

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND
AGENDA REPORT

2011 OCT 27 PM 5:17

TO: Office of the City Administrator
ATTN: Deanna J. Santana, City Administrator
FROM: Contracts and Compliance Division, City Administrators Office
DATE: November 8, 2011

RE: Report and Recommendation to (1) Adopt Changes to the City of Oakland's Local and Small Local Business Enterprise (L/SLBE) Program, as Recommended by the Fairness in Purchasing and Contracting Disparity Study, and (2) Adopt an Ordinance amending Ordinance Number 12389 C. M. S. to Authorize Changes to the L/SLBE Program Including Size Standards, Local and Small Local Business Participation, Certification Categories and the Award of Bid Discounts and Preference Points

SUMMARY

This Supplemental report is written in response to questions and concerns raised at the May 24th Community and Economic Development Committee meeting regarding the implementation of the City of Oakland's Local and Small Local Business Enterprise ("L/SLBE") Program, as recommended by the Fairness in Contracting and Purchasing Disparity Study. It also discusses and recommends the adoption of an Ordinance to amend Ordinance No. 12389 C.M.S., which authorizes changes to the L/SLBE Program, including using 30% of the SBA size standards, to define Oakland-certified small businesses, and to adjust those standards as SBA standards are updated; adding two new certification categories to include Very Small Local Business Enterprise and Locally Produced Goods Local Business Enterprise; increasing the level of participation from a minimum 20% requirement to a minimum 50% participation requirement; awarding additional preference points for local businesses according to years in Oakland (regardless of participation) and additional preference points for employing Oakland residents on professional services contracts and as an addition to previous discussions, bringing back the discussion of the previous recommendation to implement a "Preferred Small Local Business Program" instead of a Small Business Contractor's Rotation Program where a pre-qualified pool of certified small local businesses of like capacity compete for contracting opportunities.

FISCAL IMPACT

Per information provided by the Public Works Agency, the application of bid discounts and preference might limit the number of bidders and as such tends to increase project costs, although it is difficult to quantify this number.

It is important to note that over the years, Oakland City Council by virtue of accepting the 5% bid discount for local business participation has agreed to pay a 5% premium to engage local business participation because that investment tends to translate to an increase in dollars circulated through the Oakland economy. As such, these cost increases may be offset by the economic benefits of spending local funds with local contractors and consultants

Item: _____
CED Committee
November 8, 2011

BACKGROUND

At its meeting on May 24, 2011, the members of the Community and Economic Development Committee asked staff to return with answers posed by members, as well as an ordinance that amends the current L/SLBE ordinance and reflects the program changes as recommended and approved.

Currently, pursuant to Ordinance No. 12389 C.M.S., persons and firms who compete for purchases from the City of Oakland, or who wish to enter into construction or service contracts, may be awarded "preference points" or "percentage discount points" during the competitive bidding or proposal process if they have been certified by the City of Oakland as a Local or Small Local Business Entity. The current ordinance requires a minimum 20% total LBE and SLBE participation (with a minimum 10% SLBE participation as a subset) in order to earn the minimum number of preference or discount points.

As a result of an increased concern for the rising Oakland unemployment rate and overall economic health, additional questions have been posed regarding city-wide application of L/SLBE policies to include purchases made through the Finance and Management Agency, (Purchasing Services) and the Department of Information Technology.

In an effort to extend the power of the public purse, staff recommends applying the L/SLBE policies to all city purchases where feasible.

KEY ISSUES AND IMPACTS

This report was prepared in order to respond to the questions posed by the Community and Economic Development committee and designed to present the ordinance to codify the program. The new proposed ordinance is made as part of this report and can be found in **Attachment A**.

Specifically, the six questions posed by the CED committee include the following:

1. Under the new **50% L/SLBE Program** what will be the maximum number of preference points earned by an Oakland-certified business? What is the maximum number of preference points that a non-Oakland-certified business may earn under the new **50% L/SLBE Program**?

Two options are proposed for your consideration. Option I: A maximum of 16 points and Option II: A maximum of 11 points. Staff recommends Option II.

Option I:

- **OAKLAND FIRM:** As part of the evaluation phase of a Request For Proposal process, an Oakland-certified business may earn up to a maximum of 16 potential preference points if a company: (a) has been in Oakland for 25 years - (+5 points), (b) has 100% Oakland resident workforce - (+5 points), (c) the company proposes to hire

Oakland residents in potential vacancies - (+1 point) and (d) the company proposes up to 80% L/SLBE participation - (+5 points).

- **NON-OAKLAND FIRM:** As part of the evaluation phase of a Request For Proposal process, a non- Oakland –certified business may earn up to a maximum of 11 potential preference points if a company has (a) has 100% Oakland resident-workforce (+5 points), (b) the company proposes to hire Oakland residents in potential vacancies (+1 point) and (c) the company proposed up to 80% L/SLBE participation (+5 points).

Option II:

- **OAKLAND FIRM:** As part of the evaluation phase of a Request For Proposal process, an Oakland-certified business may earn up to a maximum of 11 potential preference points if a company: (a) has been in Oakland for 25 years - (+2.5 points), (b) has 100% Oakland resident workforce - (+2.5 points), (c) the company proposes to hire Oakland residents in potential vacancies - (+1 point) and (d) the company proposes up to 80% L/SLBE participation - (+5 points).
- **NON-OAKLAND FIRM:** As part of the evaluation phase of a Request For Proposal process, a non- Oakland –certified business may earn up to a maximum of 8.5 potential preference points if a company has (a) 100% Oakland resident workforce (+2.5 points), (b) the company proposes to hire Oakland residents in potential vacancies (+1 point) and (c) the company proposed up to 80% L/SLBE participation (+5 points).

Table 1-A (Options 1 and II) Preferences Points (Apply to Requests for Proposals)

OPTION I Years in Oakland		Oakland Resident Workforce		OPTION II Years in Oakland		Oakland Resident Workforce	
Years in Oakland	Additional Points	Workforce	Additional Points	Years in Oakland	Additional Points	Workforce	Additional Points
5 yrs	1 pt	Up to 24%	1 pt	5 yrs	.5 pt	Up to 24%	.5 pt
10 yrs	2 pts	25%- 49%	2 pts	10 yrs	1 pts	25%- 49%	1 pts
15 yrs	3 pts	50% -74%	3 pts	15 yrs	1.5 pts	50% -74%	1.5 pts
20 yrs	4 pts	75%-99%	4 pts	20 yrs	2 pts	75%-99%	2 pts
25 yrs	5 pts	100%	5 pts	25 yrs	2.5 pts	100%	2.5 pts
		New Hires	1 point			New Hires	1 point
Total	5 pts	Total	6 pts	Total	2.5 pts	Total	3.5 pts

Questions were raised regarding the number of additional preference points under Option I. There was a concern that the total 16 points will skew the outcome away from a non- local firm that may be more technically qualified.

Currently, businesses may earn a maximum of five (5) preference points only, for exceeding the

20% minimum participation requirement. They do not now earn points for the number of years in business in Oakland or for employing Oakland residents as permanent employees.

Under the new proposal and based on stakeholder feedback, staff recommended an additional 11 points (as noted in Option 1 above) bringing the total potential preference points earned, up to 16. Data suggested that there would be very few businesses if any, positioned to earn the maximum total 16 preference points because firms must have a substantial presence in Oakland for 25 or more years and employ (as permanent employees) 100% Oakland residents.

The fact that it might occur however, will disproportionately skew the results. It is also important to note that professional services are qualifications based as opposed to low bid. Therefore, staff recommends, as noted in Option II, reducing the total number of additional points to 6 with 11 total potential preference points:

2. Under the new 50% L/SLBE Program, how will Oakland-certified companies earn additional preference points regardless of size?

- Oakland-certified companies will earn additional preference points (regardless of size) during the evaluation phase of the Request for Proposal (RFP) process. Oakland-certified companies may earn up to a maximum of 16 preference points (Option I) or 11 points (Option II) as described in the answers to question #1 above. Please also see Table 1-A above "Years in Oakland" and "Oakland Resident Workforce".

3. Under the new 50% L/SLBE Program, will extra points be awarded to companies for employing Oakland residents?

- Yes, for non-construction RFPs, firms may earn extra points during the evaluation phase for employing Oakland residents. See Table 1-A Options I and II. Additional preference points will be awarded to Oakland certified companies for employing Oakland residents according to the percent of full-time equivalent Oakland residents in the workforce.

Table 1-B - 50% L/SLBE Participation

(3) L/SLBE Participation			Professional Services	Construction Services
LBE	SLBE	Total	Preference Points	Bid Discounts
25%	25%	50%	2 pts	2%
30%	30%	60%	3 pts	3%
35%	35%	70%	4 pts	4%
40%	40%	80%	5 pts	5%

Table 1-B represents the 50% minimum participation and associated preference points and bid discounts.

The minimum 50% participation is satisfied at a rate of 25% local and 25% small local business participation. When a company proposes the 50% minimum that company will earn a 2% bid discount for construction bids and an additional 2 preference points on Request for Proposals.

As noted above, a company may earn up to 5 preference points for 80% L/SLBE participation on a Request for Proposal and up to a 5% bid discount on bids where the lowest responsible bidder prevails.

4. What policies do other entities have in place regarding local, small local and very small local business participation and associated goals and preferences?

- Other localities apply a variety of strategies to increase the participation of a preferred market. For example, San Francisco County and City employs a non-federal Disadvantaged Business Enterprise Program. Participation goals ranged from 0% to 60% and most employ a local or small local business designation.
- See Table 2 for a summary of the goals, preference points and bid discounts offered by other jurisdictions. Staff surveyed other entities in California including Contra Costa County, Alameda CTC, San Jose, San Francisco, San Diego, City of Los Angeles and Sacramento. For purposes of discussion, staff recommends focusing on a program in Alameda County that operates similar to that of the City of Oakland as a point of reference only. The Alameda County Transportation Commission (formerly referred to as the Alameda County Transportation Authority or ACTA) has a program that is similar to the City's new policies. Additional survey information is provided as **Attachment B** and contains notes that further explain the survey information.

Table 2-A

CONSTRUCTION SERVICES REQUIREMENTS							
	<u>LBE</u> <u>Required?</u>	<u>SLBE</u> <u>Required?</u>	<u>VSLBE/</u> <u>*ELBE</u> <u>Program?</u>	<u>Bid Discnunts?</u>	<u>Local Hire</u> <u>Required</u>	<u>Preferred</u> <u>SLBE Program</u>	
1	Alameda CTC (Formerly ACTA)	60%	Set by project	Yes (See note)	No	Yes	No
2	Alameda County	No	20%	Yes (See Note)	10% (See note)	Yes	NA
3	Contra Costa	No	50% (See notes)	NA	NA	NA	NA
4	Long Beach	No	Yes (see note)	Yes	10%	No	No
5	City of Los Angeles	No	No	Yes	See note	No	No
6	Oakland	25% Proposed	25% Proposed	Proposed	Up to 5%	Yes	No
7	Port of Oakland	Set by project. (See Note)	Set by project. (See Note)	Yes	No	Yes	No
8	Sacramento	No	No	No	Yes (see note)	No	Yes (See note)
9	San Diego	Yes (see note)	Yes (see note)	Yes	5% up to \$50K	No	Yes (See Note)
10	*San Francisco (SF)	Yes (see note)	No	20%. Increase 5% each year up to 50%. (See note)	10% for projects 10K to 10M	Yes	Micro-LBE for < \$400K
11	SF Re- development	NA	50% Goal (See note)	NA	NA	NA	No
12	San Jose	No	No	No	Yes (See note)	No	No

*San Francisco recently adopted a local employment program similar to that of the City of Oakland's 50% Local Employment Program. San Francisco has opted to apply the 50% local hire in increments of 5% starting with 20% and increasing in increments of 5% each year up to 50%. in seven years, San Francisco will have a 50% Local Employment Program in place.

Table 2-B

PROFESSIONAL SERVICES REQUIREMENTS							
	<u>LBE Required?</u>	<u>SLBE Required?</u>	<u>VSLBE/ *ELBE Program?</u>	<u>Preferences?</u>	<u>Local Hire Required</u>	<u>** Preferred SLBE Program</u>	
1	Alameda CTC (Formerly ACTA)	70%	30%	Yes (See note)	No	Yes	Yes
2	Aiameda County	No	20%	Yes (See Note)	5 or 10 points	Yes	NA
3	Contra Costa	No	50% (See notes)	NA	NA	NA	NA
4	Long Beach	No	Yes (see note)	Yes	10%	No	No
5	City of Los Angeles	No	No (See note)	Yes	See note	No	No
6	Oakland	25% Proposed	25% Proposed	Proposed	Up to 5%	Yes	No
7	Port of Oakland	Set by project. (See Note)	Set by project. (See Note)	Yes	NA	Yes	NA
8	Sacramento	No	No	No	No (see note)	No	Yes (See note)
9	San Diego	Yes. (see note)	Yes. (see note)	Yes	5% up to \$50K	No	Yes (See Note)
10	San Francisco (SF)	Yes (See note)	No	20% to increase 5% each year up to 50%. (See note)	10% for projects 10K to 10M	Yes	Micro-LBE for < \$400K
11	SF Re-development	NA	50% Goal (See note)	NA	NA	NA	NA
12	San Jose	NA	No	No	5% (See note)	No	No

5. How did we award preference points in the past? What percent of bidders earned 5% bid discounts over a two year period?

- Preference points were previously awarded in the same fashion as they are proposed for the new L/SLBE Program. During the evaluation phase of the RFP process, preferences points are awarded over and above the points earned for technical expertise and other relative criteria typically totaling 100 points. Compliance staff validates the level of participation and assign additional points according to that participation. With the additional preference points under the new L/SLBE Program, compliance staff will review the workforce data, number of years in Oakland, and new hires to award points. The additional points must be added to the total score which is typically 100 plus total preference points earned.
- Under the current system, businesses may earn 2 preference points or 2% bid discounts for meeting the minimum 20% requirement and one additional preference point or bid discount for each additional 10% participation up to a maximum of 50% participation.
- A business may earn a maximum of 5 preference points or 5% bid discounts for

local/small local participation as prime or subs. *Attachment C* provides details of the following data.

- Three years of projects history show the following bid discount activity:
 - FY 07-08 47% of the businesses earned 5% bid discounts.
 - FY 08-09, 43% of the businesses earned 5% bid discounts.
 - FY 09-10, 44% of the businesses earned 5% bid discounts.

6. How does the City monitor and enforce the use of satellite offices?

- A satellite office is defined as an office that is part of a larger organization and is some distance away from the main office which controls it. All businesses including satellite offices seeking a City of Oakland certification must satisfy the conditions of a substantial presence and a fixed office.
- A local Oakland headquarters or home office is required if seeking Small Local Business Enterprise certification (SLBE). The very same requirements will apply under the new certification categories as well.
- Substantial Presence and Fixed Office are defined as follows:

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:

- 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;
- 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;
- 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;
- 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;
- 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.

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.

100% site visits are conducted for new certifications and for re-certifications with substantive changes such as a change in address. A thorough review process occurs to ensure applicants satisfy the conditions as noted above.

Changing the "Small Business Contractor's Rotation Program" to the new "Preferred Small Local Business Program" for professional services and construction services. In the September 14, 2010 agenda report, staff presented the recommendation from the Fairness in Purchasing and Contracting study to include a "Small Business Contractor Rotation Program". The program was designed to establish a pre-qualified pool of local certified firms from which to solicit bids and/or proposals depending on the needed service. This pre-qualified group would be held as a protected or sheltered pool made up of similarly situated firms with comparable capacities. Council adopted the recommendations in concept with concerns regarding the method in which bids and/or proposals might be solicited and how a rotation might occur.

Public Works conducted a pilot program similar in most aspects to the recommend Small Business Contractor's Rotation Program. The results of that effort showed that using a pre-qualification approach similar to the Small Business Contractor's Rotation Program for small contractors increases the amount of work done by small local and local contractors. PWA recommends that all construction and A/E work costing less than \$250,000 be first bid to L/SLBE contractors and consultants using the following process:

- a. Issue a Request for Qualifications or Notice Inviting Bids.
- b. Request submittal of required qualifications.
- c. Where subcontracting is warranted, L/SLBE will apply to those sub contractible dollars.
- d. Evaluate qualifications and create a list of L/SLBE contractors based on qualifications.
- e. When the need arises, request bids from at least three L/SLBE contractors on the list.
- f. Select the low bidder.

In addition to the above, as the primary using agency of this method, PWA recommends bidding and/or soliciting from to the open market if: (a) at least three bids or proposals are not received from the pre-qualified list of small local certified and (b) bids exceed the engineers estimate. Finally, all projects over \$250,000.00 remain subject to the 50% L/SLBE Program.

Previously, a "Small Contractor's Rotation Program" was recommended and approved with additional questions and concerns regarding the method of soliciting quotes and/or bids. Essentially, the Small Contractor Rotation Program requires establishing and maintaining a pre-qualified list of local certified businesses specific to the needed service.

SUSTAINABLE OPPORTUNITIES

Economic: Adoption of the L/SLBE Program will buttress the City's economic infrastructure by strengthening the viability and vitality of local and small local businesses.

Environmental: There are no environmental issues associated with this project.

Social Equity: Adoption of the L/SLBE Program will afford local and small local businesses an increased capacity to compete for city contracts.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no disability or senior citizen issues associated with this report.

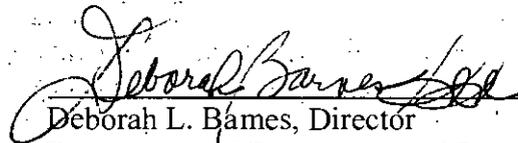
ACTION REQUESTED OF THE CITY COUNCIL

Authorize staff to move forward in implementing pre-approved policies as follows:

1. Increase the current level of local and small local business participation by 15% Small Local Business Enterprise (SLBE) and 15% Local Business Enterprise (LBE) participation, thereby increasing the current 20% L/SLBE Program (10% LBE and 10% SLBE) to the new 50% L/SLBE Program with 25% participation for LBE's and 25% participation for SLBE's; and
2. Add two new certification categories in order to afford emerging and start-up businesses the opportunity to fully participate in the City's contracting process; to include (1) a Very Small Business Enterprise (VSBE) category and (2) a Local Business Enterprise of Locally Produced Goods (LBE-LPG) category;
3. Increase the value of preference points and bid discounts for the VSBE and LBE-LPG certification categories by double-counting the value towards meeting the 25% SLBE participation; and
4. Define a Small Local Business Enterprise (SLBE) according to 30% of the most recently published Small Business Administration (SBA) size standards and to adjust those standards as SBA standards are updated; and
5. Allow firms the ability to earn up to a total of 5% bid discounts for L/SLBE participation on construction and commodities and associated services bids, or 5 preference points for L/SLBE participation on professional services in the following manner:
 - a. With 50% L/SLBE participation (25% local and 25% small local) a firm earns a

-
- minimum 2% bid discounts or 2 preference points;
 - b. With 60% L/SLBE participation (30% local and 30% small local) a firm earns— 3% bid discounts or 3 preference points;
 - c. With 70% L/SLBE participation (35% local and 35% small local) a firm earns— 4% bid discounts or 4 preference points;
 - d. With 80% L/SLBE participation (40% local and 40% small local) a firm earns— a maximum 5% bid discounts or 2 preference points; and
6. To further support local Oakland businesses, Oakland firms may earn additional preference points during the evaluation phase of the Request for Proposal and Request for Qualifications (RFP/RFQ) process as follows: Up to 2.5 preference points for operating a business with a substantial business presence in Oakland and up to 3.5 points for employing Oakland residents and new hires; and
7. Implement a "Preferred Small Local Business Program" for all projects valued at an amount not to exceed \$250,000 such that all change orders, extensions and amendments do not exceed the \$250,000 threshold. If responses from pre qualified firms are not accepted by the using agency and the decision is made to solicit (through bids or proposals) from the open market, those solicitations will be subject to the L/SLBE Program and
8. Implement recommendations one through seven as a one year pilot program effective January 1, 2012. After that time staff will come back after January 2013 with a report on the progress achieved and issues identified along with suggested changes and/or conclusions moving forward.

Respectfully submitted,


Deborah L. Barnes, Director
Department of Contracting and Purchasing

Prepared by:
Mary Mayo Mayberry, ASM I
Administration Unit

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:


Office of the City Administrator

Item: _____
CED Committee
November 8, 2011

DRAFT

INTRODUCED BY COUNCIL MEMBER _____

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE 12389 C. M. S. TO AUTHORIZE CHANGES TO THE CITY OF OAKLAND'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM (L/SLBE) INCLUDING SIZE STANDARDS, LOCAL AND SMALL LOCAL BUSINESS PARTICIPATION, PREFERRED SMALL LOCAL BUSINESS PROGRAM AND AWARDED BID DISCOUNTS AND PREFERENCE POINTS.

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

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

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

WHEREAS, national data establishes the small business market as the greatest source of employment particularly in urban areas such as Oakland; and

WHEREAS, the City of Oakland 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 Business and employment opportunities for Oakland residents; and

WHEREAS, the Council of the City of Oakland does hereby find that there is an urgent need to provide opportunities for and enforce the award of city construction, professional services contracts and the purchase of commodities and associated services to local and small local business enterprises including those owned and operated by minorities and women through the creation and adoption of city policies; and

WHEREAS, the Council of the City of Oakland further hereby finds that amendments to city policy are needed as evidenced by the current dire economic conditions and as evidenced in the Fairness in Contracting and Purchasing Disparity Study which was adopted by Council as per mandate of the City Charter and determined for that study period that in fact certain disparities in contracting existed for select ethnicities exist; and

WHEREAS, more recent data reiterates and supports the disparity study findings; and

WHEREAS, the current dire economic conditions provide a compelling governmental interest to take immediate actions to continue to re-direct public funds back into the Oakland community to the fullest extent possible;

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 in turn afford additional employment opportunities for Oakland residents; and

WHEREAS, most recent data suggests that the ready, willing and able Oakland market has the capacity to reach 50% L/SLBE participation as evidenced by earning 5% bid discounts as follows: Fiscal Year (FY) 2007-2008 approximately 47% of successful bidders earned the maximum 5% bid discount, FY 2008-2009, 43% of the successful bidders earned 5% bid discounts, and in FY 2009-2010, 44% of the successful bidders earned 5% bid discounts; and

WHEREAS, the existing requirement for 20% L/SLBE participation has been highly successful and demonstrates the capacity to reach at least a 50% level of L/SLBE participation in awarding contracts to L/SLBE firms as follows: (a) \$5,691,279 of \$8,311,541 (68.4%) paid to competitively bid construction contractors awarded in FY 2010-11 was paid to L/SLBE firms; (b) \$1,418,282 of the \$1,418,282 (100%) spent on On-Call Construction Contracts in FY 2010-11 were made to L/SLBE firms; (c) \$ 12,470,354 of the \$18,404,238 (67.7%) committed to As-Needed Architecture and Engineering Contracts over the last three years was given to L/SLBE firms; and (d) 3,288,024 of the \$4,077,872 (80.6%) paid to As-Needed Environmental and Hazardous Waste Contracts was paid to L/SLBE firms; and

WHEREAS, the Council of the City of Oakland further hereby finds that the implementation of new recommendations is necessary to ensure the economic survival of the small business community, and

WHEREAS, the Council of the City of Oakland further finds that revised 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 while continuously improving the efficiencies with regard to doing business with the City of Oakland;

Now, therefore, the Council of the City of Oakland does ordain as follows:

- The City of Oakland will increase the current level of local and small local business participation by 15% Small Local Business Enterprise (SLBE) and 15% Local Business Enterprise (LBE) participation. 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; and

- The City of Oakland will define a Small Local Business Enterprise (SLBE) according to 30% of the most recently published Small Business Administration (SBA) size standards;
- The City of Oakland will add two new certification categories in order to afford emerging and start-up businesses the opportunity to fully participate in the City's contracting process; to include (1) a Very Small Business Enterprise (VSBE) category and (2) a Local Business Enterprise of Locally Produced Goods (LBE-LPG) category;
- The value of preference points and bid discounts will be double-counted towards meeting the 25% SLBE participation for the VSBE and LBE-LPG certification categories; and
- Firms may earn up to a total of 5% bid discounts or 5 preference points for L/SLBE participation in the following manner:
 - With 50% L/SLBE participation (25% local and 25% small local) a firm earns a minimum 2% bid discounts or 2 preference points;
 - With 60% L/SLBE participation (30% local and 30% small local) a firm earns 3% bid discounts or 3 preference points;
 - With 70% L/SLBE participation (35% local and 35% small local) a firm earns 4% bid discounts or 4 preference points;
 - With 80% L/SLBE participation (40% local and 40% small local) a firm earns a maximum 5% bid discounts or 2 preference points; and
- In order to further support local Oakland businesses, Oakland firms may earn additional preference points during the evaluation phase of the Request For Proposal and Request for Qualifications (RFP/RFQ) process as follows: Up to 2.5 preference points for operating a business with a substantial business presence in Oakland and up to 3.5 points for employing Oakland residents and new hires will be earned as follows:

Years in Oakland		Oakland Resident Workforce	
Years in Oakland	Additional Points	Workforce	Additional Points
5 yrs	.5 pt	Up to 24%	.5 pt
10 yrs	1 pts	25%- 49%	1 pts
15 yrs	1.5 pts	50% -74%	1.5 pts
20 yrs	2 pts	75%-99%	2 pts
25 yrs	2.5 pts	100%	2.5 pts
		New Hires	1 point
Total	2.5 pts	Total	3.5 pts

- The new 50% L/SLBE Program will allow the assessment of penalties at 1.5 times the non-compliance shortfalls; and
- All using agencies and departments will consider un-bundling large procurements into smaller contracts where ever feasible.

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

NOES-

ABSENT-

ABSTENTION-

ATTEST:

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

DATE OF ATTESTATION:

Section 1. The Local and Small Local Business Enterprise Program, is amended, adding (underscored) and deleting (), as follows:

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 established a ~~twenty-percent (20%)~~ a fifty percent (50%) participation requirement and a minimum bid discount of two percent (2%) for meeting that 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;
- increasing the circulation of city dollars within the Oakland community and thus stimulating a stronger economic base; and
- Promoting 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. **Availability** - The number of certified L/SLBE firms, by trade, ready and willing to compete for work with the City of Oakland.
2. **Bid Discounts** - the application of a percentage discount to the total amount of a bid submitted by a Bidder for a Contract solely for the purpose of bid comparisons when determining the lowest and best bid, or lowest responsible bid. The use of a Bid Discount for Bid Comparison does not alter the total amount of the bid submitted by a Bidder or the Contract executed based on a bid.
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. **City**- Reference to the City or City Council includes the Redevelopment Agency, and reference to the City Administrator includes the Agency Administrator.
5. **City Financial Assistance Recipient (CFAR)** - A business or individual that receives a city subsidy for a public works project.
6. **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.
7. **Contractor/Consultant/Vendor** - The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with the City.
8. **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.
9. **Developer** - A person, entity, or business that prepares or develops real property for new development or redevelopment and receives a city subsidy.
10. **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

11. **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.
12. **Informal construction contracts** – With the exception of the \$250,000 dollar limit established by the "Preferred Small Local Business Program", 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.
13. **Informal professional services contracts** – With the exception of the \$250,000 dollar limit established by the "Preferred Small Local Business Program", for purposes of establishing a threshold for determining the application of the L/SLBE Program only, informal professional service contracts are valued under \$50,000. For informal professional services contracts, 75% of the work must be awarded to local firms.
14. **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.
15. **Local Business Enterprise – Locally Produced Goods (LBE-LPG) - A manufacturing business located within the geographic boundaries of Oakland. The LBE-LPG will have the same rights and privileges as a small local business enterprise.**
16. **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.
17. **Manufacturer** - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies purchased.
18. **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.

19. **Preferred Small Local Business Program** – a program designed to enhance small local business participation by soliciting proposals and/or bids from a pre-qualified group of Oakland certified firms. The Preferred Small Local Business Program will be limited to contracts of up to \$250,000 of which total amount includes the cost of include change orders, amendments and extensions.
20. **Preference Points**: a predetermined number of points awarded during the Request for Proposal and Request for Qualification evaluation phase of a competitive process.
21. **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.
22. **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.
23. **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.
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 Local Business Enterprise** - A business with (a) a substantial presence in the city of Oakland's geographic boundaries (b) a full operation conducting business for six (6) consecutive months and (c) a valid business tax certificate, and (d) is an independent business headquartered in Oakland. (e) gross receipts that do not exceed \$375,000
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

There is a ~~20%~~ 50% minimum participation requirement for all construction contracts over \$100,000 and , all professional services contracts over \$50,000, and all purchases of commodities, goods and associated services over \$50,000.00. All construction contracts below \$100,000 and all professional services contracts below \$50,000, and all procurements of commodities and associated services below \$50,000 must include outreach to certified local firms such that a minimum of three local firms are included in the solicitation.

The ~~20%~~ 50% 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 SLNFPBE 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/SLBEs are not certified, then the requirement is either waived, or the 50% requirement may be set from 50 % to 0%.

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~~ 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 ~~50~~ 20% minimum 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 Administrator, Contract Compliance & Employment Services Division. 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 50% businesses participation requirement. Certification status is confirmed during the compliance evaluation process.

Program Incentives

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.

The three examples below demonstrate (#1) the 50% minimum requirement at a rate of 25% LBE and 25% SLBE; (#2) additional bid discounts and preference point values when participation is above and beyond the minimum 50% requirement; and (#3) the maximum allowable bid discount and preference points. The maximum allowable incentives are not designed to limit participation.

Example 1: 50% Minimum Requirement

	L/SLBE Participation		Bid Discounts	Preference Points
Required	25%	Earn	1%	1
Required	25%	Earn	1%	1
Total	*50%	Total	2%	2

Participation over and above the 50% 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

Example 3: Maximum Allowable

Threshold	Up To 80% participation	Earns	5% Bid Discount	5 Preference Points
-----------	-------------------------	-------	-----------------	---------------------

Request for Proposal (RFP) and Request for Qualifications (RFQ) Preference Points for Local Hire or Non-Construction Contracts.

Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal "evaluation" process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points. Staff recommends awarding preference points for an Oakland workforce according to the percentage of Oakland residents as follows:

Years in Oakland		Oakland Resident Workforce	
Years in Oakland	Additional Points	Workforce	Additional Points
5 yrs	.5 pt	Up to 24%	.5 pt
10 yrs	1 pts	25%- 49%	1 pts
15 yrs	1.5 pts	50% -74%	1.5 pts
20 yrs	2 pts	75%-99%	2 pts
25 yrs	2.5 pts	100%	2.5 pts
		New Hires	1 point
Total	2.5 pts	Total	3.5 pts

Given the above, Local and Non-local businesses may earn up to a maximum of 2.5 additional 3.5 preference points for having a workforce that is made up of Oakland residents and committing to Oakland New Hires.

Preference Points for Local Certified Firms Regardless of Size and Participation

On Request for Proposals, Request for Qualifications or any negotiated agreement, local certified firms may earn a maximum of 2.5 additional preference points regardless of business size or level of L/SLBE participation for having a substantial presences in Oakland for 25 or more years.

Given the above, businesses may earn additional preference points during the evaluation phase of the competitive process .

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 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 No. 7937 C.M.S, 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:

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

- Detailed explanation of the financial contribution of each partner;
- List of the personnel and equipment used by each partner;
- Detailed breakdown of the responsibilities of each partner;
- Explanation of how the profits and losses will be distributed;
- Description of the bonding capacity of each partner; and
- 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:

- 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;
- The LBE/SLBE partner must perform work that is commensurate with its experience.
- The LBE/SLBE partner must use its own employees and equipment to perform its portion of the project.

- 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 those 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.

PART II - CERTIFICATION

Certification Criteria

The City of Oakland now certifies Local Business Enterprise (LBE) Small Local Business Enterprises (SLBE) Very Small Local Business Enterprise (VSLBE) and Local Produced Goods Local Business Enterprise (LPG-LBE) for both for-profit and not-for-profit operations. Certification criteria apply to both for-profit and not-for-profit organizations as follows:

1. An established operation with a substantial presence 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. (or six (6) consecutive 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 all levels of 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 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, a LBE/SLBE 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 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 have 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. In making the determination relative to size, the City will use thirty percent (30%) of the most recent 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. The City of Oakland reserves the right to adjust its size standard based on changes to the U. S. SBA size standard.

LBE/SLBE Certification Process

Step 1 – The Application: Download Applications from the web site maintained by Contract Compliance & Employment Services (CC & ES). From Oaklandnet.com, select Contract Compliance on the "go to" link. Requests for certification applications can 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, attach the last three most recent business tax returns.

Step 2 – 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:

- Newly formed firms and firms whose ownership and/or control have changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the forming of the formation of or change in the firm.
- 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.
- 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.
- 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.
- 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. At the end of the certification period 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.

END

San Jose California

The City of San Jose is very committed to promoting opportunities with local and small businesses. It is the policy of the City of San Jose to encourage local and small business activity. Effective June 18, 2004, the City adopted Ordinance 27136 which established a Local and Small Business Preference Policy for the procurement of supplies, materials, equipment, and services.

In order to receive the Local and Small business preference, suppliers must meet the eligibility requirements and complete the "Qualifications for this Agency" as may be applicable for on-line registration and electronic submission. For hardcopy submission, a completed and signed Local and Small Business Preference form must be included in the bid package. If these forms are not properly completed and submitted with bid, the preference will not be granted, even if your business qualifies. Details of eligibility and preference are described below:

Local Business Enterprise (LBE)

Suppliers must have a current San José Business Tax Certificate Number and have an office in Santa Clara County with at least one employee.

- If the basis of award is price determinative (awarded to the low bidder) then the amount of the preference shall be 2.5% of cost.
- If the basis of award is points determinative ("best value") then the amount of the preference shall be 5% of total points.

Small Business Enterprise (SBE)

In order to claim the additional SBE Preference Suppliers must first qualify as an LBE and have a total number of employees of 35 or less (regardless of where they are located). Note: The SBE preference may not be claimed if the supplier does not meet the LBE requirements.

- If the basis of award is price determinative (awarded to the low bidder) then the amount of the preference shall be an additional 2.5% of cost.
- If the basis of award is points determinative ("best value") then the amount of the preference shall be an additional 5% of total points.

San Francisco California

City applies bid discount on public works/construction, general services, architect/engineering and professional services contracts over \$10,000. For commodities, City applies bid discount on contracts over \$2,500. The Ordinance grants 10% bid discount. For example, if a DBE and a non-certified bidder all submitted bids of \$100, the DBE's bid would be reduced by 10% and the non-certified bidder's bid would not be affected. The DBE would receive the award based on its adjusted bid of \$90. The DBE would invoice, and the City would pay \$100.

The bid discount is available for all certified DBE vendors of:

- Commodities (except petroleum and related products)
- General services

- Public Works/construction contracts
- Professional services
- Legal
- architects/engineering
- Computer consulting, design training, etc.
- Management consulting
- Medical services
- Accounting, auditing, finance, miscellaneous professional services

The 10% discounts do not apply to contracts over \$10 million

San Diego California

I. Major Public Works Projects

A. Contracts valued at **\$1,000,000** and above shall, on a contract-by-contract basis, include a mandatory subcontractor participation requirement for SLBEs and ELBEs.

1. Prime bidders must achieve the mandatory subcontractor participation requirement or demonstrate good faith efforts.
2. Prime bidders shall submit, at the time of bid, on the appropriate form, the name of all SLBE and/or ELBE subcontractors and both the percentage of subcontracting and the work to be performed by the SLBE and /or ELBE.
3. A SLBE or ELBE bidder may count their own participation toward achieving the mandatory goal as long as the SLBE or ELBE prime bidder performs 51% of the contract value.

B. Contracts Valued over **\$500,000** and under **\$1,000,000** shall, on a contract-by-contract basis, include either the mandatory subcontractor participation requirement described above and/or the following:

1. 5% bid discount for SLBEs/ELBEs.
2. A bid discount based on the amount of SLBE/ELBE utilization by a non SLBE/ELBE up to a maximum of 5%.

Bid discounts would not apply if the award to the SLBE/ELBE would result in a total contract cost of **\$50,000** in excess of the low bid.

In the event of a tie bid between a discounted bidder and a non-discounted bidder, the discounted bidder will be awarded the contract.

II. Minor Public Works Projects

A. Contracts valued over **\$250,000** up to **\$500,000** will be considered Minor Construction Projects and will be awarded through a competitive bid process open only to City of San Diego certified SLBEs/ELBEs. Should no responsible bids received, these projects will be made available to all bidders and subject to requirements listed in "Major Public Works Projects" sections "A or B" above.

B. Contracts valued at \$250,000 and below will also be considered Minor Construction Projects and will be awarded through a competitive bid process open only to City of San Diego certified ELBEs unless there are less than two firms available at which it will be awarded through a competitive process open only to City of San Diego certified ELBEs SLBEs. Should no responsible bids be received, these projects will be made available to all bidders and subject to requirements listed in "Major Public Works Projects" Section "B" above.

Sacramento California

If you are a small business and interested in doing business with the City, you may want to consider becoming certified. The small business certification benefit provides bid preference and other incentives. In order to become a certified small business with the City of Sacramento, you must:

- Be independently owned and operated
- Not dominant in the field of operations
- Have your principal office located in California
- Have owners and officers domiciled in California
- Together with its affiliates, is either a service, construction, or non-manufacturer that has 100 or fewer employees, with an average annual gross receipts not exceeding \$12,000,000 over the previous three tax years or a manufacturer that has 100 or fewer employees

Los Angeles California

Program applies to: Construction Contracts and Personal Service Agreements
Type of program: Participation Program - The Harbor Department has an annual 25% SBE participation goal, of which 5% is VSBE participation. The Harbor Department establishes SBE/VSBE requirements for each contract.

VERY SMALL BUSINESS ENTERPRISE (VSBE) PROGRAM FACT SHEET

SBE and VSBE eligibility: SBE eligibility is equivalent to U.S. Small Business Administration (SBA) size standards based on North American Industry Classification System (NAICS) codes. VSBE eligibility is equivalent to the State of California's Micro business designation which is currently defined as 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

Contractor database: Los Angeles Business Assistance Virtual Network (LABAVN) – www.labavn.org. This system is free to registrants and serves as a 1) contractor database; 2) contract opportunity notification system; 3) online SBE certification system; and 4)

Minority Business Enterprise (MBE)/ Women Business Enterprise (WBE)/SBE outreach and querying system.

SBE certification process: When responding to a Request for Proposal (RFP) or bid, Prime Contractors are required to complete and notarize an Affidavit of Company Status and Contractor Description Form attesting to the status (SBE/VSBE/MBE/WBE) of all firms proposed to provide work under the contract. It is the responsibility of the Prime Contractor to verify the status of all subcontractors. Small businesses can also self certify on the LABAVN. SBE status is valid one year from the date of registration. In order to maintain status as an SBE, the business profile must be updated annually. The system will send an email notification with a courtesy reminder to update the business profile. Failure to update the profile will result in the termination of the firm's SBE status.

SBE verification process: The Harbor Department verifies SBE/VSBE status of all small businesses prior to contract award. Falsifying information could result in a firm being banned from doing business with the City for five years.

SBE/VSBE contract requirements: Bidders and proposers must submit the Affidavit of Company Status and the Contractor Description Form with their proposals. Staff reviews these documents to ensure that the bidders or proposers have complied with the SBE/VSBE requirement for the specific contract opportunity. Should bidders or proposers fail to comply with the SBE/VSBE requirements or submit the required documentation; the proposal will be deemed non-responsive.

SBE/VSBE participation calculation: Participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBE/VSBEs.

SBE/VSBE participation monitoring requirements: Prime contractors/consultants are required to submit monthly SBE/VSBE subcontractor monitoring reports. Prime contractors are subject to penalties for non-compliance.

SBE/VSBE reporting: The Contracts and Purchasing Division (CPD) assesses SBE participation at the time of contract award and contract completion. CPD submits an annual report to the Board of Harbor Commissioners detailing SBE/VSBE utilization, as well as MBE/WBE utilization.

FY 07-08 – CONSTRUCTION PROJECTS

Work Type	PROJECT NAME	PROJECT NUMBER	LBE %	SLBE %	Total L/SLBE	Bid Discount Earned
BU	14th Street Apartments	L390420	16.94%	20.18%	37.12%	3%
BU	Madison Square Park Interim Renovation	B00630	0.00%	100.00%	100.00%	5%
	One Year Term Contract for As Needed Misc. General Construction Work At Various City of Oakland Facilities	C87610				
BU			0.00%	100.00%	100.00%	5%
BU	Rehabilitation of Trestle Glenn Stairs	C282861	0.00%	97.47%	97.47%	5%
BU	Sheffield Village Recreation Center ADA Improvement	C259410	0.40%	73.69%	74.09%	5%
BU	Studio One Art Center Rehabilitation	C244710E	16.60%	11.42%	28.01%	2%
BU	Construction of Slope Stabilization Piers & Drainage Improvement 6010 Castle Drive	C282850	0.00%	97.00%	97.00%	5%
BU	Willow Park Renovation Project	C195910	61.28%	10.56%	71.84%	5%
			16.42%	23.81%	40.23%	
HO	Coliseum Gardens, Phase III	L278410	5.74%	11.37%	17.11%	
HO	East Oakland Shelter					
HO	Fox Courts	L293910				
HO	Madison & 14th Street Apartments	L278610	10.62%	4.05%	14.67%	0%
HO	Mandela Townhomes	C230610	4.47%	38.70%	43.17%	2%
HO	The Orchards on Foothill	G293510	30.02%	13.95%	43.97%	4%
			11.43%	10.98%	22.41%	
OT	Clinton Park Playground Renovations	G250910	57.65%	0.00%	57.65%	0%
OT	Lakeside Park Central Control Irrigation Upgrade	C242114	0.00%	100.00%	100.00%	5%
OT	Fremont Pool Improvements	P353410	0.00%	69.96%	69.96%	5%
OT	Oak Center Historic District Dem	P260210	0.00%	70.58%	70.58%	5%
			16.55%	53.52%	70.07%	

SE	Construction of SS Along Lakeshore	C261010				
	Construction of Sanitary Relief Sewer Along	C227410				
	Beaumont Avenue between E. 30th Street and E. 33rd					
SE	Street		0.00%	100.00%	100.00%	5%
	Construction of Sanitary Relief Sewer Along Clay	C79310				
	Street, 8th Street, Jefferson Street, 6th Street and					
SE	MLK Jr. Way		0.00%	68.71%	68.71%	5%
	The Construction of Sanitary Relief Sewers Along	C80010				
	Wilson Avenue, School Street, Coolidge Avenue,					
	Brookdale Avenue, Maple Avenue and Mac Arthur					
SE	Blvd.		0.00%	48.57%	48.57%	4%
	The Rehabilitation of SS in Telegraph, 24th St., Lee	C227210				
SE	Street, (Sub-Basin 52-05)		0.00%	100.00%	100.23%	5%
	The Rehabilitation of SS in MacArthur Blvd., Seneca	C72910				
SE	St., Dowling St., and Stems Ave. (Sub-Basin 85-212)		0.00%	49.78%	49.78%	4%
SE	Rehabilitation of SS Along Alvarado near Slater Ave					
	Rehabilitation of SS and Storm Drain in Culvert in	C135410				
SE	the Easement off Butters		0.00%	100.00%	100.00%	5%
	Rehabilitation of SS in Slater Lane between Alvarado	C282813				
	Rd. & Evergreen Lane, and in an Easement Adjacent					
SE	to Evergreen Lane		0.00%	100.00%	100.00%	5%
	Rehabilitation of Sanitary Sewers in the Area	C158310				
	Bounded By Vallejo Ave., 67th St., San Pablo Ave.,					
SE	& 59th St. (SUB-BASIN 20-02)		0.00%	100.00%	100.00%	5%
	The Rehabilitation of Sanitary Sewers in Easements	C279310				
SE	Between Amy Drive and Heron Drive		0.00%	100.00%	100.00%	5%
	The Rehabilitation of Sanitary Sewers in the area	C158010				
	Bounded by Mac Arthur Blvd. 73rd Ave. Sunkist					
SE	Ave. and 75th Ave. (Sub Basin 84-105)		0.00%	100.00%	100.00%	5%
	Rehab of SS Sewers in 4 Locations-Margarido Dr,	C282890				
	Acacia Ave, Estates, Mcandrew Dr, Easement					
	Between Carlson Ave, Paramount Rd, 107th Ave &					
SE	Malcolm Ave.		0.00%	100.00%	100.00%	5%
	Replacement of Sanitary Sewers in Various Locations	C262410				
SE	Off Outlook Ave. & Buena Ventura Ave., Off		0.00%	100.00%	100.00%	5%

Edenvale Place, Off Mountain Boulevard & Altura Place, & At Mountain Blvd. Near Keller Ave.

			0.00%	79.79%	79.86%	
ST	Roadway Restoration near 77989 Skyline Blvd.	c99540	0.00%	100.00%	100.00%	5%
ST	11th Street Sidewalk Improvement Between Clay and Broadway Streets	C00800	24.55%	67.41%	91.96%	5%
ST	Broadway Sidewalk Improvement, Phase II and III	G273910		2.28%	2.28%	
ST	40th Street Transit Hub	G283010	23.43%	50.31%	73.74%	5%
ST	66th Avenue Oakland Waterfront Trail	C244310	0.00%	20.73%	20.73%	2%
ST	Bushrod Park Streetscape Improvements	B00520	0.00%	72.61%	72.61%	5%
ST	Citywide Street Resurfacing Project	G287610	71.36%	22.50%	93.86%	5%
ST	Citywide Street Resurfacing and Slurry Sealing for Fiscal Year 2006-2007	C234910	62.21%	27.48%	89.69%	5%
ST	CITYWIDE TRAFFIC ISLAND AND BULB-OUT PROJECT 2005-2007	C159720	0.00%	97.61%	98.21%	5%
ST	Coliseum Transit HUB Streetscape	G234510	49.69%	12.61%	62.30%	5%
ST	Emergency Construction of Permanent Improvements Restoring Washout Near 2333 Tunnel Rd.	C99581	0.00%	87.90%	87.90%	5%
ST	Oakland Bay Trail: Mandela Parkway	G199010	62.04%	1.38%	63.43%	5%
ST	Rehabilitation of Easement Between El Centro Avenue & Trestle Glen Road and on Fleet Road	C282815	0.00%	100.00%	100.00%	5%
ST	Revive Chinatown Pedestrian Oriented	G278210	12.28%	65.51%	7.78%	
ST	Roadway Restoration near 6741 Armour Dr.	G297010	0.00%	100.00%	100.00%	5%
ST	*Tunnel Road Hazard Mitigation Project	G319910	96.21%	0.00%	96.21%	0%
			38.18%	33.61%	63.56%	
TR	Lake Merritt Channel Tree Removal	C241613	87.24%	10.00%	97.24%	5%
TR	Citywide Traffic Signal Projects 2005/2006, High Street at Santa Rita Street, Piedmont Avenue at Linda Avenue, Telegraph Avenue at 66th Street, High Street at Foothill Blvd and Countdown Pedestrian	C269010, C269410, C269710, C269910,	2.50%	22.90%	25.40%	2%

		C222310, C270110				
TR	Citywide Pedestrian Safety Program	C188510	0.00%	27.47%	27.47%	2%
TR	Citywide Tree Well cutting FY 06-07	C78062	0.00%	100.00%	100.00%	5%
TR	Traffic Signal Installation At SR 13 Ramps & San Pablo Ave At 65th Street	C229110	0.00%	82.00%	82.00%	5%
TR	Tree Pruning At Various Locations in District 1, 2, and 3	c323620	0.00%	100.00%	100.00%	5%
TR	Tree Pruning at Various Locations in District 5	C323660	89.84%	10.16%	100.00%	5%
TR	Tree Pruning at Various Locations in District 6	C323670	90.27%	9.73%	100.00%	5%
TR	Tree Pruning of Various Locations in District 7	C323680	0.00%	100.00%	100.00%	5%
			<u>6.73%</u>	<u>47.05%</u>	<u>53.78%</u>	

FY 08-09 – CONSTRUCTION PROJECTS

WORK TYPE	PROJECT NAME	PROJECT NUMBER	LBE %	SLBE %	LBE/SLBE %	Bid Discount Earned
BR	On Call Bridge Maintenance Services FY08/09	C321710	26.85%	70.67%	97.52%	5%
BU	Demolition of Abandoned Structures Located at 2621, 2631 and 2633 Wallace Street	B273120	86.45%	6.03%	92.48%	0%
BU	Underground Utility District No. 233 Macarthur					
BU	Underground Project Panel Conversion	C211710	12.50%	87.50%	100.00%	5%
BU	Oakland Museum Renovation	C239611	15.07%	12.27%	27.34%	2%
BU	Cleveland Cascade Rehabilitation Phase I	C242116	10.28%	34.35%	44.63%	4%
BU	Lake Merritt Bandstand ADA Improvements	C274270	0.00%	23.74%	23.74%	2%
BU	81st Avenue Branch Library	C274410	8.02%	43.55%	51.57%	5%
BU	One Year Term Contractor for as Needed Hazardous Materials Abatement at Various City Owned Facilities	C275019	13.72%	12.33%	26.05%	2%
BU	Fire Station No. 18	C328310	29.72%	14.10%	43.82%	4%
BU	Oakland Police department Basement Locker Room Improvements	C58695	0.00%	65.08%	65.08%	5%
BU	Freemont Pool Improvements	P353410	0.00%	69.96%	69.96%	5%
BU	Mandela Foods		0.00%	42.29%	42.29%	4%
			15.07%	25.85%	40.92%	
HO	Peralta Hacienda park Phase 3B Renovation at 173 Hunter Avenue 2DHS Owned	C284510	23.65%	20.54%	44.18%	4%
HO	Single Family House	C296820	10.05%	10.14%	20.18%	2%
HO	Renovation of 3501 Adeline St a DHS Owned Single Family House	C296840	11.49%	21.13%	32.62%	3%
HO	St. Andrews Manor, 3250 San Pablo Avenue	G256610	8.60%	11.94%	20.54%	2%
HO	Jack London Gateway Senior Housing	L290440	28.93%	10.83%	39.76%	2%

HO	Tassafaronga Village	L290460	10.63%	13.15%	23.78%	2%
HO	10800 Edes Avenue Homes Phase B	P151752	1.28%	64.50%	65.78%	5%
			<u>13.33%</u>	<u>15.25%</u>	<u>28.57%</u>	
OT	Shepherd Canyon Soccer Field Parking Lot	B246740	0.00%	20.36%	20.36%	2%
OT	Montclair Park Path Improvements	C276650	0.00%	7.78%	7.78%	0%
OT	Coliseum Bart Station Area Underground Utility District No. 235 Project - Panel Conversion	C332120	30.79%	69.21%	100.00%	5%
OT	Installation, replacement & repair of Bike Racks at Various Locations throughout the City of Oakland	C335210	0.00%	100.00%	100.00%	5%
OT	Installation, replacement & repair of Bike Racks at Various Locations	G335210	0.00%	100.00%	100.00%	5%
			<u>1.06%</u>	<u>12.74%</u>	<u>13.80%</u>	
SE	Rehab. SS in the area Bounded by Midvale Avenue, 1-580 Fwy, Laurel Ave & Carlson St.	C227310	0.00%	97.05%	97.05%	5%
SE	Rehab SS in the Area Bounded By Franklin St. 3rd St. Broadway & 11th St.	C227710	0.00%	11.21%	11.21%	0%
SE	Rehab. Of SS in various Easement Locations off Redwood Road, Tartan Way, Crestmont Drive, Kimberlin Heights Drive & Elinora Avenue	C262310	0.00%	59.13%	59.13%	5%
SE	Rehab SS in the Area Bounded By Embarcadero, Fallon St, 12th St & Alice	C267110	0.00%	54.64%	54.64%	5%
SE	Rehab SS in the Area Bounded by 66th Avenue, San Leandro Street, Seminary Avenue & International Blvd.	C267310	0.25%	43.90%	44.16%	4%
SE	On Call Sanitary Sewers Emergency Project	C282861	0.00%	99.42%	99.42%	5%
SE	Rehab SS in an Easement Bounded by :Glenbrook Dr & Romany Road	C282891	0.00%	100.00%	100.00%	5%
SE	Rehab SS in Jean Street & Santa Clara Avenue and in the Easement Between Hood Street & Malcolm Avenue	C282892	0.00%	100.00%	100.00%	5%
SE	Rehab SS along Mandana Blvd. in an Easement Adjacent to Palama Avenue	C329111	0.00%	100.00%	100.00%	5%

SE	On Call Sanitary Sewers Emergency Project FY 08/09	C329113	0.36%	99.64%	100.00%	5%
SE	Rehab SS in the area Bounded by Lakeside Drive, Alice St....	C59310	0.19%	72.89%	73.09%	5%
SE	Construction of a Relief Sewer Along 29th Avenue, International Blvd, 28th Avenue, E 16 St & 27th Ave	C79710	57.89%	10.09%	67.98%	2%
			<u>8.57%</u>	<u>54.32%</u>	<u>62.88%</u>	
ST	Broadway Streetscape Between West Grand & 24th St.	C00800	0.00%	67.16%	67.16%	5%
ST	park and Street Improvements for the Municipal Boathouse a& Lakeside Drive	C242311	71.27%	15.87%	87.14%	3%
ST	Citywide Sidewalk repair for FY 2007 - 2008 Contract A	C269160	0.00%	100.00%	100.00%	5%
ST	On Call Citywide Sidewalk Repair FY 06/07	C269160	0.00%	100.00%	100.00%	5%
ST	107th and Sheldon street Roadway & Sidewalk Repair	C311210	0.00%	100.00%	100.00%	5%
ST	Citywide Sidewalk Repair Project FY 07/09	C317510	0.00%	100.00%	100.00%	5%
ST	Safe Routes to School Cycle 6	G305010	4.07%	85.04%	89.10%	5%
ST	Telegraph Avenue Streetscape Improvement Project - Phase I	P128840	54.90%	10.42%	65.31%	2%
ST	Mandela Parkway Maintenance	P347910	90.00%	10.00%	100.00%	2%
			<u>40.01%</u>	<u>48.10%</u>	<u>88.11%</u>	
TR	12th Street Median Tree Removal	C241611	81.15%	10.00%	91.15%	2%
TR	1st Avenue Median Tree Removal	C241612	81.39%	10.00%	91.39%	2%
TR	1st Avenue Median Tree Removal	C241612	81.39%	10.00%	91.39%	2%
TR	Lake Merritt Channel Tree Removal	C241613	87.24%	10.00%	97.24%	1%
TR	Traffic Signal Installation	C269510	7.39%	37.04%	44.43%	4%
TR	Citywide Traffic Signal Installation	C313610	2.55%	62.36%	64.91%	5%
TR	Tree Pruning at Various Locations in district 1, 2 & 3	C323620	0.00%	100.00%	100.00%	5%
TR	Tree Pruning at Various Locations in District 4 and	C323650	88.76%	10.44%	99.20%	2%

Citywide Parks						
TR	Tree Pruning at Various Locations in District 6	C323670	90.27%	9.73%	100.00%	0%
TR	Traffic Signal Installation	C333010	6.01%	30.14%	36.16%	3%
			<u>16.68%</u>	<u>50.82%</u>	<u>67.51%</u>	

Project Type	PROJECT NAME	PROJECT NO.	LBE %	SLBE %	TOTAL L/SLBE %	Bid Discount Earned
BR	On Call Bridge Maintenance FY 08-09	C321710	0.00%	100.00%	100.00%	5%
HO	Renovation at 173 Hunter Ave. 2DHS Single Family House	C296820	10.05%	10.14%	20.18%	2%
HO	Renovation of 3501 Adeline St (DHS Single Family House)	C296840	11.48%	21.13%	32.62%	3%
HO	Renovation of Mathilda Cleveland Transitional Housing	G320010	0.00%	22.22%	22.22%	2%
HO	Tassafaronga Village	L290460	10.63%	13.15%	23.78%	2%
HO	100800 Edes Avenue - Phase B	P151752	1.28%	64.50%	65.78%	5%
			<u>9.93%</u>	<u>16.52%</u>	<u>26.45%</u>	
SS	Rehab of Sanitary Sewers Franklin St.; 3rd St.; Broadway; 11th	C227710	0.00%	16.06%	16.06%	2%
SS	Rehab of Sanitary Sewers Redwood Rd.; Tartan Way; Crestmont Dr. Kimberlin Heights	C262310	3.92%	7.35%	11.27%	5%
SS	Rehab of Sanitary Sewers Embarcadero; Fallon St; 12th St	C267110	0.00%	54.64%	54.64%	5%
SS	Rehab of Sanitary Sewers Glenbrook Dr.; Beechwood Dr.; Romany Rd.	C282891	0.00%	100.00%	100.00%	5%
SS	Rehab of Sanitary Sewers Mandana Blvd; Paloma Ave.	C329111	0.00%	100.00%	100.00%	5%
SS	On Call Sewers Emergency Project FY 08-09	C329113	0.36%	99.64%	100.00%	5%
SS	Rehab of Sanitary Sewers Between Saroni Drive and Ridgewood Drive	C329114	0.00%	100.00%	100.00%	5%
SS	Rehab of Sanitary Sewers Doncaster Ppl; Colton Blvd; Mandana Blvd	C329118	0.00%	100.00%	100.00%	5%
SS	Rehab of Storm Drain Shepherd Canyon rd - Gunn Dr.; Paso Robles Dr.	C336020	5.93%	15.66%	21.59%	2%
SS	Rehab of Sanitary Sewer Lakeside Dr. Alice St. 20th; 11th	C59310	0.19%	72.70%	72.89%	5%

SS	Rehab of Sanitary Sewers E. 24th St.; 17th Ave; International Blvd	C96110	0.11%	45.34%	45.45%	4%
SS	Rehab of Sanitary Sewers Oak Knoll - Sage Rd; St. Andrews Rd.		0.00%	73.00%	73.00%	5%
			<u>0.32%</u>	<u>49.70%</u>	<u>50.01%</u>	
ST	Park & Street Improvements for Municipal Boathouse and Lakeside Dr.	C242311	30.37%	11.92%	42.29%	4%
ST	23rd Avenue Improvement Project	P233271	4.36%	100.00%	104.36%	5%
ST	Mandela Parkway Maintenance	P347910	90.00%	10.00%	100.00%	5%
ST	Safe Routes to Schools Cycle 6	G305010	4.07%	85.04%	89.10%	5%
			<u>23.75%</u>	<u>38.05%</u>	<u>61.79%</u>	
TS	Traffic Signal Installation	C269510	7.39%	37.04%	44.43%	4%
TR	Tree Pruning at Various Locations Districts 1, 2, and 3	C323620	0.00%	0.00%	0.00%	5%
TR	Tree Pruning at Various Locations Districts 4 and Citywide Parks	C323650	88.76%	10.44%	99.20%	5%
TR	Tree Pruning at Various Locations Districts 6	C323670	90.27%	9.73%	100.00%	
			<u>62.83%</u>	<u>7.22%</u>	<u>70.05%</u>	
BU	City Stables Paddock	C213720	0.00%	76.41%	76.41%	5%
BU	Cleveland Cascade Rehab Phase I	C242116	33.90%	56.86%	90.76%	5%
BU	Lake Merritt Bandstand ADA Improvements	C274270	0.61%	87.45%	88.06%	5%
BU	One Year Tem As Needed Haz Mat at Various Facilities	C275019	13.72%	12.33%	26.05%	2%
BU	Fire Station 18	C328310	29.72%	14.10%	43.82%	4%
BU	Lake Merritt Bird Islands Restoration	G323110	0.00%	22.88%	22.88%	2%
BU	Oak Knoll Demolition	P331910	0.00%	38.55%	38.55%	3%
			<u>25.61%</u>	<u>22.55%</u>	<u>48.16%</u>	
OT	Shepherd Canyon Soccer Field Parking	B246740	0.00%	20.36%	20.36%	2%

OT

Jefferson Square Park Improvement

P338310

74.36%	25.64%	100.00%	5%
10.49%	28.29%	38.77%	