

RESOLUTION NO. 3046

A RESOLUTION of the Commission of the Port of Seattle amending Resolution No. 3026 with respect to the Port's MBE and WBE programs.

WHEREAS, by Chapter 120 of the laws of 1983, the legislature of the State of Washington found, among other things, that minority-owned businesses (MBE's) and women-owned businesses (WBE's) are significantly underrepresented and have been denied equitable competitive opportunities in contracting;

WHEREAS, the Commission of the Port of Seattle (the "Port") conducted a hearing on March 23, 1989 with respect to determining whether there is private industry discrimination against MBE's and WBE's, and whether the Port would have been or would continue to be a passive participant in any such private industry discrimination absent MBE and WBE programs;

WHEREAS, the Port hereby adopts and incorporates as part of its record the evidence and testimony presented to the City of Seattle on February 2, 1989 with respect to its MBE program, the evidence and testimony presented to Metro on March 1, 1989 with respect to its MBE and WBE programs, and the judicial decisions regarding Central Contractors Association v. Local Union No. 46, IBEW Washington v. Baugh Construction and United States v. Local 86, Ironworkers Union detailing the racial discrimination present in the construction industry in the Seattle area in the early 1970's (copies of which evidence, testimony and judicial decisions are on file in the Port offices);

WHEREAS, the Port has been presented with persuasive evidence of the systematic exclusion of MBE's and WBE's from contracting opportunities in various aspects of private commerce in the Seattle-King County Metropolitan Statistical Area and surrounding communities;

WHEREAS, but for the provisions of its past and present MBE and WBE programs, the Port would have been and would continue to be a passive participant in the discrimination by private industry against MBE's and WBE's;

WHEREAS, the Port has attempted to remedy such discrimination by private industry against MBE's and WBE's by means less restrictive than establishing MBE and WBE goals;

WHEREAS, those less restrictive means are insufficient to remedy the Port's role as a passive participant in discrimination by private industry against MBE's and WBE's absent MBE and WBE programs;

WHEREAS, the Port is prohibited by State law from helping MBE's and WBE's overcome the effects of discrimination through financial assistance or reduction of bonding requirements;

WHEREAS, the provisions of this resolution are necessary to remedy the discrimination against MBE's and WBE's and to prevent the Port from participating in this discrimination with its contracting dollars;

WHEREAS, the Port intends to obtain further information regarding discrimination by private industry against MBE's and WBE's to determine whether further amendments to the Port's MBE and WBE programs are necessary, and will continue to review its MBE and WBE programs on an annual basis.

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Port of Seattle that Resolution No. 3026 be amended as follows:

Section 1. Findings

The Port finds that

A. Contractors and consultants have systematically excluded MBE's and WBE's from contracting and subcontracting opportunities in the private sector in the Seattle-King County Metropolitan Statistical Area and surrounding communities.

B. MBE's which are found to have been systematically excluded from such contracting and subcontracting opportunities are: Asian Americans, Blacks, Hispanics, Native Americans and Native Alaskans.

C. Race neutral measures employed by the Port in the past to increase the utilization of MBE's and WBE's on Port contracts were not and would not be sufficient to prevent the Port from becoming a passive participant in the systematic discrimination against MBE's and WBE's, absent MBE and WBE programs.

D. Unless the Port takes alternative steps to prevent the pervasive discrimination against MBE's and WBE's in the private sector from affecting its contracting processes, the Port would be a passive participant in the system of racial and sexual discrimination practiced in the private sector.

E. The Port's MBE and WBE programs must be continued to prevent the Port from being a passive participant in the systematic exclusion of MBE's and WBE's from contracting and subcontracting opportunities.

F. It is in the Port's best interests to promote the use of MBE's and WBE's in Port contracting.

G. The Port's MBE and WBE programs are necessary to overcome the effects of the discrimination by private industry against MBE's and WBE's.

Section 2. Purpose and Intent

The purpose and intent of this resolution is to remedy the effects of discrimination by private industry against MBE's and WBE's and to prevent the Port from participating in this discrimination with its contracting dollars and to ensure that neither the Port 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.

Section 3. Scope

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

Section 4. 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 MBE's (including with respect to each subcategory of minority) and WBEs available in each industry to compete for such contracts, subcontracts or purchases and capable of performing work or supplying material with respect thereto;

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

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

e. 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 number and types of MBE's (including with respect to each subcategory of minority) and WBE's available in each industry to compete for such projects and capable of performing work or supplying materials with respect thereto ("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 5. 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 utilization requirements established pursuant to this resolution.

Section 6. Employment Goals

The Executive Director of the Port 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 7. Participation with Federal Agencies

Should the Port 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 laws or regulatory requirements of such federal agencies regarding W/MBE participation.

Section 8. Exclusions, Reductions and Waivers

A. The Executive Director may 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 and/or proposed Contractors 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.

C. Exclusions: The Executive Director may determine with respect to any contract that a specific subcategory of minority has not been discriminated against with respect to contracting opportunities for those types of contracts or in the particular geographic areas in which they operate. In the event of any such determination by the Executive Director, that specific subcategory of minority shall be excluded from consideration on that contract as an "MBE." The Executive Director may make such determination on his own initiative. In addition, Port contracting departments and/or proposed contractors or subcontractors may submit in writing a request for such exclusion to the Executive Director.

Section 9. Use of Sheltered Workshops and Private Disabled Entrepreneurs

It is the intent of the Port 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 10. Use of King County Residents and Local Businesses

All parties doing business with the Port 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 11. Nondiscrimination

The Port, its contractors, subcontractors, consultants, service providers or suppliers, shall not discriminate in employment or contracting with the Port 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 12. Equal Opportunity

Equal opportunity shall be afforded by the Port 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 13. Affirmative Action

The Port 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 14. 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 15. 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 16. 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 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 28th day of March 1989, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.

Patricia Jant
David. Han
Jim Wright
Paige R Miller

Port Commissioners



The Honorable Patricia Davis, President
Port of Seattle Commission
Post Office Box 1209
Seattle, Washington 98111

Dear Commissioner Davis:

I will be unable to attend the Port Commission Regular Meeting of March 28, 1989. However, I consent to Resolution No. 3046 being placed on second reading and final passage at that meeting. Please enter this consent in the official minutes of the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Block", written over the word "Sincerely".

Jack Block
Port Commissioner

4946D/JB/hcm