



Legislation Text

File #: 2021-0035, **Version:** 1

DATE: September 14, 2021

SUBJECT:

UPDATE BPC POLICY NO. 359 EQUAL OPPORTUNITY CONTRACTING AND BPC POLICY NO. 361 EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION TO REFLECT A CHANGE IN THE NAME OF THE EQUAL OPPORTUNITY FUNCTION TO REFLECT INDUSTRY PRACTICE

EXECUTIVE SUMMARY:

Policies are an essential part of all organizations. They ensure compliance with laws, provide the framework for culture, decision-making, and the development of programs and processes to achieve desired results. Additionally, updates to policies are an essential requirement to remain effective, especially in light of changes in the way we live and work specifically due to the COVID-19 pandemic and continued efforts on our social justice journey to a truly diverse, equitable and inclusive workplace for all.

RECOMMENDATION:

- A) Adopt a Resolution updating BPC Policy No. 359 Equal Opportunity Contracting and
- B) Adopt a Resolution updating BPC Policy No. 361 Equal Employment Opportunity and Nondiscrimination.

FISCAL IMPACT:

This agenda item has no fiscal impact.

COMPASS STRATEGIC GOALS:

Policies require maintenance and updates to remain effective and aligned with laws, the work environment, and our goals. This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

- A) Adopt a Resolution updating BPC Policy No. 359 Equal Opportunity Contracting

Since January 1989, the Board of Port Commissioners have had a formal policy statement to ensure that diversity and inclusion was incorporated into the way we conduct business. Specifically, at the time, the District received federal funding requiring a policy covering Disadvantaged Business Enterprises (DBE) as a condition of federal grant eligibility. In 1999, the policy statement was revised to incorporate new federal regulations and the title was changed from DBE to Equal Opportunity Contracting.

In 2003, in conjunction with the airport transition, the policy was updated to delete federal regulation references and to incorporate the utilization of small businesses, thereby servicing a broader pool of contractors including DBEs and minority, women, disabled veteran, and veteran owned businesses, while staying in compliance with the California Civil Rights Initiative (aka Proposition 209) which was approved by the voters in 1996.

Today, standard industry practice reflects a shift away from “equal opportunity” to diversity, equity, and inclusion, as characteristic of broader objectives. The District has embraced this transition, renaming, and rebranding the Equal Opportunity Department as the Diversity, Equity, and Inclusion (DEI) Department. Policy No. 359 needs updating to reflect this change. District staff also recommends the following changes, consistent with DEI:

- Added verbiage to emphasize, and raise visibility to the fact that small businesses are inclusive of minority, women, disabled veterans, veteran, and other socioeconomically owned businesses based on size, and
- Replacing verbiage to update equal opportunity with diversity, equity, and inclusion as needed.

The proposed changes to Policy No. 359 will allow better alignment with existing and potential future policies addressing equal opportunity, nondiscrimination, and diversity, equity, and inclusion. This freestanding contracting policy clearly articulates the District’s DEI commitment and allows flexibility for adjustment whenever governing regulations require revisions under contracting laws. A redlined version showing the changes is attached.

B) Adopt a Resolution updating BPC Policy No. 361 Equal Employment Opportunity and Nondiscrimination.

Since 1971, the Board of Port Commissioners have had an Equal Employment Opportunity policy statement to align with the objectives of the Civil Rights Act of 1964. In January 2000, the policy was expanded to include nondiscrimination and complaint procedures were added. Over the years, reaffirmation and minor changes to the Equal Employment Opportunity and Nondiscrimination Policy were presented to the Board.

Today, like BPC Policy No. 359 above, given the name change to the Diversity, Equity, and Inclusion Department and the focus on broader principles of diversity, equity, and inclusion, the following changes are being recommended:

- Replacing verbiage to update equal opportunity with diversity, equity, and inclusion as needed,
- Updated verbiage to use gender neutral pronouns, and
- Removal of the Exhibit A attachment since it contains duplicate information.

Removal of Exhibit A will simplify and clarify the message of equal opportunity and nondiscrimination by eliminating duplicate information within the same document. However, if Exhibit A is not removed, minor revisions have been made along with updated time limits to file a complaint externally with the state (DFEH) and federal (EEOC) agencies. Additionally, the complaint procedure is documented in the attached general District policy, Policy and Complaint Procedure Against Harassment, Discrimination and Retaliation, thereby ensuring availability and consistency.

The proposed changes to Policy No. 361 will allow better alignment with existing and potential future policies addressing equal opportunity, nondiscrimination, and diversity, equity, and inclusion. This freestanding EEO and Nondiscrimination policy clearly articulates the District's DEI commitment and allows flexibility for adjustment whenever governing regulations require revisions under employment laws. A redlined version showing the changes is attached.

General Counsel's Comments:

The General Counsel's Office has reviewed the agenda sheet and attachments, as presented to it, and approves them as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, updating an existing BPC policy to reflect a change in name, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

The proposed Board action complies with Section 35 of the Port Act, which allows the Board to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

This agenda item has no direct DEI impact.

PREPARED BY:

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Attachment(s):

Attachment A: BPC Policy No. 359, Equal Opportunity Contracting, Redlined

Attachment B: BPC Policy No. 359, Equal Opportunity Contracting, Final

Attachment C: BPC Policy No. 361, Equal Employment Opportunity and Nondiscrimination, Redlined

Attachment D: BPC Policy No. 361, Equal Employment Opportunity and Nondiscrimination, Final

Attachment E: Exhibit A proposed to be removed, Redlined

Attachment F: Exhibit B Acknowledgment Form, Redlined

Attachment G: Policy and Complaint Procedure Against Harassment, Discrimination and Retaliation