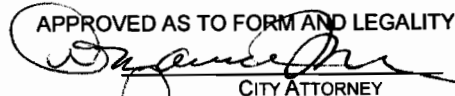


FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

2012 FEB 17 AM 10:17
INTRODUCED BY COUNCIL MEMBER _____

ORDINANCE NO. 13097 C.M.S.

ORDINANCE AMENDING ORDINANCE 12389 C. M. S. TO ADD LOCAL AND SMALL LOCAL BUSINESS CONTRACTING REQUIREMENTS TO OAKLAND'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM SPECIFIC TO THE DEMOLITION AND REMEDIATION CARRIED OUT AT THE OAKLAND ARMY BASE AND, FOR THE PURPOSES OF THIS PROGRAM, ADDING ELIGIBILITY SCREENING REQUIREMENTS TO BE CONSIDERED AN "OAKLAND" FIRM

WHEREAS, the City of Oakland faces the worst economic crises since the Great Depression; and

WHEREAS, the official unemployment rate in the City of Oakland is approximately 17%; the unofficial rate is estimated to be in the mid 20's.

WHEREAS, the 2010 Census data indicates that the jobs growth rate in the City of Oakland decreased by 3%; and

WHEREAS, it is the intent of the City of Oakland City Council to use the power of the public purse to stimulate the local Oakland economy and to ensure Oakland businesses have equal opportunities to do business with the City of Oakland; and

WHEREAS, the Oakland Army Base has a number of demolition and remediation projects which must be completed by August of 2013, and the Oakland Army Base currently has a \$9-million-dollar Remediation fund; and

WHEREAS, the Oakland City Council understands there is a direct correlation between high rates of unemployment and increased crime rates and as such is desirous of finding ways to create contracting opportunities for Oakland Businesses and employment opportunities for Oakland residents; and

WHEREAS, research shows that for every dollar paid by a jurisdiction to a "resident" contractor seven dollars are circulated in the jurisdiction's local economy; and

WHEREAS, Oakland LBEs that are qualified to do demolition and remediation work are underutilized for such work in Oakland; and

WHEREAS, a sheltered market for Army Base demolition and remediation contracts for Oakland LBEs may increase the number of firms with primary business offices in Oakland by encouraging firms to move to Oakland and creating opportunities for the formation of new Oakland-based firms; and

WHEREAS, Army Base demolition and remediation contracts present a significant financial opportunity for underutilized LBEs to get work and thereby bolster Oakland's economy; and

WHEREAS, Army Base demolition and remediation contracts present a significant opportunity for Oakland LBEs to build capacity and experience as *prime* contractors in the demolition and remediation fields, and will later assist them in gaining additional work in these fields in Oakland and other jurisdictions, which would significantly bolster Oakland's economy; and

WHEREAS, the Oakland City Council wishes to amend the City of Oakland's Local and Small Local Business Enterprise program to add new requirements, entitled the "Oakland Army Base Demolition and Remediation Contracting Program," ("Program") specific to the demolition and remediation activities carried out at the Oakland Army Base which will mandate that all contracts for demolition and remediation work at the Oakland Army Base shall be awarded through a competitive bid process open only to City of Oakland Certified Local Business Enterprise (LBE) or Small Local Business Enterprise (SLBE) firms; and

WHEREAS, the U.S. Supreme Court has ruled that "local government should have considerable leeway in analyzing local evils and prescribing appropriate cures, particularly when government is merely setting conditions on the expenditure of funds it controls and it is limited in scope to employees working directly on City public works projects"; and

WHEREAS, in accordance with the leeway granted by the U.S. Supreme Court and based upon the 17% official unemployment rate, the unofficial rate of 25+% and African-American male and Latino male unemployment rates upwards of 33% the City Council desires to prescribe that for purposes of this program that to be eligible to apply for contracts for the demolition and remediation work at the Oakland Army Base, 33% of the firms core workforce must be Oakland residents; and

WHEREAS, this program will require prime contractors that wish to obtain or participate in contracts for demolition and remediation at the Oakland Army Base to submit bids showing that their Core Employee workforces for these jobs must be comprised of at least thirty-three-percent (33%) Oakland residents, unless less than three (3) Oakland certified local contractors have the core workforce required to qualify for the work; and

WHEREAS, the core workforce screening mechanism is necessary and narrowly tailored to bolster the number of Oaklanders working on City-funded construction projects and decrease Oakland's unemployment and poverty levels, and to sustain in this troubled economy existing Oakland contractors that have contributed to Oakland's economy by making a significant and meaningful commitment to hire Oakland residents, and is necessary and narrowly tailored so as not to unduly infringe upon the privileges and immunities of nonresidents; and

WHEREAS, all of the City of Oakland local hire requirements of the City's Local Employment program with respect to new hires shall continue to be applicable to demolition and remediation contracts subject to the Oakland Army Base Demolition and Remediation Contracting Program;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Oakland Army Base Demolition and Remediation Contracting Program.

Ordinance No. 12389 C. M. S., passed December 18, 2001, which established that the City of Oakland's Local and Small Local Business Enterprise, Local Employment, Prevailing Wages and Apprenticeship programs would apply to Oakland contracts involving construction and construction-related work, is hereby amended to add a new section titled the "Oakland Army Base Demolition and Remediation Contracting Program" to the City of Oakland's Local and Small Local Business Enterprise program (Program). This new Program adds new requirements specific to the demolition and remediation activities carried out at the Oakland Army Base, as follows:

- 1) all demolition and remediation contracts for the Oakland Army Base shall be awarded through a competitive bid process open only to City of Oakland Certified Local Business Enterprise (LBE) or Small Local Business Enterprise (SLBE) firms; and
- 2) to be eligible to apply for prime contracts for the demolition and remediation work at the Oakland Army Base, thirty three percent (33%) of the prime contractor's core workforce must be Oakland residents; and
- 3) if less than three (3) Oakland certified local prime contractors have the 33% core workforce required to qualify as an "Oakland" firm to bid on the Army Base demolition and remediation contracts, the core workforce requirement shall be eliminated; and
- 4) to be considered for the work eligible Oakland certified local prime contractors must submit bids showing that fifty percent (50%) of the dollar value of the bid will go to Oakland certified local or small local business enterprises with at least twenty five percent (25%) going to small local business enterprises; and
- 5) the successful Oakland certified local prime contractor shall be required to assign fifty percent (50%) of the work hours to Oakland residents, in accord with the City's existing local-hire requirements; and
- 6) to provide an incentive for the successful bidder to offer employment opportunities to formerly incarcerated and other Oakland residents with barriers to employment, the City will count/credit hours worked by such persons at the rate of 1 and 1/2 times or 1.5 hours for each actual hour worked toward meeting the fifty percent (50%) local hours requirement; and
- 7) the prime contractor and subcontractors hired for the work shall be required to seek referrals for new hires from local pre-apprenticeship training programs in line with the City's First Source Hiring policy; and

- 8) except as modified herein, requirements of Oakland's Local and Small Local Business Enterprise Program, which generally requires prime contractors to assign a certain percentage of the work to Oakland Certified Local and Small Local business Enterprises, shall continue to apply to all demolition and remediation contracts for the Oakland Army Base; and
- 9) requirements of Oakland's Local Employment program, which requires that a certain percentage of new hires be Oakland residents, shall continue to apply to all demolition and remediation contracts for the Oakland Army Base.

Section 2. Scope and Application of Army Base Demolition and Remediation Contracting Program

The Army Base Demolition and Remediation Program shall apply to the demolition and remediation work at the Army Base with the following restrictions and clarifications:

- 1) The proposed Army Base Program shall apply only to the City's/Oakland Redevelopment Agency's portion of work at the Army Base.
- 2) The proposed Program shall not apply to the wide-scale site preparation work or infrastructure construction work currently being master planned by the Master Developer and the Port of Oakland, for which local contracting and local hiring provisions for that work will be detailed in binding Development and Community Benefit Agreements, to be developed later.
- 3) Federal procurement regulations do not apply to the Army Base demolition and remediation work that is subject to the Program because that work is not federally –funded. But, federal procurement regulations may apply to some extent to any future work paid for with federal funds.
- 4) The term “remediation” for the purposes of the Program is defined as including abatement and excavation work as well as transportation and disposal of hazardous materials or non-universal hazardous wastes, but shall exclude the removal of small-quantity spoils generated during field-testing. Further, Program remediation work shall include only such abatement, excavation and transportation and disposal of hazardous materials or non-universal hazardous wastes performed under a public works construction contract, and shall not include routine, pre-construction remediation-related investigation and documentation work that is currently conducted by Environmental consultants through the City's existing professional services contracts.
- 5) The \$9 million budget for demolition and remediation work represents the estimated balance of the Joint Environmental Remediation Fund established by the Agency and the Port of Oakland. These funds can be used for work specific to the Remediation Action Plan/Risk Management Program (RAP/RMP) approved by the U.S. Army and overseen by the Department of Toxic Substances Control. Demolition is not an allowable use of those funds. Investigation and remediation of hazardous materials that exceed Industrial Standards, as well as documentation and reporting necessary to obtain Regulatory Closure of RAP/RMP sites, is the general framework of allowable uses for the Joint Environmental Remediation Fund.

Section 3. Enforcement

The City Administrator shall ensure that the Oakland Army Base Demolition and Remediation policy outlined above is applied to all contracts for demolition and remediation work at the Oakland Army Base, to the extent permitted by law.

Section 4. 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 5. 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) **DEC 6 2011**

PASSED BY THE FOLLOWING VOTE:

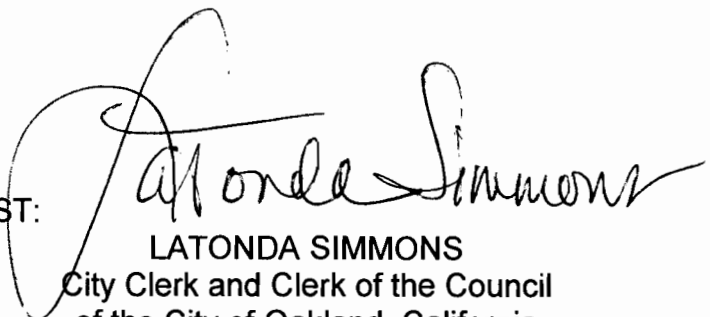
AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, SCHAAF,
 NADEL AND PRESIDENT REID - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:


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

Date of Attestation
February 17, 2012