



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 21, 2011

Ordinance 17050

Proposed No. 2011-0119.1

Sponsors Lambert and Phillips

1 AN ORDINANCE authorizing the county executive
2 to enter into an interlocal agreement with the Port of
3 Seattle to provide small contractor and supplier
4 certification services.

5 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

6 **SECTION 1. Findings:**

7 A. The King County Strategic Plan supports a strong, diverse and sustainable
8 economy.

9 B. The King County Strategic Plan promotes regional economic development
10 through partnerships with regional organizations, other jurisdictions and the private
11 sector.

12 C. The King County Strategic Plan encourages creating contracting opportunities
13 for small and disadvantaged businesses.

14 D. King County Executive Order Con 7-12 calls for partnerships with other
15 public agencies to develop common application forms and common certification
16 standards to make it easier for small contractors and suppliers to work with public
17 agencies.

18 E. King County certifies small businesses as small contractor and suppliers for
19 participation in its contracting opportunities program.

20 F. King County and the Port of Seattle programs are similar whereby each entity
21 and its contractors are encouraged to use certified small businesses as prime contractors,
22 subcontractors and suppliers for construction, consulting, and goods and services
23 contracts.

24 G. The Port of Seattle and King County programs' small business certification
25 requirements are identical.

26 H. It is in the economic interest of King County and the Port of Seattle is to
27 encourage competition within the supply chain and to increase the number of small
28 contractors and suppliers on their procurements.

29 I. King County and the Port of Seattle desire to enter into an agreement under
30 which the county will provide small contractor and supplier certification services to the
31 Port of Seattle for its program.

32 J. King County is able and willing to provide small contractor and supplier
33 certification services to the Port of Seattle, consistent with K.C.C. chapter 4.19, the
34 Strategic Plan priorities and executive order policies noted in subsections A. through D.
35 of this section.

36 K. Participation in this agreement will benefit the customers of the Port of Seattle
37 and the residents of King County.


38 SECTION 2. The county executive is authorized to enter into an interlocal
39 agreement,

40 substantially in the form of Attachment A to this ordinance, with the Port of Seattle, for
41 the county to provide small contractor and supplier certification services.
42

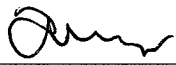
Ordinance 17050 was introduced on 3/14/2011 and passed by the Metropolitan King County Council on 3/21/2011, by the following vote:

Yes: 7 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Patterson,
Ms. Lambert, Mr. Dunn and Mr. McDermott
No: 0
Excused: 2 - Ms. Hague and Mr. Ferguson


KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 25 day of March, 2011.


Dow Constantine, County Executive

RECEIVED
2011 MAR 25 PM 4:02
KING COUNTY COUNCIL

Attachments: A. Interlocal Agreement for Provision of Small Contractor and Supplier Certification Services between King County and the Port of Seattle

**INTERLOCAL AGREEMENT FOR PROVISION OF
SMALL CONTRACTOR AND SUPPLIER CERTIFICATION
SERVICES BETWEEN
KING COUNTY AND THE PORT OF SEATTLE**

March 3, 2011

**INTERLOCAL AGREEMENT FOR PROVISION OF
SMALL CONTRACTOR AND SUPPLIER CERTIFICATION
SERVICES BETWEEN
KING COUNTY AND THE PORT OF SEATTLE**

THIS INTERLOCAL AGREEMENT ("Agreement") FOR PROVISION OF SMALL CONTRACTOR AND SUPPLIER CERTIFICATION SERVICES BETWEEN KING COUNTY ("County") AND THE PORT OF SEATTLE ("Port") is entered on this ____ day of _____, 2011. Collectively, the County and the Port are referred to as the "Parties."

WHEREAS, the Port adopted Resolution 3618 on January 26, 2010 to update its Small Business Initiative and rename it the Small Contractor and Supplier Program; and,

WHEREAS, the County operates the Contracting Opportunities Program to provide contracting opportunities for small businesses on County contracts; and,

WHEREAS, the County's and the Port's programs are similar whereby each entity and its contractors are encouraged to use certified small businesses as prime contractors, subcontractors and suppliers for construction, consulting, and goods and services contracts; and,

WHEREAS, it is in the economic interest of the County and the Port to encourage competition within the supply chain and to increase the number of small contractors and suppliers in their procurements; and,

WHEREAS, the small business certification requirements are identical for the Port's and the County's programs; and,

WHEREAS, the County certifies small businesses as Small Contractor and Supplier (SCS) firms for participation in the Contracting Opportunities Program; and

WHEREAS, the Port and the County desire to enter into an Agreement under which the County will provide SCS certification services; and,

WHEREAS, County Executive Order Con 7-12 calls for partnerships with other public agencies to develop common application forms and common certification standards to make it easier for SCS firms to work with public agencies; and,

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action.

INTERLOCAL AGREEMENT BETWEEN
KING COUNTY AND THE PORT OF SEATTLE
CERTIFICATION SMALL CONTRACTOR AND SUPPLIERS

NOW THEREFORE, the Parties hereby agree:

**ARTICLE I
PURPOSE**

The purpose of the Agreement is to set forth the terms and conditions under which the County will provide certification services for Small Contractors and Suppliers to the Port.

**ARTICLE II
RESPONSIBILITIES**

A. COUNTY RESPONSIBILITIES.

1. **CERTIFICATION PROCESS.** The County shall be responsible for the certification process for businesses that have demonstrated an interest in participating or continuing to participate as SCS firms in County and/or Port-related programs. This process includes certification, recertification, and removal and/or decertification.
 - a. The County will apply the following standard procedures in the certification process for those firms referred to it by the Port for certification review ("Port Firms"):

(1) Notification and Application Receipt

- i. The County shall send an email notification receipt to the contact person identified in the certification application to inform him/her of the date the application was received by the County. The notification shall be sent within 2 business days after the County's receipt of the application.
- ii. All applicants for certification must complete and submit an application and the required supporting documentation necessary to conduct the certification review. The County shall process complete applications in the order received.
- iii. All applicants shall be required to prepare and submit the certification application in electronic or typewritten hard copy formats. The County will not accept handwritten applications.

(2) Certification Review Period

- i. For all complete applications, the County will complete the certification review within 30 business days

from the application receipt date unless otherwise provided herein. The County may extend this period once, per application, for no more than an additional fifteen (15) days, upon written notice to the Port explaining the specific reasons for the extension.

ii. For all certification reviews estimated to exceed the standard 30-business day review period, the County will notify the applicant within 2 days from the County's receipt of the complete application package, to inform the applicant of the estimated time to complete the review. The County shall notify the applicant by email.

(3) Applicant Missing Information

i. For all incomplete application packages from Port Firms, the County will identify any deficiencies and send a request via email to the applicant contact person and the Port that includes a request to submit the information requested within 30 calendar days.

ii. Upon receipt of missing items from the applicant, the County will notify the applicant via email with an estimated review completion date that shall not exceed the standard 30 business days.

iii. Failure of the applicant to submit the missing information requested within 30 calendar days from the notification date by the County will result in removal of the application from certification review. The County shall notify the Port of any such removal.

iv. If an applicant has previously sought certification as an SCS from the County and failed to comply with a request from the County to submit information, the applicant must complete and submit a new application to initiate the review process. The County shall process complete applications in the order received unless otherwise provided in this Agreement.

(4) REQUESTS TO EXPEDITE THE CERTIFICATION REVIEW PROCESS

i. The County may grant a request to expedite the certification review process if:

a) The Port or a contractor submits a written request to expedite the application; or,

- ii. All requests to expedite the certification review process must be made in writing and received by the County certification reviewers ten (10) business days prior to a bid opening or proposal due date.
 - iii. The County may deny requests to expedite the certification review process if any of the following conditions exists:
 - a) The County receives the request less than ten (10) business days prior to the identified bid opening or proposal due date.
 - iv. The County will make the final decision on whether or not a request to expedite certification review will be granted.
2. **ONLINE DIRECTORY.** The County will host and maintain an Online Directory of Certified SCS Firms ("SCS Directory").
- a. The SCS Directory will include the following search options:
 - i. Contract Category – categories shall include construction, architectural & engineering, professional/technical consulting and goods & services.
 - ii. NAICS Codes - North American Industry Classification System, searchable the code number and/or using keywords at <http://www.census.gov/eos/www/naics/>.
 - iii. By Construction Specification Institute Code – Usable for Construction related firms.
 - iv. Business Name / Description –Searchable using name or keywords.
 - b. Excel Download – The entire SCS Directory shall be available for download.
 - c. County and Port Logos – Each party agrees that the application form and webpage for the SCS Directory shall display the logo for the County and Port.

B. SHARED RESPONSIBILITIES. The Parties mutually agree to the following provisions:

- 1. **CERTIFICATION APPLICATION.** Each Party agrees to use the same SCS certification application form. The County shall provide the Port an application for use and distribution to businesses seeking to obtain certification as a Small Contractor and Supplier. No modifications or revisions to the application shall be made by either Party without the written consent of the

other which consent shall be obtained a minimum of thirty (30) days prior to the change, unless otherwise agreed by the Parties. The official logo of each Party will appear on the front page of the certification application.

2. PROGRAM ADMINISTRATION. The Port and the County may apply different methods, strategies and outreach efforts in administering their respective SCS programs.
 3. SCS DIRECTORY. Unless mutually agreed by the Parties, each Party agrees to use the same certification SCS Directory that shall be maintained by the County and located at:
<http://www.kingcounty.gov/exec/BusinessDev.aspx>
 4. INFORMATION SHARING. The Parties will share copies of any documents that may affect the certification status of a certified Port Firm. The Parties agree to exchange such documents within two business days of their receipt of the documents.
- C. ELIGIBILITY AND DIRECTORY STANDARDS. The Parties agree to the following eligibility and directory standards:
1. FINANCIAL CONDITIONS. The relevant financial condition for eligibility shall be based on: (1) A threshold for standard business classifications set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS); (2) Each owner's personal Net Worth less than \$750,000 and; (3) The business owners' agreement to participate in a minimum of fifteen (15) hours of business development training within twelve months of certification approval.

CERTIFICATION: The Parties agree to the following SCS certification process:

1. INITIAL CERTIFICATION OF PORT FIRMS. The Port will submit to the County an initial list of firms for certification review from the Port's business rosters. For each firm identified on the list, the Port shall provide the County with contact information that shall include an email address for each firm. The initial list of Port firms will represent a volume of work of approximately 300 firms. The County will complete the certification review no later than three months from receipt of the list for all firms contained on the list for which a fully executed certification application and all required supporting documents from the applicant business are provided if a consultant is retained by the County to complete the reviews. In the absence of a hired consultant to perform the reviews, the certification review for all firms contained in the initial list shall be completed no later than six months from the receipt date of a fully executed certification application and all required supporting documents from the applicant business.
2. LENGTH OF CERTIFICATION. The length of initial certification shall not exceed five (5) years.

3. **ONGOING CERTIFICATION REVIEWS.** After the County has completed the certification review for all firms identified on the initial list provided by the Port, the County shall complete all subsequent certification reviews within thirty (30) days from the date of receipt from the Port a fully executed and completed certification application and all required supporting documentation for each applicant business. The County may extend this period once, per application, for no more than an additional fifteen (15) days, upon written notice to the Port explaining the specific reasons for the extension. Firms may register directly with the County instead of first registering with the Port.
4. **ELIGIBILITY.** Only certified SCS firms shall be eligible to participate in the SCS programs at the County and the Port.
5. **TRANSMITTALS.** For purposes of document transmittals associated with firms applying via the Port, the Port will act as the initial point of contact for firms that it refers to the County to conduct a certification review. The Port shall submit to the County all required application materials and supporting documentation from these firms at the time of first referral. The County will conduct the certification review and issue a written determination of the firm's acceptance or denial for SCS certification.
6. **RECORD KEEPING.** The County shall keep all records pertaining to active certification files as required by the County's applicable retention schedules and the County shall accept any costs incurred for this activity. The County will email the Port copies of certification letters or notices sent to certified SCS firms and the Port reserves the right to keep copies of the documentation submitted to the Port from applicant firms. Where there is a disagreement about the determination of the County regarding the acceptance or denial of a firm for SCS certification based upon the certification standards outlined in this Agreement, the County will provide a copy of its written determination to the Port and the applicant firm upon request.
7. **SCS CERTIFICATION OVERVIEW.** The County shall provide Port staff with an overview of the SCS certification review process. The Port and the County shall mutually agree on a date and time to conduct the overview that shall not exceed three hours in duration. The overview shall not include instruction on how to evaluate or analyze business financial eligibility for SCS certification.
8. **REVIEW AGENCY.** The County will perform the certification review for all applicant firms to include initial certification, recertification and decertifications. The Port will assist the county in defending appeals, challenges, and investigations of third party allegations concerning Port Firms.
9. **LEGAL COUNSEL.** Each party shall, at the request of the Port, obtain separate legal counsel to address certification matters, as needed. The

County shall defend against any challenges to its certification of Port Firms.

ARTICLE III ADMINISTRATION

ADMINISTRATOR. The following individuals are designated as representatives of the respective Parties. The representatives shall be responsible for administering this Agreement and for coordinating and monitoring performance under it. In the event such representatives are changed, the party making the change shall notify the other party.

- a. The County's representative shall be the Director of the Finance Business and Operations Division of the Department of Executive Services or his/her successor.
- b. The Port representative shall be the Director of the Office of Social Responsibility or his/her designee.

ARTICLE IV DURATION AND RENEWAL OF AGREEMENT

DURATION AND RENEWAL. This Agreement shall be effective when executed by both Parties and shall continue through December 31, 2011. Thereafter, this Agreement shall automatically renew annually on January 1 unless terminated by either party.

ARTICLE V COMPENSATION

PORT COMPENSATION TO COUNTY. The Port shall compensate the County for its certification services as follows:

- a) The Port shall pay 50% for the fixed costs for annual maintenance and operation of the SCS database and Directory. For the calendar year 2011, the County's annual maintenance and operation costs for the SCS database and online directory is \$12,900. The Port agrees to compensate the County 50% of this amount that shall be prorated from the effective date of this agreement for the year 2011. The County will inform the Port of these costs no later than September 1 of each year for the following calendar year. The County will provide sufficient documentation for the Port to review the proposed amount, which shall be based on the level of services provided by the County to the Port under this Agreement. If the County enters into a contract with additional parties for maintenance and operation of the SCS database and Directory, the County shall apportion the total annual fixed costs equally and proportionately among all parties, including the Port.

- b) The Port shall also pay a fixed fee for each SCS certification application that is received by the County directly from or referred by the Port and for which the County completes certification review, regardless of whether certification is approved or denied. For the calendar year 2011, the Port agrees to compensate the County a fixed fee of twenty three dollars (\$23.00) for each of these applications. No later than September 1, 2011 and September 1 each year thereafter, the Parties will agree in writing upon the fixed fee that will apply for the following year.
- c) The parties to this Agreement may agree in writing to utilize a different fee methodology for calculation of the payment referenced in subsection (b) above upon mutual written consent by each party.

INVOICES. The County shall invoice the Port as follows:

- a. Quarterly for the fixed, annual maintenance and operations costs described in Article VI, Compensation, (a) of this Agreement.
- B. Monthly for the recovery cost of the certification fees described in Article VI, Compensation, (b.) of this Agreement.

PAYMENT TO THE COUNTY. The Port shall pay the amount invoiced and due within thirty (30) days after receipt of an invoice that shall include the following information items:

- a) The firm name of all applicants for which a certification review was conducted during the invoice period, regardless of the whether certification was approved or denied;
- b) Total number of certification reviews completed during the invoice period;
- c) The determination (approval or denial) for each applicant for which the County conducted a certification review during the invoice period;
- d) The certification number for all Port Firms approved for certification during the invoice period; and,
- e) The total amount of payment requested by the County.

ARTICLE VI PERFORMANCE OF AGREEMENT

COMPLIANCE WITH ALL LAWS. Each party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to confidentiality, disabilities and non-discrimination.

MAINTENANCE AND AUDIT OF RECORDS. Each party shall maintain books, records, documents, and other materials relevant to its performance under the

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Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other materials for the applicable retention period under federal and Washington law.

TREATMENT OF ASSETS AND PROPERTY. No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

IMPROPER INFLUENCE. Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been, or will be, offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

CONFLICT OF INTEREST. The elected and appointed officials and employees of the Parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

ARTICLE VII INDEMNIFICATION

INDEMNIFICATION.

To the extent permitted by law, the County shall protect, defend, indemnify and save harmless the Port, and its officers, officials, employees and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property which arise out of, or in any way result from, or are connected to, or are due to any acts or omissions of the County in its performance of this Agreement. The County shall not be required to indemnify, defend, or save harmless the Port if the claim, suit, or action for injuries or damages is caused by the sole negligence of the Port. In the event of any claims, demands, actions and lawsuits, the County upon prompt notice from the Port, shall assume all costs of defense thereof, including legal fees incurred by the Port, and of all resulting judgments that may be obtained against the Port. This indemnification shall survive the termination of this Agreement.

ARTICLE VIII DISPUTES

GOVERNING LAW. This Agreement shall be governed exclusively by the laws of the State of Washington.

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CERTIFICATION SMALL CONTRACTOR AND SUPPLIERS

ATTORNEY FEES. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney's fees incurred in that action, arbitration or proceeding.

ARTICLE IX TERMINATION

TERMINATION. Any party may terminate this Agreement without cause upon thirty (30) calendar days written notice either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address. If this Agreement is terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE XI GENERAL PROVISIONS

CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS. The Agreement may be changed, modified, amended, or waived only by written agreement signed by the Parties and adopted in accordance with each Party's legislative procedures. Changes herein which are technical in nature, consistent with the intent of the Agreement and fall within the scope of their respective authorities may be approved on behalf of the County by the County Executive and on behalf of the Port by its Chief Executive Officer. Any waiver of a term or condition of the Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver of breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

ASSIGNMENT. Neither Party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of the Agreement.

SEVERABILITY. In the event any term or condition of the Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

ENTIRE AGREEMENT. This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement this ____ day of ____ 2011.

PORT OF SEATTLE

Tay Yoshitani, Chief Executive Officer

KING COUNTY

Dow Constantine, King County Executive