

CITY OF OAKLAND

AGENDA REPORT

2011 JAN -6 PM 3:31

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: *Department of Contracting and Purchasing*
DATE: January 11, 2011

RE: A Supplemental Report Adopting the Changes to the City's Local and Small Local Business Enterprise Program as Recommended by the Fairness in Purchasing and Contracting Disparity Study And Ordinance Amending Oakland Municipal Code Title 2, Chapter 2.04, Purchasing System, To Authorize A Contractor Rotation Program Pre-Qualification Process And Authorizing Contract Award For Such Contracts On A Rotation Basis

SUMMARY

This supplemental report presents clarification to questions and concerns raised by members of the Community and Economic Development Committee regarding the proposed changes to the Local and Small Local Business Enterprise Program.

FISCAL IMPACT

There are no fiscal impacts associated with this report.

BACKGROUND

On December 14, 2010, staff presented a report to the CED Committee outlining changes to the City's Local and Small Local Business Enterprise Program. The City of Oakland's new policies cover the following areas:

1. Updating and lowering current business size standards in order to reflect the Oakland market of certified firms and in order to stimulate an increase in the level of small business participation in prime contracting.
2. Adding two new certification categories: (a) a Very Small Local Business Enterprise (VSLBE) and (b) a Local Business Enterprise of Locally Produced Goods (LBE-LPG).
3. Expanding local business contracting opportunities by increasing the existing 20% minimum business participation requirement to 50% L/SLBE participation requirement on all projects. Within the context of this increase, DCP staff (in concert with the using agency) will adjust

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the 50% participation requirement up or down (if warranted) given the nature and scope of particularly unique projects and current market conditions.

4. Imposing a penalty for failure to meet L/SLBE participation at a rate of 1.5 times the amount of shortfall dollars that should have been paid to L/SLBE subcontractors/suppliers.
5. Affording contractors the opportunity to satisfy non compliance shortfalls through payment of penalties and/or working off shortfalls as noted above; or satisfy the non-compliance by hiring L/SLBEs on non city funded projects at 1.5 times the shortfall within a period of 12 consecutive months following project closeout.
6. Unbundling or “right sizing” large contracts into smaller contracts where feasible.
7. Establishing a Two-Tiered Contractor Rotation Program (CRP) to be used for small construction projects (referenced in number 2 above).

KEY ISSUES AND IMPACTS

Members of the CED Committee asked staff to address or clarify the following issues:

- a. Show the number of businesses in the City’s certified business database with annual gross receipts that are less than or equal to \$375,000.
- b. Present an analysis of the City’s capacity to achieve at the 50% participation level
- c. Show the total number of individuals employed in manufacturing businesses in the City of Oakland as represented in the chart in the Power Point presentation which showed the number of businesses in each category. (Slide #8)
- d. Are there other cities with a similar program? How are the same issues addressed?
- e. Contractor’s Rotation Program – method for awarding work

PROGRAM /POLICY DESCRIPTION

Staff offers the following clarifications to questions and concerns raised by the Community and Economic Development Committee:

- a. Show the number of businesses in the City’s certified business database with annual gross receipts that are less than or equal to \$375,000.

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There are 167 businesses with current certifications and average annual gross receipts at or below \$375,000. These businesses fall under a number of work types.

- b. Present an analysis of the City's capacity to achieve at the 50% participation level

In a previous report staff presented L/SLBE participation for FY 07/08 and FY 08/09. That data was included in the analysis of the feasibility of a 50% L/SLBE participation goal. Staff selected three construction work types to review participation: streets projects, sewer projects and traffic signal projects. L/SLBE participation achieved for those areas was:

	FY 07-08	FY 08-09
Streets	94%	73%
Sewers	82%	76%
Traffic Signals	54%	48%

Across departments for FY 08/09 L/SLBE participation was 63% construction and 31% professional services. For FY 07/08 L/SLBE participation was at 31% professional services and 37 % construction.

- c. Show the total number of individuals employed in manufacturing businesses in the City of Oakland as represented in the chart in the Power Point presentation which showed the number of businesses in each category. (Slide #8)

Number of persons employed by companies in Oakland listed as manufacturing

This chart reflects the average number of employees working in manufacturing businesses in the city of Oakland. The number of employed was found by taking the average for each category (number of employees) and multiplying that by the number of firms in each category.

ZIP Code	Total Estabs	Average Number of Employees									Total Employed
		3	7	15	35	45	175	375	750	1000	
'94601'	65	75	105	165	175	315	175	375	0	0	1,385
'94602'	4	9	7	0	0	0	0	0	0	0	16
'94603'	28	30	35	105	140	90	0	0	0	0	400
'94604'	1	3	0	0	0	0	0	0	0	0	3
'94605'	2	3	7	0	0	0	0	0	0	0	10
'94606'	44	45	70	150	210	90	0	375	0	0	940
'94607'	75	102	84	180	350	225	175	375	0	0	1,491
'94609'	18	33	28	15	70	0	0	0	0	0	146
'94610'	13	21	14	30	35	45	0	0	0	0	145
'94611'	12	21	28	15	0	0	0	0	0	0	64
'94612'	31	48	42	60	175	0	0	0	0	0	325
'94614'	1	3	0	0	0	0	0	0	0	0	3
'94618'	6	12	0	15	35	0	0	0	0	0	62
'94619'	5	12	7	0	0	0	0	0	0	0	19
'94621'	60	39	70	165	385	270	1,050	1,125	0	0	3,104
'94624'	1	3	0	0	0	0	0	0	0	0	3
	366	459	497	900	1,575	1,035	1,400	2,250	0	0	8,116

d. Are there other cities with a similar program? How are the same issues addressed?

Two jurisdictions have sheltered market programs: Sacramento California and Portland Oregon. Listed below are some of the program criteria for both programs:

Program criteria for the sheltered market program in Portland Oregon

Sheltered Market Program (SMP) – Portland, Oregon

- Firms participating in the SMP must have prior contracting experience.
- Participation in the program is limited to three to five years, with a maximum of five years.
- Participating M/W/ESB firms to compete among themselves as prime contractors for all of the City's construction projects in the \$5,000 to \$200,000 range.

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- SMP firms are the first source for City informal contracts with a dollar value of \$5,000 to \$100,000.
- SMP primes are required to attempt to utilize available SMP firms for sub-contracting on projects bid within the program. On some large City projects SMP firms will also be designated as the first source for subcontracting.
- The application process is open to construction firms certified by the State Office of M/W/ESB as a MBE, WBE or ESB firm.
- A firm's average annual gross receipts must not exceed one million dollars a year, for the prior three years at time of application.
- The firm must agree to an assessment of technical assistance needs by a consultant named by the City of Portland and to participate in training opportunities.
- Firms applying for the SMP must have the ability to perform a commercially useful function – typically at least 50% of the construction involved on any contract they are awarded, or must obtain written approval of a lesser percentage by the SMP Coordinator.
- At the time of application, the firm must have been in business for at least two years and must have experience bidding and performing in their specific areas of work. These areas of work are identified in the firm's Contractor Prequalification Application.
- The firm must complete the application process.

Sheltered Market Program - City of Sacramento California

- Informal contracts or agreements (those under \$100,000)
- Available for bidding to City-certified Emerging Business Enterprises and Small Business Enterprises only.
- Informal contracts will be made available, from time-to-time, at the discretion of individual City departments.

The following chart shows a comparison of the Portland, Sacramento and Oakland programs.

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Program Highlights	City of Sacramento	City of Portland	City of Oakland (Proposed)
Contract Limits	Informal projects up to \$100,000	Construction projects ranging from \$5,000 to \$200,000	Tier I: up to \$50,000 Tier II: \$50,001 - \$250,000
Program Participation Criteria	City-certified Emerging Business Enterprises and Small Business Enterprises only	State-certified minority, women or emerging small businesses	Pre-qualified local & small local businesses
Program Eligibility - Size		Participating firms' average annual gross receipts must not exceed \$1 million	VLSBE – Gross receipts ≤ \$375,00 SLBE – Gross Receipts ≤ 10% of Current SBA size standard for the work type
Program Eligibility - Capacity		Must have the ability to perform a commercially useful function – at least 50% of the work to be performed on the contract	Firm must hold a current and valid license for the work to be performed
Program Eligibility - Experience		Must have been in business for two years and have experience bidding and performing in the specific areas of work	VSLBE – 6 months in business SLBE – In business for 1 year LBE – In business for 1 year
Program Eligibility – Technical		Must agree to an assessment of technical assistance by a third party and participate in training opportunities	NA
Program Eligibility – Commitments		Prime contractors under the program must commit to solicit bids from program participants for subcontracting opportunities	NA
Program Eligibility - Duration		Participation is limited to maximum of five years	Firms in tier one will move to tier two if the average annual gross receipts place them over the threshold for very small category

e. Contractor's Rotation Program – method for awarding work

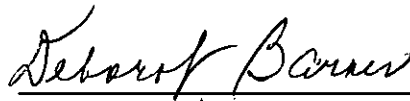
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Highest end using agency suggests that the preferred method for awarding work to the prequalified group will be to solicit quotes from the most qualified based on the scope of work and the best price offered.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the changes to the Local and Small Local Business Enterprise Program.

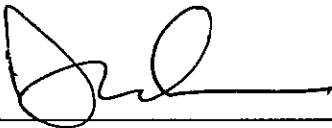
Respectfully submitted,



Deborah Barnes
Director,
Department of Contracting and Purchasing

Prepared by:
Mary Mayberry, ASM I
Administration Unit

FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



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