

**Port KC
Construction Workforce Policy
August 15, 2016
Resolution 2016-08-02**

Section 1 - Policy Statement

On June 19, 2009 the Port Authority of Kansas City, Missouri (“Port KC”) Board of Commissioners adopted a Construction Workforce Policy (“Workforce Policy”) through Resolution No. 06-07-09 in order to increase the recruitment, training and retention of residents, minorities and women on Port KC construction contracts and throughout the Kansas City Metropolitan Statistical Area by setting goals for utilization of minority, women and resident workers in order to mirror the stated goals of the City of Kansas City, Missouri (“City”) as set forth in Article II, Chapter 38 of the City’s Code of General Ordinances Sections 38-83.1 through 38-83.13 which established a construction employment program (“City Construction Employment Program”). On May 1, 2013, Chapter 38 was repealed in its entirety and replaced with Part II, Chapter 3, Article IV, Sections 3-501 through 3-527.

Port KC does not adopt, implement or amend this Construction Workforce Policy to correct or remedy any actual or alleged discriminatory action or policy by or on behalf of the Port KC in connection with the recruitment, training and retention of residents, minorities and women on Port KC construction projects.

Port KC continues to recognize the importance of recruiting, training and retaining residents, minorities and women on construction projects in the Kansas City Metropolitan Statistical Area and supports the economic and social reasons underlying the City Construction Employment Program.

Section 2 – Definitions Applicable to Workforce Policy

Apprentice means person of legal working age who has entered into a program for training and employment to learn a skilled construction trade.

Apprenticeship Program means a program approved by the Bureau of Apprenticeship Training providing for no less than 2,000 hours of reasonably continuous employment and for participation in an approved schedule of work experience through employment, which shall be supplemented by a minimum of 144 hours per year of related instruction.

Board of Commissioners means the Board of Commissioners of the Port Authority of Kansas City, Missouri.

City means the City of Kansas City, Missouri.

City Council means the governing body of the City.

Compliance Officer means the individual(s) designated by Port KC to monitor a Construction Contractor's compliance with this Workforce Policy on behalf of Port KC.

Construction Contract means a contract with a Construction Contractor estimated by Port KC prior to solicitation of construction bids as requiring more than 800 Construction Labor Hours and with an estimated cost that exceeds \$324,000.00 (as may be adjusted annually by the City under the City Construction Employment Program) for the construction, reconstruction, improvement, enlargement or alteration of any Fixed Work in which any portion is paid for out of Port KC funds.

Construction Contractor means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which, regardless of the number of employees, enters into a Construction Contract with Port KC.

Construction Employment Goals means the percentages of Construction Labor Hours to be performed by Minority and Women workers for a Construction Contractor on a given Construction Project(s) of that Construction Contractor during the construction time period of that Construction Contract unless otherwise waived by Port KC on appeal.

Construction Hours Affidavit means a statement by a Construction Contractor, verified under oath, setting forth the Construction Contractor's intent to meet or exceed the Construction Employment Goals while performing a Construction Contract.

Construction Labor Hour means a sixty minute period of time devoted by a worker employed by a Construction Contractor or subcontractor: (a) performing labor on a Construction Project job site, or (b) preparing, fabricating or painting materials or equipment to be used or incorporated on a Construction Project job site.

Construction Project means any project for construction of a Fixed Work performed by a Construction Contractor in the Kansas City Metropolitan Statistical Area.

Determination of Compliance means a final report issued by the Compliance Officer issued upon request of the Construction Contractor or upon the receipt of the

Fixed Work means any permanent building or structure for public use or benefit to be constructed, reconstructed, improved, enlarged or altered under a Construction Contract, including, but not limited to roads, streets, public utilities or other public facilities.

Good Faith Waiver means a waiver that is granted by Port KC based upon a showing by a Construction Contractor that despite undertaking in good faith the actions outlined in this Workforce Policy, the Construction Contractor was unable to achieve the Minimum Construction Employment Goals.

Incentive Construction Employment Goal means an aspirational goal for company-wide employment of Minorities and Women intended to encourage Construction Contractors to invest additional money and resources to hire and retain Minorities and Women on their

workforce in order to achieve participation percentages well in excess of the Minimum Construction Employment Goals and the percentage of Minorities and Women generally available in the workforce by providing public recognition upon the completion of a Construction Contract to the Construction Contractor who achieves such goal.

Journey person means one who has completed an apprenticeship in a trade or craft and is recognized in the particular trade or craft as a journey person.

Labor Union means any organization which exists, in whole or in part, for the purpose of collective bargaining; for dealing with employers concerning grievances, terms or conditions of employment; or for other mutual aid or protection of workers in relation to employment.

Minimum Construction Employment Goal means a minimum goal for employment of Minorities and Women that a Construction Contractor is expected to endeavor to meet by undertaking in good faith the actions outlined in this Workforce Policy.

Minority means a person who is a citizen or lawful permanent resident of the United States and who is:

- (1) African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or
- (2) Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish speaking islands of the Caribbean (for example Cuba and Puerto Rico), regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
- (3) and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
- (4) Native American, a person having origins in any of the original peoples of North America, and who maintain tribal affiliation or demonstrate at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.

Port KC means The Port Authority of Kansas City, Missouri.

Resident means an individual residing or domiciled within the City.

Woman means a person who is a citizen or lawful permanent resident of the United States and who is a female.

Workforce Preparedness Program means a program approved or certified by the City that actively seeks the participation of Minorities and Women and provides them with the skills and resources necessary to enter a program for training and employment to learn a skilled construction trade.

Section 3 – Construction Employment Goals

- (a) The Construction Employment Goals consist of the Incentive Construction Employment Goals and the Minimum Construction Employment Goals and are expressed as a percentage of total Construction Labor Hours of a Construction Contractor on a given Construction Contract. The Construction Employment Goals applicable under this Workforce Policy shall be those established under the City Construction Employment Program in effect at any time as set forth in the attached **Exhibit A**.
- (b) The Construction Employment Goals are goals for individual Construction Contracts.
- (c) Construction Employment Goals shall be based upon Minorities and Women working sufficient hours to qualify for benefits.
- (d) All Construction Contracts entered into by Port KC shall require that the Construction Contractor include the requirements of this Workforce Policy in all subcontracts of any tier and that the Construction Contractor use good faith efforts to ensure that such subcontractors comply with this Workforce Policy.
- (e) Port KC may provide public recognition to a Construction Contractor that achieves the Incentive Construction Employment Goals.
- (f) This Workforce Policy shall not be construed as requiring or encouraging a Construction Contractor, or any subcontractor working in conjunction with the Construction Contractor, to make employment decisions or otherwise alter the terms and conditions of employment based upon race or gender.

Section 4 – Good Faith Efforts to Comply; Good Faith Waivers

- (a) A Construction Contractor shall make good faith efforts to meet or exceed the Minimum Construction Employment Goals during the period beginning with the date bids are received on the Construction Contract and ending on the date that the Construction Contractor completes all work under the Construction Contract.
- (b) A Construction Contractor shall be presumed conclusively to be in compliance with this Workforce Policy as it relates to good faith efforts if (i) the Construction Contractor has met the Minimum Construction Employment Goals, or (ii) Port KC determines that the Construction Contractor has made good faith efforts to achieve the Minimum Construction Employment Goals and grants the Construction Contractor's request for a Good Faith Waiver.

- (c) Port KC shall grant a Good Faith Waiver if the Construction Contractor demonstrates to Port KC's reasonable satisfaction that it has made good faith efforts to achieve the Minimum Construction Employment Goals. In determining whether to grant a Good Faith Waiver, Port KC shall consider whether the Construction Contractor undertook the following actions:
- (1) For Construction Contractors that are not signatories to a collective bargaining agreements with organized labor:
 - a. Requested in writing the assistance of the Compliance Officer and/or the Director with respect to efforts to promote the utilization of Minorities and Women in the Construction Contractor's workforce and acted upon any such recommendations;
 - b. If the Construction Contractor hires workers in the ordinary course of business:
 - (i) Provided notice to a reasonable number of Minority and Women's business organizations of specific opportunities to participate in the Contract in sufficient time to allow MBE, WBE and DBE firms to participate effectively;
 - (ii) used terminology in such advertisements that sufficiently describes the work available, the pay scale, the application process, and anything else that one might reasonably be expected to be informed of relevant to the position being advertised;
 - (iii) maintained copies of each advertisement and a log identifying the publication and date of publication;
 - (iv) conducted real and substantial recruitment efforts, both oral and written, targeting Resident, Minority and Women community-based organizations, schools with a significant Minority student population, and training organizations serving the recruitment area;
 - (v) established and maintained and/or obtained from the Compliance Officer and/or the Director a current list of Resident, Minority and Women recruitment sources, providing written notifications to the recruitment sources of available employment opportunities, and maintained records of the notices submitted to the organizations and any responses thereto; and
 - (vi) maintained a current file for the time period of the Construction Contract with the name, address, and telephone number of each Resident, Minority and Woman job applicant, the source of the

referral, whether or not the person was hired, and in the event that the applicant was not hired, the reason therefore.

- c. Promoted the retention of Minorities and Women Journeypersons in its workforce with the goals of achieving sufficient annual hours for Minorities and Women to qualify for benefits;
- (2) For Construction Contractors that are signatories to collective bargaining agreements with organized labor:
- a. Supported the efforts of the Joint Apprenticeship Training Committee (JATC), a joint effort of Labor Unions and Contractors, or some other Apprenticeship Program, whose purpose is to recruit, train and employ new workers for a full time career in the construction industry. For purposes of this Workforce Policy, a Construction Contractor's support may include, but is not limited to, financial contributions, providing volunteers, or in-kind services or goods; and
 - b. Requested in writing from each Labor Union representing crafts to be employed by the Construction Contractor that:
 - i. The Labor Union will make efforts to promote the utilization of Residents, Minorities and Women in the workforce; and
 - ii. The Labor Union will identify any Residents, Minorities and Women in its membership eligible for employment by the Construction Contractor; and
 - iii. The JATC will take substantial and real steps to increase the participation of Minorities in the union Apprenticeship Programs in the aggregate to 30% and encourage other Labor Unions to do the same; and
 - iv. The JATC will take substantial and real steps to increase the participation of Women in the union Apprenticeship Programs in the aggregate to 5% and encourage other Labor Unions to do the same; and
 - v. The JATC will partner with Workforce Preparedness Programs, community based organizations, employment referral programs and school-sponsored programs to accomplish these goals; and
 - c. Collaborated with Labor Unions in promoting mentoring programs for Journeypersons intended to assist Minorities and Women in increasing retention with the goals of achieving sufficient annual hours to qualify for applicable benefits; and

- d. If the Construction Contractor hires workers in the ordinary course of business, the Construction Contractor has maintained a current file with the name, address, and telephone number of each Resident, Minority and Woman identified by the Labor Union, whether or not the person was hired, and in the event the person was not hired, the reason therefore; and
 - e. To the extent that the good faith effort actions set forth in this subsection (2) are in conflict with the procedures implemented by the Construction Contractor in order to comply with a competitive bargaining agreement, the Construction Contractor shall substitute other procedures, as may be approved in writing by the Compliance Officer, in consultation and cooperation with the Director, in order to accomplish the purpose and intent of this subsection; and
- (3) Required by written contract that all of its subcontractors on the Construction Contract comply with this Workforce Policy.
 - (4) Complied with the record keeping, reporting and compliance monitoring provisions of this Workforce Policy. The Construction Contractor shall be conclusively presumed to be in compliance with this Workforce Policy as it relates to records and reports if all records have been kept and reports have been timely made as required by this Workforce Policy.
- (d) The Construction Contractor shall submit a written request for a Good Faith Waiver to the Compliance Officer. The written request shall include all documentation and information supporting the Construction Contractor's request for a Good Faith Waiver. The Construction Contractor shall submit a copy of the written request to the Director at the same time it is submitted to the Compliance Officer.
 - (e) When a Construction Contractor requests a Good Faith Waiver, the Compliance Officer shall review the request and determine whether the request should be approved or denied and setting out the reasons supporting such decision. If the Compliance Officer determines that the Construction Contractor failed to make a good faith effort to meet the Minimum Construction Employment Goals, they shall also determine the appropriate remedy. The determination whether or not to grant a Good Faith Waiver shall be made within 45 days of the request for a Good Faith Waiver shall be in writing, shall set out the reasons supporting such determination, and shall be promptly provided to the Construction Contractor.
 - (f) As an alternative to (e) above, the Compliance Officer may request that the Board of Commissioners hold a hearing to determine whether or not the Construction Contractor should be granted a Good Faith Waiver. After due notice given to the Construction Contractor, the Board of Commissioners may hold a hearing and determine whether the Construction Contractor made a good faith effort to meet the Minimum Construction Employment Goals. If the Board of Commissioners determines that the Construction Contractor failed to make a good faith effort to meet the Minimum Construction

Employment Goals, it shall also determine the appropriate remedy. Port KC's determination whether or not to grant a Good Faith Waiver shall be made within 45 days of the hearing, shall be in writing, shall set out the reasons supporting such determination, and shall be promptly provided to the Construction Contractor.

- (g) Notwithstanding anything contained in this Section 4, if a Good Faith Waiver is required by federal or state or local law, Port KC shall grant a Good Faith Waiver to a Construction Contractor that nonetheless fails to meet the Minimum Construction Employment Goals and fails to make a good faith effort under the standards set forth in subsection (c) of this Section.

Section 5 – Monitoring and Compliance with Workforce Policy

- (a) On solicitations for Construction Contracts, Port KC will require each potential Construction Contractor to submit with its response to the solicitation a Construction Hours Affidavit stating the Construction Contractor's intent to meet or exceed the Minimum Construction Employment Goals while performing the Construction Contract. The Construction Hours Affidavit shall be in a similar format utilized by the City in connection with the City Construction Employment Program.
- (b) On solicitations for Construction Contracts, Port KC shall, after the Construction Contract has been executed, but before work under the Construction Contract begins, require the selected Construction Contractor to meet with the Compliance Officer for the purpose of discussing (i) the Construction Contractor's willingness to provide first opportunity for employment on Construction Projects to Residents, (ii) the Minimum Construction Employment Goals for Minority and Women workers, (iii) how the Construction Contractor will endeavor in good faith to meet the Minimum Construction Employment Goals, (iv) any problems that may affect the Construction Contractor's ability to employ Residents or achieve the Minimum Construction Employment Goals, and (v) the forms and procedures required for the Construction Contractor's reporting obligations.
- (c) Throughout the duration of the Construction Contract, the Construction Contractor shall submit monthly workforce reports directly to the Compliance Officer utilizing a similar reporting format as set forth by the City in connection with the City Construction Employment Program in a form provided by the Compliance Officer documenting the total number of Construction Labor Hours performed by Minorities and Women on the Construction Contract as compared to the total number of Construction Labor Hours performed by all workers on the Construction Contract. The Construction Contractor shall submit copies of all monthly workforce reports to the Compliance Officer.
- (d) The Compliance Officer shall have access, at all reasonable times, to all books, papers, records, reports or accounts in possession of or under the control of the Construction Contractor and its subcontractors as may be reasonably necessary to ascertain compliance with this Workforce Policy. The Construction Contractor and its subcontractors shall furnish such further information as may be required by the

Compliance Officer within ten (10) working days of the date it is requested in writing. The Construction Contractor shall require all of its subcontractors to comply with the requirements of this subsection.

- (e) The Compliance Officer shall be authorized to conduct on-site audits and records inspections of the Construction Contractor and its subcontractors without prior notice as may be necessary to ascertain compliance with this Workforce Policy. The Construction Contractor shall require all of its subcontractors to comply with the requirements of this subsection.
- (f) After completion of work on the Construction Contract but before release of retainage, final acceptance and closeout, the Construction Contractor shall submit a final report in a form provided by the Compliance Officer documenting the overall project total number of Construction Labor Hours performed by Minorities and Women on the Construction Contract as compared to the total number of Construction Labor Hours performed by all workers on the Construction Contract and request the Compliance Officer to have a final Determination of Compliance with the Workforce Policy. The Compliance Officer may request, in the format required by the City Construction Employment Program, the payroll records of the Construction Contractor and its subcontractors on the Construction Contract, for the duration of the Construction Contract, documenting the total number of Construction Labor Hours performed by Minorities and Women on the Construction Contract as compared to the total number of Construction Labor Hours performed by all workers on the Construction Contract.
- (g) All Construction Contractors shall be required to comply with all federal laws, including those of the Immigration and Naturalization Service and the Department of Homeland Security. Only those Construction Labor Hours performed by workers in compliance with federal law shall be counted towards the meeting the Minimum Construction Employment Goals.
- (h) The Construction Contractor shall be required to obtain and retain documentation establishing the residence of record for any person working on a Construction Project. The documentation may be one of the following:
 - (1) driver's license or identification card issued by a government or governmental agency with a photograph of the holder; or
 - (2) voter registration card; or
 - (3) utility bill showing the account holder's name and address; or
 - (4) valid United States Passport; or
 - (5) other document that sufficiently establishes residency.

- (i) It is the responsibility of the Construction Contractor to demonstrate compliance with this Workforce Policy, including, but not limited to, its good faith efforts to achieve the Minimum Construction Employment Goals. The Compliance Officer shall monitor the Construction Contractor's ongoing compliance with this Workforce Policy, shall assist the Construction Contractor in its good faith efforts to meet or exceed the Minimum Construction Employment Goals and otherwise comply with this Workforce Policy, and shall make periodic reports to Port KC relative thereto.

Section 6 - Equal Employment Standards

- (a) Port KC shall include an Equal Opportunity Clause in all Construction Contracts requiring that all Construction Contractors adhere to the equal opportunity requirements in the City's Code of Ordinances, Part II, Chapter 3, Article IV. The Equal Opportunity Clause shall include, at a minimum, the following provisions:
 - (1) The Construction Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or sexual orientation.
 - (2) The Construction Contractor will take affirmative action to ensure that employees are treated fairly during employment without regard to their race, color, religion, sex, national origin, disability or sexual orientation. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
 - (3) The Construction Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the Equal Opportunity Clause.
- (b) Port KC shall contractually require that the Construction Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability or sexual orientation.

Section 7 - Remedies for Noncompliance with Workforce Policy

For any Construction Contract that this Workforce Policy is applied the Construction Contractor's noncompliance with this Workforce Policy, or with any applicable rules and regulations, shall be a material breach of the Construction Contract for which Port KC may pursue the remedies set out in the Construction Contract, which may include, but not be limited to, canceling, terminating, or suspending, in whole or in part, the Construction Contract and declaring the Construction Contractor ineligible for further Construction Contracts with Port KC for a period of up to one year.

Section 8 - Severability

If any section, subsection, clause, or provision of this Workforce Policy is deemed to be invalid or unenforceable in whole or in part, this Workforce Policy shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable subsection(s), clause(s), provision(s) or portion(s) thereof, and alter the balance of those same sections in order to render the same valid and enforceable.

Section 9 – Miscellaneous

- (a) The Chairman and Vice-Chairman of the Board of Commissioners, as well as the President/CEO are authorized and directed to undertake any activities, including signing any documents, certificates or other instruments, necessary or reasonable to carry out and implement this Workforce Policy.
- (b) Port KC may adopt rules and regulations to implement this Workforce Policy; provided, however, such rules and regulations shall not be inconsistent with this Workforce Policy.
- (c) Port KC shall consider adopting any amendments to the City Construction Employment Program approved by the City Council but only to the extent that any such amendments are applicable to Construction Contracts entered into by Port KC.
- (d) If there is any conflict between the provisions of this Workforce Policy and the City Construction Employment Program, the provisions of this Workforce Policy shall control.

Section 10 – Effective Date; Termination

This Workforce Policy shall be effective immediately upon its adoption by Port KC. This Workforce Policy will automatically terminate if the City Construction Employment Program is terminated for any reason.

Exhibit A

These goals are intended to mirror the goals set forth by the City at any given time and are subject to change. As of the effective date of this Workforce Policy, the Construction Employment Goals are as follows:

- (1) For Minorities, an Incentive Construction Employment Goal of 20% and a Minimum Construction Employment Goal of 10%.
- (2) For Women, an Incentive Construction Employment Goal of 4% and a Minimum Construction Employment Goal of 2%.