

# PDC

## PORTLAND DEVELOPMENT COMMISSION

**DATE:** February 24, 2010  
**TO:** Board of Commissioners  
**FROM:** Bruce A. Warner, Executive Director  
**SUBJECT:** Report Number 10-23  
Amending the Business and Workforce Equity Policy

### EXECUTIVE SUMMARY

#### BOARD ACTION REQUESTED

Adopt Resolution No. 6775

#### ACTION SUMMARY

This action will update the Business and Workforce Equity Policy (Policy) adopted by the Board of Commissioners (Board) on February 27, 2008 (Resolution No. 6561), and amended on January 29, 2009 (Resolution No. 6667) by making the following changes:

- Add language to apply the Workforce Equity Program to Intergovernmental Agreements (IGAs) and add a definition for IGAs;
- Add language in the Business and Equity Program and the Workforce Equity Program under the Intergovernmental Agreement sections that allows the Executive Director or the Executive Director's designee to defer to the other agency if the programs are similar with monthly reporting provided to PDC;
- Add a "Prompt Payment" statement similar to the City of Portland language for the contractor or developer to make payments to subcontractors within ten calendar days after being paid by PDC; and
- Remove the Project Apprenticeship and Equity Agreement (PAEA) requirement.

#### PUBLIC BENEFIT

**This action will support the following PDC goals:**

- Sustainability and Social Equity
- Healthy Neighborhoods
- A Vibrant Central City
- Strong Economic Growth and Competitive Region
- Effective Stewardship over our Resources and Operations, and Employee Investment

#### PUBLIC PARTICIPATION AND FEEDBACK

The changes to the Policy are administrative in nature and public participation and feedback was not solicited.

## **COMPLIANCE WITH ADOPTED PLANS AND POLICIES**

This Policy as amended complies with the Solicitation and Purchasing Policy, the Local Contract Review Board Administrative Rules and the Development Disposition Policy.

## **FINANCIAL IMPACT**

There is no additional financial impact with the amendment to the Policy.

## **RISK ASSESSMENT**

It is anticipated that amending the Policy creates no risk for PDC. The Policy has been in place since February 2008, no risk to date has been identified and it is now necessary to refine the Policy for efficiency and effectiveness.

## **WORK LOAD IMPACT**

It is anticipated that there will be no staff impact with the changes to the Policy.

## **ALTERNATIVE ACTIONS**

If the Board chooses not to amend the Business and Workforce Equity Policy, staff would continue to administer the Policy under the current guidelines.

## **CONCURRENCE**

The Policy amendment language has been reviewed by the PDC Operations Steering Committee and Urban Development Department staff.

## **BACKGROUND**

The Board adopted the Workforce Equity Policy on February 27, 2008 (Resolution No. 6561), with the objective of ensuring fair and equitable opportunities for Portland's diverse populations to participate in PDC-funded projects, promoting prosperity in all segments of Portland's diverse communities, fostering economic growth, and expanding competition in the market.

The Policy was amended on January 29, 2009 (Resolution No. 6667) to incorporate sections from the Construction Wage Policy, add workforce goals recommended by the Workforce Diversity Strategies Committee similar to those established for the South Waterfront project, and to add language that applies the Policy to commercial projects based on certified MWESB subcontracting on availability in the various trade areas.

This second amendment to the Policy will add language to apply the Workforce Equity Program to Intergovernmental Agreements (IGAs) and add a definition for IGAs. This language was inadvertently left out of the previous amendment. The amendment clarifies the IGA language, authorizes the Executive Director to defer to another agency's programs if the programs are similar, and adds monthly reporting requirements if a project is covered under another agency's programs.

A “Prompt Payment” requirement similar to the City of Portland requirement has been included in the Policy. Lastly, the requirement for the Project Apprenticeship and Equity Agreement (PAEA) is being removed.

The PAEA was originally established in the Construction Wage Policy to require an agreement be signed by both the Developer and the Contractor to memorialize the actions that would be taken to promote workforce diversity on PDC sponsored construction projects. The PAEA language was moved to the Business and Workforce Equity Policy through an amendment on January 29, 2009. Since the time the PAEA requirement was put in place, a Workforce Diversity Strategies Committee (“Committee”) was established. One of the products from this Committee was a recommendation of workforce diversity goals for all PDC sponsored construction projects similar to those implemented on the South Waterfront project. These goals were adopted by the PDC Board in the January 29, 2009 Policy amendment. With the addition of the new workforce goals and other activities and recommendations of the Committee, it has been determined that the PAEA is no longer beneficial and should be removed from the Policy.

Staff believes that the changes to the Policy through this amendment will facilitate easier administration and improve clarity of the Policy.

## EXHIBIT A

### Business and Workforce Equity Policy (Amended \_\_\_\_\_)

#### A. OBJECTIVES OF THE POLICY

The objective of the **Business and Workforce Equity Policy** (the “Policy”) is to:

- Ensure that the Portland Development Commission’s (“PDC’s) work provides professional, supplier and construction contracting opportunities to small businesses that have been historically under utilized including businesses owned by People of Color, Women and Emerging Small Businesses (collectively, “M/W/ESBs”) and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources including Interagency and Intergovernmental Agreements; and
- 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.

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. “**Board**” means the PDC Board of Commissioners.
2. “**Business Financial Resource Tools**” means certain PDC business financial assistance programs including, but not limited to, the Quality Jobs Program, the Economic Opportunity Fund, the Direct Tax Increment Loan, and the EDA Revolving Loan and Real Estate Fund.
3. “**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.

4. **“DA” or “DDA”** means, respectively, a Development Agreement or a Disposition and Development Agreement that is typically entered into by and between a developer and PDC that sets forth the terms and conditions of property conveyance, if any, and the requirements for redevelopment of the property.
5. **“Direct Contracting”** included all professional, supplier and construction services purchased directly by PDC.
6. **“Enterprise Zone”** is a 5-year, 100% tax abatement program designed to encourage existing and new industrial firms to invest in new capital outlays in certain designated areas. Participating firms are required to create or retain quality jobs while maximizing the economic benefits for residents of Portland who are currently earning at or below 80% Median Family Income.
7. **“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.
8. **“Hard Construction Costs”** 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 Costs.
9. **“Intergovernmental Agreement”** is an agreement between PDC and another government entity, including the City of Portland.
- 9-10. **“Land Transactions”** is the sale of real property by PDC at any price for the purpose of a private or public project through a DDA.
- 10-11. **“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.
- 11-12. **“PDC Resources”** include:
  - (i) PDC funds in the form of grants, loans or payments. For purposes of calculating PDC Resources, any PDC funds used by a single entity for a single project in the form of grants, loans or payments 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 specified in the DDA.
- 12-13. **“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.
- 13-14. **“People of Color”** as used in this Policy includes persons who self identify as being other than Caucasian.

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**14.15.** “**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.

**14.16.** “**Utilization Goal**” shall mean the percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.

**14.17.** “**Workforce Goals**” means the goals covering construction trades to utilize People of Color and Women as a percentage of total construction hours worked in a PDC Project.

**14.18.** “**Workforce Training and Hiring Program**” means the Workforce Training and Hiring Program originally authorized by the Board on December 18, 1997 (Resolution No. 5066) and further amended on September 16, 1998 (Resolution No. 5171) and reauthorized on February 27, 2008 (Resolution No. 6561) that pertains to apprentice utilization.

### C. THE BUSINESS EQUITY PROGRAM

1. **Purpose of the Business Equity Program.** To ensure 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 for any amount;
  - b) A PDC-Owned Construction Contract greater than \$200,000;
  - c) A PDC Sponsored Project receiving more than \$300,000 of PDC Resources to finance a project with Hard Construction Costs greater than \$300,000; or
  - d) An ~~Interagency or~~ Intergovernmental Agreement with Hard Construction Costs greater than \$200,000 and more than \$100,000 in PDC Resources, whether performed by PDC or another agency. The Executive Director or the Executive Director's designee may defer to the other agency's program if its program is similar to PDC's program. If PDC defers to the other agency's program, utilization reports shall be provided to PDC by the other agency on a monthly basis.
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 the Utilization Goals, and is authorized to modify them based on such annual analysis:
  - a) Personal Services Contracts: 25 percent of the payments made under such contracts;

- b) PDC-Owned Construction Contracts: 20 percent of Hard Construction Costs;
- c) PDC Sponsored Projects: 20 percent of Hard Construction Costs for residential low-rise construction and 20 percent of the Hard Construction Costs for commercial high-rise construction as calculated by an analysis of availability and capacity of Certified Firms for the specific project;
- 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:
  - (i) 30 percent of the total number of contracts in any fiscal year; AND
  - (ii) 25 percent of the payments made under such contracts.

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) may negotiate a Certified Firm participation level that is reasonable and may provide technical assistance to achieve that negotiated Utilization Goal.

5. Prompt Payment. The contractor and/or developer shall pay all subcontractors and suppliers within ten calendar days after receiving payment from PDC on all PDC-owned and sponsored construction projects.

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#### D. THE PDC 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 entering into a DA or DDA 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** or an Intergovernmental Agreement greater than \$200,000, the Workforce Equity Program shall apply to:

- (i) The prime contract; and
- (ii) Any subcontract greater than \$100,000.

~~(ii)~~(iii) The Executive Director or the Executive Director's designee may defer to the other agency's program if its program is similar to PDC's program. If PDC

defers to the other agency's program, utilization reports shall be provided to PDC by the other agency on a monthly basis.

- b) On a **PDC Sponsored Project** the Workforce Equity Program shall apply if the project receives \$300,000 or more of PDC Resources to finance a project with a Hard Construction Cost greater than \$1,000,000 and shall apply to:
  - (i) The prime contract; and
  - (ii) Any subcontract greater than \$100,000.

**3. Requirements.**

- a) Projects subject to the Workforce Equity Program shall:
  - (i) Comply with the Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors are worked by state-registered apprentices, as such requirements are further described therein; and
  - (ii) Work toward achieving the Workforce Goals phased over a ten-year period as outlined in the table below. The percentage of hours set forth below includes both apprenticeship hours and journey level hours.

**Workforce Goals**

Fiscal Year	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013	2013/ 2014	2014/ 2015	2015/ 2016	2016/ 2017	2017/ 2018
Female	6%	7%	8%	9%	10%	11%	12%	13%	14%	15%
People of Color	25.5%	26%	26.5%	27%	27.5%	28%	28.5%	29%	29.5%	30%

- (iii) 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.
- c) ~~Project Apprenticeship and Equity Agreement:~~

~~Prior to the commencement of a PDC Sponsored Project that receives \$300,000 or more in PDC Resources and \$1,000,000 or more in Hard Construction costs, PDC, the developer and the general contractor (collectively the "Contracting Parties") shall enter into an agreement that sets forth, among other things, a process to achieve the~~

~~Workforce Goals and a plan for compliance with the Business Equity Program. Elements of the Project Apprenticeship and Equity Agreement shall include:~~

- ~~(i) A commitment to comply with the process set forth in the Project Apprenticeship and Equity Agreement to achieve the Workforce Goals.~~
- ~~(ii) An acknowledgement that failure to comply with Project Apprenticeship and Equity Agreement process may result in an assessment of damages against the general contractor for each day of non-compliance.~~
- ~~(iii) A commitment to comply with the Policy.~~
- ~~(iv) An acknowledgement that failure to comply with the Policy may result in an assessment of damages against the general contractor for each day of non-compliance.~~

**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 Workforce Equity Program, PDC (the Project Manager, with assistance from the M/W/ESB Coordinator) may negotiate a level of compliance that is reasonable and may provide technical assistance to achieve that negotiated Workforce Goal.

**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. In the event that PDC determines, in its sole and absolute discretion, that the procedural requirements of the Policy have not been complied with, then PDC's finding 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.
4. Withholding of progress payments.

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

**H. Exemptions.**

1. The Policy shall not apply to projects within an Enterprise Zone or PDC Resources derived from Business Financial Resource Tools that are intended to be used for working capital or property acquisition.
2. Any ~~other~~ exemption or waiver of requirements of the Policy other than those stated in

the Policy shall require approval of the Board.