

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6561

**ADOPTION OF THE BUSINESS AND WORKFORCE EQUITY
POLICY; AND RESCIND RESOLUTION 5066**

WHEREAS, the Portland Development Commission (“PDC”) is committed to diversity in all aspects of its operations, including its’ contracting;

WHEREAS, since January 2007, PDC staff have engaged in various community outreach efforts aimed at improving PDC’s current policy adopted by the Board on December 18, 1997 (Resolution No. 5066) (the “Existing Policy”) that authorized implementation of the Disparity Study Implementation Plan and policies concerning fair contracting and workforce training, including the Good Faith Effort Program and the Workforce Training and Hiring Program;

WHEREAS, such outreach efforts have included convening a Contracting Advisory Committee (the “CAC”) to provide input regarding changes to the Existing Policy;

WHEREAS, the Business and Workforce Equity Policy (the “Policy”) attached hereto as Exhibit A incorporates recommendations of the CAC and replaces the Existing Policy;

WHEREAS, the Policy consists of two (2) components: (1) the Business Equity Program that concerns minority and women owned businesses and emerging small businesses (collectively, “M/W/ESBs”) utilized on PDC projects (formerly, PDC’s Good Faith Efforts Program; and (2) the Workforce Equity Program, that includes PDC’s Workforce Training and Hiring Program, that maximizes apprenticeship opportunities and employment opportunities for minorities, women, and economically disadvantaged workers;

WHEREAS, the PDC Business Equity Program: (i) changes the basis for utilization goals for M/W/ESBs from PDC’s investment in a project to the hard construction costs of a project; and (ii) expands the procedural steps for outreach, capacity-building and small-business friendly practices; and

WHEREAS, the PDC Workforce Equity Program: (i) retains the current requirements of PDC’s Workforce Training and Hiring Program; and (ii) encourages the use of veterans and people with disabilities.

NOW, THEREFORE, BE IT RESOLVED that PDC Resolution No. 5066 is hereby rescinded;

BE IT RESOLVED that the Board adopts the Business and Workforce Equity Policy in the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to create guidelines necessary to implement the Business and Workforce Equity Policy; and

BE IT FURTHER RESOLVED that this Resolution shall become effective April 1, 2008.

**Portland Development Commission
Business and Workforce Equity Policy**

A. OBJECTIVES OF THE POLICY

The objectives of the **Business and Workforce Equity Policy** (the “Policy”) are to:

- Ensure that the Portland Development Commission (“PDC”) provides professional, supplier and construction contracting opportunities to Certified Firms and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
- Maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women and encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

In this way, it is PDC’s aim to ensure fair and equitable opportunities to Portland’s diverse populations, promote prosperity in all segments of Portland’s diverse communities, foster economic growth, and expand competition in the market.

The Policy replaces the existing policy adopted by the Board on December 18, 1997 (Resolution No. 5066) that authorized implementation of the Disparity Study Implementation Plan and policies concerning fair contracting and workforce training, including the Good Faith Effort Program and Workforce Training and Hiring Program. This Policy also supports other City of Portland and PDC policies with respect to workforce diversity and utilization of Certified Firms.

The Policy objectives are pursued through the establishment of two separate and distinct programs.

- **The Business Equity Program;** and
- **The Workforce Equity Program.**

B. DEFINITIONS

1. **“Certified Firms”** include M/W/ESB firms that have been certified by the State of Oregon as a minority-owned business, a women-owned business or an emerging small business.
2. **“Hard Construction Cost”** is the cost to build improvements on a property, including all related construction labor and materials, including fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as entity overhead, administration or taxes, or other professional services including architectural or engineering, shall not be considered a part of the Hard Construction Cost.
3. **“Direct Contracting”** includes all professional, supplier and construction services purchased directly by PDC.
4. **“Flexible Service Contract”** is a contract for services that has repetitive requirements on an as-needed basis and may include Personal Services Contracts that have such repetitive requirements.
5. **“Land Transaction”** is the sale of real property by PDC at any price for the purpose of a private or public project.

6. **“PDC-Owned Construction Contracts”** include contracts where PDC has a direct contractual relationship with the contractor and where PDC is the owner of the project.
7. **“PDC Resources”** include:
 - (i) PDC funds in the form of grants or loans. For purposes of calculating PDC Resources, any PDC funds used by a single entity for a single project in the form of grants or loans shall be combined to determine the total amount of PDC Resources; and
 - (ii) The value of a Land Transaction. For purposes of calculating the value of a Land Transaction, the value shall be that which is specified in the sales or development agreement.
8. **“PDC Sponsored Projects”** include all projects that are privately owned and constructed involving a disposition and development agreement, development agreement, loan agreement, or other type of financial assistance agreement with PDC.
9. **“People of Color”** as used in this Policy includes persons who self identify as being other than Caucasian.
10. **“Personal Services Contract”** is a contract for specialized skills, knowledge or unique resources in the application of highly-technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Such services include, but are not limited to the services of architects, engineers, surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers.
11. **“Utilization Goal”** shall mean the percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.

C. THE BUSINESS EQUITY PROGRAM

1. **Purpose of the Business Equity Program.** To ensure that PDC provides professional, supplier and construction contracting opportunities to Certified Firms and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
2. **Applicability.** Direct Contracting entities, entities involved in a Land Transaction or entities receiving PDC Resources shall be obligated to comply with the Business Equity Program, upon meeting any one of the following criteria:
 - a) A PDC Personal Services Contract greater than \$100,000 that has subcontracts;
 - b) A PDC-Owned Construction Contract greater than \$200,000;
 - c) A PDC Sponsored Project receiving more than \$100,000 of PDC Resources to finance a project with a Hard Construction Cost greater than \$200,000; or
 - d) An interagency or intergovernmental agreement with Hard Construction Costs greater than \$200,000 and more than \$100,000 in PDC funding, whether performed by PDC or another agency.
3. **Utilization Goals for Certified Firms.** The following Utilization Goals are established upon the initial adoption of the Policy. The Executive Director is responsible thereafter for annually reviewing these Utilization Goals, and is authorized to modify them based on such annual analysis:
 - a) Personal Services Contracts: 25 percent of the contract value;

- b) PDC-Owned Construction Contracts: 20 percent of Hard Construction Costs;
- c) PDC Sponsored Projects: 20 percent of Hard Construction Costs;
- d) Interagency and intergovernmental agreements: the greater of the appropriate Utilization Goal for PDC or the other agency's goal; and
- e) Flexible Service Contracts and Personal Service Contracts not otherwise subject to Section C-2 above:
 - (i) 30 percent of the total number of contracts in any fiscal year; AND
 - (ii) 25 percent of contract dollars.

4. Notice and Timing. Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Business Equity Program, PDC (the project manager, with assistance from the M/W/ESB coordinator) will negotiate a Certified Firm participation level that is reasonable and provide technical assistance to achieve that negotiated Utilization Goal. For example, if a project is already under construction, there may be a negotiated Utilization Goal for any remaining work.

D. THE WORKFORCE EQUITY PROGRAM

1. Purpose of the Workforce Equity Program.

- a) To maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women on Direct Contracting, Land Transactions and on work utilizing PDC Resources; and
- b) To encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

2. Applicability. Direct Contracting entities, entities involved in a Land Transaction or entities receiving PDC Resources shall be obligated to comply with the Workforce Equity Program upon meeting any one of the following criteria:

- a) On a **PDC-Owned Construction Contract** greater than \$200,000, the Workforce Equity Program shall apply to:
 - (i) the prime contract; and
 - (ii) any subcontract greater than \$100,000.

- b) On a **PDC Sponsored Project** the Workforce Equity Program shall apply if:
 - (i) the project receives \$100,000 or more of PDC Resources to finance a project with a Hard Construction Cost greater than \$1,000,000; OR
 - (ii) for a Land Transaction, the resultant development will have a Hard Construction Cost greater than \$1,000,000.
 - (iii) When applicable to a **PDC Sponsored Project**, the Workforce Equity Program shall apply to:
 - (a) the prime contract; and
 - (b) any sub-contract greater than \$100,000.

3. Requirements.

- a) Projects subject to the Workforce Equity Program must comply with PDC's Workforce Training and Hiring Program which requires contractors to:
 - (i) Ensure that a minimum of 20 percent of labor hours in each apprenticeable trade performed by the contractor and subcontractors are worked by state-registered apprentices; and
 - (ii) Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources.
- b) Projects subject to the Workforce Equity Program are encouraged to employ people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

E. Equal Employment Opportunity Certification. Contractors and subcontractors subject to the Policy must be certified by the City of Portland as an Equal Employment Opportunity Employer.

F. Damages. The procedural requirements of the Policy are contractual obligations. Failure to comply with such procedural requirements may result in one or more of the following:

- 1. A finding of breach of contract;
- 2. Disqualification of the developer, contractor or subcontractor to receive future PDC Resources or bid on future PDC solicitations;
- 3. A claim for liquidated damages; OR
- 4. Withholding of progress payments.

G. Administration. The Executive Director shall develop and administer administrative policies and/or guidelines, and make any determinations necessary, to implement and manage the Policy.

H. Exemptions.

- 1. The Executive Director shall have the authority to waive requirements of the Policy in an Enterprise Zone if it can be demonstrated that the financial impact would exceed the legal limits outlined in OAR 123-065-2540 (4), or would otherwise jeopardize major economic development goals such as the relocation of a major employer to an Enterprise Zone.
- 2. Any other exemption or waiver of requirements of the Policy shall require approval of the PDC Board of Commissioners (the "Board").

I. Annual Report. The Executive Director or designee is responsible for preparing an annual report to the Board summarizing the accomplishments and activities that have occurred related to the implementation of the Policy.