

**Port of Houston Authority**  
**Minority- and Woman-Owned Business Enterprise Development Policy**  
**April 2021**



**I. Purpose.**

The purpose of this Minority- and Woman-Owned Business Enterprise Development Policy (the “Policy”) is to establish the Port of Houston Authority Minority- and Woman-Owned Business Enterprise Development Program (the “Program”), set out principles guiding the Program, and authorize and assign responsibilities for carrying out its requirements.

**II. Policy Statements.**

A. It is the long-standing policy of the Port of Houston 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. The Port Authority is committed to equal opportunity for small, minority- and woman-owned businesses to participate in the award and performance of Port Authority contracts.

C. It is the policy of the Port Authority to ensure competitive business opportunities for small, minority- and woman-owned 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.

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

**III. Background.**

A. The Port of Houston Authority Small Business Development 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, in furtherance of the policies and commitments as set forth in its Policy Statements above and desiring to include race- and gender-conscious elements to the Port Authority’s contracting process, if appropriate, awarded to Griffin & Strong, P.C., a contract to perform disparity study research to meet the requirements of strict constitutional scrutiny required by the United States Supreme Court in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

C. A summary of research conducted in connection with the “Port of Houston Authority 2020 Disparity Study” prepared by Griffin & Strong, P.C. (the “Draft Disparity Study”)

was presented to the Port Commission, the governing body of the Port Authority, on December 8, 2020, and among other things the draft research indicated disparities between the availability of minority- and woman-owned business enterprises (“M/WBEs”), and the utilization by the Port Authority of those M/WBEs seeking to do business with the Port Authority.

D. The Draft Disparity Study recommended measures to assist the Port Authority’s efforts to help ensure that all qualified firms within the Port Authority’s relevant marketplace would be given the opportunity to successfully conduct business with the Port Authority.

E. The State of Texas, Harris County, and the City of Houston have also conducted disparity studies which have established that M/WBEs or historically underutilized businesses in the applicable jurisdiction’s market area experience disparities in access to the jurisdiction’s contracts.

F. These studies have each recommended that the applicable jurisdiction employ measures to address their findings, and each jurisdiction has adopted programs to do so.

G. The Port Authority is similarly committed to implementing and maintaining a contracting program in conformance with the *City of Richmond v. J.A. Croson Co.* decision and applicable law, including employing measures that are narrowly tailored to help ameliorate disparities in the participation of minority- and woman-owned business enterprises in Port Authority contracting.

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

When used in this Policy, the following terms shall have the following meanings:

A. “Aspirational Goal” means the Port Authority’s overall total target for the participation of M/WBEs in Eligible 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 to M/WBEs *compared to* total amounts awarded in Eligible Contracts.

B. “Availability” means the pool of Businesses ready, willing, and able to perform the applicable Contract or Contract task, including, where special qualifications are necessary, qualified to undertake the particular portion of the work of the Contract or Contract task.

C. “Bid” means a Bidder’s response to a solicitation for bids, proposals, or statements of qualifications for a Contract that is at least partially funded by the Port Authority.

D. “Bidder” means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, a limited liability company, or any other entity which has submitted a Bid in response to a Port Authority solicitation, regardless of the procurement method employed by the Port Authority or the type of goods or

services sought.

E. “Business,” or “Business Enterprise” means a for-profit (i) sole proprietorship or (ii) entity, with a place of business located in the United States.

F. “Business Equity Division” means the Port Authority division or the successor Port Authority division responsible for the Program.

G. “Business Equity Division Head” means the senior-most staff leader of the Business Equity Division.

H. “Certified” means a MBE, WBE, or DBE (as each such group is defined herein) that has the applicable certification from an authorized certifying agency as recognized and approved by the Port Authority from time to time.

I. “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.

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

K. “Compliance” means that the applicable Port Authority department, or Business, properly implements the requirements of this Policy and the Program.

L. “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.

M. “Contract Goal” means the goal or requirement for participation of MBEs and/or WBEs applicable to a specific Eligible Contract solicitation, based on the percentage Availability of MBEs and/or WBEs to perform the specific weighted scopes of work of the entire Contract, the Port Authority’s utilization of MBEs and WBEs to date, the Port Authority’s progress towards meeting the Aspirational Goal, and other relevant factors.

N. “Contractor” means any Business that enters into a Contract with the Port

Authority, and includes members of any Joint Venture comprising such Business.

O. “DBE” means a Business as defined in the regulations governing the federal Disadvantaged Business Enterprise program, currently set forth in 49 C.F.R. Part 26, as amended.

P. “Draft Disparity Study” means the draft report titled “Port of Houston Authority 2020 Disparity Study” prepared by Griffin & Strong, P.C.

Q. “Eligible Contract” means a Contract, in an amount expected to exceed \$50,000 (or any other amount as currently authorized under Texas Water Code Section 60.403(a) for routine purchases or contracts) (i) subject to the requirements of this Program and to which a Contract Goal may be applied, and (ii) not including Excluded Contracts and Exempted Contracts, as defined herein.

R. “Enrolled M/WBE” means a Certified MBE, WBE, or DBE that has completed the Port Authority’s Enrollment Process and has received a confirmation from the Port Authority of its status as an Enrolled M/WBE in the Program.

S. “Enrollment Process” means the process by which a Certified MBE, WBE, or DBE becomes an Enrolled M/WBE, permitting its participation in an Eligible Contract to be counted toward the Aspirational Goal and a Contract Goal.

T. “Excluded Contract” is a Contract not subject to this Policy because it is:

- Purchase of an item that can be obtained only from one source, as provided under the Texas Water Code Section 60.412(a)(7);
- All or partially state- or federally-funded, and may be subject to other requirements in connection with such funding;
- Awarded pursuant to a procurement for which consideration of such status is prohibited by law; or
- Not a Contract as defined herein.

M/WBEs are encouraged to Bid on an Excluded Contract, but there is no individual participation Contract Goal for such Excluded Contract.

U. “Exempted Contract” is a Contract for which the owner’s status as an MBE, WBE, or DBE is not considered as a selection criterion because the Business Equity Division Head, in consultation with the User Group, has determined that it meets one or more of the following criteria:

- A public or administrative emergency exists that requires the goods or services to be provided with unusual immediacy;

- The goods or services are of such a specialized, technical, or unique nature that the pool of qualified contractors is so limited (and there is not reasonable opportunity for subcontracting) that a selection process that formally considers the Bidder’s status as an MBE, WBE, or DBE is not reasonable;
- A selection process that considers the Bidder’s status as an MBE, WBE, or DBE would:
  - Impose an unwarranted economic burden or risk on the Port Authority;
  - Unduly delay acquisition of the goods or services; or
  - Otherwise not be in the best interest of the Port Authority (e.g. purchases for which the Port Authority intends to seek reimbursement from a third party); or
  - Market research, past experience, or the Availability of local, qualified MBEs, WBEs, or DBEs for providing the goods or services indicate that negligible or no such Bidder participation would be obtained.

M/WBEs are encouraged to Bid on an Exempted Contract, but there is no individual participation Contract Goal for such Exempted Contract.

V. “Good Faith Efforts” means efforts to achieve an MBE or WBE participation goal which efforts, by their scope, intensity, and appropriateness, can reasonably be expected to fulfill the applicable Program requirement.

W. “Joint Venture” means an association of an MBE and/or WBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and/or knowledge, and in which the MBE or WBE is wholly responsible for a distinct, clearly defined portion of the work of the Contract or Commercially Useful Function, and the share of which in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

X. “Manual” means the Port Authority Minority- and Woman-Owned Business Enterprise Program Standards and Procedures Manual, detailing the Program and the standards and procedures for implementation of the Policy and the Program.

Y. “Marketplace” means Harris, Montgomery, Fort Bend, Galveston, Brazoria, Chambers, Liberty, and Waller counties.

Z. “Minority Person” means a citizen or lawful permanent resident of the United States who is a member of one of the following socially and economically-disadvantaged groups:

1. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
2. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3. “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians; or

4. “Asian Americans,” which includes “Asian-Pacific Americans,” i.e. persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong; or “Subcontinent Asian Americans,” i.e. persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

AA. “MBE” (Minority-Owned Business Enterprise) means a Business that is at least 51% Owned by one or more Minority Persons, or for which at least 51% of the equity is Owned by one or more Minority Persons, and both the management and daily business operations are carried out and controlled by one or more of the Minority Persons who own it.

BB. “M/WBEs” means MBEs and WBEs.

CC. “Owned” means the status of having all the customary incidents of ownership of a Business, including control and disposition and sharing in all risks and profits commensurate with the degree of ownership interest.

DD. “Port Authority” means the Port of Houston Authority of Harris County, Texas, a political subdivision.

EE. “Port Commission” means the governing body of the Port Authority.

FF. “Prime Contractor” means a Contractor that is awarded a Contract and is obligated to perform the Contract, including coordinating all the work of that Contract and purchasing all materials and performing services required thereunder, or contracting with Subcontractors to do so.

GG. “Procurement Services” means the Port Authority department generally responsible for acquiring goods and services for the Port Authority.

HH. “Program” means the Minority- and Woman-Owned Business Enterprise Program established by this Policy.

II. “SBDP” means the Port of Houston Authority Small Business Development Program.

JJ. “Subcontractor” means a party that enters into a subcontract agreement with a

Prime Contractor to perform work or provide materials under a Contract.

KK. “User Group” means the Port Authority division, department, or other staff group that has or shares responsibility for the procuring and administering of a Contract subject to the Program.

LL. “Utilization Plan” means the plan, in the form specified by the Port Authority, which must be submitted by a Bidder listing the M/WBEs that the Bidder intends to use in the performance of a Contract, the scopes of the work of such M/WBEs, and the dollar values and/or the percentages of the work to be performed by such M/WBEs.

MM. “WBE” (Woman-Owned Business Enterprise) means a Business that is at least 51% Owned by one or more female American citizens, or for which at least 51% of the equity is Owned by one or more female American citizens, and both the management and daily business operations are carried out and controlled by one or more of the female American citizens who own it.

## **V. Program Established.**

A. The Port Commission hereby adopts the Program and directs the Port Authority to designate the Business Equity Division responsible for carrying out the Program as described herein. Such Business Equity Division shall also be responsible for carrying out the Port Authority’s SBDP in conjunction with the Program.

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. It is the responsibility of all Port Authority employees, divisions, departments, and groups to be aware of this Policy and Program, and to support the Policy and Program to the greatest extent appropriate to the role of such employee, division, department, and group.

## **VI. Aspirational Goal.**

The Port Authority hereby establishes the following Aspirational Goal for the Program:

30% of all Eligible Contract amounts should be paid to Enrolled M/WBEs by the Port Authority.

The Port Commission reserves the right to amend or update such Aspirational Goal from time to time.

## **VII. Program Administration.**

### **A. Business Equity Division Responsibilities.**

1. The Business Equity Division shall have primary responsibility for the implementation and administration of the Program and all other Port Authority contracting diversity, equity, and training programs, including without limitation, working with User Groups to implement the goals and objectives of the Program. In the absence of a contrary directive by the Executive Director, the Business Equity Division Head is responsible for this Policy's implementation and interpretation.

2. The Business Equity 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.

3. The Business Equity Division Head or his or her designee shall periodically report to the Port Commission and Committee regarding the operations and achievements of the Program.

4. The Business Equity Division Head or his or her designee shall periodically evaluate the effectiveness of this Policy and the Program and recommend updates as needed to the Port Commission and Committee.

5. The Business Equity Division shall work in cooperation with the Port Authority's Grants Programs Manager in administering or partially administering state- or federally-funded contracts, including United States Department of Transportation-assisted contracts incorporating the requirements of the DBE program pursuant to 49 C.F.R. Part 26, where the Port Authority is either a direct recipient of United States Department of Transportation funds or is a subrecipient of such funding through another entity.

### **B. Program Roles and Responsibilities for User Groups.**

1. Each User Group is particularly responsible for promoting, supporting, and assisting in carrying out the Program, in addition to the general responsibility of Port Authority staff to do so, and for exercising specific functions in support of the Program, as well as any other function(s) deemed necessary by the Business Equity Division to implement the goals and objectives of the Program.

2. To reduce barriers to MBE and WBE participation in Port Authority



procurements, all User Groups requesting Bids on behalf of the Port Authority shall:

a. Designate a departmental coordinator or designee, or multiple coordinators or designees, who shall be the point of contact for monitoring and reporting Compliance in the Business Equity Division.

b. Evaluate anticipated solicitations to unbundle items or services, where feasible, to permit Bids on quantities or scopes of work less than the total, or the performance of discreet portions of the project. “Unbundling” means a process whereby a Contract is divided into smaller parts to provide Enrolled M/WBEs better access and reduce barriers to Port Authority procurement opportunities. Unbundling can be divided into two types, horizontal and vertical. Horizontal unbundling divides the Contract into multiple lots. Vertical unbundling divides each lot into different phases of the procurement process, where each of the phases offers new opportunity for M/WBE participation.

c. Establish schedules for submitting Bids with adequate time frames for identifying and contacting M/WBEs qualified to submit Bids or participate in Contracts.

d. Arrange time schedules for Bid response due dates and presentations to facilitate the participation of Prime Contractors and Subcontractors qualified to submit Bids or participate in Contracts.

e. Review insurance, experience, and other award evaluations factors to facilitate the participation by M/WBEs and other small firms, while no more burdensome than necessary to protect the Port Authority’s interests.

f. Manage Contracts in a consistent manner, to assure Compliance with the Program.

g. Assist in the compilation of Contract data for M/WBE Availability and utilization.

h. Assist and support the Business Equity Division by helping ensure that the Prime Contractor provides all necessary documents and information to close out the Contract in order to provide a final accounting for Subcontractor participation on the Contract, including M/WBE participation.

i. Assist and participate in training on the Program (including User Group leadership, project managers, buyers, and Program coordinators).

j. Assist and participate in workshops, trade fairs, outreach seminars, and other efforts organized by the Business Equity Division and others to help identify and increase the participation of M/WBEs in Contracts.

k. Assist and participate in classes, training programs, and other efforts organized by the Business Equity Division and others to help to increase Availability and train and mentor M/WBEs to help increase their participation in Contracts.

### **VIII. Race- and Gender-Neutral Measures to Ensure Equal Opportunities for all Contractors and Subcontractors.**

A. Suggested Measures. In order to implement the Program, the Port Authority shall develop and use race- and gender-neutral measures to the maximum feasible extent. These measures may include, but are not limited to:

1. Providing timely information, including through the Port Authority's electronic procurement system and social media, on Port Authority contracting procedures, Bid preparation, specific Contract opportunities, and competencies sought in Port Authority Contract solicitations.

2. Holding pre-Bid conferences, where appropriate, to explain Contract opportunities and to encourage Prime Contractors to use available qualified MBEs and WBEs.

3. Arranging time schedules for Bid response due dates and presentations to facilitate the participation of Prime Contractors and Subcontractors qualified to submit Bids or participate in Contracts.

4. Establishing schedules for submitting Bids with adequate time frames for Bidders to identify and contact M/WBEs and other small businesses qualified to participate in the procurement, and for non-Certified Bidders to solicit quotes from MBE and WBE Subcontractors.

5. Segmenting procurements, where feasible, to facilitate the participation of MBEs, WBEs, and other small businesses.

6. Reviewing retainage, bonding, and insurance requirements and their application to Bid evaluations, to eliminate unnecessary barriers to contracting with the Port Authority.

7. Authorizing, where appropriate, mobilization payments to Prime Contractors and requiring that Subcontractors be remitted their proportionate share of mobilization funds, to eliminate unnecessary barriers to contracting with the Port Authority.

8. Adopting prompt payment procedures, including contractually requiring that Prime Contractors promptly pay Subcontractors, investigating complaints or charges of excessive delay in payments, and enforcing statutory and contractual prompt payment provisions.

9. Reaching out to and providing training, mentorship, and development assistance to M/WBEs and other small businesses, to increase their Availability and the number of Enrolled M/WBEs, and support their maximum participation in Contracts.

10. Providing training seminars on the technical aspects of preparing a Bid in response to a Port Authority solicitation, and education and other assistance in areas that may provide barriers to participation, such as obtaining bonding and financing, bid estimation, safety requirements, and quality control.

11. Collecting information from all Prime Contractors on applicable Contracts, detailing the quotes received from all Subcontractors for such Contracts and the payments to Subcontractors utilized by Prime Contractors on such Contracts.

12. Investigating complaints of discrimination against M/WBEs and/or referring them to the appropriate authorities for investigation.

B. Additional Measures. The Business Equity Division Head should work with User Groups to adopt additional measures as warranted.

## **IX. Race- and Gender-Conscious Measures to Implement the Program.**

A. Eligibility. To be eligible to be counted as an MBE or WBE towards a Contract Goal, the firm must be Certified at the time of Bid submission and become an Enrolled M/WBE no later than the date of award. The Port Authority shall make available on its website and through other means a list of certifying agencies recognized and approved by the Port Authority from time to time.

B. Contract Goals. The Business Equity Division Head, in consultation with the applicable User Group, shall establish a Contract Goal for each Eligible Contract. Such determination shall be made in accordance with governing law and the Port Authority's Procurement Policy, and shall be based upon the Availability in the Marketplace of at least three Certified MBEs or three Certified WBEs to perform the anticipated scopes of work of the entire Contract, the Port Authority's utilization of MBEs and WBEs to date, the Port Authority's progress towards meeting the Aspirational Goal, and other relevant factors including the type of commodity or service procured, the procurement method used, and other Port Authority requirements.

### **C. Counting MBE and WBE Participation Towards Contract Goals.**

1. A Bidder may achieve the Contract Goal by: (i) its own status as an MBE or WBE; (ii) entering into a Joint Venture with one or more MBEs and/or WBEs; (iii) subcontracting, at any tier, a portion of the work to one or more MBEs and/or WBEs; (iv) directly purchasing materials or services from one or more MBEs and/or WBEs; or (v) any combination of the above.

2. When the Port Authority solicits Eligible Contracts using a procurement method with goal- (or target-) oriented scoring of M/WBE participation, the solicitation document should provide that each proposer is awarded points based upon its proposed level of M/WBE participation, as compared to the Contract Goal.

3. When the Port Authority solicits Eligible Contracts using a request for competitive sealed bid or other procurement method with a “pass/fail” Contract Goal, the solicitation document should provide that a bidder or proposer must meet the Contract Goal or its Bid will be considered non-responsive.

4. When an MBE or WBE participates in a Contract, the Port Authority shall count only the payment for the work actually performed by the MBE or WBE toward the Contract Goal.

5. Only payments to an MBE or WBE that is performing a Commercially Useful Function shall be counted towards the Contract Goal.

6. Procedures and standards for counting the participation of qualified MBEs and WBEs towards a Contract Goal may additionally be provided for in the Manual.

D. Utilization Plans.

1. Utilization Plans and other Compliance documents must be submitted as provided in the procurement solicitation, and the failure to do so may render the Bid non-responsive. The Business Equity Division shall review each Bid submission to determine if it meets the Program and applicable solicitation requirements.

2. Each Bidder shall submit with its Bid a completed Utilization Plan, affirmed as correct and identifying the Businesses proposed to participate in the Contract in order to meet the Contract Goal, the type of work or service each Business would perform, the Contract amount to be paid to each Business, and such other information as provided for in the Manual.

3. The Utilization Plan shall include each Bidder’s commitment to (i) meeting or exceeding the Contract Goal set forth in the solicitation or (ii) demonstrating its Good Faith Efforts to do so.

4. Each Bidder shall submit at the time specified in the solicitation, a letter of intent for each MBE and WBE firm specified in the Bid response, affirmed as correct by the parties thereto, and evidence that each such MBE and WBE is Certified.

5. A Bidder may request a partial or total reduction of the Contract Goal, in the manner and form as specified in the Manual, based on its Good Faith Efforts to meet the

Contract Goal. In the event a non-M/WBE Business was selected by a Bidder for work on the Contract instead of an MBE or WBE, the documentation of Good Faith Efforts shall include evidence of each non-M/WBE, MBE, and WBE Business proposal quote submitted to the Bidder in connection with the Bid.

6. In the event any non-M/WBE, or purported MBE or WBE other than those listed on the Utilization Plan, is performing work or providing materials and/or equipment in place of those listed on the applicable Utilization Plan, following notice to the Prime Contractor, the Port Authority may exercise remedies and penalties as provided by the Program and Manual.

E. Additional Performance Compliance Measures.

1. The successful Bidder shall submit reports of its progress towards meeting the Contract Goal and Compliance with other Program requirements, in the form and at the time specified in the solicitation or as otherwise directed by the Port Authority.

2. Subject to amendments as approved by the Port Authority, the Contract Goal obligation extends to all Contract work covered by change orders regardless of the contracting tier, and the obligation to make Good Faith Efforts to meet the Contract Goal extends to the entire performance of the Contract.

3. Port Authority Program contract compliance analysts and auditors, or their designees, should have reasonable access to the Contractor's and Subcontractor's books and records to help determine Compliance with the Contract Goal commitment and other Policy and Program requirements.

**X. Enforcement and Sanctions for Non-Compliance.**

A. 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.

B. Authorization. The Port Commission authorizes sanctions against any Business 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 Certified or as an Enrolled M/WBE, 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 M/WBE 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.

C. 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 research, investigations, determinations, and enforcement of Compliance with the Program.

D. 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.

E. Appeals.

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

2. A sanction hereunder that involves suspension from status as an Enrolled M/WBE 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.

## **XI. Port Commission Authority Reserved.**

Port Authority procurement, including the consideration of M/WBE participation as a selection criterion, is under the sole control of the Port Commission, which approves and oversees Port Authority expenditures in conformity with 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.

## **XII. Policy and Program Authority.**

### **A. Statutory Authority.**

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 Policies.**

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. The Strategic Plan of the Port Authority as in effect from time to time

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.

## **XIII. 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 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.

#### **XIV. 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