



**CITY OF KIRKLAND**  
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## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** James Lopez, Deputy City Manager, External Affairs  
David Wolbrecht, Senior Neighborhood Services Coordinator  
Eric Scott, Recovery Intern

**Date:** September 8, 2021

**Subject:** EQUITY IN CONTRACTING RESOLUTION AND POLICY UPDATE

### **RECOMMENDATION:**

It is recommended that the City Council adopt draft Resolution R-5491, establishing an equity in contracting directive to increase opportunities between the City and Women and Minority Business Enterprises (Attachment A). Staff is also seeking input and direction on the draft Equity in Contracting Policy (Attachment B).

### **BACKGROUND DISCUSSION:**

On August 4, 2020, the City Council adopted Resolution R-5434 to ensure the safety and respect of Black people and dismantle structural racism in Kirkland (Attachment C). Section 3c of R-5434 called for "a comprehensive review of the City's procurement and contracting processes and documents to eliminate barriers for disadvantaged business enterprises to compete for City projects." To help guide the City's work on this element, staff first met with local community experts:

- Ms. Ollie Garrett, President and CEO of PMT Solutions and President of the Tabor 100, an association of entrepreneurs and business advocates who are "committed to economic power, educational excellence and social equity for African-Americans and the community at large," and
- Mr. Luis Navarro, Director of Workforce Development in the Office of Equity Diversity and Inclusion for the Port of Seattle and a resident of Kirkland.

Additionally, staff researched the practices of Whatcom Transportation Authority, the Washington State Liquor and Cannabis Control Board, and the Port of Seattle for related practices and programs. Based on these meetings and initial research, staff outlined a draft framework which was included in the February 16, 2021 [R-5434 Early Action Update to Council](#)<sup>1</sup>. Staff subsequently provided an update on actions to date as part of the May 18, 2021 [R-5434 Update to Council](#)<sup>2</sup>.

In June, staff met with Mr. Fernando Martinez, President & CEO of Northwest Mountain Minority Supplier Development Council (Northwest Mountain MSDC), a nonprofit organization certifying, developing, and connecting Minority Business Enterprises (MBEs) with major corporations and public agencies. Mr.

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<sup>1</sup> February 16, 2021 Study Session Memo, R-5434 Early Action Update to Council:

[https://www.kirklandwa.gov/files/sharedassets/public/city-council/agenda-documents/2021/february-16-2021/3a\\_study-session.pdf](https://www.kirklandwa.gov/files/sharedassets/public/city-council/agenda-documents/2021/february-16-2021/3a_study-session.pdf)

<sup>2</sup> May 18, 2021 Study Session memo, R-5434 Update: [https://www.kirklandwa.gov/files/sharedassets/public/city-council/agenda-documents/2021/may-18-2021/3a\\_study-session.pdf](https://www.kirklandwa.gov/files/sharedassets/public/city-council/agenda-documents/2021/may-18-2021/3a_study-session.pdf)

Martinez's input further guided staff's approach to this work and emphasized the importance of a policy directive articulating an aspirational goal for the City.

While drafting Resolution R-5491 and the related policy, staff relied on Port of Seattle Resolution No. 3737 as a reference (Attachment D). For context, the Port of Seattle Commission adopted on January 9, 2019 Resolution No. 3737 establishing a Diversity in Contracting Policy Directive to increase women and minority business opportunities and to repeal Resolutions No. 3506 and No. 3618. This action and subsequent program administration by the Port has provided a helpful precedence for City staff in developing Kirkland's approach. Specifically, as mentioned in R-5491 and relevant to staff's work to accomplish Section 3c of R-5434, the passage of Initiative 200 in 1998 by Washington state voters prohibits discrimination or preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. Staff mirrored the Port's policy directive for the aspirational goal articulated in Section 2 of draft R-5491. The accompanying policy structure provides a clear intent and purpose for this effort.

The key provision of R-5491 is Section 2 which states:

*The City will create a procurement environment in which Women and Minority Owned Business Enterprises (WMBEs) are afforded equitable opportunities for business partnerships with the City. The purpose of this policy is to provide the maximum practicable opportunity for increased participation by WMBEs in City contracting for public works, consulting services, supplies, material, equipment, and other services to create the opportunity to leverage City spending to increase WMBE utilization.*

One key accompaniment to the aspirational goal is the definition for "Women and Minority Owned Business Enterprises (WMBEs)." Staff considered developing City of Kirkland -specific criteria and definition for WMBEs and/or disadvantaged business enterprises. Based on best practice advice from the experts mentioned above, as well as a preliminary assessment of internal resources needed to administer such a program, staff recommend using pre-existing certification processes through the Washington State Office of Minority and Women's Business Enterprises (OMWBE), while being open to adding relevant certification entities and programs as identified and reviewed over time. Developing a process for reviewing additional eligible databases for certified WMBE firms beyond OMWBE is part of the Equity in Contracting Policy.

#### Background on OMWBE

OMWBE, a Washington State agency, is responsible for "certifying small, minority and women-owned businesses to facilitate their participation in public contracting and procurement". The certifications apply to enterprises that conduct business with Washington state agencies, local governments, school districts, and public universities. OMWBE offers two general types of certification, Federal Certification and State Certification.

#### *State Certifications*

State Certification is a program of the State of Washington, and OMWBE offers five types of state certification. Certifications are determined by the identity of the business owner. The same benefits are provided with each certification. The five certification types as defined by the OMWBE are:

**MBE** - Minority Business Enterprise – owned by minorities

**WBE** - Woman Business Enterprise – owned by women

**MWBE** - Minority Women Business Enterprise – owned by minority women

**CBE** - Combination Business Enterprise – owned by women and minorities

**SEDBE** - Socially and Economically Disadvantaged Business Enterprise – owned by non-minority men who are found to be socially and economically disadvantaged on a case by case basis.

In order to be certified, the eligible owner(s) must:

- Be a minority or woman. Minority is defined by OMWBE as African American/Black, Hispanic/Latino, Asian American, Pacific Islander, Native Hawaiian, Alaska Native, or Native American. Other individuals may be found to be socially and economically disadvantaged on a case-by-case basis; more information is available on the OMWBE website.
- Own at least 51% of the business and show contribution of capital and expertise.
- Control the managerial and day-to-day operations.
- Be a U.S. citizen or permanent U.S. resident.
- Be economically disadvantaged. "Economically disadvantaged" is generally defined as having a personal net worth less than \$1.32 million, not including a person's primary residence or an applicant business. There are other guidelines available on the OMWBE website.

Additionally, qualifying businesses must be:

- For profit.
- Licensed to do business in Washington State.
- Able to perform the core services necessary to fulfill a contract in the business's eligible owner(s) area of specialty or expertise.
- A small business based on U.S. Small Business Administration (SBA) size standards.

More information on [state certifications](#)<sup>3</sup> can be found at the OMWBE website.

#### *Federal Certification*

Federal Certification is a program of the US Department of Transportation and qualifies businesses as a disadvantaged business for federally funded projects, such as interstate highways and airports. There are three federal certifications:

**DBE** – Disadvantaged Business Enterprise – for socially and economically disadvantaged individuals.

**ACDBE** – Disadvantaged Business Enterprise for concessionaires located at airports.

**SBE** - Small Business Enterprise – for small businesses. This program is race and gender neutral.

The criteria for the federal certifications are generally similar to the state certifications, with some differences. Additional information on [federal certifications](#) can be found at the OMWBE website.

#### *Overview of draft Equity in Contracting Policy*

The Equity in Contracting Policy is intended to apply to all contracts and other activities at the City, including construction and consulting contracts, purchased goods, and services, with the exception of Emergency Purchases as defined in the City of Kirkland Procurement Manual. The policy includes five general areas:

1. Developing responsibilities, policies, practices, and processes that can provide a more receptive environment for the utilization of WMBE firms;
2. Improving inclusion and outreach efforts to sustain and improve WMBE participation and to reduce any disparity in City contracting;
3. Affirmative efforts to assure equality of contracting opportunity;
4. Affirmative efforts in subcontracting; and
5. Defining clear processes for program evaluation and improvement.

The draft Resolution and policy have both been reviewed by Ms. Garrett and Mr. Navarro (mentioned previously); the City's equity assessment consultant, Ms. Chanin Kelly-Rae; Kirkland Human Services

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<sup>3</sup>State Certification – Office of Minority and Women's Business Enterprises. <https://omwbe.wa.gov/certification/state-certification>

Commissioner, Mr. Jonathan Stutz; and Diversity, Inclusion, and Equity consultant, trainer, and facilitator, Mr. Kevin Henry. All items of feedback from these reviewers have been incorporated into the draft documents before Council.

In total, this body of work will result in a comprehensive program supporting equity in contracting at the City of Kirkland. Staff in the Finance & Administration Department and the City Manager's Office have started preliminary planning of this new program. With Council adoption of Resolution R-5491, staff will begin in earnest to develop the program elements defined in the draft policy, with anticipated rollout in Quarter 4, 2021.

**NEXT STEPS:**

Staff recommend City Council adopt Resolution R-5491. Staff also seeks input and direction on the draft Equity in Contracting Policy.

Attachment A – Draft Resolution R-5491

Attachment B – Draft Equity in Contracting Policy

Attachment C – Resolution R-5434

Attachment D – Port of Seattle Resolution 3737