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CITY OF OAKLAND
AGENDA REPORT

2010 DEC -2 PM 3: 57

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Department of Contracting and Purchasing
DATE: December 14, 2010

RE: **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

The Oakland City Council has consistently been on the leading edge with respect to the economic impacts of public policy on Oakland businesses and residents. These cutting edge public policies continue to stand as a model for other governmental entities. Oakland City Council now seeks to enhance existing policies to better serve the Oakland business community.

The Community and Economic Development Committee supported the recommendations presented by staff set forth in the Fairness in Purchasing and Contracting Disparity Study. The Committee requested staff to return with the redlined policies containing the new actual proposed language along with a report outlining how the policies will be implemented with current staffing resources. Supportive data are found in previous agenda reports and are available upon request.

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. These actions best reflect the Oakland business market of certified firms and will further stimulate an increase in the level of small local business participation in contracting.
2. Two new certification categories: (a) a Very Small Local Business Enterprise (VSLBE) and (b) a Local Business Enterprise of Locally Produced Goods (LBE-LPG). By creating these

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new categories, the City will provide advantages to very small businesses and add value to local Oakland businesses that produce products and goods in Oakland.

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 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. The term unbundling was used by the federal government when it established a program to reverse purchasing policies that created regional “mega” contracts in order to increase small business participation. Applied to capital improvement projects, increased participation by small local contractors is achieved by setting the size and scope of construction projects to maximize such participation. Applied to purchasing contracts (supplies, for example) presents opportunities to optimize purchases also. The decision to unbundle or right size must be made before a project is in place for bid and must include discussions between project managers in concert with department and agency heads. While city agencies have in the past broken large projects into smaller ones, the decision to set an optimal project size on a more frequent basis occur, during the planning stages. The decision must consider, among other issues: (a) multi-project locations; (b) size or complexity of the service; and/or(c) buying options, and the impact of reducing project size on any grant opportunities. The Public Works Agency reports that its current practice applies to projects that include multiple locations across the city. In addition, unbundling is practiced in the purchases of commodities by Department of Contracting and Purchasing, Purchasing Services.
7. Establishing a Two-Tiered Contractor Rotation Program (CRP) to be used for small construction projects (referenced in number 2 above). Similar to a sheltered market program, the proposed Contractor Rotation Program requires establishing and maintaining a pre qualified list, by trade or contractor license, of local certified businesses. An engineer’s estimate will be used to establish cost of services and jobs will be awarded on a rotating basis. A contractor’s rotation program will not only capture the very small and small local businesses and provide reliable opportunities but will also expedite small construction services desperately needed by city agencies. The Department of Engineering and Construction recently established just such program modeled after the “as needed” contracts for professional services and has applied it to general construction work. This pilot effort

based on this model for as needed construction services was approved by the City Council in February and thus far is proving to be a successful model.

Staff from the Department of Contracting and Purchasing and other city stakeholders discussed application strategies. A discussion and description of those strategies is contained in this report.

FISCAL IMPACT

As per Council's directive, the implementation and on-going management of the policy changes will be undertaken by existing staff. It is currently difficult to assign an overall dollar figure to the cost of the program changes. However, if implementation of the proposed policies requires the addition of staff or other operating costs, staff will return to the City Council with a status report of unanticipated fiscal impacts after a 12 month evaluation period. There are no negative impacts anticipated to current contracting and compliance programs.

BACKGROUND

Several years ago, staff submitted Volume I of the Fairness in Purchasing and Contracting Disparity Study. The study was based on Oracle data, city-wide records, surveys and interviews covering a three year period. The study identified the existence of disparities for selected ethnicities and for women in construction as well as in professional services. Mason Tillman Associates, LTD submitted a comprehensive set of race neutral recommendations based on the outcomes of their analysis. Those recommendations were shared with Oakland citizens in a series of public hearings. A September 29, 2009 council agenda report summarized the race and gender recommendations. At the Community and Economic Development Committee meeting held on July 14, 2010, staff was requested to prepare the necessary revisions to the Local and Small Local Business Enterprise Program incorporating the recommendations for adoption. The disparity study in general and the seven specific program recommendations were adopted by the City Council in concept and are now returning to the CED Committee for implementation.

KEY ISSUES AND IMPACTS

In order to address the disparities identified in the Fairness in Purchasing and Contracting Disparity Report, it was deemed necessary to make changes to current policies around how the city does business with local and small local Oakland-based firms. To that end, staff analyzed the current program and inserted new language to reflect the recommendations set forth in the report. *Appendix A* attached to this report is a red-line version of the City of Oakland's Local and Small Local Business Enterprise Program. The policy changes address concerns expressed in public hearings as well as by the City Council and other agencies and departments directly impacted by the City's program.

POLICY DESCRIPTION

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Following is a discussion of the details of the policy changes:

Action (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 and subcontracting

Business size standards are typically expressed in average gross receipts and/or the number employees. Like the City of Oakland, most localities apply the gross receipts as a measure of business size. The City's certification process relies upon a percentage of the Small Business Administration (SBA) size standards as a criterion to determine whether a business qualifies as small. Historically, the City of Oakland has defined small businesses as 30% of the SBA standards. As previously reported and adopted by the Oakland City Council, the percentage of SBA standards are as follows: (a) 10% of the most recent SBA standards for the construction industry, and (b) 15% of the SBA standards for professional services and all other non-construction industries. As was discussed in a previous Council report, the methodology for updating business size standards includes a review of the average annual gross receipts of Oakland-based certified businesses and comparing it with the most current SBA size standards. In order to ensure that the City's size standards are more representative of the Oakland's business market and in keeping with the two-year certification period, staff will adjust percentages every two years.

Action (2) Establish two new certification categories

In a previous report, the disparity study recommended creating targeted contract opportunities for very small Oakland businesses, which will be accomplished by creating additional certification categories and by establishing a prequalified list for small construction jobs on a rotating basis. These efforts necessitate identification and certification of the very small business market in Oakland. Therefore Oakland's LBE/SLBE policy will be amended to include two new certification categories: (a) a Very Small Business Enterprise (VSLBE). Local businesses of locally produced goods requested a separate (b) Local Business Enterprise of Locally Produced Goods (LBE-LPG) certification category.

- a. A VSLBE is defined as one with gross sales of no more than \$375,000 with a substantial business presence in Oakland for at least 6 months and a valid City of Oakland business tax license.*
- b. A LBE-LPG is defined as a business whose end products (goods) are manufactured within the geographic boundaries of the city of Oakland.*

In staff's analysis of Oakland's pool of previously certified firms, it was determined that many of the businesses, already certified, fit the definition of very small local business enterprise. A very small business enterprise designation will give those businesses a greater opportunity to compete for projects. Creation of this new certification level will serve several purposes,

including providing preferences for prime contractors that utilize VSLBEs as subcontractors on projects. Prime contractors will be able to “double count” VSLBE participation in achieving the L/SLBE requirement assigned to the project. VSLBE’s will be able to be certified sooner, making them available to participate and be double counted towards the SLBE requirement on projects, and VSLBEs will be eligible to participate in the Small Contractors Rotating Program (discussed below).

Businesses that are locally owned and operated and provide locally produced goods create an extra added value to the Oakland market. The numbers are relatively small when compared to the total number of certified firms. However, these businesses compete for city contracts and find it difficult to compete with non-local firms. It was suggested that the City consider giving small local preferences to local business enterprises for locally produced goods (LBE-LPG). According to census statistics, there are approximately 460 businesses that define themselves under the manufacturing NAICS code. A preference of this nature would further encourage contractors to utilize locally produced goods over goods obtained outside of the city, and bolster the local economy through the increased infusion of sales tax dollars, employment of Oakland residents, and the continued support of local business enterprises.

Certification criteria will be the same as for a small local business enterprise, except that this category will include those businesses that manufacture goods (e.g. rebar, metal works, sheetrock, etc.) within the geographic boundaries of the city used in construction projects.

Action (3) Increase the existing 20% minimum participation requirement to 50% L/SLBE participation requirement on all construction and professional services projects, within the context of this increase, to exercise the option (only when necessary) to adjust the 50% participation requirement up or down (if warranted) given the nature and scope of a particularly unique projects and current market conditions

In order to capture a snapshot of actual L/SLBE participation on certain types of city projects, staff reviewed the last two fiscal years 2007-2008 and 2008-2009 data specifically for three types of projects : streets, sewers, and traffic signals. L/SLBE participation on average met or exceeded 50%. In order to address concerns regarding the impact of new policy implementation on the contracting process, staff is recommending that the 50% L/SLBE requirement (split 25% LBE and 25% SLBE) be applied to all construction and professional services projects, with flexibility to adjust up or down given current market conditions. In instances where staff has concerns relative to whether the market can bear a 50% requirement, an availability analysis will be performed prior to advertisement of the project to appropriately adjust the requirement. Staff analysis will take into consideration current market trends as well as past participation levels for the type of project in making its determination. VSLBE’s will count for double at meeting the 25% SLBE requirement as long as the VSLBE performs a commercially useful function for which the business is certified.

Action (4) Unbundling or “right sizing” large procurements into smaller contracts

Unbundling is an excellent approach to reducing the size of multi-million dollar projects. It is important to note that "unbundling" contracts was a methodology put in place by the SBA in the early 2000's to address impediments in the federal procurement process at that time. These were multi-billion dollar projects. For construction and professional services projects, a more appropriate approach to meeting this goal would be to set the size of contracts at a level that reflects the available local market.

At the city's agency/department level, project managers routinely review larger projects to determine the feasibility of breaking the projects into smaller portions that in essence are more easily managed by small businesses. The challenge is to strike a balance between operational efficiency, opportunity, and fairness in light of cost savings, quality improvements, reduction in contracting process cycle times, and/or better terms and conditions. In order to achieve that balance it is important to first have a clear definition of what "unbundling" means and the effect on the city's acquisition of services. As noted in the disparity study, the city currently unbundles purchases of commodities and some city wide services such as the purchase of supplies.

The Public Works Agency routinely breaks large construction contracts that are city wide in scope into smaller contracts to be bid separately. This practice serves to structure contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation. The Small Contractors Rotation Program mentioned below is an example of a mechanism to carry out unbundled projects such that they are let to certified small local firms.

Action (5) Implement a Two Tiered Contractor Rotation Program for Small Construction Jobs

Staff recommends a two-tiered small business contractor rotation program. Similar to a sheltered market program, the Two-Tiered Contractor Rotation Program establishes a pre qualified list, by trade, of local certified businesses. The engineer's estimate serves as a guide to the costs of services. The Public Works Agency (PWA) currently operates a pilot program which has proven to be quite successful and is about to take an additional group of small local business contracts to Council for award to complete miscellaneous concrete and sewer work. Essentially, they have established, through a competitive process, a list of pre qualified, Oakland certified small local businesses, by trade. The work is bid on a rotating basis. The scope of work may include maintenance and repair, part renovation, stairway and restroom projects, and minor capital improvement projects such as tenant improvements.

The Contractor Rotation Program (CRP) allows the using agency to solicit from a pre-qualified pool by way of a two tiered process. The first tier is for very small local business enterprises. The sizes of the jobs are under \$50,000. The second tier is for small local business enterprises and local business enterprises and the size of the projects may be up to \$250,000.

Pre-qualification is determined by the business' certification status and the ability to satisfy stated criteria such as licensing. Only businesses with a current certification and who satisfy

stated criteria may participate. The business must possess the proper license for the work to be performed. Businesses may remain listed for as long as their certification status remains the same. Very Small Businesses will be moved from competing at tier one to tier two should the average gross receipts increase up to the next size standard.

Rotation will take place as follows: When a project under the CRP comes up for bid, the first three companies listed for that trade will be invited to bid. The firm awarded the bid will then drop to the end of the list. When the next project comes up for award, then the next three firms listed (the two unsuccessful bidders from the previous solicitation plus the next firm listed) will be allowed to bid. That process will continue for the life of the contract, typically two to three years. Non responsive or non-performing participants will be dropped from the list and will forfeit the privilege of pre-qualification. The successful bidder is still required to meet specified program requirements or face penalties as prescribed by the L/SLBE Program. At this time this method of rotation is believed to be the most beneficial to contractors and the City. Staff will evaluate the effectiveness of this process and recommend changes if needed.

Establishment of the Contractor Rotation Program requires amendments to Oakland's Purchasing Ordinance (Oakland Municipal Code Title 2, Chapter 2.04) to permit rotation-based awards from a pre-qualified list. That ordinance is attached to this report.

SUSTAINABLE OPPORTUNITIES

Economic: Changes to the policies will create more opportunities for local and small local businesses to compete as well as make it easier for those firms to compete for projects.

Environmental: There are no environmental impacts or opportunities anticipated as a result of implementation of the policy changes

Social Equity: There are no social equity opportunities or impacts anticipated as a result of implementation of the policy changes.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no impacts to disability or senior citizen access to services as a result of implementation of the policy changes recommended in this report.

RECOMMENDATION(S) AND RATIONALE

It is recommended that Council adopt the implementation strategies for an enhanced L/SLBE Program. By doing so, the City will maximize participation of certified local, small local, very small local business enterprises in City contracting. These enhancements will also stimulate inclusion of more Oakland businesses and recycle funds back into the City's economy.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no impacts to disability or senior citizen access to services as a result of implementation of the policy changes recommended in this report.

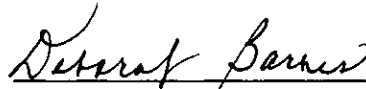
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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution adopting the changes to the City of Oakland's Local and Small Local Business Enterprise Program.

Respectfully submitted,



Deborah Barnes
Department of Contracting and Purchasing

Reviewed by:
Michael Neary, Project Delivery
Public Works Agency

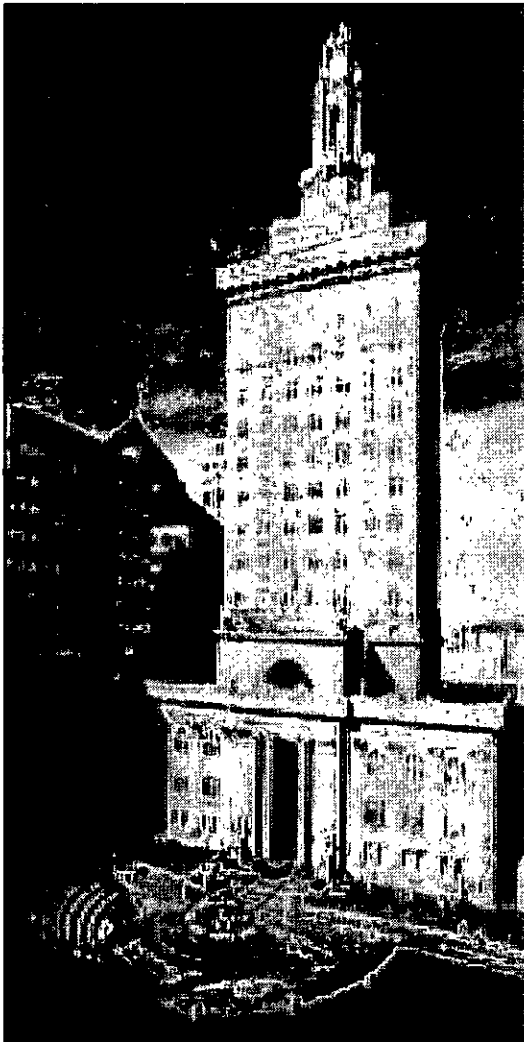
Prepared by:
Mary Mayberry, Administrative Services Manager I
Administration Unit

FORWARDED TO THE COMMUNITY AND
ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

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- **Local & Small Local For Profit and Not For Profit Business Enterprise Program**

- **Certification Local & Small Local Business Enterprise (For Profit and Not For Profit)**

- **Local Employment Program**

CITY OF OAKLAND – Department of Contracting and Purchasing
OFFICE OF THE CITY ADMINISTRATOR

Contract Compliance & Employment Services Division
250 Frank Ogawa Plaza Suite 3341, Oakland, Ca. 94612
(510) 238-3970 – www.oaklandnet.com

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Part I. Local and Small Local Business Enterprise Program (L/SLBE)

In order to provide economic opportunity for its residents and businesses, and stimulate economic development, the City of Oakland has developed and implemented various policies that directly impact how public funds are spent. These policies are aimed at using the power of the public purse to stimulate economic development through the support and empowerment of the local community, especially those aspects of it that have been placed at a disadvantage in the past. The City has demonstrated leadership through various cutting edge policies and is in the vanguard nationally in terms of harnessing local resources to achieve local benefits. The major programs that were created to serve these respective groups are the Local and Small Local Business Enterprise (L/SLBE) Program and the Local Employment Program (LEP). Supporting and/or complementing these programs are policies regarding living wage, local construction employment referral program, prevailing wage, disadvantaged business enterprises, certifications, apprenticeship, and equal benefits for domestic partners.

The L/SLBE program supports policies that establish a **50% participation requirement for all construction and professional services contracts, with 25% requirement for small businesses and 25% for local businesses** ~~ed a twenty percent (20%) participation requirement and a minimum bid discount of two percent (2%) for meeting that requirement.~~ **Bid discounts will be awarded to the prime contractor for achieving and/or surpassing the requirement.** In addition to bid discounts, the program provides for additional points in negotiated professional services contracts and increased points and discounts as the level of local and small local business participation increases. Specifics of the new policies are detailed under "Program Guidelines".

Intended Impacts of the L/SLBE Program

The intended impacts include:

- Increasing the number of Oakland certified businesses participating in City contracting and in development projects;
- Increase the circulation of city dollars within the Oakland community and thus stimulate a stronger economic base; and
- Promote the development of Oakland certified businesses through joint ventures, and mentor/protégé relationships.

The new policies provide economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for goods and services. At the same time, the program does not obstruct efforts to attract outside investments that are critical to the City's economic growth.

Definitions

- 1) **Annual Anticipated Participation Level (AAPL)** is the City's assessment in the aggregate of the level of participation and utilization that the City expects could be attained on contracts awarded in its jurisdiction in a given fiscal year.
- 2) **Availability** - The number of certified L/SLBE firms, by trade, ready and willing to compete for work with the City of Oakland.

- 2)3) **Business Suppliers/Prefabricators** - An individual or business entity that makes available a certain commodity for meeting demand or for purchase at a given price.
- 4) **Certification** – An official endorsement from the City of Oakland that attests to an entity's status as a local business enterprise (LBE), small local business enterprise (SLBE), very small local business enterprise (VSLBE) or a local business enterprise – locally produced goods (LBE-LPG) based on fulfillment of a prescribed set of criteria established and enforced by the City. Not for profit entities may also be endorsed as belonging to one of the categories aforementioned.

3)City- Reference to the City or City Council includes the Redevelopment Agency, and ~~reference to the City Manager includes the Agency Administrator.~~

5)

4)6) **City Financial Assistance Recipient (CFAR)** - A business or individual that receives a city subsidy for a public works project.

5)7) **Commercially useful function** - The business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. LBEs and SLBEs that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the City.

6)8) **Contractor/Consultant/Vendor** – The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with the City.

7)9) **Dealer** - A firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers.

8)10) **Developer** - A person, entity, or business that prepares or develops real property for new development or redevelopment and receives a city subsidy.

9)11) **Emergency Work** - A public works contract awarded because of imminent danger (e.g. fires, floods, earthquakes) or immediate threat to health safety and welfare of Oakland residents and meeting the City's requirements for waiving normal bidding procedures

10)12) **Fixed office** – A fixed office is dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For small local business certifications, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided that all the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution

point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.

13) Informal construction contracts - For purposes of establishing a threshold for determining the application of the L/SLBE Program only, informal construction contracts are valued under \$100,000. For informally bid construction contracts, 75% of the work must be awarded to local firms.

14) Informal professional services contracts - For purposes of establishing a threshold for determining the application of the L/SLBE Program only, informal professional service contracts valued under \$50,000. For informal professional services contracts, 75% of the work must be awarded to local firms.

15) Local Business Enterprise (LBE) - An Oakland business (a) with a substantial presence in the city of Oakland's geographic boundaries (b) fully operational for 12 consecutive months and (c) a valid business tax certificate.

16) Local Business Enterprise - Locally Produced Goods (LBE-LPG) - Equivalent to a SLBE for businesses that supply locally produced products or goods. All SLBE criteria apply.

17) Local Certified Trucker - A locally owned and operated business engaged in transporting goods on trucks to or from a specified location and holds a valid certification as a trucking contractor.

18) Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies purchased.

19) Non-profit/Not for Profit Corporation - A nonprofit corporation is a corporation formed for purposes other than generating a profit and in which no part of the organization's income is distributed to its directors or officers. Nonprofit corporations are formed pursuant to state law, often under the Revised Model Non-Profit Corporation Act (1986). A nonprofit corporation can be a church or church association, school, charity, medical provider, legal aid society, volunteer services organization, professional association, research institute, museum, or in some cases a sports association. Nonprofit corporations must apply for tax-exempt status at both the federal and state level.

20) Public works contract - Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part with public funds, or by a developer who receives any type of governmental subsidy.

Size Standard - One factor used to determine a small business. ~~For the City of Oakland, a small business is one with three year average gross receipts at or below thirty percent (30%) of the United States Small Business Administration's size standard.~~ **A numerical definition, based on average annual gross receipts which represents the largest size that a business may be to remain classified as a small business concern. The City will set its size standard annually based on an analysis of the gross receipts for businesses located within the City's geographic boundaries.**

21)

22) **Small Local Business Enterprise (SLBE)** –A business with (a) a substantial presence in the city of Oakland’s geographic boundaries (b) a full operation conducting business for 12 consecutive months and (c) a valid business tax certificate, and (d) is an independent business headquartered in Oakland. e) **does not exceed the size standard as established by the City for its industry trade.**

23) **Subcontractable dollars – that portion of the work remaining not restricted by specifications**

24) **Subcontractor/Sub-consultant** - The individual, partnership, corporation or other legal entity that contracts to perform part of or all of the obligations of another’s contract.

25) **Subsidiary/Affiliate** - Part of a larger company with national offices located in other cities outside Oakland, and controlled by a home office or headquarters outside Oakland.

26) **Subsidy** - A grant, loan, credit, tax rebate, or any other way that provides a measure of value to the developer from the City.

27) **Substantial Presence** – A fixed and established place where work is carried on of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify. Businesses with offices both within and outside of the City that seek certification as a local business must demonstrate the existence of a bona fide local office in accordance with the following criteria:

- a) **Independent Office Site:** The local office can and does function as an independent office site. The local office is not merely a sham operation set up by a non-local business for the purpose of gaining L/SLBE certification;
- b) **Fixtures and Equipment:** The local office contains all fixtures and/or equipment, including but not limited to, as appropriate, computer(s) software, copy machine(s), furniture, vehicle(s), tools, appliances and/or machinery necessary to operate the business for which the certification is sought;
- c) **Space:** The local office contains all space necessary to operate the business for which certification is sought, including but not limited to, as appropriate, office space, warehouse space, parking, yard area and/or shop area;
- d) **Dedicated Personnel:** The local office must be the main office for assigned personnel who conduct a full range of the business’ activities out of the local office including but not limited to, as appropriate, professional, clerical and/or administrative staff assigned and dedicated to the local office as necessary to operate the business for which certification is sought;
- e) **Daily Function:** The local office functions on a daily basis, or a regular basis as otherwise appropriate, providing all services to operate the business for which certification is sought.

28) **Tier** - The level of the relationship between the prime contractor and subcontractors, or between subcontractors.

29) **Very Small Business Enterprise (VSLBE)** – a business with: a) gross receipts at or below \$375,000 per year; b) domiciled in Oakland for at least six (6) months; c) a valid Oakland business tax license; and d) substantial business presence

25)30) Waiver - An intentional action by City Council, excusing a contractor or a department from (1) adhering to and/or complying with a City policy.

Program Requirements

"Annual Anticipated Participation Level (AAPL)" is the City's assessment of the level of participation and utilization that the City expects could be attained on contracts awarded in its jurisdiction in a given fiscal year. This includes an assessment of the availability for specific items of work, that local and small local firms could reasonably be expected to compete for subcontracting opportunities on a city funded contract and their likely availability for work on city funded contracts that will be awarded in a given fiscal year. The AAPL is not a goal that the City needs to achieve, but the AAPL will be used by the Department to establish a city-wide overall participation goal as required by resolution.

Actual payment to subcontractors that are certified contractors and performing a commercially useful function will be counted toward participation. If the prime contractor is a qualified contractor, his/her work is reported and counted toward the contract participation.

~~There is a 20% minimum~~ **A project participation requirement (PPR) will be calculated** for all construction contracts over \$100,000 and all professional services contracts over \$50,000. All construction contracts below \$100,000 and all professional services contracts below \$50,000 must include outreach to certified local firms such that a minimum of three local firms are included in the solicitation.

The AAPL is calculated on an annual basis to reflect participation achieved by all city departments, based on all of the contracts that the City plans to award in the fiscal year.

~~The 20% local business participation requirement must be met with a minimum participation of 10% for Local Business Enterprises (LBE)/Local Not For Profit Business Enterprise (L/NFPBE) and 10% for Small Local Business Enterprises (SLBE)/Small Local Not For Profit Business Enterprise (S/LNFPBE). SLBE and SLNFPB may meet the full 20% requirement. In the case of construction projects where trucking is warranted, 20% of the total trucking dollars must be allotted to certified (Oakland) Local Truckers~~

Based on the "Rule of Three", there must be at least three certified businesses listed in the industry, trade or profession that constitutes a major category of work. If at least three L/SLBE/VSLBE/LBE-LPGs are not certified, then the requirement is ~~either waived or reduced, or the 20% requirement may be set from 19% to 0%.~~ **In those instances where a waiver is necessary, the Department reserves the right to negotiate the issuance of extra credit to contractors who demonstrate a good faith effort to award to small local businesses.**

The awarding authority shall request an availability analysis if there is reason to believe that the availability of certified firms will not satisfy the ~~50% requirement~~ **20% requirement.** ~~And~~ The request must be made in time for completion prior to issuing an invitation for bids, request for proposals or any other solicitation.

Contractors are required to submit a completed Subcontractor Listing (Schedule R) as attached. The Subcontractor Listing provides the buyer with a formal list of subcontractors, the trade or service area to be provided, bid amounts and certification status on for all profit and not-for profit businesses that will be used on the project.

Schedule R will be used to calculate the level of certified local business participation. Unless a requirement is waived due to limited availability, the determination of responsive and responsible will include meeting the ~~20% minimum requirement~~ **50% requirement**. Each prime or lead contractor is urged to obtain, from each certified subcontractor, a copy of either the certification letter or certificate issued by the City of Oakland, ~~Office of the City Manager, Contract Compliance & Employment Services Division~~ **Department of Contracting and Purchasing**. The certification letter and certificate include the certification number and date of expiration.

Certifications must be current and valid prior to the submittal due date in order for the local participation to count toward meeting the ~~20% businesses~~ **project** participation requirement. Certification status is confirmed during the compliance evaluation process.

Program Incentives

The prime contractor will be awarded a 2% bid discount or two preference points for achieving the 50% requirement (PPR). In those instances where the contractor surpasses the project participation requirement, bid discounts will be applied at a rate of one percent (1%) or one preference point for every 10% increment of the contract dollars attributable to certified firms over and above the project participation requirement up to a maximum of 5% or five preference points. Bid discounts are applied at a rate of one percent (1%) or one (1) preference point for every 10% of contract dollars attributable to certified firms. No more than five percent (5%) in bid discounts or five (5) preference points may be earned.

	Project Participation Requirement (X)	Bid Discounts Earned	Preference Points Earned
PPR Increment Achieved	X%	2%	2
	X + 10%	1%	1
	X + 20%	1%	1
	X + 30%	1%	1
MAX		5%	5%

The three examples below demonstrate (#1) the ~~20% minimum requirement~~ at a rate of 10% LBE and 10% SLBE; (#2) additional bid discounts and preference point values when participation is above and beyond the minimum ~~20% requirement~~; and (#3) the maximum allowable bid discount and preference points. The maximum allowable incentives are not designed to limit participation. To address participation above and beyond the 50% maximum **limits established**, for profit and not for profit entities may bank the participation (up to 2%) for future use.

Example 1: 20% Minimum Requirement

*20% SLBE participation also satisfies the 20% requirement.

Participation over and above the 20% requirement earns additional bid discounts and points up to a maximum of a 5% bid discount and 5 preference points as long as the participation increases in equal increments between LBE and SLBE or additional participation is achieved with SLBEs.

Example 2: Additional bid discounts and preference points.

	L/SLBE Participation			Bid Discounts	Preference Points	
	LBE	SLBE	or SLBE			
Additional	5%	5%	10%	Earn	1%	1
Additional	5%	5%	10%	Earn	1%	1
Additional	5%	5%	10%	Earn	1%	1
Total	15%	15%	30%	Total	3%	3

	L/SLBE Participation		Bid Discounts	Preference Points
Required	10%	Earn	1%	1
Required	10%	Earn	1%	1
Total	*20%	Total	2%	2

Example 3: Maximum Allowable

Threshold	Up To 50% participation	Earns	5% Bid-Discount	5 Preference-Points
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Dollars and hours attributable to subcontracting with Oakland for profit and not for profit businesses and the hiring of Oakland residents beyond 50% of the contract amount or beyond the 50% employment and new hire work hours threshold, may be banked and applied to projects within a 12 month period following completion of the project on which the extra credit was earned.

Contractor Rotation Program

The Contractor Rotation Program (CRP) The Contractor Rotation Program waives Oakland Municipal Code Chapter 2.04 open-market advertising and bidding requirements in light of a competitive pre-qualification process for on-call construction work, so that the work can be let to prequalified contractors on a rotating, solicitation basis. The Program allows the using agency to solicit from that pre-qualified pool by way of a two tiered process. The first tier is for very small local business enterprises. The sizes of the jobs are under \$50,000. The second tier is for

small local business enterprises and local business enterprises and the size of the projects may be up to \$250,000.

Pre-qualification is determined by the business' certification status and the ability to satisfy stated criteria such as licensing. Only businesses with a current certification and who satisfy stated criteria may participate. The business must possess the proper license for the work to be performed. Businesses may remain listed for as long as their certification status remains the same. Very Small Businesses will be moved from competing at tier one to tier two should the average gross receipts increase up to the next size standard.

Rotation will take place as follows: When a project under the CRP comes up for bid, the first three companies listed for that trade will be invited to bid. The firm awarded the bid will then drop to the end of the list. When the next project comes up for award, then the next three firms listed (the two unsuccessful bidders from the previous solicitation plus the next firm listed) will be allowed to bid. That process will continue for the life of the contract, typically two to three years. The first tier is for very small local business enterprises. The size of the jobs are under \$50,000.00. The second tier is for small local business enterprises and the size of the projects may be up to \$250,000.

The scope of work may include maintenance and repair, part renovation, stairway and restroom projects, and minor capital improvement projects such as tenant improvements. This is ideal work for the Two-Tiered Small Business Contractor Rotation Program. Non responsive or non-performing participants will be dropped from the list and will forfeit the privilege of pre-qualification. The successful bidder is still required to meet specified program requirements or face penalties as prescribed by the L/SLBE Program.

Maintaining Participation

Incentives are earned based on the level of participation proposed prior to the award of a contract. Once a project begins, it is important to achieve and maintain the participation for which incentives were earned. Prime Contractors and consultants must maintain the L/SLBE percentages indicated at the time of a contract award and throughout the term of the contract.

Should the prime contractor fail to maintain the L/SLBE participation listed at the time the contract is awarded, the City may impose a penalty equal to the amount that should have been awarded to L/SLBE, and/or may stop the work.

If the City modifies the original scope of work, the contractor must make reasonable efforts to maintain the L/SLBE participation for which incentives were earned. If change orders affect only one discipline, staff may use their discretion to allow adjustments to L/SLBE percentages for the change order portion of the work. Upon request, City staff will help firms to determine methods of maintaining percentages.

Should the prime contractor fail to maintain the L/SLBE participation listed at the time the contract is awarded, the City may impose a penalty equal to ~~1.5~~ **1.5** times the amount that should have been awarded to L/SLBE, and/or may stop the work upon approval by the full City Council or a designee approved by at least three Council Members of which one must include the Council Member representing the district in which the work is being performed.

Substitution of Listed Subcontractors

Prime consultants or contractors who have entered into a contract agreement with the City cannot substitute a listed subcontractor or sub-consultant without prior approval of the City.

The City will grant substitution of a listed subcontractor or consultant on the following conditions:

1. A written statement from the listed sub consultant agreeing to the substitution,
2. When the listed sub consultant has been given a reasonable opportunity to execute a contract, yet fails to, or refuses to execute a written contract when such written contract is based upon the City's conditions and scope of work,
3. When a listed sub consultant becomes insolvent,
4. When the listed sub consultant fails or refuses to satisfy contractual agreements,
5. When the listed sub consultant fails to meet contract insurance requirements, or
6. When the City or the duly authorized officer determines that the work performed by the listed Sub consultant is substantially unsatisfactory, or not in accordance with the contract agreement or that the sub consultant is substantially delaying or disrupting the progress of the work.

Prior to the approval of the prime consultant's request for substitution, the City shall give notice, in writing, to the listed sub consultant, of the prime consultant's request for substitution and/or the reason for such request. Such notice shall be served by certified or registered mail to the last known address of the sub consultant. The sub consultant who has been so notified shall have five (5) working days in which to submit to the City written objections to the substitution. Failure to file such written objection shall constitute the sub consultants consent to the substitution.

If written objections are filed, the City shall give written notice of a hearing date to the prime and sub consultant within five (5) working days. At the hearing, the prime and sub consultant will present their cases and the Hearing Officer will make a determination.

Emergency Contracts

Local businesses will be given first priority in the performance of emergency work as defined in Ordinance 7937 CMS, which formulates and establishes procedures for bidding, contracting, and purchasing goods and services.

The City established a goal wherein 75% of emergency contract dollars must be spent with local firms. Of that amount, at least two thirds must be spent with small local businesses. User agencies are required to solicit from certified local firms for all informally bid emergency work whenever feasible.

Compliance Monitoring and Penalties

To ensure compliance with the program, the contractor or consultant shall provide records upon request (within ten calendar days) and permit the City to review all pertinent records and documents of the contractor and subcontractors. The contractor or consultant shall provide a copy of all subcontractor agreements, purchase orders and/or other verification of the total amount to be paid to each subcontractor, supplier, etc., prior to commencement of work. A penalty of one percent (1%) of the contract amount or one thousand dollars (\$1,000) per day (whichever is less) may be applied if records or documents are not provided within the specified time. The City shall deem such refusal a material breach of contract, in which case the City may terminate the contract and/or stop the work until compliance is met. In addition, the contractor or subcontractors may be debarred from participating in future City contracts for a period of six months to five years, and may lose certification.

The subcontractor's progress payment report must be submitted with each progress payment in order for the progress payment to be processed. Also, prime contractors and/or prime consultants will provide the City and Redevelopment Agency with executed copies of its subcontractor/sub consultant agreements to verify dollar amounts stated for all L/ SLBEs. Contractors must also provide information with each progress payment indicating payments made to L/SLBEs in order to receive subsequent progress payments. An Exit Report and Affidavit form should be attached to the final progress payment application.

For construction contracts pursuant to Public Contracts Code Section 4107, et seq., no substitution of the listed L/SLBE subcontractors can be made without the approval of the City. Contractors are required to contact the Contract Compliance Office to request a substitution hearing.

Prevailing Wages

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn. The prevailing wage also is based on the locality and nearest labor market. The California Department of Industrial Relations, (Divisions of Labor Statistics and Research) annually determines prevailing wages and may be reached at www.dir.ca.gov/DLSR/PWD.

The Contractor shall ensure that all workers performing construction work for the project are employed by the Contractor and shall include in its contracts with its contractors, requirements that its contractors' employees and their subcontractors' employees shall be compensated in an amount no less than the general prevailing wage rate of per diem wages pursuant to the California Labor Code Sections 1770, et seq.

The Contractor shall comply with, and shall include in its contracts with its contractors, requirements that its contractors and their subcontractors shall ensure that its contractors and subcontractors comply with all reporting and record keeping requirements of the applicable prevailing wage statutes and regulations. The Contractor is aware of and shall comply with the provisions of the City of Oakland and Redevelopment Agency's prevailing wage requirements contained in Resolution No. 87-4 CMS passed on January 20, 1987 or Resolution 57103 CMS, passed March 28, 1978. Copies are on file with the Division of Contract Compliance and Employment Services.

The prevailing wage requirement will be monitored and enforced by the City of Oakland and Redevelopment Agency. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this agreement.

Winning Compliance

Local Subcontracting Outreach

To ensure full disclosure of contracting and subcontracting opportunities available through the City of Oakland, each awarding City agency, department and division must post city funded contracting opportunities on the City's website.

The City of Oakland, Office of Contract Compliance & Employment Services, maintains a list of for profit and not-for profit businesses and organizations. The list is divided by trade or profession and includes contact information as and if the certification type is either Local Business Enterprise (LBE) or a Small Local Business Enterprise (SLBE). Each agency is required to solicit responses from certified firms appropriate to the nature and scope of the particular solicitation. Upon request, mailing lists of certified firms will be provided to using agencies and contractors/consultants.

Mentor Protégé Agreements

The City of Oakland strongly supports "Mentor-Protégé" relationships because they help to build capacity in underutilized service areas. Typically, prime contractors and consultants help develop the technical and business capabilities of local and small local as well as disadvantaged businesses (pursuant to DOT requirements). On a case-by-case basis, the City will allow a 5% preference for Mentor – Protégé teams on construction and professional services contracts.

If a prime contractor or prime consultant is able to develop a "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor will enjoy the benefit of credits against City goals particularly under circumstances where availability is zero, In order to earn credit for Mentor-Protégé relationships, the Mentor-Protégé Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts.

A written mentor-protégé agreement must be completed by both parties and executed before a notary public. The agreement must delineate the rights and responsibilities of each mentor and protégé. The parties must agree to enter into the relationship for the life of the project.

During the duration of the contract both the mentor and protégé must each provide the Division of Contract Compliance and Employment Services with a monthly report of the kinds of mentor skills provided to the protégé, which shall include but not limited to:

- B. Number of hours expended in the fulfillment of the project by each partner;
- X. Managerial assistance provided (*e.g. bookkeeping services, personnel, payroll, etc*);
- A. Technological assistance provided (*e.g. computer hardware/software, training, etc.*);
- E. Bonding assistance provided;
- Φ. Number of private sector projects bid on by the mentor-protégé team;
- F. Number of private sector contracts awarded to the mentor-protégé team; and
- H. Financial assistance provided.

No officer, director, employee or member of the mentor-protégé team shall be allowed to bid or otherwise participate independently on a city contract where the mentor-protégé team is bidding or otherwise participating. Each party is prohibited from submitting multiple bids on city contracts.

The protégé must be able to demonstrate that it is an independent business operation prior to submittal of a mentor-protégé agreement and throughout the term of the agreement. Unless specifically defined as one of the benefits to the protégé and spelled out in the agreement, the mentor and protégé must maintain separate office spaces while the mentor-protégé agreement is in effect.

Joint Venture Agreements

A business that is bidding or competing for City contracts may associate with a certified LBE or SLBE business to compete for contracts as a joint venture. A joint venture should be between two entities with the same discipline or license as required by the awarding department. Joint ventures receive bid discounts depending upon the LBE or SLBE percentage of participation as set forth in the Ordinance. The parties must agree to enter into the relationship for at least the life of the project.

Basic Elements of the Joint Venture Agreement:

A Joint Venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement two weeks prior to the bid due date. Copies of the JV applications are available upon request to the Contract compliance & Employment Services Division (510) 238-3970. Each agreement or management plan must include, but not limited to the following:

1. Detailed explanation of the financial contribution of each partner;
2. List of the personnel and equipment used by each partner;
3. Detailed breakdown of the responsibilities of each partner;
4. Explanation of how the profits and losses will be distributed;
5. Description of the bonding capacity of each partner; and
6. Management or incentive fees available for any one of the partners (if any).

Commercially Useful Functions Performed by Joint Venture Partners:

Each JV partner must perform a "commercially use function" as that term is defined herein. A LBE or SLBE that relies on the resources and personnel of a non-LBE or SLBE firm will not be deemed to perform a "commercially useful function"

Joint Venture License Requirements: Each joint venture partner must possess licenses appropriate for the discipline for which a proposal is being submitted. If a joint venture is bidding on a single trade project, at the time of bid submittal, each of the joint venture partners must hold a Joint Venture License and possess the requisite specialty license for that trade bid.

Delineation of Joint Venture Work:

The LBE or SLBE partner must clearly define the portion of the work to be performed during the project. This work must be of the similar type of work the LBE or SLBE partner performs in the normal course of its business. The Joint Venture Participation Form must specify the project bid items to be performed by each individual joint venture partner. Lump sum joint venture participation is not acceptable.

Responsibilities of the LBE or SLBE Joint Venture Partners:

1. The LBE or SLBE partner must share in the ownership, control, management responsibilities, risks, and profits of the joint venture in proportion with level of participation in the project;

2. The LBE/SLBE partner must perform work that is commensurate with its experience.
3. The LBE/SLBE partner must use its own employees and equipment to perform its portion of the project.
4. For construction contracts only, the joint venture as a whole, must perform bid item work that equals or exceeds twenty-five percent (25%) of the total value of the contract, excluding the cost of manufactured items, in order to be eligible for a joint venture discount.

Application of Bid Discounts For Joint Venture Agreements

To be eligible for a bid discount, at the time of bid submittal, each joint venture partner must hold a Joint Venture License and each must have the license that is appropriate for the project as required in the contract document of the contract award authority. Unless permission is granted by the City Manager or his designee for good cause shown, based on sudden and unexpected necessity, the following actions are not permitted: i) the non-LBE/SLBE partner performing work for the LBE/SLBE partner; ii) leasing of equipment or property by the LBE/SLBE partner from the non-LBE/SLBE partner; and iii) the hiring of the non-LBE/SLBE partner's employees by the LBE/SLBE partner.

Other Joint Venture Conditions

The City Manager or designee must first approve the LBE/SLBE Joint Venture Agreement/Management Plan before the joint venture is eligible for bid discounts. Any changes must also receive the prior approval of the City Manager or designee. In addition to any other information required by conditions specified herein, each LBE/SLBE joint venture must provide upon request, cancelled checks and any other financial records to the City.

Earning Credits (Banking Dollars)

In order to increase the level of self-sufficiency of Oakland based firms, the City will allow contractors to accumulate credits for hiring local businesses and small local businesses on non-city funded projects, and to earn credits for the participation of local businesses beyond the fifty percent (50%) threshold on city funded projects. Prime contractors will be allowed to bank extra credit based on dollars paid to certified local firms on non-city funded projects prior to the notice to proceed and on city funded projects, when at project end, there is proof of participation exceeding the fifty percent (50%) threshold. A maximum of 2% banked credits will count toward achieving the requirement on a City contract.

In order to receive bid discounts above the two percent (2%) minimum requirement the bidder must allocate additional dollars at a 5% LBE and 5% SLBE split. The ability of firms to bank hours on non-City projects will not be retroactive. Firms will only have one year to credit these hours.

City –Assisted Private Developments

For City-assisted private developments (e.g. Disposition and Development Agreements, affordable housing projects, and loans for construction projects) prime contractors are required to seek competitive bids from subcontractors and comply with the program goals and objectives as set forth in this document. Prime contractors must give SLBE contractors a 5% bid discount and LBE contractors a 2% bid discount. Prime contractors are required to award to the lowest responsible bidder.

Incentives for Supporting Local Business Participation on City Contracts

Each year, the City Manager will award a certificate of achievement to the city agency that reaches the highest level of support to small local businesses.

Other

Prime contractors shall not impose any unreasonable additional criteria on subcontractors that are not required by the City. Any demand on the subcontractors that would change the way the subcontractor may do business will be deemed unreasonable. The prime contractor shall not selectively impose criteria upon local certified businesses that are not applied to other business in similar contractual relationships with the prime.

In addition to any other documents required by the bid specifications, the contractor shall submit the Compliance Commitment Agreement as attached.

All bids submitted shall be made available to the public upon bid opening as required by the Sunshine Ordinance, including all bids prepared by subcontractors.

Attached herein are construction forms identified as (Schedule R-Subcontractor /Supplier/Trucking Listing; Schedule U-Compliance Commitment Schedule W-Bid Confirmation (lowest bidder must submit this form 48 hours after bid opening.

END

Part II. Certification

Certification Criteria

The City of Oakland now certifies both for-profit and not-for-profits operations. **The following** certification criteria apply to both for profit and not-for-profit organizations:-

1. An established operation located and doing business or operating within the geographical boundaries of the City of Oakland.
2. Fully operational for at least twelve (12) consecutive months prior to applying for certification (**six (6) months for VSLBE**).
3. A valid City of Oakland Business Tax certificate issued no less than twelve (12) months prior to applying for certification. All payments must be current and the certificate must reflect the address of the local business.
4. A fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland. Post Office boxes, temporary locations, and moveable work sites will not establish status as a local business. In the case of trucking firms, the truck inventory must be located within the city limits. A fixed office is a dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For SLBE certification, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.
5. The owner or employees (person hired and paid directly by the local business to conduct work solely on behalf of the business at its fixed office or distribution point) shall be available during normal operating hours.
6. ~~A LBE/SLBE~~**The company**—must comply with all applicable Federal, State and local regulations, including, but not limited to the City of Oakland Zoning Regulations.
7. All taxes, fees, permit fees, and fines shall be current.
8. Upon request by the City's certifying officer, ~~the a LBE/SLBE~~**company** must possess and make available for inspection the following documentation citing the Oakland business street address:
 - a. Executed (i.e. signed by all parties) copies of past/current contracts;
 - b. Oakland Business Tax Certificate and federal tax identification number;
 - c. Executed lease or other written agreement for occupancy of the Oakland office;

- d. Business cards and Utility bills (including but not limited to telephone, gas, electric, or water bills)
9. A business requesting certification shall supply the City with all such additional information, as the City may deem relevant to make a determination on its eligibility for certification. The City may wish to review additional documents that may include, but may not be limited to:
 - a. Commercial advertising
 - b. On-site signage
 - c. Letterhead
 - d. Previous Lease Agreements
 - e. Marketing materials
 - f. Listing in the telephone book.
 10. Small local businesses must present or make available copies of federal tax returns showing gross revenues for the three most recent fiscal years in order for the City to determine compliance with established business size standards.

Certification Eligibility Standards

Ownership And Control For Small Local Business Enterprise

The following standards shall be used by the City to determine if a firm is owned and controlled by one or more owners or businesses and eligible for certification as a Small Local Business Enterprise:

1. An eligible small local business shall be an independent business. The ownership and control of the ~~SLBE~~ **business** shall be real, substantial and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The small local business owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax, corporate or local status purposes is not necessarily sufficient for recognition as an SLBE. In determining whether a potential SLBE is an independent business, the City shall consider all relevant factors, including the date the business started, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing and other relationships with non local firms.
2. The owner(s) of the small local business must also possess the power to direct or cause the direction of the management and policies of the firm. Also, the owner shall make the day-to-day, as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the owners. There shall be no restrictions that would prevent the local business owners, without the cooperation or vote of any non-local owners, from making a business decision of the firm. (i.e. bylaws provisions, partnership agreements or charter requirements for cumulative voting rights)

- Where the actual management of the firm is contracted out to individuals other than the owners, those persons who have the ultimate power to hire and fire the managers are, for the purposes of this part, considered controlling the business.
- The contribution of capital or expertise by the local owner(s) to acquire their interests in the firm shall be real and substantial.
- Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.
- A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.
- Any relationship between a SLBE and non- SLBE, which has an interest in the SLBE, is carefully reviewed to determine if the interest of the non-SLBE conflicts with the ownership and control requirements.
- SLBEs will be considered bona fide if the ownership interests are real and continuing, and not created solely to meet the City goals for SLBEs participation. The SLBEs included in the contract must perform commercially useful services and/or supplies and not merely act as a passive conduit. In the event the City has reason to question the ownership of SLBEs, the burden of proof is on the claimant and/or contractor to provide documentation to substantiate the SLBE business enterprise status.

Size Standards for Small Businesses

The City has established a size limit in order to set forth criteria and define small local businesses. **Size is based on gross revenues realized by the firm for the three most recent fiscal years that the firm is doing business.** In making the determination relative to size, the City will use ~~thirty percent (30%) of the most current edition of~~ the United States Small Business Administration's Small Business Size standards. ~~Size is based on gross revenues realized by the firm for the three most recent fiscal years that the firm is doing business.~~ **Annually, on or before the 20th of November, the City will conduct an analysis of its database of certified firms in order to determine the size standard for the next fiscal year. In the case of Very Small Business Enterprises, the annual gross receipts must not exceed \$375,000.**

LBE/SLBE Certification Process

Step 1 – The Application: ~~Down load a~~Applications from the web site maintained by ~~the City through the link to Contract Compliance & Employment Services (CC & ES)~~**the Department of Contracting and Purchasing, -** ~~From Oaklandnet.com, select Contract Compliance on the “go to” link.~~ Requests for certification applications can be **also** be made by phone, facsimile, electronic mail, in writing or in person. When submitting the application, remember to attach a copy of the most recent Business Tax Certificate and have the application notarized. ~~If you are applying as a small business or a very small business,~~ attach the last three most recent business tax returns.

Step 2 – Registration: If not already obtained, register as a City vendor through the iSupplier portal, which also can be found on the City’s website.

Step 3 - The Review Process: The City of Oakland employs a three-tier certification process as standard operating procedure. This process is used to determine the degree of difficulty and time necessary to complete the review.

- ↳ **Tier I** – The application, upon review by staff, is complete and accurate, and requires no further action. Analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days. Tier I applications are typically LBE re-certifications.
- ↳ **Tier II** – The application, upon review by staff, requires additional information (e.g. application information is incomplete or requires clarification, supporting documents missing, etc.) If the application is incomplete, additional documentation will be requested and must be submitted within 10 working days. Analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days.
- ↳ **Tier III** - The application, upon review by staff, necessitates a desk audit and site visit. The desk audit and site visit will be conducted within 15 working days. All parties are asked to cooperate fully with the investigation. Failure or refusal to furnish requested information or failure to cooperate voids the application. If the audit and review results in a satisfactory determination, analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days after the site visit.

During the process of certification, the City may review any documentation or information it deems necessary to determine whether the applicant meets the definition of a local business set forth in the section 2.01 of this document.

To ensure complete and accurate determination in a timely fashion, it is requested that all potential LBE/SLBE participants submit an application for certification a minimum of three (3) weeks prior to a bid opening or submittal of a proposal. In order to receive LBE or SLBE credit for listed subcontractors and suppliers certifications must be complete and existing at the date and time of bid opening or submittal due dates.

Certification with another agency does not constitute certification with the City of Oakland. The City reserves the right to approve LBE/SLBE status from other government or City agencies. Firms or individuals who knowingly submit false information concerning their LBE/SLBE business status are subject to action or actions for fraud under the State and Federal False Claims Act and will be debarred from bidding on future City work for a period of three (3) years.

Other Considerations

In addition to the above the City shall give special consideration to the following circumstances in determining eligibility:

1. Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.
2. Previous and/or continuing employer-employee relationships between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.
3. Any relationship between an LBE/SLBE and a business that is not an LBE/SLBE, which has an interest in the LBE, is carefully reviewed to determine if the interest of the non-LBE conflicts with the ownership and control requirements.
4. A joint venture is eligible for certification if the LBE/SLBE partner of the joint venture meets the standards for an eligible LBE. The LBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture. The City Attorney's office must approve joint venture agreements.
5. The mentor and protégé must be certified prior to the submittal of a mentor-protégé agreement for approval.

Re-Certification

A City of Oakland certification is valid for a period of two years, unless otherwise specified. **A VSLBE certification is valid for one year, and renewable for two one year terms.** At the end of the certification period (~~October and April~~) the business may apply for re-certification. Notwithstanding the above, the City may require re-submittal of current documentation and information in the event a LBE/SLBE certification is challenged.

Appeal

Any firm that believes that it has been wrongfully denied certification as an LBE/SLBE or joint venture may file an appeal in writing. The written appeal must be signed and dated.

The appeal shall be filed no later than 30 days after the date of denial. The City may extend the time for filing, or waive the time limit in the interest of justice. The City may specify in writing the reason for so doing.

Third parties, who have reason to believe that another firm has been wrongfully denied or granted certification as an LBE/SLBE or joint venture, may advise the City in writing. This information is not considered an appeal.

The City ensures a prompt investigation, and may at its discretion; decertify the LBE/SLBE or joint venture pending the outcome of the investigation.

Part III: Local Employment Program

Program Objective

The objective of the Local Employment Program for public works and subsidized construction projects is to cause the hiring of Oakland residents on as many Prevailing Wage jobs as possible, and to encourage businesses to hire local residents for non-City-funded work.

Definitions

1. **Apprentice** – An individual who is registered with an apprenticeship program approved by the Division of Apprenticeship Standards (DAS).
2. **Apprenticeship Coordinator** – An individual who supervises apprenticeship-training activities.
3. **Apprentice Work Hours** – The work hours apprentices are required to work on public works projects.
4. **Bay Area Construction Sector Intervention Collaborative (BACSIC)** – A coalition of community based organizations, union representatives and apprenticeship coordinators partnering to provide necessary support services to assist job seekers in obtaining employment in the construction industry.
5. **City** – The City of Oakland, including the Redevelopment Agency. Reference to the City Manager includes the Redevelopment Agency Administrator.
6. **City Financial Assistance Recipient** – An entity or individual that receives a City subsidy for a public works project.
7. **Community Based Organization (CBO)** – A non-government agency created to provide training or employment assistance to job seekers.
8. **Contract** – The written agreement to provide services established between the City (or developer) and the general contractor.
9. **Contractor** – An individual, partnership, corporation, joint venture or other legal entity entering into a contract (or a subcontract of whatever tier) for a public works project (as such projects are defined in this policy). The general contractor is the entity that enters into the contract directly with the City or Developer; a Subcontractor is an entity that enters into a Contract with the General Contractor or a Subcontractor of whatever tier.
10. **Core Employee** – An apprentice or journey level employee who: possesses any license required by state or federal law for the project work to be performed; has worked a total of at least 1000 hours in the construction craft during the prior three years; was on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award; and has the ability to perform safely the basic functions of the applicable trade.

11. **Craft-by-Craft** – Measuring the hours worked by an apprentice or journey person with regard to each craft, as defined in the Federal and State Wage Determination.
12. **Developer** – A person or entity that prepares or develops real property for development or redevelopment and receives a City subsidy.
13. **Division of Apprenticeship Standards (DAS)** – The agency responsible for apprenticeship in the state of California.
14. **Emergency Work** – A public works contract awarded because of imminent danger (i.e. fires, floods, earthquakes) or threat to the health, safety and welfare of Oakland residents and meeting the City's requirements for waiving normal bidding procedures.
15. **Local Construction Employment Referral Program (LCERP)** – The Employment Services Unit of the Office of the City Manager created to identify Oakland residents for employment on City of Oakland and Oakland Redevelopment Agency construction projects.
16. **Monitoring** – The system established to measure compliance with the Local Employment Program Policy and the 15% Apprenticeship Utilization Policy. This system includes tracking the employment status (as reported by certified payrolls) on all public works projects. Monitoring occurs for:
 - a. Payment of prevailing wages
 - b. Resident workforce hours
 - c. Apprenticeship Hours
 - d. New Hires
17. **New Hire** – Any employee of a contractor who is not listed on the contractor's quarterly tax statements for the tax period been hired prior to the commencement of work, unless the employee qualifies as a Core Employee.
18. **Owner Operator** – a contractor, who operates their own, leased or rented equipment and uses that equipment on the public works project, and hires no other employees.
19. **Post Award** – The meeting held between the City and contractors after the award of a public works project and before the issuance of a notice to proceed. Post award meetings occur at the request of either the using agency or contractor/consultant.
20. **Public works project (project)** – Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds or by a developer who receives a City subsidy for the project.
21. **Resident** - Any person whose primary residence is in Oakland. An individual designated as a journey-level worker must have established residency at least two (2) weeks prior to commencement of work; and an individual designated as an apprentice must have established residency at least six (6) months prior to commencement of work.
22. **Subcontract** – A contract that exists between the general contractor and a subcontractor or between subcontractors of any tier.
23. **Subsidy** – A grant, loan, credit, tax rebate or any other instrument or means that provides a measure of value to the developer from the City.
24. **Tier** – The level of relationship to the prime contractor of a subcontractor who enters into a contract under a prime or another subcontractor to perform a portion of the work on a project.

Program Goals

For any construction contract or development agreement with the City this policy establishes a goal for Oakland-resident employment on public works projects (as such projects are defined in this policy). Specifically, for work performed at the construction site, this policy establishes a goal of 50% of the work hours, which must be performed by Oakland residents on a craft-by-craft basis. In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents, and the first new hire must be an Oakland resident. A contractor or developer must achieve the goals or secure an exemption from the City.

Apprenticeship is an essential pathway to a productive career in the construction trades. Therefore this policy recognizes that implementation of the 15% Oakland Apprenticeship Utilization policy on public works projects is important to achieve the goals of this policy. This policy will include additional incentives to both highlight and further encourage the use of Oakland apprentices. Utilization of Oakland Apprentices will count toward the 50% new hire goals and the 50% workforce hour goals.

General Provisions

The City shall require its developers and contractors to abide by the Local Employment Program. The City shall also require that the developers and contractors enforce the provisions of the Program on any and all parties with whom the developers and contractors intend to enter into a contract to perform any portion of said work.

The Local Employment Program required by the City will be incorporated in all contract specifications as well as Dispositions and Development Agreements (DDA) for subsidized projects and contract specifications. The developer or contractor shall cause this Program to be a part of all subcontracts, regardless of Tier or phase under the contract. The goals set forth must be maintained for the duration of the project.

The LEP applies when the project includes the purchase of construction services either by the City as buyer or by a City Financial Assistance Recipient (CFAR); and either the City is the buyer and the dollar amount of the project exceeds \$50,000.00 dollars; or the project exceeds 30 days; or new hires are needed to perform the work on the project.

The LEP does not apply when the contract or subcontract is performed by an owner/operator; or the project requires less than 140 hours of work; or the project is performed as emergency work; or a job requires no more than two craft-persons to perform the duties of the entire project; or a contractor's core workforce includes 50% Oakland residents, and no additional employees will be hired.

Prior to receipt of the Notice to Proceed (NTP), the developer or contractor and Contract Compliance & Employment Services staff together will create a project-specific plan to comply with the LEP goals on a craft-by-craft basis for all work forces and for planned new hires. The project-specific plan will recognize the lawful hiring hall rules of the union hiring halls where applicable. The Anticipated Project Workforce Form may be used in the development of a project specific compliance plan.

Winning Compliance

The Developer or Contractor must meet or exceed the 50% work force and new hire requirements in order for the following program criteria to apply:

Exemptions

Hours of work performed by employees of a subcontractor on a LEP-covered project may not be assessed against the Contractor's LEP goals, if the subcontract will be:

1. Performed by an Owner Operator;
2. Performed in less than 40 hours;
3. The Subcontractor's core work force includes 50% Oakland employees, and no additional employees will be hired; or
4. No more than two craft persons are required to perform the work of the subcontract, the Subcontractor hires no new employee to perform the work and the Subcontractor is a Small Business within the meaning of City policies.

When the Contractor has taken the steps and an Oakland resident is not available the City shall issue an exemption.

Conditional Exemptions

The Developer or Contractor's project manager must submit a request for conditional exemption to the Contract Compliance & Employment Service staff. They must determine whether to grant the exemption prior to issuance of the contract. The request is reviewed based on conditions (cited by Developer or project manager) that make compliance unfeasible. Examples of such conditions include but are not limited to:

1. Permanent core workforce performs short-term (five days) work.
2. Intermittent service by one trade throughout the life of the project
3. Overall project time is under three months.
4. Owner Operator performs the work.

If circumstances arise subsequent to the issuance of the contract, the results of which the Contractor believes will prevent attaining the local-hire goals, the contractor will immediately notify Contract Compliance & Employment Services staff by requesting a conditional exemption. Staff shall meet with the applicant as necessary and issue a decision within five days, including a determination as to any retroactive liability for failure to achieve the goals for work undertaken prior to the application for such a conditional exemption.

Local Construction Employment Referral Program (LCERP) – The Local Construction Employment Referral Program is a one-stop employment service for Oakland residents. The on site Job Developer evaluates the skill levels of Oakland residents seeking work as skilled or un-skilled workers on construction projects. Names, contact information and skill levels are maintained in a LCERP Data Bank. In order to satisfy the fifty percent (50%) new hire goal when employment vacancies occur on a job site, each contractor must follow the steps outlined below.

Referrals and Dispatching Oakland Residents:

1. For Open Shop – in the absence of a collective bargaining agreement the Contractor shall:
 - a. Contact Contract Compliance & Employment Services (CC&ES) to request a referral from the Local Construction Employment Referral data bank; and
 - b. Submit a completed "Job Request & Referral Form" by fax or e-mail.
 - c. The CC&ES will refer an Oakland resident (matching the qualifications identified by the contractor on the Job Request & Referral form) to the Contractor within three business days.

2. For Union Shop – contractors working under a collective bargaining agreement shall:
 - a. Contact local union hall to request an Oakland resident; and
 - b. If an Oakland resident is not available for dispatch, contact CC&ES to request a referral from the Local Construction Employment Referral data bank; and
 - c. Submit a completed “Job Request & Referral Form” by fax or e-mail to CC&ES.
 - d. The CC&ES will refer an Oakland resident (matching the qualifications defined by the contractor) to the local union hall and that resident will be dispatched within three business days in accordance with the lawful hiring hall rules of the Union.

Incentives and Penalties

Incentives (credit or banking of hours)

To encourage long-term retention and early hiring of Oakland residents as employees of contractors doing business in Oakland, the City will give a contractor credit towards the LEP goals when the contractor employs craft persons, superintendents, and foremen that are Oakland residents. Banked or credited hours may only be applied toward meeting 50% of the LEP requirement. Contractors may receive credit for hours performed by these Oakland-resident employees in the following circumstances:

1. When a contractor exceeds the LEP workforce hour goal on an existing project, those surplus hours will be banked for application on a subsequent City project.
2. When a contractor employs Oakland residents on non-City projects during the year prior to issuance of a notice to proceed on the City contract, those hours will apply toward the 50% workforce hour requirement.
3. When a Contractor employs Oakland residents on non-City projects during the six months following completion of a City Contract or Subcontract, those hours will be banked for application on a subsequent City project.
4. The general contractor may utilize the hours performed by its Oakland-resident employees that exceed LEP goals to meet the LEP goals of a Subcontractor that fails to achieve its own LEP goals. However, the City may designate a contractor as ineligible to receive excess-hours credit under this section for demonstrated prior non-compliance.

Contractors may fully avail themselves of other credits for local hire that may be available in other City programs and policies (such as tax credits) without regard to the credits that they may receive under the LEP policy for their use of Oakland-resident employees. The LEP is in no way designed to reduce or otherwise compromise those available incentives.

Penalties

Any penalty imposed under this policy for a Contractor’s failure to achieve the LEP goals will be implemented under a system of progressive implementation. The City will assess factors such as the degree of failure; the efforts undertaken to achieve the goals and the presence or absence of repeated failure to achieve the goals in determining what level of penalty would be appropriate within the penalty range available in Article VI.

When a Contractor finishes its contract without meeting the LEP requirements, and a penalty is warranted, the City will withhold from final payment up to 150% of the wages for the deficient hours of the non-complying Contractor’s contract. The Contractor will have one year to work off the hours owed by working Oakland residents on non-City projects. If at the end of this period all

the deficient hours have not been eliminated, the Contractor will forfeit 150% of the wages for any remaining deficient hours to the City as a fine.

Repeated failure to comply with the LEP could lead to debarment under City contracting policies.

Outreach

The City may hold a post-award meeting to familiarize the contractors with the LEP requirements as well as with the requirements of the 15% Apprenticeship Program. If requested by the contractor the City shall hold such a meeting within 10 business days. Post award meetings are most advantageous to contractors that wish to become more familiar with these programs and may also be held upon request of the contractor throughout the life of the project. Attendance at a post-award meeting will contribute to the contractor's ability to comply with the LEP and apprentice utilization policies. To the extent allowable by law, the meeting will be open to stakeholders.

A post-award meeting will include instructions on when and how to prepare and submit the following forms:

- Certified payroll reports
- Anticipated Project Workforce
- Job Request and Referral
- Apprentice Utilization Plan
- Certified Trucking Roster
- Quarterly Wage & Withholding Reports (DE-6)
- Progress Payment

A post-award meeting should also provide, when possible, information to support the contractors' success, and may include:

- California Labor Code relating to Apprentices on public works projects
- Certification Application
- Work Opportunity and Welfare-to-Work Tax Credit
- Construction & Demolition (C&D) Debris Recycling
- Prevailing Wages
- Apprenticeship Program

The City Manager's Office, Contract Compliance & Employment Services Division will conduct at least three "Winning Compliance" Workshops per year. Contractors are encouraged to attend at least one such workshop. Forms and information listed above under post award meeting will be the major topics of discussion. Attendance at these workshops will assist the contractor in complying with the LEP and apprentice utilization policies.

Reporting

The developer or contractor must submit reports for compliance with the LEP as required by the City. These reports may include weekly certified payroll records for all crafts covered under these Program provisions within fifteen working days of the end of each payroll period. In addition to the weekly-certified payroll records, the City may require a weekly or monthly summary of the information that would be obtainable from the certified payroll regarding local-hire by craft. These reports must show the person-hours on a craft-by-craft basis and, in the case of certified payroll records, identify the address, Social Security number, new hire, ethnicity, gender and trade and status (journey person or

apprentice) of all employees on the project. All reports must have an original signature and be signed by an authorized officer of the company under penalty of perjury. The City will make a copy of required forms available to Contractors. These forms will be available in hard copy or digitally.

Nothing in this Policy is intended to eliminate the requirement of a contractor to maintain certified payrolls, or of the subcontractors to provide certified payrolls to the prime Contractor, or for any contractor to provide certified payrolls to any party that requests them, as required in State law.

Monitoring

The City will monitor LEP and Apprentice-Utilization compliance, via means such as desk reviews or on-site monitoring. City employees conducting on-site monitoring are authorized to visit City-subsidized projects and are covered under the City of Oakland's insurance policy. Full-scale investigations of non-compliances or violations will be on an as-needed basis.

The City shall provide a general contractor with an audit of a subcontractor's LEP compliance within 45 days of the request, so long as the General Contractor provides the City with the information required by the City to make such an audit.

Audits of compliance may require the review of documents such as certified payrolls, Apprenticeship Utilization Form, Request & Referral Form, Certification of Compliance Hours Form, cancelled checks, progress payments, or Quarterly Wage and Withholding Reports (DE-6), among others.

A Developer or Contractor that fails to provide requested documents or misrepresents material facts in such documents shall be deemed to be non-compliant with the LEP.

Other Conditions

Developers or contractor will comply with the appropriate provisions of the California State Labor Code regarding the required ratio of apprentices to journeypersons to be employed on the job site.

Program Amendments

The City Manager may make changes as necessary to implement and achieve the goals of the Local Employment Program.

Conflicts

The provisions of this program may not be enforced to the extent that such enforcement results in a Developer or Contractor violating a consent decree or other judicial or administrative order or a statutory or regulatory provision.

Severability

In the event any provision of this Program is deemed illegal or invalid for any reason, said illegality or invalidity will not affect the remaining parts of the Program but the same shall be construed and enforced as if said illegal or invalid provision had never been inserted herein, and the Ordinance will be interpreted in a manner that best gives effect to its initial understanding.

End of Document

**ATTACHMENTS -
CONSTRUCTION FORMS**

**ATTACHMENTS -
PROFESSIONAL SERVICES FORMS**

**ATTACHMENTS -
LOCAL EMPLOYMENT
FORMS**

INTRODUCED BY COUNCILMEMBER _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

2010 DEC -2 PM 3: 58

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04, PURCHASING SYSTEM, TO AUTHORIZE A CONTRACTOR ROTATION PROGRAM AND PRE-QUALIFICATION PROCESS AND AUTHORIZING CONTRACT AWARD FOR SUCH CONTRACTS ON A ROTATION BASIS

WHEREAS, the Fairness in Contracting and Purchasing Disparity Study was adopted by Council as per mandate of the City Charter on September 29, 2009; and

WHEREAS, the Disparity Report identified disparities in contracting and purchasing across ethnicities and gender within the City's contracting process; and

WHEREAS, the Disparity Study in its analysis put forward seven recommendations for improvements and enhancements to the City's contracting policies to mitigate the disparities noted, now therefore be it

WHEREAS, the new Local and Small Local Business Enterprise Program (L/SLBE) will include new mechanisms and methodologies to improve the effectiveness of City policy in maximizing participation of small local businesses in the City's contracting process across ethnicities and gender, while improving the efficiencies with regard to doing business with the City of Oakland; and

WHEREAS, bi-annually staff will review the City's small business size standards and employ a methodology to adjust the standards to reflect the sizes of certified small businesses in light of the most current Small Business Administration (SBA) size standards used to measure the largest size that a business may be to remain classified as a small business concern, and

WHEREAS, the certification criteria in the new L/SLBE Program will include a Very Small Business Enterprise (VSBE) and a Local Business Enterprise of Locally Produced Goods (LBE-LPG) certification categories and policy for utilization of the new categories for the purpose of certifying emerging businesses, to afford them the opportunity to fully participate in the City's contracting process and to assist them in building capacity to compete in the market; and

WHEREAS, the new L/SLBE Program will include a 50% L/SLBE participation requirement with 25% participation for LBE's and 25% participation for SLBE's. VSLBE participation will be double counted towards meeting the 25% SLBE participation; and

WHEREAS, the new L/SLBE Program will also include language to where contractors will be assessed a penalty at 1.5 times the amount that should have been awarded to the L/SLBE for failure to comply with maintaining subcontractor participation levels (including imposition of penalties for failure to meet requirements), and satisfying non-compliance shortfalls; and

WHEREAS, using agencies will consider un-bundling large procurements into small contracts where ever feasible; and

WHEREAS, the City wishes to establish a "Contractor Rotation Program" under which a two-tiered pre-qualified list of local, small local and very small local construction contractors will periodically be established to perform on-call construction work over a specified contract term, and as-needed work will be awarded from the prequalified list, for small and large construction projects, on a rotating basis;

NOW, THEREFORE, the Council of the City of Oakland does ordain as follows:

Section 1. Oakland Municipal Code Title 2, Chapter 2.04, Purchasing System, is amended, adding (underscored) and deleting (strikethrough), as follows:

Chapter 2.04, Purchasing System

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2.04.040 – Contracting procedures.

- A. Contracts Subject to Council Appropriation and Allocation of Program or Contract Funds. All contracts authorized by the Council or City Administrator shall be subject to the prior appropriation and allocation of funds by the City Council for the City programs, activities, functions or operations, which the purchase of any supplies, professional or other services or combination are intended to support.
- B. Limits for Informal, ~~and~~ Formal and Prequalification Solicitation Procedures.
 - 1. Informal Advertising and Bidding. Informal advertising and bidding procedures established by the City Administrator are required for purchase orders or contracts for supplies, services or combination involving expenditures between five hundred dollars (\$500.00) and fifty thousand dollars and one cent (\$50,000.01) in any single transaction or term agreement;
 - 2. Formal Advertising and bidding. Formal advertising and bidding, described in Section 2.04.050, is required for purchase orders or contracts for supplies, services or combination involving expenditures in excess of fifty thousand dollars (\$50,000.00) in any one transaction or term agreement.
 - 3. Formal Advertising and bidding for Prequalified Construction Businesses. Formal advertising and bidding described in Section 2.04.050.A.1 is required for purchase orders or contracts for construction labor and materials involving expenditures in excess of fifty thousand dollars (\$50,000.00) in the conduct of any periodic solicitation of qualifications from businesses for a prequalified list for the Contractor Rotation Program.
 - ~~34.~~ Informal RFP/RFQ Process. Informal advertising and solicitation of proposals/qualifications is required for professional services contracts involving expenditures of twenty-five thousand dollars (\$25,000.00) or less;
 - ~~45.~~ Formal RPF/RFQ Process. Formal advertising and solicitation of proposals/qualifications described in Section 2.04.051 is required for professional services contracts involving expenditures of more than twenty-five thousand dollars (\$25,000.00).
- C. Purchase Orders, Contract Format, Petty Cash.
 - 1. Purchase orders shall be used for all purchases of supplies, services or combination or professional services in excess of five hundred dollars (\$500.00). The purchase order shall incorporate by reference all relevant agreements, including but not limited to the City of

Oakland Professional Services Agreement, negotiated agreements, vendor agreements and exhibits, attachments, addendums and other supporting documents that, together, constitute the entire agreement.

2. All purchases and contracts for supplies, services or combination of professional services in excess of five hundred dollars (\$500.00) shall be in writing, in a format approved by the City Attorney.
3. The City Administrator shall institute control procedures for petty cash funds without prior use of purchase orders or contracts.

D. Miscellaneous Procedures.

1. Notwithstanding the above, nothing shall preclude the City Administrator from placing any purchase, procurement or contract within the City Administrator's approval limit on the City Council agenda for discussion or approval.
2. The City Administrator shall institute informal contacting procedures for the purchase of supplies, services or combination.
3. The City Administrator shall institute informal and formal contracting procedures for the purchase of professional services.
4. The City Administrator shall maintain a centralized list of all contracts executed by the City Administrator, or the City Administrator's designees, within the City Administrator's authorization limit, for the prior year.
5. Pursuant to the City Charter, the City Attorney will draft standardized contract terms and conditions and standardized contracts for professional services, purchasing, procurement and for supplies, services or combination.
6. Pursuant to the City Charter, the City Attorney will approve the form and legality of all contracts before their execution.

2.04.050. Bid Procedure

- A. When Advertising Required. Where the cost of services, supplies or combination required by the city exceeds fifty thousand dollars (\$50,000.00), the City Clerk shall call for formal bids by advertising at least once in the official newspaper of city not less than ten calendar days before the date for receiving bids. The City Administrator may deem it advisable to require more than one advertising of the call for bids.

Notwithstanding the foregoing, the requirements of this section shall not apply to contracts let under the prequalified "Contractor Rotation Program" described in section 2.04.050.A.1, below.

A.1.Prequalification for Contractor Rotation Program.

- a. Prequalified Businesses for As-Needed Construction Work. The City shall periodically establish a list of prequalified businesses to perform as-needed construction work by advertising a solicitation for qualifications (including but not limited to California required licensing, insurance and bonding) from "local", "small, local" and "very small, local" construction contractors" as defined in the City Administrator's Contractor Rotation Program Administrative Instruction.

- b. Two-Tiered As-Needed Construction Contracts. Qualified local businesses responding to the solicitation and accepting term contracts for as-needed construction work will be listed on the City's "Contractor Rotation Program" prequalified list in two tiers. Tier 1 will be for very small, local construction contractors to perform as-needed construction work up to \$50,000.00 over the term of the as-needed contract. Tier 2 will be for local and small local construction contractors to perform as-needed construction work up to \$250,000.00 over the term of the as-needed contract.
- c. Rotation of Work Offers. As as-needed work arises bids will be solicited from the top 3 firms on the Tier 1 or Tier 2 list, in accord with the size of the job, and awarded to the lowest responsible bidder. The winning bidder will then drop to the bottom of the list and the next job will again be offered to the top 3 firms on the list, with the winning bidder again dropping to the bottom of the list.
- d. City Administrator Authority. The City Administrator is authorized to award and increase Tier 1 contracts up to \$100,000.00 without further advertising or bidding on the open market or Council approval, provided the rotation work offer process is followed for the Tier 1 prequalified list. Council approval is required for the award of Tier 2 contracts and subsequent increases, if any, in Tier 2 contract amounts.
- e. Businesses awarded term contracts and work under this section shall be required to comply with all City policies applicable to the work such as, but not limited to, payment of prevailing wages, small local business participation requirements and local hire requirements.
- f. Administrative Instruction. The City Administrator will prepare an administrative instruction with specific requirements for staff implementation of the "Contractor Rotation Program" and prequalification and selection process.
- g. Removal From Prequalified List. Businesses that become unqualified to perform construction work or that fail to perform work awarded shall be removed from the prequalified list.

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E. Opening of Bids and Awards. All bids submitted under this section shall be sealed, identified as bids on the envelope and submitted to the City Clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the City Administrator or the City Administrator's designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. The contract shall be let to the lowest responsible bidder, as defined herein, by the City Council at any time not exceeding sixty (60) calendar days after bid opening. The City Council may reject any and all bids and waive informalities or minor irregularities in the bids. In the bid for Public Works Construction Projects, the City Administrator may deem it advisable to delay the submission of a list of subcontractors to be on the project. Such list shall be sealed, identified as a subcontractor list on the envelope and submitted to the City Clerk at the place and time specified in the public notice inviting bids. The requirements of this section shall not apply to the Contractor Rotation Program in subsection 2.04.050.A1, above.

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I. Exceptions to Competitive Bidding. Upon a finding in each instance by the City Council that any of the following conditions exist, the provisions of this section shall not apply:

1. To contracts involving professional or specialized services such as, but not limited to, services rendered by architects, engineers and other specialized professional consultants;
2. When calling for bids on a competitive basis is impracticable, unavailing or impossible;
3. Placement of insurance coverage;
4. When public work is performed by the city with its own employees;
5. In other cases when specifically authorized by the City Council after a finding and determination that it is in the best interests of the city.
6. To contracts let to contractors on the prequalified list for the Contractor Rotation Program in subsection 2.04.050.A1 above.

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SECTION 2. Severability.

If any section, subsection, subpart or provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Ordinance and the application of such to other persons or circumstances shall not be affected thereby.

SECTION 3. Effective Date.

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND
 PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____