

**Port of Houston Authority  
Amended and Restated Small Business Development Policy  
April 2021**



**I. Purpose.**

The Port of Houston Authority of Harris County, Texas (the “Port Authority”) desires to continue its previously-authorized small business development program (the “Program”). The purpose of this Amended and Restated Small Business Development Policy (the “Policy”) is to restate and reaffirm the principles and policy by which the Program shall be guided, and to amend and restate Program authority and responsibilities.

**II. Policy Statements.**

A. It is the long-standing policy of the Port Authority (the “Non-Discrimination Mandate”) to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability, and including any other status protected by applicable law, in all operations at the Port Authority including the award of, or participation in, Port Authority contracts.

B. It is the policy of the Port Authority to ensure competitive business opportunities for small and local business enterprises in the award and performance of Port Authority contracts and abolish barriers to full participation in Port Authority contracts by all persons, regardless of race, ethnicity, or sex.

C. The Port Authority is committed to equal opportunity for small and local businesses to participate in the award and performance of Port Authority contracts.

D. It is the policy of the Port Authority to promote commerce and business diversity by supporting the development of small businesses.

**III. Background; Superseding Effect.**

A. The Port of Houston Authority Small Business Development Program (the “Program”) effective January 1, 2002 was adopted by the Port Commission as the coordinated program of activities and procedures for encouraging local small business participation and creating opportunities in Port Authority procurement and contracting.

B. The Port Commission finds that the Program supports (i) the Port Authority’s statutory mandates to acquire, construct, operate, and develop waterways, facilities, and other aids, for the operation, development, or in aid of navigation and commerce of the ports and waterways within its jurisdiction, (ii) the Port Authority’s mission to “*Move the world and drive regional prosperity,*” and (iii) the Port Authority’s strategic objectives to “*Develop and Strengthen External Partnerships*” and “*Create Better Value for the Region.*”

C. The Program’s original guiding document, the “Port of Houston Authority Small Business Development Program Policy and Procedures” was issued in 2001 and subsequently

updated several times (as amended, the “Port of Houston Authority Small Business Development Program Policy and Procedures (Revised)”).

D. In order to carry out the purposes described above, this Policy shall supersede the policy measures set forth in the Port of Houston Authority Small Business Development Program Policy and Procedures (Revised), and Port Authority staff is hereby authorized to prepare the Manual (as defined below) to supersede the procedural measures set forth in the Port of Houston Authority Small Business Development Program Policy and Procedures (Revised) and bring them into compliance with current Port Authority standards.

#### **IV. Definitions.**

A. “Certified Small Business” means a business that meets small business requirements as certified by a Port Authority-approved entity applying the same .

B. “Commercially Useful Function” means contract work that a business controls and executes or for which it is directly responsible for executing, by actually performing, managing, and supervising the work, including negotiating price, determining quality and quantity, ordering, installing, and paying for materials, supplies, and services as applicable.

C. “Committee” means the Port Commission Business Equity Committee, or the successor Port Commission committee or task force carrying out Program responsibilities as provided herein.

D. “Contract” means a mutually-binding legal relationship, or any modification thereof, obligating the vendor to furnish services and/or materials and supplies to the Port Authority and the Port Authority to pay for them, and excluding any lease of real property, agreement with or payment to other governmental entity (including any cooperative purchase program purchase), employer/employee relationship, utility agreement, settlement agreement, or agreement with any not-for-profit entity.

E. “Contract Goal” means the goal or requirement for participation of Enrolled Small Businesses applicable to a specific solicitation, the Port Authority’s utilization of Enrolled Small Businesses to date, the Port Authority’s progress towards meeting the Organizational Program Goal (as described in Section VI), and other relevant factors.

F. “Division” means the Port Authority division responsible for the Program.

G. “Enrolled Small Business” means a Certified Small Business that meets the additional small (revenue, number of employees, owner net worth) and local business presence requirements set out in the Manual (as defined below), has completed the Port Authority’s enrollment process, and has received a confirmation from the Port Authority of its status as an Enrolled Small Business in the Port Authority’s Program.

H. “Manual” means the Port Authority Small Business Development Program Standards and Procedures Manual, detailing the Program and the standards and procedures for implementation of the Policy and the Program. The Manual, when adopted, shall replace and supersede the document titled “Port of Houston Authority Small Business Development Program Policy and Procedures (Revised).”

I. “Organizational Program Goal” means the Port Authority’s overall total target for the participation of small business in Port Authority Contracts, as determined by the Port Commission from time to time, expressed as the percentage that the Port Authority strives to achieve, of Contract amounts awarded and committed or paid to Enrolled Small Businesses *compared to* the total amounts awarded in Program eligible Contracts.

## **V. Program Principles.**

A. Race- and Gender-Neutral. The Program shall operate in a race- and gender-neutral manner.

B. Nondiscrimination Mandate. It is the policy of the Port Authority to enforce the Non-Discrimination Mandate and prohibit discrimination, as set out in Section II(A) above. Contractors and/or Enrolled Small Businesses that violate this Non-discrimination Mandate in Port Authority procurements or other operations of the Program shall be subject to sanctions.

C. Operational Integrity. The Program shall maintain a high level of operational integrity. The Port Authority does not allow violations of policies, standards, or procedures that harm the integrity of the Program, and may enforce sanctions to address such violations.

D. Dispute Resolution. The Program shall include procedures for dispute resolution, including grievance procedures and procedures for resolution of disputes between a contractor and a small business.

## **VI. Organizational Program Goal.**

The Port Commission hereby establishes the Organizational Program Goal of thirty-five (35%) percent. The Port Commission reserves the right to amend or update such Organizational Program Goal from time to time.

## **VII. Staff Responsibilities.**

A. The Port Commission directs the Port Authority to designate the Division responsible for carrying out the Program as described herein. Such Division shall also be responsible for carrying out the Port Authority’s Minority- and Woman-Owned Business Enterprise Development Program in conjunction with the Program.

B. Delegation. The Division shall have primary responsibility for the implementation and administration of the Program. In the absence of a contrary directive by the Executive Director, the senior-most staff leader of the Division is responsible for this Policy's implementation and interpretation.

C. Standards and Procedures. The Division shall formulate, propose, and implement the Manual, setting forth rules and regulations for the development, implementation, administration, and monitoring of the Program, and may prepare and update other standards and procedures consistent with this Policy for administration of staff services related to the Program. The Manual and all other standards and procedures developed by staff shall not contain restrictions on the authority of the Port Commission or impose obligations on the Port Commission.

D. Periodic Small Business Development Reports. The senior-most staff leader of the Division or his or her designee shall periodically (i) report to the Port Commission regarding the operations and achievements of the Program, and (ii) evaluate the effectiveness of this Policy and the Program and recommend updates as needed to the Port Commission and the Committee.

### **VIII. Small Business Participation in Procurements.**

A. Determination of Participation. The determination of whether small business participation will be considered in a specific procurement, and the manner in which such small business participation will be considered, shall be made in accordance with governing law, the Port Authority's Procurement Policy, and Port Authority requirements. Such determination of whether a Contract is Program-eligible is based on all relevant factors including the type of commodity or service procured, the procurement method used, and the availability of Enrolled Small Businesses.

B. Evaluation of Participation.

1. When the Port Authority solicits Program-eligible Contracts using a procurement method with goal- (or target-) oriented scoring of small business participation, the solicitation document should provide that each proposer is awarded points based upon its proposed level of small business participation.

2. When the Port Authority solicits Program-eligible Contracts using a request for competitive sealed bid or other procurement method with a "pass/fail" small business requirement, the solicitation document should provide that a bidder or proposer must meet the required level of small business participation or its bid will be considered non-responsive.

3. Notwithstanding Sections VIII(B)(1) and (2), the Port Commission delegates to the Executive Director or his designee the authority to determine specific procedures and standards for whether and how small business participation may be evaluated in particular

procurements.

## **IX. Enforcement and Sanctions for Non-Compliance.**

A. Authorization. The Port Commission authorizes sanctions against any business participating in the Program that violates the provisions of this Policy, the Manual, its Contract(s), or any other document adopted to implement this Policy or Program.

1. Such violations shall include, but are not limited to, violation of the Port Authority's Non-Discrimination Mandate, falsification or misrepresentation of a business as a Certified or an Enrolled Small Business, failure of a business to perform a Commercially Useful Function in connection with the applicable Contract, or any other violation of the terms of the Contract, this Policy, the Manual, or applicable Port Authority requirement.

2. Such sanctions may consist of measures up to and including Contract termination, suspension from status as an Enrolled Small Business for a period of up to three (3) years, and debarment from contracting with the Port Authority for a period of up to two (2) years.

3. The Port Authority may determine that sanctions imposed against a business shall also apply personally to all those persons with control or knowledge of the acts and omissions that give rise to the sanctions.

### **B. Enforcement and Investigation Provisions.**

1. The Port Authority should include, in each applicable solicitation and/or Contract, provisions stating that the failure by the business to carry out the requirements of the Program may: (i) be a breach of the Contract; (ii) result in termination of the Contract; (iii) result in denying or limiting credit towards the Contract Goal; (iv) result in withholding progress payments; (v) trigger required payment of liquidated damages; (vi) result in debarment or suspension from future contract opportunities; and/or (vii) result in other remedies.

2. Solicitations and/or Contracts should additionally provide for reasonable access to books and records of contractors, and require contractors to provide reasonable access to books and records of subcontractors, to support the Port Authority's investigations, determinations, and enforcement of compliance with the Program.

C. Hearings. The Manual shall provide for the Port Authority to conduct a hearing to consider whether the alleged misconduct provides grounds for the Port Authority to sanction a business participating in the Program, and to issue sanctions if appropriate.

1. The Port Commission hereby delegates authority to the Executive Director to select a hearing officer to conduct any such hearing and impose appropriate sanctions.

2. The Manual shall provide for the details of the processes and procedures for such hearings, including but not limited to notice, conduct, issuance of decisions, and appeals.

D. Appeals.

1. Any sanction hereunder may be appealed to the Executive Director.

2. A sanction hereunder that involves suspension from status as an Enrolled Small Business may be appealed to the Committee. The Committee may require that the appeal be heard by the Executive Director before being brought before the Committee.

3. A sanction that involves debarment may be appealed to the Port Commission. The Port Commission may require that the appeal be heard by either the Executive Director or the Committee before being brought before the Port Commission.

4. Appeals before the Executive Director, Committee, or Port Commission shall be limited to determining whether the sanctions imposed should be upheld based on evidence presented at the initial hearing.

**X. Port Commission Authority Reserved.**

Port Authority procurement, including the consideration of small business participation as a selection criterion, is under the sole control of the Port Commission, which approves and oversees Port Authority expenditures in conformity with the Texas law, including the Texas Water Code and adopted policies. This Policy does not constrain the discretion and authority of the Port Commission, which may amend this Policy at any time for any reason.

**XI. Policy and Program Authority.**

A. Statutory.

1. Texas Water Code, Chapters 60, 61, and 62
2. Texas Government Code, Chapter 2254
3. Texas Special District Local Laws Code, Chapter 5007

B. Port Commission-enacted.

1. Amended and Restated Bylaws of the Port Commission
2. Second Amended and Restated Code of Ethics

3. Charter of the Procurement and Small Business Development Task Force
4. Procurement Policy
5. Local Preference Procurement Program and Policy
6. Local Preference Standards
7. Approval of a Small Business Development Program, described in Minute No. 2001-0529-35

C. Savings Clause. If any provision of this Policy is inconsistent in whole or in part with Texas or federal law, then such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable or shall be deemed excised from this Policy as may be required, and this Policy shall be deemed restated as if such provision had been originally incorporated herein as so modified or restricted or excised.

D. Supersedes Prior Policies.

1. This Policy supersedes and replaces any prior policies adopted by the Port Commission regarding participation by small business enterprises in Port Authority procurements and contracts, including prior Small Business Development and Local Preference Procurement Program policies, and including any policies contained in prior Program documents.

2. This Policy does not supersede or replace the Port Authority Minority and Women-Owned Business Enterprise Policy adopted by the Port Commission by Minute Number 2021-0427-55.

**XII. Non-binding Statement of Intent.**

This Policy, the Program, and any standards and procedures established to implement them, are nonbinding statements of intent, which do not create in any person a property interest in a potential award or contract, do not constitute a contractual obligation of the Port Authority to others, and do not waive any of the Port Authority's immunities under law, including the Port Authority's immunity from suit and its immunity from liability. Nothing in this Policy or in the Program prohibits the Port Authority from rejecting any and/or all proposals or bids received in response to a procurement solicitation. The Port Authority reserves the right to assert every defense to any claim that is available to it under law.

**XIII. Adoption and Review.**

A. This Policy was adopted by the Port Commission on April 27, 2021, as evidenced by Minute Number 2021-0427-55, and is effective as of the date of adoption.

B. The Committee or the Port Commission may, from time to time, evaluate the effectiveness of this Policy and the Program and recommend updates as needed.

Policy Owner: Executive  
Policy Version: Original