submitted prior to execution of the Contract.
3. **Certified Weekly Payroll:** This report is required from every construction contractor, subcontractor, and any lower tier subcontractor, having a subcontract of \$5,000 or more, for each work week from the time work starts on the project until completion.

The information required in this section shall be submitted on forms provided by the Port unless otherwise approved.

- F. **Subcontractors:** The prime contractor shall be required to submit to the Port, along with its qualifying documents under Resolution 2818, as amended, Affidavits of Compliance and reports from its subcontractors, having a subcontract of \$5,000 or more, in the same manner as these are required of the prime contractor. Payroll reporting requirements of the prime contractor during the contract period will apply equally to all subcontractors regardless of the value of the subcontract.
- G. **Employment Goals:** The contractor will ensure that equal opportunity of employment for minorities and women results during the term of this contract and take every reasonable measure to achieve and maintain at all levels of workforce and management including subcontractors, employment goals as outlined in this section.

The evaluation of a construction contractor, subcontractor or lower tier subcontractor's performance in attempting to meet goals shall be based on total hours of employment and training of minorities and women at locations and establishments where work under contract with the Port is being performed.

1. The goals for minorities and women are as follows:

	<u>Minorities</u>	<u>Women</u>
Construction Contractors	13%	12%

"Minority" is defined as a person who is a citizen, a lawful permanent resident of the United States, and who is black (all persons have origins in any of the black African racial groups not of hispanic origin); 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 America and maintaining identifiable tribal affiliations through membership and participation or community identification).

- H. **Underrepresentation of Minorities and Women:** Underrepresentation of minorities and women will not be deemed a per se violation of Resolution 2818, as amended. Where a contractor's employment statistics demonstrate that minorities and/or women are underrepresented in its work force in relationship to the goals set forth in Paragraph G.1, the burden will be on the contractor to show that the minimum affirmative action requirements set forth below have been met and that reasonable "good faith" affirmative action plan in compliance with Resolution 2818, as amended, has been pursued.
- I. **Minimum Affirmative Action Requirements:** Contractor agrees that failure to implement and/or maintain reasonable "good faith" efforts to achieve the goals set for in Paragraph G.1 will constitute a breach of this agreement. The evaluation of a contractor's compliance with Port Commission Resolution No. 2818, as amended, shall be based upon the contractor's effort to achieve maximum results from its affirmative action program. The contractor shall document these efforts and shall implement affirmative action steps at least as extensive as the following:

1. Reporting: Periodic reporting of employment statistics and affirmative action policies and procedures as may be requested by the Port of Seattle.
2. Policy Dissemination: Internal and external dissemination of the contractor's equal employment policy; posting of nondiscrimination policies and of the requirements of Resolution 2818, as amended, on bulletin boards clearly visible to all employees, notification to each subcontractor, labor union or representative of workers with which there is a collective bargaining agreement or other contract, subcontract, or understanding, of the contractor's commitments under Resolution 2818, as amended, inclusion of the equal opportunity policy in advertising in the news media and elsewhere.
3. Recruiting: Adoption of recruitment procedures designed to increase the representation of women and minorities in the pool of applicants for employment; including, but not limited to, establishing and maintaining a current list of minority and female recruitment sources, providing these sources written notification of employment opportunities, and solicitation of bids for subcontracts from firms whose employment profile meets the affirmative action goals established under Resolution 2818, as amended.
4. Self-Assessment and Test Validation: Review of all employment policies and procedures, including review of tests, hiring and training practices and policies, performing evaluations, seniority policies and practices, job classifications and job assignments, to assure 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.
5. Record Referrals: Maintain a current file of applications of each minority and female applicant or referral for employment indicating what action was taken with respect to each such individual and the reasons therefor. Contact these people when an opening exists for which they may be qualified. Names may be removed from the file after three years have elapsed from their last application or referral.
6. Notice of Union Noncooperation: Provide immediate written notification to the Port of Seattle and OFCCP when the union or unions with which the contractor has a collective bargaining agreement contract or understanding has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations under Resolution 2818, as amended.
7. Supervisors: Ensure that all supervisory personnel understand and are directed to adhere to and implement the non-discrimination and affirmative action obligations of the contractor under Resolution 2818, as amended. Such direction shall include, but not be limited to, adherence to, and achievement of, affirmative action policies in performance appraisals of supervisory personnel.
8. Training. Develop on-the-job training opportunities which expressly include minorities and women.

Where a contractor's employment statistics demonstrate that minorities and/or women are underrepresented, failure to follow any of the requirements of Paragraph I (1-8) shall be prima facie evidence of noncompliance with this agreement.

- J. Contractor agrees in all its employment policies and practices to refrain from discrimination against any person on the basis of race, color, creed, national origin, sex, age, marital status, or the presence of any mental, physical or sensory handicap nor Vietnam era veteran status, including but not limited to hiring, lay-off, transfer, promotion or demotion, job assignment wages, and other terms and conditions of state and local rules, laws or ordinances and regulations regarding any such discrimination.

- K. Contractor agrees to provide reasonable access upon request to the premises of all places of business and employment, relative to work undertaken in this contract, and to records, files, information and employees in connection therewith, to the Port Contract Compliance Officer for purposes of reviewing compliance with the provisions of this affidavit and agrees to cooperate in any compliance review.
- L. Should the Port Contract Compliance Officer find, upon complaint, investigation or review, the Contractor not to be in good faith compliance with the provisions contained in this affidavit, it shall notify the contractor in writing of the findings, fully describing the basis of noncompliance. Contractor may request withdrawal of such notice of noncompliance at such time as the compliance officer in writing has notified the contractor and the Port that the noncompliance has been resolved.
- M. The contractor agrees that any violation of the specific provisions of Port Commission Resolution No. 2818 and of any term of the affidavit of compliance required herein, including reporting requirements, shall be deemed a violation of the contract. Any such violation shall be further deemed a breach of a material provision of the contract between the Port and the contractor. Such breach shall be grounds for implementation of any sanctions provided for in this affidavit or other contract document, including but not limited to cancellation, termination or suspension, in whole or in part, of the contractor by the Port, disqualification of the contractor, or the withholding of the contract progress payments.
- N. Contractor recognizes that it is bound by all provisions of Port Commission Resolution No. 2818, as amended, and acknowledges receipt of a copy thereof.

CONTRACTOR: _____
Company Name

WASHINGTON STATE REGISTRATION NO. _____

ADDRESS: _____
Street City State Zip

AUTHORIZED SIGNER _____
Signature Title

NAME: _____
Print or Type

SUBSCRIBED AND SWORN TO before me
 this ____ day of _____ 19 ____

APPROVED BY: _____
POS Compliance Officer

 Notary Public in and for the State of
 Washington
 residing at _____

 Date Telephone Number