



CITY OF OAKLAND
CITY COUNCIL

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LEGISLATIVE ANALYST REPORT

To: Council President Brunner and members of the City Council
From: Clara Garzon, Legislative Analyst
Date: July 28, 2009

Re: A Supplemental Report And Resolution Accepting Governor Schwarzenegger's Program Which Urges City And County Governments With Small Businesses To Adopt The California Department of General Services' (DGS) 25% Small Business Participation And 3% Disabled Veterans Enterprise (DVBE) Participation In Their Procurement And Contracts Associated With The American Recovery And Reinvestment Act Funds

SUMMARY

At the request of Councilmember Desley Brooks, attached for the Council's review and approval is a supplemental report which includes background and research information provided by Townsend Public Affairs, Inc. on the Governor's request that local governments adopt a goal of 25% small business participation and 3% Disabled Veterans Business Enterprise (DVBE) participation for procurement and contracts; a copy of the Governor's letter urging City and County governments to adopt his Administration's goals; and background information on the City's Local and Small Local Business Enterprise (L/SLBE) Program provided by the Department of Contracting and Purchasing.

BACKGROUND

The City of Oakland's twenty (20%) Local and Small Local Business Enterprise (L/SLBE) program was adopted in 2004. The purpose of the program is to provide economic opportunity to Oakland businesses and to stimulate economic development within the city of Oakland.

The L/SLBE program applies to construction contracts over \$100,000 and professional services contracts over \$50,000. The program establishes a twenty percent (20%) participation requirement. Bidders can also earn bid discounts ranging from two (2) to five (5) percent. Bidders who achieve the minimum 20% L/SLBE requirement earn a 2% bid discount and bidders achieving from thirty to fifty percent L/SLBE participation can earn further discounts of 3 to 5 percent.

In order to receive credit toward the L/SLBE participation requirement, businesses used to meet the L/SLBE requirement must be certified prior to the submittal due date. A certified business is a business that is 1) located in the boundaries of the City of Oakland; 2) fully operational for at least twelve (12) consecutive months; 3) has a valid City of Oakland Business Tax certificate issued no less than 12 months prior to applying for certification; 4) has a fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland; and 5) meet established business-size standards for certification as a Small Local Business Enterprise.

KEY ISSUES AND IMPACTS

Staff reports that the City's criteria for certification as a Small Local Business Enterprise (SLBE) are different from the State of California's criteria for certification as Small Business Enterprise (SBE). The City's SLBE must be located in Oakland while the State's SBE can be located anywhere in the State of California. The City's size threshold for an SLBE ranges from 3.1 million to 8.5 million over three years. For the State of California, the size standard for SBE is \$12 million over three years. The City does not currently have Disabled Veteran's Business Enterprise (DVBE) certification or program.

REQUESTED ACTION BY THE CITY COUNCIL

Adopt a resolution accepting the Governor's California Department of General Services' (DGS) 25% small business participation and 3% Veterans Enterprise (DVBE) participation.

Respectfully submitted,



Clara Garzon

Council Legislative Analyst

Prepared by:

Clara Garzon, Legislative Analyst

Niccolo De Luca, Senior Associate

Northern California Townsend Public Affairs, Inc.

Shelley Darensburg, Senior Contract Compliance

Officer - Department of Contracting and Purchasing

Attachments:

- A.** Townsend Public Affairs, Inc. Memorandum
- B.** City of Sacramento Memorandum of Understanding for Small Business Certification Services
- C.** County of Sacramento Memorandum of Understanding for Small Business Certification Services
- D.** Governor Arnold Schwarzenegger's Letter



MEMORANDUM

To: Council President Brunner and Members of the City Council
From: Team Townsend Public Affairs, Inc. (Team TPA)
Date: July 23, 2009
Subject: Governor Schwarzenegger's proposal of small business participation

At the request of the City Council, Townsend Public Affairs, Inc. has provided background information and researched Governor Arnold Schwarzenegger's request that local governments adopt a goal of 25 percent small business participation and three percent Disabled Veterans Business Enterprise (DVBE) participation for procurement and contracts. This request from the Governor comes at a time when the State of California will receive an estimated \$50,794,400,000 in American Recovery and Reinvestment Act (ARRA) funding. The overall goal of the Governor is to ensure job creation while helping the State through the current challenging economic conditions.

The Governor has also urged local government to review existing processes and evaluate if obstacles to accessing government contracts exist for small businesses and determine if they can be removed. The Governor has encouraged local governments to actively seek small business participation in local procurements by publicizing opportunities as widely as possible. Governor Schwarzenegger has stated that California's economic recovery is tied directly to the success of our business community, particularly our small businesses and disabled veterans owned firms.

The California Department of General Services created the Reciprocity Program, administered by the Office of Small Business and DVBE Services, with the goal of reducing the duplication of small business and DVBE certification processes throughout California government. Legislation signed into law in 2005 (AB 348), established a one stop process through collaborative relationships with local governmental entities. These relationships are called Reciprocity Partnerships and offer benefits to the primary stakeholders which are local government, small business, and the State.

For local governments, a Reciprocity Partnership ensures procurement and contracting staff has access to an advanced, centralized, certified-firm database. The database currently details more than 21,000 firms that have been "certified" by the State as "small businesses". Per the State of California, as of July 22, 2009, there are 292 certified Small Businesses/Disabled Veteran Business Enterprises in Oakland. This means local programs are assured of offering procurement/contracting opportunities to small businesses that have already met specifically defined eligibility requirements. In addition, statewide exposure for local businesses can mean increased contracting opportunities.

Reciprocity relationships also help the State to carry out the provisions of Governor's Executive Order D-37-01. This executive order states that small businesses comprise nearly 98% of all businesses in the state; small businesses are the principal source of new jobs in California's economy and are instrumental to the health of California's economy. "Reciprocity" happens when a local entity agrees to accept State Small Business Certification as the foundation of its local business program. "Reciprocity" has been designed to be flexible, so it can be tailored to meet local program needs. The eligibility requirements for a small business to be State-certified:

- Must be independently owned and operated;
- Cannot be dominant in its field of operation;
- Must have its principal office located in California;
- Must have its owners (or officers in the case of a corporation) domiciled in California;
- and
- Together with its affiliates, be either:
 - A business with 100 or fewer employees, and an average annual gross receipts of \$12 million or less over the previous three tax years, or
 - A manufacturer with 100 or fewer employees.

In 2001, AB 1084 established the definition of a microbusiness as a subset category of a small business. It is the intent of the State that microbusinesses are afforded the same entitlements and business participation benefits as a small business. A microbusiness is:

- A small business that, together with affiliates, has an average annual gross receipts of two million seven hundred fifty thousand dollars (\$2,750,000) or less over the previous three years; or
- A small business manufacturer with 25 or fewer employees.

Attached to this memo are two Memorandums of Understanding (MOU) that shows the format needed to process an application. The City of Sacramento, the County of Sacramento, and Sacramento Municipal Utility District are members of the Reciprocity Program. Once the State receives an MOU from a local government, the Office of Small Business and DVBE Services will review it and will either accept it as is, or will request the local government to modify the MOU prior to acceptance.

The State of California is committed to making certain that businesses are fully aware of all contracting opportunities available to them, especially those projects with American Recovery and Reinvestment Act funds.

Memorandum of Understanding
for
Small Business Certification Services

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by the City of Sacramento, a political subdivision of the State of California (hereinafter "City"), and the State of California, Department of General Services, Procurement Division, Office of Small Business and DVBE Services (hereinafter "State").

RECITALS

Whereas, the State certifies eligible California small businesses for the State's five (5) percent bid preference program;

Whereas, the State maintains databases of firms certified as small businesses for the purpose of its own programs;

Whereas, the City has adopted a Procurement Opportunities Program designed to maximize the participation of small businesses in the City's contracting process;

Whereas, the State has developed a certification reciprocity program in order to increase efficiencies and maximize the population of certified small businesses in the State's database; and

Whereas, this program will allow the City to use the State's database in accessing small businesses (via public data queries) thereby allowing the City to access a broader base of small businesses.

NOW, THEREFORE, THE CITY AND THE STATE AGREE AS FOLLOWS:

1. This MOU is effective as of the date below and remains in effect until it is formally revised, superseded, or terminated. The City and State agree to review the MOU at least every 5 years. The MOU will terminate if it ever conflicts with any law adopted after the MOU becomes effective or if there arises any fiscal/budgeting issues that affect the ability of the parties to carry out the intentions of the MOU. Each party may terminate this MOU by giving thirty (30) day written notice of termination to the other party.
2. The City will refer small businesses that desire to contract with the City to perform work to the State for certification (as appropriate). The City shall make its referrals to the State of California, Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Services. Referrals may also be made directly to the State's online application services at: www.getcertified.dgs.ca.gov.
3. Any notice, demand request, consent, or approval that either party hereto may or is required to give the other pursuant to this MOU shall be in writing and shall be personally delivered or sent by mail, addressed as follows:

TO CITY
Director,
Need a name, address and title of the person that
will be signing this.

TO STATE
Department of General Services
Office of Small Business and DVBE Services
707 Third Street, Suite 400
West Sacramento, CA 95605

4. This MOU shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to the MOU shall be brought in Sacramento City, California.
5. The State agrees to provide the City access to an exclusive data query (Reciprocity Query), to the extent that such a query is developed, maintained and made available to local government agencies.
6. The City agrees to provide notice to the State concerning changes to the City's Procurement Opportunities Program as they may occur (in so much as such changes may impact reciprocity program operations and/or public information sharing).

7. This MOU constitutes the entire contract between the CITY and the STATE regarding the subject matter of this MOU. Any prior agreements, whether oral or written, between CITY and STATE regarding the subject matter of this MOU are hereby terminated effective immediately upon full execution of this MOU.
8. This MOU may be executed in duplicate counterparts. The MOU shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of this ____ day of _____, 2007.

CITY OF SACRAMENTO, a political subdivision of the State of California

STATE OF CALIFORNIA, Department of General Services, Procurement Division, Office of Small Business and DVBE Services

By _____
Name
Title

By _____

Date: _____

Title: _____

Date: _____

APPROVED BY CITY COUNSEL

By: _____

Date: _____

Memorandum of Understanding
for
Small Business Certification Services

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by the County of Sacramento, a political subdivision of the State of California (hereinafter "County"), and the State of California, Department of General Services, Procurement Division, Office of Small Business and DVBE Certification (hereinafter "State").

RECITALS

Whereas, the State certifies eligible California small businesses for the State's five (5) percent bid preference program and disabled veteran business enterprises for the State's three (3) percent participation program;

Whereas, the State maintains databases of firms certified as small businesses for the purpose of its own programs;

Whereas, the County has adopted a Procurement Opportunities Program designed to maximize the participation of small businesses in the County's contracting process;

Whereas, the State has developed a certification reciprocity program in order to increase efficiencies and maximize the population of certified small businesses in the State's database; and

Whereas, this program will allow the County to use the State's database in accessing small businesses (via public data queries) thereby allowing the County to access a broader base of small businesses.

NOW, THEREFORE, THE COUNTY AND THE STATE AGREE AS FOLLOWS:

1. This MOU is effective as of the date below and remains in effect until it is formally revised, superseded, or terminated. The County and State agree to review the MOU at least annually. The first review shall be no later than one year from the effective date of this MOU. The MOU will terminate if it ever conflicts with any law adopted after the MOU becomes effective or if there arises any fiscal/budgeting issues that affect the ability of the parties to carry out the intentions of the MOU. Each party may terminate this MOU by giving thirty (30) day written notice of termination to the other party.
2. The County will refer small businesses that desire to contract with the County to perform work to the State for certification (as appropriate). The County shall make its referrals to the State of California, Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Certification.
3. Any notice, demand request, consent, or approval that either party hereto may or is required to give the other pursuant to this MOU shall be in writing and shall be personally delivered or sent by mail, addressed as follows:

TO COUNTY
Director,
Department of General Services
10545 Armstrong Avenue, Suite 202C
Mather, CA 95655-4153

TO STATE
Department of General Services
Office of Small Business and DVBE Certification
707 Third Street, Suite 400
West Sacramento, CA 95605

4. This MOU shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to the MOU shall be brought in Sacramento County, California.
5. The County agrees that the State cannot permit the County access (for purposes of information review) to any State certified firm without the County first obtaining the express written authorization from the certified small business in question.
6. The State agrees to provide the County access to an exclusive data query (Reciprocity Query), to the extent that such a query is developed, maintained and made available to government agencies.

7. The County and State agree to maintain and uphold all appropriate and applicable laws surrounding the confidentiality of any and all State certification related data available to, shared with or released to the County.
8. The County agrees to provide notice to the State concerning changes to the County's Procurement Opportunities Program as they may occur (in so much as such changes may impact reciprocity program operations and/or public information sharing).
9. Each party hereto shall indemnify, defend, and hold harmless the other party, its officers, agents, and employees, from and against any and all loss, cost, damage, expense, claim, suit, demand, or liability of any kind or character, including but not limited to reasonable attorney's fees, arising from or relating to any negligent or wrongful act or omission of the Indemnifying party, its officers, agents or employees, which occurs in the performance or otherwise in connection with this MOU.
10. This MOU constitutes the entire contract between the COUNTY and the STATE regarding the subject matter of this MOU. Any prior agreements, whether oral or written, between COUNTY and STATE regarding the subject matter of this MOU are hereby terminated effective immediately upon full execution of this MOU.
11. This MOU may be executed in duplicate counterparts. The MOU shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of this ____ day of _____, 2002.

COUNTY OF SACRAMENTO, a political subdivision
of the State of California

STATE OF CALIFORNIA, Department of General
Services, Procurement Division, Office of Small
Business and DVBE Certification

By _____
John W. Newton,
Director of General Services

By _____

Date: _____

Title: _____

Date: _____

APPROVED BY COUNTY COUNSEL

By: _____

Date: _____



GOVERNOR ARNOLD SCHWARZENEGGER

July 3, 2009

Dear friends,

To date, the federal government has awarded more than \$20 billion in American Recovery and Reinvestment Act funds to our great state. As these funds flow through state and local governments, I urge you to consider the place of small and disadvantaged businesses in contracting and procurement. My administration places a great emphasis on spending funds efficiently in ways that create jobs and help our state through these difficult times. With small businesses comprising more than 98 percent of California's enterprises and employing most of California's workforce, the economic prosperity of our local communities lies substantially in their hands.

As an elected official, there are at least three critical roles you can play in this process:

First, I urge you to adopt my administration's goals of 25 percent small business participation and three percent Disabled Veteran Business Enterprise (DVBE) participation in your procurements and contracts.

Second, local officials can review processes and determine if bureaucratic obstacles to access to government contracts for all small businesses exist and could be removed. For example, the California Department of General Services (DGS) has implemented a quick and efficient online small business certification process that can be completed in 20 minutes. This system has facilitated an exponential growth in the number of certified small businesses bidding on state contracts. I ask that all city and county governments with small business preference or other programs to accept certifications from my DGS for small businesses and DVBEs when bidding at the local government level. DGS already has small business certification reciprocity agreements with a number of local and regional agencies, such as the County of Sacramento and the Metropolitan Water District of Southern California. I have asked DGS to work with every community to expedite this reciprocity process. By opening up local procurement to the 16,005 small businesses certified with the state, a wider pool of small businesses will be able to bid on local government contracts, allowing for more competitive bids.

Third, please actively seek small and underrepresented business participation in your procurements by publicizing procurement notices as widely as possible so that they reach all the businesses in your community. Not only will this allow for more businesses to participate in the process, but it also means more competition for bids, which can ultimately generate savings for your community.

Thank you for all you do to help get our economy growing and to get jobseekers back to work. I, along with my Recovery Task Force and state agencies, stand ready to work with you to see that the funds coming to your local communities are spent with the greatest speed and economic impact.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger". The signature is fluid and cursive, with a prominent initial "A" and a long, sweeping tail.

Arnold Schwarzenegger