**RESOLUTION**

A RESOLUTION of the Port of Port Arthur Navigation District of Jefferson County, Texas (the "Port") establishing a Diversity in Contracting Policy Directive to increase local, minority, veteran and women owned ("MVW") business opportunities.

WHEREAS, the Port is committed to increasing local economic opportunity, promoting social responsibility, and establishing partnerships within its communities; and

WHEREAS, the economic vitality of a community is strengthened and more resilient when opportunity is inclusive across diverse communities; and

WHEREAS, the Port is uniquely positioned to lead in efforts to provide a level platform to all businesses including MVW owned businesses to compete and succeed; and

WHEREAS, the Port seeks to affirmatively expand its efforts to increase MVW participation in Port contracts by providing resources, training and assistance to MVWs to bid on Port contracts; and

WHEREAS, the Board of Commissioners of the Port of Port Arthur believe there is a need to increase the number of MVW owned businesses utilized on Port contracts; and

WHEREAS, this Policy is being adopted to increase the Port's efforts to eliminate disparities and result in more equal, diverse, and inclusive opportunities for MVWs; and

WHEREAS, the Port seeks to establish and support a diverse workforce by improving diversity and inclusion focused on eliminating racial inequalities and identifying interventions for use in policy, program, and budget planning and implementation; and

WHEREAS, the Port is committed to its values of conducting business with the highest ethical standards and business practices reflect integrity, accountability, honesty, fairness and respect at all levels;

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners as follows:

SECTION 1. The Diversity in Contracting Policy Directive as shown in Exhibit A is hereby established.

SECTION 2. This Policy Directive shall be labeled and catalogued as appropriate, together with subsequent policy directives, and shall be made readily available for use by Port staff and members of the public as a governance document of the Port of Port Arthur.

ADOPTED by the Board of Commissioners of the Port of Port Arthur at a duly noticed meeting thereof, held this 24 day of June, 2020 and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

COMMISSIONERS VOTING FOR THE RESOLUTIONS: COMEAUX, JOHNSON, MARTIN, SIMON, SPEARS

COMMISSIONERS VOTING AGAINST THE RESOLUTIONS: NONE

**ABSENTEES AND ABSTENTIONS:** NONE

**Signature of Officer:** _____

**Name Printed:** Norris J. Simon, Jr.

**Title:** President of Board of Commissioners

**(seal)**

**Approved by Counsel:** _____

# Port of Port Arthur Navigation District of Jefferson County, Texas

## POLICY DIRECTIVE ON DIVERSITY IN CONTRACTING

Adopted JUNE 24, 2020

**SECTION 1. Purpose.**

The Board of Commissioners of the Port of Port Arthur have determined a need to increase the number of local, minority, veteran and women owned businesses utilized on Port contracts. The purpose of this policy directive is to increase the utilization of Port revenues from taxes and operations to assist local, minority, veteran and women owned businesses by providing increased opportunities for participation in contracting for public works, consulting services, supplies, material, equipment, and other services required by the Port.

**SECTION 2. Definitions.**

For the purposes of this policy directive:

"Affirmative efforts" means documented reasonable attempts in good faith to contract with minority, veteran and women owned businesses.

"Availability" or "available" means a business that is interested in and capable of performing the work within the time frame required and to the quality specified in the solicitation and contract.

"Capability" or "capable" means that a business appears able to perform a commercially useful function in performance of the work.

"Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor.

"Contract" means an agreement for public works, consulting services, supplies, material, equipment, or other services.

"Contractor" means a business that has a contract with the Port.

"Local" means within the boundaries of the Port of Port Arthur Navigation District of Jefferson County, Texas.

"Local Plus" means within the nine county region comprised of Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers counties, as well as the Bolivar Peninsula area of Galveston County.

"Relevant demographic data" is defined as, but not limited to, Asian-Pacific Americans, Black Americans, Hispanic Americans, Native Americans, Asian, and Women, and other characteristic information related to a business owner's

sexual orientation, sex/gender, race, ethnicity, physical ability, or veteran status as self-reported and/or certified by another government entity, as deemed necessary or relevant to eliminating disparity in Port contracting.

"Utilization" is defined as both the percent of contracting dollars paid to MVW firms as well as the number of MVW firms under contract.

"Minority, veteran, or women owned business" (MVW) means a business that is at least 51 percent owned and controlled by minorities, veterans and/or women (including, but not limited to Asian-Pacific Americans, Black Americans, Hispanic Americans, Native Americans, Asian, Service-Disabled Veterans, and Women, and other characteristic information related to a business owner's sexual orientation, sex/gender, race, ethnicity, physical ability, or veteran status as self-reported and/or certified by another government entity, as deemed necessary or relevant to eliminating disparity in Port contracting).

**SECTION 3. Scope and Applicability.**

This policy directive shall apply to all types of procurement contracts with the Port, including construction and consulting contracts, purchased goods, and services.

**SECTION 4. Responsibilities.**

The Board of Commissioners shall establish goals to increase MVW utilization for the Executive Director and staff in Port contracts and shall:

A. Expand opportunities for MVW firms across Port functions, wherever practicable;

B. Pursue the goal to substantially increase the number of MVW firms that contract with the Port and thereby substantially increase the percentage of dollars spent on MVW contracts, effective immediately upon the adoption of this policy directive;

C. Within 120 days of adoption of this policy directive, develop a Diversity in Contracting Program that identifies affirmative efforts to afford MVW owned businesses the maximum practicable opportunity to participate in Port contracts;

D. Incorporate the MVW goals into the Port's Diversity in Contracting Program to the fullest extent reasonable, including incorporation into scorecards, reports, and project plan updates. The Port shall prepare and publish an annual report each year entitled "Port of Port Arthur Diversity in Contracting Annual Report";

E. Establish and improve outreach efforts to increase and sustain MVW participation in Port contracting; and

F. Take affirmative efforts to assure equality of contracting opportunity through the development and application of inclusion plans or other tools as necessary.

**SECTION 5. Policy.**

A. The Port's Diversity in Contracting Program shall include:

(1) Responsibilities, policies, practices, and processes that can improve the Port procurement and contracting processes to provide a more receptive environment for the utilization of MVW firms, and

to ensure that businesses and contractors of all tiers working on Port contracts and subcontracts utilize MVW firms, wherever feasible or as required;

(2) Development of a standard procedure for the Port-wide MVW goal setting, and collection and reporting of relevant demographic data to be stored in a central database;

(3) Identify categories of contracts that will require MVW inclusion plans and other tools that will be applied to other categories of contracts Port-wide;

(4) Clear lines of responsibility and accountability for implementation of the MVW program; and

(5) Make MVW goal-setting and affirmative implementation efforts part of the annual performance evaluation for each Port department head/supervisor and require standardized MVW program training, implementation, and coordination for all department leaders and their MVW representatives.

B. The Port's Diversity in Contracting Annual Report shall include:

(1) The Port's prior year increase in utilization of MVWs to reduce disparity in Port contracting; and

(2) The achievement of goals by department for MVW utilization based on:

(a) Each Port department head/supervisor's review of future procurements to identify available firms on upcoming contracts to create a utilization goal that is justifiable, bold, and challenging; and

(b) Construction goals based on historic utilization plus an established percentage, until such time that a disparity study or other valid internal data can demonstrate a reasonable level of utilization.

C. To improve inclusion and outreach to improve and sustain MVW participation and to reduce disparity in Port contracting, the Port shall:

(1) Support training and assistance to Port staff to increase participation in outreach and to learn about the internal and external resources available to include MVW firms in the Port's procurement and contracting;

(2) Improve and expand technical assistance, including MVW certification, business development, training, and mentoring programs for MVW firms to enhance bidding expertise and promote greater coordination with advocacy organizations, businesses, individuals, and public agencies and other Port departments;

(3) Create opportunities for members of the contracting and vendor community, Port, and other stakeholders to work collaboratively on recommendations for the Port to more effectively use the directives in this policy directive;

(4) Assist contractors desiring to bid on Port contracts to comply with the affirmative efforts provisions for such contract, and offer information as to organizations and agencies available to

assist such contractors in recruiting, mentoring, training, or otherwise preparing potential subcontractors; and

(5) Cooperate and establish formal and/or informal partnerships and mutual cooperation with other public agencies to carry out the purposes of this policy directive, as needed.

D. Affirmative efforts to assure equality of contracting opportunity required:

(1) Develop procurement tools, such as MVW inclusion plans, and require bidders and proposers to comply with the MVW solicitation requirement in order to improve and sustain participation of MVW in Port contracts;

(2) Identify and implement a Port-wide method to regularly monitor and measure the Port MVW program and attainment of goals by contractors;

(3) Establish goals for participation of MVW owned businesses in a particular Port contract on a case-by-case basis;

(4) Work closely with other departments to ensure all policies, practices, and processes are consistent and complementary to make it easier for MVW firms to pursue Port contracts; and

(5) Review certifications and determine whether vendors meet program requirements.

E. Affirmative efforts in subcontracting:

(1) All contractors, including MVW firms, shall actively solicit bids for subcontracts to qualified, available, and capable MVW businesses to perform commercially useful functions;

(2) Contractors shall consider the grant of subcontracts to MVW bidders on the basis of substantially equal proposals in the light most favorable to MVW businesses;

(3) At the request of the relevant Port department, when inclusion plans are required, contractors shall furnish evidence of the contractor's compliance with the Port's requirements for MVW solicitation and will submit evidence of compliance with this section as part of any bid.

(4) Contractors shall provide records necessary to document affirmative efforts to subcontract with MVW businesses on Port contracts;

(5) At any time during a contract in which an inclusion plan is required, Port shall request and contractors shall furnish evidence of the contractor's compliance with these requirements of MVW solicitation and affirmative efforts to subcontract with MVW businesses;

(6) Compliance with all requirements and past performance under this policy directive may be included in the evaluation of future procurements; and

(7) In applying the provisions of this policy directive to contracts funded in whole or in part with federal funds and subject to 49 CFR Part 23, Subpart D, regarding Airport Concessions Disadvantaged Business Enterprises (ACDBE) or 49 CFR 26, Subpart C, regarding Disadvantaged Business Enterprises (DBE), references to Women and Minority Businesses shall also include federally recognized ACDBEs

or DBEs. In the event of a conflict between the provisions of this chapter, or the rules implementing this policy directive, and the requirements of 49 CFR 26, Subpart C, or 49 CFR Part 23, Subpart D, or any other superseding applicable federal statute or regulation, the provisions of the federal statute or regulation shall control.

F. Expanding Opportunity.

(1) The Port shall immediately commence review and recommend measures to expand opportunities for MVW firms in other Port enterprise opportunities, for example real estate leases, to encourage and promote access to Port facilities by MVW firms.

**SECTION 6. Local Preference.**

A. To be deemed a Local business or Local Plus business in this Program, businesses must first successfully complete Registration and provide other documentation as may be reasonably required by the Port.

B. A Local business means a business with its principal place of business within the Port of Port Arthur Navigation District, Jefferson County, Texas.

C. A Local Plus business means a business with its principal place of business within Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers counties, as well as the Bolivar Peninsula area of Galveston County in the State of Texas.

D. Principal place of business means the business must:

(1) Be headquartered within the limits of the applicable jurisdiction as stated in A. or B. above; or

(2) Have an established place or places of business within the limits of the applicable jurisdiction in A. or B. above from which 20% or more of the entity's workforce are regularly based, and from which a substantial role in the entity's performance of a commercially useful function or a substantial part of its operations is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed as a principal place of business.

E. Headquartered means the location where an entity's leadership directs, controls, and coordinates the entity's activities.

F. Local Preference may be appropriate for contracts related to:

(a) any activity or matter incidental to the advertising, development, or promotion of the Port district or its ports, waterways, harbors, or terminals;

(b) furthering the general welfare of the Port district and its facilities; or

(c) the betterment of the Port district's relations with steamship and rail lines, shippers, consignees of freight, governmental officials, or others interested or sought to be interested in the ports, waterways, harbors, or terminals.

**SECTION 7. Historically Underutilized Businesses (HUB).**

A. A business submitting a bid under the HUB category for a Port project must obtain a HUB Certification from the State of Texas prior to submission.

B. To be eligible for HUB certification in the State of Texas, a business must:

(1) Be a U.S. citizen;

(2) Be a for-profit entity that has not exceeded the size standard prescribed by 34 TAC §20.294 and has its principal place of business in Texas; and

(3) Be at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or a Service Disabled Veteran with a Service related disability of 20% or greater, who resides in Texas and actively participates in the control, operations and management of the entity's affairs.

**SECTION 8. Veteran Owned Businesses.**

A. A business submitting a bid under the Veteran Owned business category for a Port project must complete a Veteran Owned business certification packet from the Port prior to submission.

B. A Veteran Owned business must be at least 51% owned by one or more veterans as defined in 38 USC 101(2).

**SECTION 9. Program Evaluation and Audit.**

A. The Executive Director or his or her designee shall periodically monitor and report benchmarks and metrics to evaluate the Port's Diversity in Contracting Program, including:

(1) Incorporation of these MVW goals into the Port's procurement policies and plans to the fullest extent reasonable, including incorporation into scorecards, reports, and project plan updates.

(2) Specific measures the Port will undertake to increase the participation of MVW firms and to reduce disparities, including the number of events or outreach activities conducted to ensure responsiveness to bid opportunities.

(3) Progress towards specific department MVW utilization goals, including the number of opportunities a department has available, the goals established for those opportunities and the actual utilization, including periodic review of disparity study results, to determine reasonableness of goals.

(4) Data reporting using the standard procedure identified in the MVW program for the Port-wide collection and reporting of relevant demographic data including percent of project dollars spent, number of businesses, and types of procurements.

(5) Preparation and publication of the Port's Diversity in Contracting Annual Report.

B. The Port's Director of Accounting shall include the Diversity in Contracting Program in the Port's annual business plan to monitor and report on adherence to this policy and establish compliance measures for future years as the Director of Accounting deems appropriate.

**SECTION 10. Fiscal Implications.**

Fiscal implications shall be reviewed by the Executive Director annually, at a minimum, to ensure that implementation of this policy directive is adequately resourced and shall submit a budget request as appropriate.