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OAKLAND

AGENDA REPORT

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TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Oakland Army Base Contracting Benefits **DATE:** April 16, 2012

City Administrator

Date

Approval

4/17/12

COUNCIL DISTRICT: 3

RECOMMENDATION

Staff recommends that the City Council receive a report and approve recommendations for the Oakland Army Base Contracting Community Benefits Program.

EXECUTIVE SUMMARY

A wide range of stakeholders participated in the Oakland Army Base Contracting Benefits workshops convened by Vice Mayor Nadel in 2011 and 2012. A matrix of specific recommendations is included as *Attachment A* to this report and includes policies recommended by the working groups. A majority of the recommendations echo existing City policies and practices such as preferences and outreach to Oakland businesses and residents.

Specifically, staff is recommending adoption of the following Oakland Army Base Contracting Benefits:

1. City of Oakland's recently adopted 50% Local/Small Local Business Enterprise Program (L/SLBE).
2. City of Oakland Social Justice policies applicable to City contracting, including the 50% Local Employment Program, the 15% Apprenticeship Program, the Equal Benefits Ordinance, the Living Wage Ordinance for service agreements, and the Prompt Payment Ordinance.
3. If the Oakland Army Base Project is determined to fall under the mandates of federal regulations, and the Disadvantaged Business Enterprise (DBE) Program applies, the City of Oakland's DBE Program (Caltrans-approved, pursuant to federal regulations) will apply as follows: an 11.17% overall Annual Anticipated Disadvantaged Percentage Level (AADPL), a 3.95% Race-Neutral goal and a 7.22% Race-Conscious goal.

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4. In the competitive contracting process, double the value of preference points earned for professional services and bid discounts for construction services and commodities that may be earned by Oakland-certified businesses with a substantial business presence in West Oakland.
 - a. Award preference points and bid discounts to firms with valid Oakland certifications; and
 - b. Double preference points and bid discounts for Joint Venture Partnerships (JVs) and Mentor-Protégé Relationships with Certified *West Oakland Businesses*.
5. Maintain the responsibilities of monitoring and enforcement of City Council policies under the direction of the City's full time Contract Compliance staff. City Compliance staff will collaborate with stakeholder groups.
6. Support resident and business outreach through the City's Local Construction Employment Referral Program (LCERP) and support outreach to the business community through the Oakland Business Assistance Center.

OUTCOME

Upon Council's adoption of Oakland Army Base Contracting Community Benefits recommendations, and their subsequent inclusion in agreements to develop the Oakland Army Base, Oakland certified firms and Oakland residents will realize significant business and employment opportunities. Dollars will circulate through the Oakland economy and strengthen Oakland's economic base. Over the duration of the Army Base Development, many Oakland firms will realize an increased business capacity and Oakland residents will enjoy the benefits of long-term livable wage jobs, thus enhancing their overall quality of life.

BACKGROUND

In 2011 and 2012, Vice Mayor Nadel led an extensive community outreach process open to all stakeholders interested in developing recommendations designed to enhance contracting opportunities for Oakland businesses in general. In addition, the proposed developer and his staff participated in the many discussions designed to enhance the involvement of Oakland-certified Local and Small Local Business Enterprises (L/SLBEs). The underlying intent of this effort was to ensure that by the end of the Army Base development project, Oakland businesses and Oakland residents will have realized substantial and preferably sustainable economic opportunities through the contracting process. Recommendations for aggressive local hiring strategies for Oakland resident employment and the use of a project labor agreement was adopted by the City Council on February 7, 2012. Both the employment and contracting outreach efforts ran in tandem.

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ANALYSIS

This report speaks specifically to the application of certain contracting strategies and policies with the expectation of enhancing local Oakland business participation. Many of the strategies represent those that have been previously adopted by the City Council and are currently applied in City contracting. Other recommended strategies are enhancements to afford extra value to West Oakland businesses.

Monitoring and enforcement are essential tools for compliance with public policies. It is important to note that City staff recommends collaboration between the City and stakeholder groups who wish to participate in compliance monitoring and enforcement of public contracting policies particularly if the City's approved Disadvantaged Business Enterprise program applies under federal funding. As holder of the agreement, the City Administrator's Office of Contracts and Compliance stands as the lead monitoring and enforcement arm, and as such looks forward to a collaborative working relationship with stakeholders. In addition, the specifics of the stakeholder collaboration must be captured in writing and incorporated in the agreement between the City and the Developer. It is also important to note that the City's contracting out provision prohibits replacing City workers with outside services.

Under the skillful guidance of Vice Mayor Nadel, the makeup of the stakeholder groups varied from meeting to meeting, but retained a consistent central theme. Discussions were largely within the context of shaping the contracting process to benefit Oakland businesses in general, and West Oakland businesses in particular, and included a focus on ways that collaborative monitoring and enforcement can ensure that those benefits are realized within the terms of the contractual agreement between the City and the Developer.

The stakeholder outreach process was essential to the economic well being of the Oakland community. Experts in the field of Community Benefits Agreements (CBAs) believe that "...while economic development projects are often heavily subsidized by taxpayer dollars, they produce decidedly mixed results for city dwellers....."¹ Local government leaders such as Vice Mayor Nadel and Council Member Brunner have advanced the idea that developments must be governed by the three E's: Economy, Environment, and Social Equity.

The Los Angeles Alliance for a New Economy (LAANE) defines the Community Benefits Agreements (CBAs) as legal documents in which the developer of a project commits to a series of benefits that typically include (a) quality jobs, (b) local hiring, (c) affordable housing, (d) environmental mitigations, and (e) community services and other components depending on the nature of the project and the needs of the community. Such CBAs are won by residents of the project neighborhood and other stakeholders organized in cross-issue and multi-racial coalitions

¹ "Community Benefits Agreements – Making Development Projects Accountable" Julian Gross, Greg LeRoy and Madeline Janis-Aparicio

that build enough power to bring the developer to the table to negotiate. Often, local government entities become involved through provision of subsidies or application of land use requirements. Over time, the City of Los Angeles has come to include community benefits standards in requests for proposals (RFPs) or development agreements without the need to negotiate a separate agreement.²

Oakland is on the leading edge of this movement. With the Oakland Army Base Development, the City stands poised to realize the tremendous social equity potential of economic development and land use planning.

Please see *Attachment A* for the specifics of the contracting working group's matrix outlining strategies combining economic growth with equity policies. Staff's recommendations embrace 95% of those put forward by the stakeholders.

The following recommendations are those which match the City of Oakland's current social equity policies and contracting procedures. A brief discussion of each follows.

1. Apply the City of Oakland's recently adopted 50% Local/Small Local Business Enterprise Program (L/SLBE).
 - The City of Oakland recently adopted a 50% L/SLBE Program, the terms of which can be placed in the agreement as an attachment and referenced in the language of the document.
 - The most recently adopted policy has a minimum requirement of 50% L/SLBE participation, with a 25% Small Local Business and 25% Local Business split for construction.
 - For professional services agreements, the 50% LBE applies however the 25% Small Local Business split was waived for certified local businesses competing for professional services.
 - Non-local and non-certified professional services firms must satisfy the 50% L/SLBE requirement at a 25% local and 25% small local business split.
2. Apply all other City of Oakland Social Justice policies applicable to City contracting practices, including the 50% Local Employment Program, the 15% Apprenticeship Program, the Equal Benefits Ordinance, the Living Wage Ordinance for service agreements, and the Prompt Payment Ordinance.

² Los Angeles Alliance for a New Economy – Building a City of Justice.

- The City Council has adopted a number of social equity policies, from ensuring the hiring of Oakland residents on construction jobs, to awarding extra preference points to professional services businesses for having an Oakland resident workforce.
 - The 50% Local Employment Program is a model that has been used across the country. It requires a minimum of 50% Oakland resident workforce on a craft-by-craft basis. The policy works in concert with the Project Labor Agreement and does not pre-empt the hiring of Oakland residents.
3. If the Oakland Army Base Project is determined to fall under the mandates of federal regulations, and the Disadvantaged Business Enterprise (DBE) Program applies, the City of Oakland's DBE Program (Caltrans-approved, pursuant to federal regulations) will apply as follows: an 11.17% overall Annual Anticipated Disadvantaged Percentage Level (AADPL), a 3.95% Race-Neutral goal, and a 7.22% Race-Conscious goal.
- Each year as a recipient of federal funds, the City of Oakland, like other entities, must submit for approval a Disadvantaged Business Enterprise program that captures the expected level of contracting, the available market, and the estimated level of DBE participation. As noted above, the City of Oakland's DBE Program carries an 11.17% overall annual anticipated disadvantaged level, with 3.95% race-neutral goals and 7.22% race-conscious goal.

Outreach and technical assistance strategies are critical to business development. Stakeholders can play a significant role in assisting businesses. The working group put forward the following additional recommendations in an effort to assist small businesses:

- Small businesses assistance through referrals, technical support and a job center desk for maritime businesses. Oakland's Business Assistance Center is an excellent central resource.
- Interagency certification for small businesses (using the same application for Port, City, and other agencies.)
 - The City of Oakland is an active member of the East Bay Interagency Alliance and currently shares a combined certification.
 - The City's average turnaround certification is three weeks, provided all required documents have been submitted.
- Preference points for women-owned business enterprises (WBEs).
 - The level of women-owned business participation is very low. Efforts can be made to augment WBE participation.

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- It would be feasible to award extra preference points to Oakland certified women-owned business enterprises with WBE certifications from other entities.
- Preference points for returning veteran-owned businesses. The City does not currently certify veteran-owned businesses, but can accept that designation for Oakland certified businesses holding a veteran-owned business certification from other entities.
- Enhanced training for the hardest-to-employ workers.
 - The City's Local Construction Employment Referral Program (LCERP) receives referrals from Oakland residents seeking employment on city funded projects.
 - As a standard operating procedure, Oakland residents are referred to appropriate resources. Collaboration with other employment entities and stakeholders can augment existing city services.

PUBLIC OUTREACH/INTEREST

Recommendations contained in this report were the result of an extensive public outreach process. Many working group meetings were held with a variety of stakeholders. The Contracting working group had an underlying goal of valuing the capacity to produce high quality deliverables with on-time and on-budget performance, without skewing the outcomes of the competitive process. The working group did not want to encourage low bids with subsequent change orders.

A general overview of the minutes shows that the working group wanted to apply local participation goals in contracting. Stakeholders wanted to apply the City's 50% L/SLBE participation, and to require that the developer apply the same minimum requirement in their bidding process. In addition, the group wanted to establish community involvement and public education in order to close the communication gap between the City and the community, and to ensure that all contractors are treated equally with respect to enforcement.

COORDINATION

Staff from the City Administrator's Office of Neighborhood Investment and Contracts and Compliance Division, Vice Mayor Nancy Nadel and other Council District 3 staff, the developer and his representatives, and a variety of individuals and organized stakeholder groups contributed to the development of these strategies.

COST SUMMARY/IMPLICATIONS

Adoption of these policy guidelines will have a fiscal impact to be determined at the point at which the policies are included in the Army Base development agreements, which will return for City Council consideration at a later date.

POLICY ALIGNMENT

The recommendations contained in the *Attachment A* matrix largely mirror the most recently adopted City of Oakland policies.

SUSTAINABLE OPPORTUNITIES

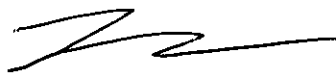
Economic: Substantial economic benefits by enhancing contracting and employment opportunities for Oakland-certified firms and Oakland residents. In addition, these strategies will stimulate the Oakland economy by circulating dollars into the community.

Environmental: Environmental issues are at the forefront of the Oakland Army Base development process, and are addressed in a separate Environmental Community Benefits report also under consideration at the April 24, 2012 Community and Economic Development Committee.

Social Equity: Community Benefits Agreements create quality jobs, local hiring, affordable housing, community services and other components as defined by the community.

For questions regarding this report, please contact Deborah Barnes, Contracts and Compliance at 510-238-6270.

Respectfully submitted,



Fred Blackwell
Assistant City Administrator

Prepared by:
Deborah Barnes, Manager
Contracts and Compliance

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	Issues	Option 1	Option 2	Consensus?	Notes
	Contracting Benefits				
1	a. Oakland %	Effective Feb 1, 2012 Current city policy of 20%-50%	Proposed city policy 50%	Proposed 50%	
2	b. West Oakland preference points	Encouragement of West Oakland contractor participation	Requirement of West Oakland contractor participation	Preference points for West Oakland contractor, particularly prime contractor. If low bid environment bid discounts apply.	Based on existence of companies with the capacity to do the work. Recent Council Ordinance limiting bidding to L/SBE with 33% workforce.
3a	c. 1. Capacity Building	Joint Venture City has JV and Mentor/Protégé in existing program.	Mentorship	Joint venture preferred but some hybrid of the two would be okay	Current city policy allows for JV and mentor/protégé
3b	c. 2. Capacity Building	Contractor College		yes	To assist small and midsize companies in how to do payroll, estimating access capital, respond to Gov't requirements, etc.
4	d. Contract Monitoring	City staff monitors	City and community monitors	City and community monitors	Stipend for community monitors. Contract Compliance Officers are City's compliance technicians responsible for compliance with City policy and compliance with very specific federal DBE Program. Can be a collaborative effort with sign off by City Compliance Officers.
5	e. Contract enforcement (local resident employment and/or local business participation?)	Penalties 1.5 times the shortfall	Option to use local subs on another job	Penalties were preferred	Penalties to be contributed to West Oakland Community Fund. Businesses are given a year to work off non-compliance, after one year, penalties are collected. Also, requires ordinance to direct funds. At this point penalties go to general fund.
6	f. Helping contractors find WO and Oakland subs and workers	1. Job Center should also include info for contractors; 2. Contractors and long term employers should ban the		Yes	Good starting point is city's local construction referral program as foundation. Includes data base of Oakland residents who have taken

		<p>box</p> <p>3. Contractors and long term employers should be encouraged to employ the difficult to employ (% of workforce?)</p> <p>4. staff capacity at Job/contracting center sufficient to supply workers and contractors in a timely manner.</p>			the time to register.
	<p>Ask 6 questions of potential contractors:</p> <p>1. How many of their local apprentices have obtained union cards</p> <p>2. How many local contractors have grown as a result of contracting with them</p> <p>3. The general contractor must be "let" by the Request for Proposal (RPF)</p> <p>4. How many re-entry workers have been hired within the last 3 years</p> <p>5. How many successful joint ventures</p> <p>6. What economic benefit to West Oakland is derived from a contract with the proposed contractor, i.e., insurance broker, lawyer, bank, accountant, consultants, engineers.</p>	Require response	Encourage response	Encourage response	
7	Encourage Contractors to use local suppliers			Yes	
8	a.7 public communication	<p>1. public posting of current status of project</p> <p>2. newsletter or social media</p>		Yes	

		updates			
	Miscellaneous Issues				
9	How to keep local priorities if federal dollars	Special legislation? Barbara Boxer?			If DBE, will be driven by existing federal DBE program requirements
	Maximize accommodation logistics-related existing small and W.O. businesses if they have local Oakland employment.			Creative idea on which we did not have the chance to vote	
10	Small businesses assistance. Possibly a desk in job center (maritime businesses) or better educating staff at downtown Business Assistance Center on special army base issues			Same as above	Feasibility has not been determined. However, Compliance staff can work with volunteers to cover business assistance.
11	Interagency certification for small businesses (same application for Port, City, and other agencies?) Simplification of process.			Same as above	Have reached interagency alliance certification. Setting same expiration dates etc.
12	Preference goals for women-owned businesses and training difficult to employ for work on base.			Same as above	
13	Preference for returning veteran-owned contracting companies			Same as above	