



## MARAD-PIDP Diverse Business Program for Port of Oakland

The Port of Oakland (“The Port”) is implementing a minority-owned, woman-owned, and small business program for our federally funded construction and professional services contracts subject to 2 C.F.R. 200.321. The program is described below.

### 1. Objective/Strategies

**Regulation.** The controlling federal regulation, 2 C.F.R. 200.321, reads as follows.

*§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.*

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

**Strategies.** The Port of Oakland employs the following strategies to comply with 2 C.F.R. 200.321.

1. Diverse business goals on contracts. These goals reflect Minority Business Enterprise and Women Business Enterprise availability and participation.
2. Small business goals on contracts. These goals reflect Small Business Enterprise availability and participation.
3. Small business goals are an element of responsiveness.
4. Solicit diverse and small businesses directly.
5. Break up scopes of work into smaller contracts when feasible.
6. Partner with organizations that serve diverse and small businesses.
7. Require primes to implement the aforementioned strategies.

## 2. Definitions

*Labor Surplus Area:* is a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period. For 2022, that includes Antioch, Pittsburg, Richmond, and San Pablo in Contra Costa County and no cities in Alameda County.

*Labor Surplus Area Firm:* A firm that together with its first-tier subcontractors *will perform substantially in labor surplus areas*. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

*Minority Business Enterprise:* a business owned 51% or greater by a person or persons who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA. Businesses that are certified as DBE by the California Unified Certification Program with one of the corresponding designations: Black American, Hispanic American, Native American, Asian-Pacific American, and Subcontinent Asian American.

*Small Business Enterprise:* as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) which is based on the NAICS code of the business for the listed scope, **and the personal net worth of the business owner(s) does not exceed the cap on average annual gross receipts specified in 49 C.F.R. 26.65(b) which is \$1.32 M excluding personal residence and equity in the subject business.** Businesses that are certified as DBE by the California Unified Certification Program.

*Women Business Enterprise:* a business owned 51% or greater by a woman. Businesses that are certified as DBE by the California Unified Certification Program with a designation of Woman.

## 3. Small Business Certification Entities

**Port of Oakland:** Small Business Enterprise (SBE) and Very Small Business Enterprise (VSBE).

**Alameda County:** Small Business, Emerging Business.

**Alameda County Transportation Commission:** Local Business Enterprise, Small Local Business Enterprise, Very Small Local Business Enterprise.

**City of Oakland:** Small Local Business Enterprise (SLBE), Very Small Local Business Enterprise (VSLBE), Not for Profit Small Local Business Enterprise (NFP/SLBE), Small Business Administration-Local Business Enterprise (SBA-LBE);

**California Department of General Services:** Small Business (SB) and Disadvantaged Veteran Business Enterprise (DVBE); and

**United States Small Business Administration:** HUBZone, 8(a), Small Disadvantaged Business (SDB), Woman-owned, Veteran owned, and Service-Disabled Veteran-owned small businesses

#### 4. Diverse Business Certification Entities

**California Unified Certification Program:** Disadvantaged Business Enterprise (DBE).

**National Minority Supplier Development Council:** Minority Business Enterprise- Black, Hispanic, Native American, Asian, and Asian Indian.

**Western Regional Minority Supplier Development Council:** Minority Business Enterprise- Black, Hispanic, Native American, Asian, and Asian Indian. To register for diverse business. <https://affiliate.nmsdc.org/wrmsdc/app/template/account%2Cregistration%2CUserRegistrationDefault.vm>

**California Public Utility Commission Supplier Clearinghouse:** Minority Business Enterprise- African American, Hispanic American, Native American, and Asian Pacific American. Women Business Enterprise. <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>

#### 5. Verification

- The Port will minimize fraud and abuse in the Diverse Business Program by verifying personal net worth eligibility of non-DBE firms.

#### 6. Monitoring/Record Keeping

- The primes are required to submit a Contractors/Subcontractors Participation Form or Consultant/Subconsultant Participation Form which lists the prime and its subs.
- The primes are required to submit an Interested Parties List form which identifies all subconsultants/ subcontractors that submitted a proposal or bid, irrespective of whether the business was selected for the team.
- Primes must demonstrate Good Faith Efforts at meeting the small business participation goals. Good Faith Efforts are measured in two ways: (1) meet or exceed the small business goal or (2) demonstrate through documentation that there were sincere efforts to meet the small business goal.
- A promise to use small businesses after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.
- Primes are required to identify payments to all subconsultants/subcontractors at all tiers through the use the Port of Oakland Progress Payment Form No. 1 Transmittal and Monthly Summary. Subconsultants/ Subcontractors are required confirm receipt of payment through the Port of Oakland Progress Payment Form No. 2 Subcontractor Payment Declaration.
- Enforcement Mechanisms may include liquidated damages, withholding payment, debarment, and alternative dispute resolution.
- The Port's Diverse Business Program will be reasonably monitored by the DBE Liaison Officer and assignees (e.g., Contract Compliance Office staff).