



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Emylene Aspillia,  
Director, Department of  
Workplace and Employment  
Standards

**SUBJECT:** Ordinance to Amend Ordinance No.  
13647 C.M.S. Requirements for  
L/SLBE Certification

**DATE:** November 8, 2022

City Administrator Approval

Date: Nov 8, 2022

## **RECOMMENDATION**

**Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No. 13647 C.M.S., Which Amended Certification Requirements in Oakland's Local and Small Local Business Enterprise (L/SLBE) Program, To Revise and Correct Certification Requirements.**

## **EXECUTIVE SUMMARY**

On February 24, 2021, the City Council adopted Ordinance [No. 13640 C.M.S.](#), which, among other adjustments to the Local and Small Local Business Enterprise (L/SLBE) Program, amended local business certification criteria and requirements to be responsive to both the City's contracting needs, and the needs of the business community. The most notable change to L/SLBE certification criteria included further defining "substantial presence" to include an Oakland headquarters requirement **or** a substantial employment impact in Oakland demonstrated by having either twenty percent (20%) of the total company workforce, or a minimum of 50 employees working in Oakland. On May 4, 2021, the City Council adopted Ordinance [No. 13647 C.M.S.](#), which further amended the L/SLBE program for clarity and consistency.

In implementing the new certification criteria, staff discovered further clerical errors which undermine the new L/SLBE certification criteria that were adopted and have a material impact on how certification applications are reviewed and approved. The proposed revisions and corrections further clarify terms to facilitate the consistent implementation of Ordinance Nos. 13640 C.M.S and 13647; they preserve the legislative intent of these ordinances, as well as ensure that certification is not tied to any specific competitive bidding process.

## **REASON FOR REPLACEMENT REPORT**

On July 26, 2022, the City Council directed staff to engage with stakeholders, to correspond with the City and County of San Francisco about reciprocal programs, and to return to Council once staff had undertaken both efforts. This replacement report details the actions undertaken by staff in response to this direction.

## **BACKGROUND / LEGISLATIVE HISTORY**

On December 18, 2001, the City Council adopted Ordinance [No. 12389 C.M.S.](#), which authorized Oakland's Local and Small Business Enterprise (**L/SLBE**) Program. Ten years later, on December 20, 2011, the City Council adopted Ordinance No. 13101 C.M.S. amending Ordinance No. 12389 C.M.S., to, among other things, change business size standards for small local business enterprises (**SLBEs**).

Since the original authorization of the L/SLBE Program, the City Council has recognized the importance of maximizing competition for City contracts, encouraging businesses to locate operations in the City of Oakland, and encouraging existing Oakland businesses to refrain from locating to areas outside of Oakland that might be less expensive or have more contracting opportunities.

To support all of this, the L/SLBE Program includes a certification category for both businesses **headquartered** in Oakland, and another category for businesses with a **substantial presence** in Oakland. To be certified as a **Small Local Business Enterprise (SLBE)**, a business must be **headquartered in Oakland** and **meet specific size standards**. To be certified as a **Local Business Enterprise (LBE)**, a business does **not need to meet a specific size standard**, nor does it have to be headquartered in Oakland, as long as the business has **substantial presence in Oakland**.

On February 24, 2021, City Council adopted Ordinance 13640 C.M.S., and on May 4, 2021, Ordinance 13647 C.M.S., both making notable changes to L/SLBE certification criteria. These ordinances further defined "substantial presence" for LBEs to include an **Oakland headquarters requirement** or a **substantial employment impact in Oakland**, demonstrated by having either twenty percent (20%) of the total company workforce, or a minimum of 50 employees working in Oakland.

The headquarters and size criteria for LBEs and SLBES, as defined since the L/SLBE Program was authorized in 2001, are summarized in the following table:

**Table One: LBE and SLBE Substantial Presence and Headquarters**

	LBE		SLBE	
	Substantial Presence	Size Requirements	Headquarters	Size Requirements
<b>Ordinance 12389</b> 12/18/2001	An Oakland business with a <b>substantial presence</b> in the City of Oakland's geographic boundaries	None	Headquartered in Oakland	The City will set its size standard annually based on an analysis of the gross receipts for businesses located within the City's geographical boundaries.
<b>Ordinance 13101</b> 12/20/2011	A fixed office that reflects a <b>substantial presence</b> in the geographical boundaries of the City of Oakland	None	Headquartered in Oakland	30% of the most recently published SBA size standards
<b>Ordinance 13640</b> 2/24/2021	Must have a <b>substantial presence in the Oakland geographic region as defined by:</b> a. Headquartered (Primary Office location) within the Oakland geographic region (City of Oakland); and b. Either twenty percent (20%) of the total company workforce or a minimum of 50 employees must work in the Oakland headquarters	None	Headquartered in Oakland	20% of the most recently published SBA size standards
<b>Ordinance 13647</b> 5/4/2021	1. Must have a <b>substantial presence in the Oakland geographic region as defined by:</b> a. Headquartered (Primary Office location) within the Oakland geographic region (City of Oakland); or b. Either twenty percent (20%) of the total company workforce or a minimum of 50 employees must work in the Oakland headquarters	None	Headquartered in Oakland	20% of the most recently published SBA size standards

Further, Ordinance Nos. 13640 and 13647 provide the following definition of "Substantial Presence" in the glossary of the program:

**Substantial Presence** – A fixed and established place where work is carried on of a clerical, administrative, and 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 within and/or 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. Headquartered within the City of Oakland **OR**
- B. Located in a commercial office with a current lease signed at least 12 months prior to the bid date and the office must be the primary location for either (i) at least 20% of the business' workforce or (ii) at least 50 employees, **OR**
- C. If the business had or has its headquarters in a home-based office, the requirements for that home-based office will have to have been met over the prior 12 months, **AND**
- D. Home-based offices should have the owner's residence as the business' sole headquarters.

In implementing the new certification criteria, staff discovered inconsistencies in the L/SLBE program certification provisions. To correct the inconsistencies, staff proposed amendments before City Council in July 2022.

**ANALYSIS AND POLICY ALTERNATIVES**

1. Proposed Corrections

Proposed corrections to the program are summarized below. Strikethrough indicates language deleted and boldface and underlined text indicates language added. These corrections can also be found in **Attachment A** on pages 21 and 22.

*Table Two: Proposed Corrections*

<b>Summary of Corrections</b>	<b>Corrected Language</b>	<b>Rationale</b>
<p>(1) In the LBE Certification Category on Page 21, deletion of the word "headquarters" in section 1b and adding the word "office"</p>	<p><i>1. Must have a substantial presence in the Oakland geographic region as defined by:</i></p> <p><i>a. Headquartered (Primary Office location) within the Oakland geographic region (City of Oakland); or</i></p> <p><i>b. Either twenty percent (20%) of the total company workforce or a minimum of 50 employees must work in the Oakland <del>headquarters</del> <b>office</b></i></p>	<p>As currently written, the L/SLBE program has <b>two conflicting definitions of "substantial presence."</b></p> <p>In the Glossary on <b>Page 38</b>, it notes the following:</p> <p><i>a. Headquartered within the City of Oakland OR</i></p> <p><i>b. Located in a commercial office [emphasis added] with a current lease signed at least 12 months prior to the bid date and the office must be the primary location for either (i) at least 20% of the business' workforce or (ii) at least 50 employees</i></p> <p>The use of <b>headquarters</b> on <b>Page 21</b> instead of <b>office</b> is incongruous with the substantial presence definition on <b>Page 38</b>, as well as the intent of the Ordinance No. 13640 C.M.S to <b>continue to allow businesses that are not headquartered in Oakland to be certified as an LBE</b>, given they have a substantial employment impact, demonstrated by having either twenty percent (20%) of the total company workforce must working in Oakland.</p>

**Table Two [continued]: Proposed Corrections**

<b>Summary of Corrections</b>	<b>Corrected Language</b>	<b>Rationale</b>
(2) In the LBE and SLBE Certification Categories on <b>Pages 21</b> and <b>22</b> , deletion of the words "closing date of a competitive process" and adding the phrase "submitting the certification application"	<i>Headquarters must be located in a commercial office with a lease agreement signed 12-months prior to <del>the closing date of a competitive bid process</del> <b>submitting the certification application</b></i>	Not all applicants seek certification to apply to a specific solicitation. The revised language severs the eligibility timeline to a specific competitive bid process.
(3) In the LBE and SLBE Certification Categories on <b>Pages 21</b> and <b>22</b> , deletion of the word "certification" and adding the words "business tax certificate"	...whereby a valid <del>certification</del> <b>business tax certificate</b> is in place 12 months...	This correction clarifies that the required "certification" is a <b>business tax certificate</b> .

2. Advancing Citywide Priorities

The proposed corrections advance the Citywide priorities of **housing, economic, and cultural security**, as well as **vibrant, sustainable infrastructure**. Oakland’s economic infrastructure depends in large measure on the strength of its local and small businesses. Helping local and small businesses to compete for City contracts provides economic empowerment and contributes to reducing income insecurity and wealth disparities. These corrections will stimulate the inclusion of more Oakland businesses and will help increase the number and type of businesses ready, willing, and able to compete for City contracts. In addition to recirculating funds into the City’s economy through jobs and other economic benefits, supporting local and small businesses helps promote the entrepreneurial spirit that sustains Oakland’s vibrant culture.

3. Impact of Not Adopting Proposed Changes

**A) Certification Denials**

Because the City Council did not approve the Proposed Corrections noted in Table Two in Section 1 back in July, for the first time since the L/SLBE program was authorized over 20 years ago, the Department of Workplace and Employment (DWES) staff started formally denying new LBE certification and LBE certification renewal applications for all firms **not headquartered in Oakland**. As a result, **28 firms** have been denied certification to date.

If the City Council had approved the Proposed Corrections back in July, almost **30% of the denials**, a total of **eight (8) firms**, would currently be certified as LBEs as they meet the criteria for **substantial presence**. Details of recent certification denials are summarized in the following table:

**Table Three: Certification Denials for Businesses Not Headquartered in Oakland**

	<b>Denials that Meet Definition of Substantial Presence</b> Ordinance 13640 C.M.S. and Ordinance 13647 C.M.S.	<b>Denials that Do <u>Not</u> Meet Definition of Substantial Presence</b> Ordinance 13640 C.M.S. and Ordinance 13647 C.M.S.																																										
Total Number of Businesses Formally Denied Certification since July 2022	8	20																																										
Estimated Number of Employees Working in Oakland	121	120																																										
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<sup>1</sup> Percentages may not sum to 100 due to rounding.

**B) Decrease in Overall LBE Certification Pool/Increase in LBE Waivers Requests**

Based on a query of the L/SLBE database in early October 2022, there are a total of **83** certified LBEs. In reviewing where certified LBEs are currently headquartered, staff estimate that the overall pool of LBEs will decrease by **46%**, a total of **38 firms**, by not renewing currently certified firms that do not have their headquarters in Oakland. This would reduce the overall pool of all certified firms by **15%**.

This decrease will further deplete an already dwindling LBE pool, and lead to bidders not being able to meet LBE goals, resulting in non-responsive bids, and limiting overall competition on City contracts. Requests for waivers of LBE Program requirements will increase.

If the City Council approves the Proposed Corrections noted in Table Two in Section 1, firms with **substantial presence** in Oakland would be recertified, and the LBE pool would decrease by **31%**, **12 firms**, instead of **46%**, **38 firms**. The overall pool would decrease by **10%** instead of **15%**. Table Four summarizes this difference:

**Table Four:** Currently Certified LBEs that are Not Headquartered in Oakland

	<b>Certified Firms that Meet Definition of Substantial Presence</b> Ordinance 13640 C.M.S. and Ordinance 13647 C.M.S.	<b>Certified Firms that Do Not Meet Definition of Substantial Presence</b> Ordinance 13640 C.M.S. and Ordinance 13647 C.M.S.																																																
Number of Currently Certified Firms that are Not Headquartered in Oakland	<b>26</b>	<b>12</b>																																																
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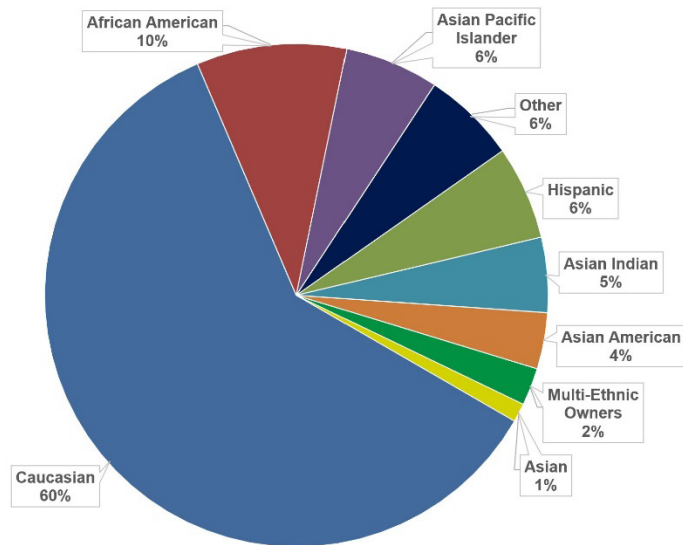
**C) Decrease in Certified Minority-owned Businesses**

Currently, **33%** of all certified LBEs are minority-owned; **10%** are African American-owned. **Seventy-six (76%)** of LBEs with their primary headquarters in Oakland are Caucasian-owned; there are **no LBEs** with their headquarters in Oakland that are African American-owned.

**Table Five: Race/Ethnicity for Currently Certified LBEs**

Race/Ethnicity	# of Firms	%
African American	8	10%
Asian and Asian American	4	5%
Asian Indian	4	5%
Asian Pacific Islander	5	6%
Caucasian	50	60%
Hispanic	5	6%
Multi-Ethnic Owners	2	2%
Other	5	6%
<b>Total</b>	<b>83</b>	

**Figure One: Race/Ethnicity for Currently Certified LBEs**

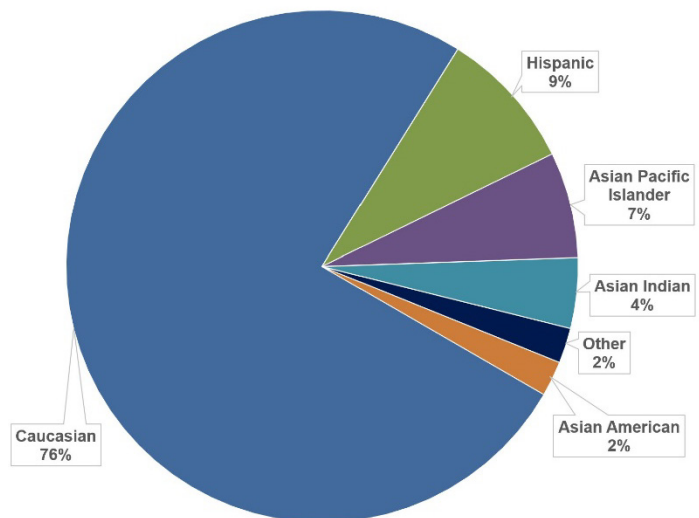


If currently certified firms that do not have their headquarters in Oakland are decertified, this would result in only **22%** of LBE firms being minority-owned; there would be **no African American-owned LBEs** in the pool of certified firms.

**Table Six: Race/Ethnicity for LBEs Headquartered in Oakland**

Race/Ethnicity	# of Firms	%
Asian and Asian American	1	2%
Asian Indian	2	4%
Asian Pacific Islander	3	7%
Caucasian	34	76%
Hispanic	4	9%
Other	1	2%
<b>Total</b>	<b>45</b>	

**Figure Two: Race/Ethnicity for LBEs Headquartered in Oakland**



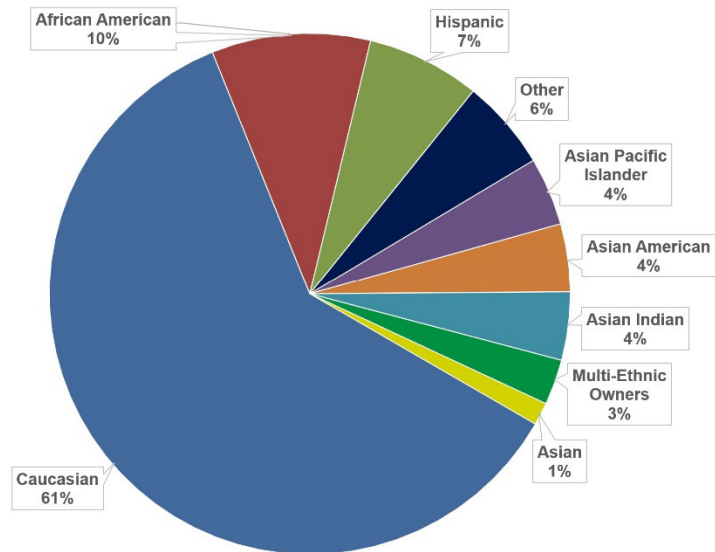


If the City Council approves the Proposed Corrections noted in Table Two in Section 1, firms with **substantial presence** in Oakland would be recertified. Currently, **55% of all LBEs with substantial presence are minority-owned; 27% are African American-owned**. Recertification of these firms (and excluding firms that do not meet the substantial presence requirements) would preserve **33% of all LBEs being minority-owned, with 10% being African American-owned**.

**Table Seven: Race/Ethnicity for Currently Certified LBEs that are Headquartered in Oakland or Have Substantial Presence in Oakland**

Race/Ethnicity	# of Firms	%
African American	7	10%
Asian and Asian American	4	5%
Asian Indian	3	4%
Asian Pacific Islander	3	4%
Caucasian	43	61%
Hispanic	5	7%
Multi-Ethnic Owners	2	3%
Other	4	6%
<b>Total</b>	<b>71</b>	

**Figure Three: Race/Ethnicity for Currently Certified LBEs that are Headquartered in Oakland or Have Substantial Presence in Oakland**



**D) Decrease in the Nonprofit LBE Pool**

The Nonprofit LBE pool will decrease by almost 25%. Nonprofit businesses that provide critical services in Oakland, but that have their primary headquarters outside of Oakland, including Swords to Plowshares, Rising Sun Center, Lifelong Medical, and Building Opportunities for Self-Sufficiency (BOSS), will likely lose their certification.

**E) Businesses with Substantial Presence in Oakland May Disband Local Operations**

With little incentive to compete for City contracting opportunities, businesses may relocate to areas outside of Oakland where it is less expensive to operate; this could result in hundreds of Oakland residents losing their employment.

4. Headquarters Requirements in San Francisco

On July 26, 2022, the City Council directed DWES to reach out to the City and County of San Francisco about “reciprocal LBE certification.” Staff spoke with Romulus Asenloo, Director of the Contract Monitoring Division, the department that oversees the City and County of San Francisco’s LBE certification. Mr. Asenloo shared that while San Francisco/Oakland certification reciprocity has been explored in the past, there is currently **no certification reciprocity** with the City of Oakland or any other jurisdiction.

LBEs in San Francisco must be **headquartered in San Francisco** and **meet specific size standards**. San Francisco’s LBE classification requirements are aligned with the criteria for being certified as an SLBE in the City of Oakland. San Francisco does **not** have a certification category that aligns with the City of Oakland’s LBE designation.

Below is a high-level comparison of the LBE and SLBE certification categories for the City of Oakland and the City and County of San Francisco:

**Table Eight:** *City of Oakland versus City and County of San Francisco Certification Categories*

<b>Certification Requirements</b>		<b>Oakland</b>	<b>San Francisco</b>
<b>Headquarters</b>	<b>Size</b>		
None	None	1) LBE 2) Not for Profit LBE 3) Locally Produced Goods LBE	<u>N/A</u>
Yes	Small Business Administration Size Standards	SBA-LBE	SBA-LBE <b>Size:</b> \$8.5 million-\$40 million
Yes	Small	1) SLBE 2) Not for Profit SLBE  <b>Size:</b> 20% of SBA	1) Small-LBE 2) Small Non-Profit Entity  <b>Size:</b> \$5 million-\$24 million
Yes	Very Small Micro	Very Small LBE  <b>Size:</b> \$375K or lower	1) Micro-LBE 2) Micro Non-Profit Entity  <b>Size:</b> \$2.5 million - \$12 million

5. Headquarters Requirements in other Jurisdictions

While San Francisco requires businesses be headquartered in San Francisco, a brief review of business certifications in other jurisdictions revealed that there are other cities/localities that also recognize the benefit of certifying both businesses headquartered in their jurisdiction, as well as those with substantial presence, though a size standard may also be required.

Below summarizes certification requirements in a select few localities that do not solely have a headquarters requirement:

**Table Nine: Other Jurisdictions with Substantial Presence Provisions**

City	Substantial Presence	Size Requirements
New York City <b>LBE</b>	Performing at least 25% of its work in an economically depressed area in New York City, or employ a workforce of which at least 25% are economically disadvantaged persons.	Yes
Philadelphia <b>LBE</b>	Headquarters or two of the following requirements: <ul style="list-style-type: none"> <li>• More than 60 percent of the business' full-time employees live in Philadelphia.</li> <li>• More than half of the business' full-time employees work in the city at least 60 percent of the time.</li> <li>• More than 75 percent of the business' gross receipts reported on their Business and Income Receipts Tax (BIRT) come from Philadelphia.</li> </ul>	None
City of Los Angeles <b>LBE</b>	Headquarters or applicant must have a workspace within LA County. Can demonstrate: <ul style="list-style-type: none"> <li>• At least 50 of its full-time employees perform work within the boundaries of the County at least 60 percent of their total hours worked on annual basis; or</li> <li>• At least half of its full-time employees work within the boundaries of the County at a minimum of 60 percent of their total regular hours worked on annual basis; or</li> <li>• It is headquartered in the County of Los Angeles. Headquartered means that the business physically conducts and manages all of its operations from a location in the County.</li> </ul>	None

6. L/SLBE Program Revisions and Stakeholder Engagement

As directed by City Council on July 26, 2022, and Resolution No. 88483 C.M.S., DWES and other City staff continue to work with stakeholders to develop recommendations on how to address the City's contracting disparities. City Staff and community stakeholders have been participating in the Contracting Disparity Action Team and its various subcommittees.

The L/SLBE Program Enhancements Subcommittee is currently performing a **Racial Equity Impact Analysis** to systematically examine how different racial and ethnic group are faring in the current L/SBLE program, as well as how they might be affected by an overhaul of the various L/SLBE program components.

The Subcommittee is doing a thorough review of available data to inform proposed revisions to remedy the inequities in the City's contracting system; the data cited in this report came out of the work of this committee. These data show that not accepting the Proposed Corrections in Table Two in Section 1 results in a **substantive change to LBE certification criteria that have been in place for over 20 years**. At this time, there is no analysis on how this change impacts other critical levers of the L/SLBE program, including the current LBE utilization requirements and bid discounts.

While the Racial Equity Impact Analysis might eventually result in a recommendation to restrict LBE certification to firms only headquartered in Oakland, making this substantive change at this time, without a completed Racial Equity Impact Analysis, results in a fragmented approach that may further exacerbate current problems with the L/SBE program, or even lead to unintended new problems.

DWES plans to return to Council over the next year with a comprehensive set of race-centered and data-driven revision recommendations, created in partnership with community stakeholders.

### **FISCAL IMPACT**

There is no anticipated fiscal impact or cost due to the recommended amendments to the City's L/SLBE program proposed under this ordinance.

### **PUBLIC OUTREACH / INTEREST**

The primary stakeholders, including impacted business owners and operators, Chambers of Commerce and other business-related organizations, collaborated with City staff and District 6 City Council Office to assist with shaping the policy changes.

### **COORDINATION**

The forgoing modifications were made in coordination with the DWES, the Office of the City Attorney, the Budget Bureau, the Office of the City Administrator and District 6 City Council Office.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** Adoption of the forgoing amendments to Ordinance No. 13647 C.M.S. will serve to further enhance the participation of local businesses in the City's procurement process and strengthen the City's economic infrastructure.

**Environmental:** There are no environmental opportunities associated with this report.

**Race & Equity:** Adoption of the forgoing amendments to the Ordinance No. 13647 C.M.S. will strive to provide greater opportunities for people of color who own and operate local businesses whose participation in the City's procurement process would be otherwise adversely impacted. Further refinements may be recommended based on the outcome of the racial equity impact analysis that is underway.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No. 13647 C.M.S., Which Amended Certification Requirements in Oakland's Local and Small Local Business Enterprise (L/SLBE) Program, To Revise and Correct Certification Requirements.

For questions regarding this report, please contact Emylene Aspilla, Director of Workplace and Employment Standards, at 510-238-6270.

Respectfully submitted,



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EMYLENE ASPILLA  
Director, Department of Workplace and  
Employment Standards

Attachment (1):

A. Local and Small Business Enterprise Program

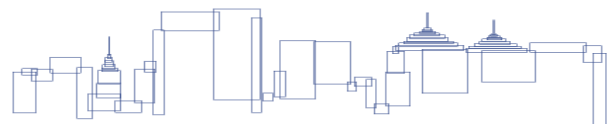


City of  
**OAKLAND**  
California

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**Local and Small Local  
Business Enterprise  
Program (L/SLBE)**



# LOCAL and SMALL LOCAL BUSINESS ENTERPRISE PROGRAM (L/SLBE)

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## OVERVIEW/EXECUTIVE SUMMARY

In order to provide greater economic opportunities for its residents and businesses, to stimulate economic development, and to strengthen the Oakland economy, the City of Oakland (at times, “City”) has developed and implemented groundbreaking 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, and workplace and employment standards.

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 geographic regions, thus stimulating a stronger economic base;
- Promoting the development of Oakland certified businesses through joint ventures and mentor/protégé relationships;
- Protecting workforces;
- Adopting new cutting-edge policies designed to provide economic opportunities for local residents and businesses;
- Supporting local economic developments, while paying competitive prices for goods and services;
- Protecting fairness and safety of wage workers; and
- At the same time, attracting outside investments critical to the City’s economic growth.

On December 20, 2011, the City Council passed Ordinance No. 13101 C.M.S., which amended Ordinance No. 12389 C.M.S., to revise the provisions governing participation of local and small local business enterprises in City contracting.

On February 16, 2021, the City Council passed Ordinance No. 13640 C.M.S., which amended Ordinance No. 13101 C.M.S. to further revise the provisions governing participation of local and small local business enterprises in City contracting as follows:

1. Revision of the City's L/SLBE Trucking Program requirements by (a) requiring that to meet the 50% participation goal, contractors may only use trucking companies certified through the L/SLBE program and (b) removing the requirement that companies house or store trucks within the City's geographic region.
2. Reducing the size standard of an SLBE where the 3-year average of gross receipts is less than or equal to 20% of the most recently published United States Small Business Administration's Small Business Size standards (U.S. SBA), and correspondingly creating a business certification category to include businesses with revenues greater than Oakland's SLBE size standard, but lower than the federal SBA size standard and referring to that category as "Small Business Administration-Local Business Enterprises" (SBA-LBEs).
3. Redefining "substantial presence" and "local-based manufacturer."
4. Limiting modifications to L/SLBE schedules after bid opening.
5. Application of a bid discount of 10% to a VSLBE prime contractor during construction bid evaluation, and the award of 10 preference points to professional services contract where the VSLBE meets a 50% subcontractor goal.
6. Requiring that all developers engaged via a Disposition and/or Development Agreement shall submit a schedule of the projected award of construction and construction-related agreements, with all such agreements required to include the L/SLBE Program requirements.
7. Increase the preference percentage for Mentor-Protégé teams on construction and professional services contracts from 5% to 10%, and establishing criteria for eligible agreements that formalizes how mentees and junior JV partners receive the mentorship and growth opportunities intended by the Mentor-Protégé and JV programs, and requiring that mentor-protégé teams not exceed two per project.
8. Updating the list of schedules applicable to the L/SLBE program.

This L/SLBE Program Manual amends the City's L/SLBE Program Manual adopted February 16, 2021 and is effective immediately upon adoption by the City Council.

NOTE: Modifications shown herein and made as a part of the L/SLBE Program are being implemented as a pilot program. Modifications will be vetted, and impacts reviewed and drafted, in a report to be presented to the City Council within thirty-six months of the date of revision shown on this document.

## **PART I: PROGRAM GUIDELINES**

### **Participation Requirements**

There is a 50% minimum participation requirement for all construction contracts at or over \$100,000; all professional services contracts at or over \$50,000; and all purchases of commodities, goods and associated services at or over \$50,000. All construction contracts below \$100,000; 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 have responded to solicitations.

The 50% local business participation requirement must be met with a minimum participation of 25% for Local Business Enterprises (LBE)/Local Not for Profit Business Enterprise (L/NFPBE) and 25% for Small Local Business Enterprises (SLBE)/Small Local Not for Profit Business Enterprise (S/LNFPBE). SLBE and SLNFPBE may meet the full 50% requirement.

Where Very Small Local Business Enterprises (VSLBE) participation is evident, the level of participation will be double-counted towards meeting the requirement.

The City of Oakland also has a 50% L/SLBE trucking participation requirement based on a list of certified truckers to enhance the participation of locally based trucking firms in city funded public works projects. In the case of construction projects where trucking is warranted, 50% of the total trucking dollars must be allotted to certified (Oakland) Local Truckers. The City will note in bid specifications when the 50% local trucking requirement is applicable. It is important to note that failure to comply with the 50% trucking requirement will result in a non-responsive bid.

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 at a percentage from 50 % to 0%, but not less than 20% if at least one L/SLBE is certified and available. Adjustments may be made if, for example, the Oakland market holds more firms than are certified by the City. Those non-certified firms may be canvassed and invited to certify with the City and/or invited if firms are already certified by other entities.

The awarding authority shall request an availability analysis prior to advertisement if there is reason to believe that the availability of certified firms will not satisfy the 50% requirement. The request for an availability analysis must be made prior to advertisement and/or in time for completion of the analysis prior to issuing an invitation for bids (IFB), request for proposals (RFP) or any other solicitation.

Prime Construction Contractors are required to submit a completed Subcontractor Listing (Schedule R) for construction and Project Consultant Listing (Schedule E) by the required submittal due date for professional services projects contracts, as found in the Appendix. 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 for all profit and not-for profit businesses that will be used on the project.

Both Schedule R and Schedule E 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% minimum requirement. Further, the City shall review Schedules R and E to determine a bid's/proposal's compliance with the SLBE requirements as a condition of determining if it is a responsive and responsible bid and/or proposal. Moreover, the SLBE participation listed on Schedule R shall not be modified after bid opening without following the formal substitution requirements applicable to the bid process.

At the time of submittal of Schedule E (for professional services), some L/SLBE-participation must be proposed in order to satisfy the requirement at time of submission. If zero participation is presented, the proposal will not be accepted. If the proposal with minimum participation is selected, the proposer shall be able to adjust up in order to meet the 50% requirement.

Each prime or lead contractor is urged to obtain, from each certified subcontractor, a copy of either the certification letter or certificate issued by the City of Oakland, Department of Workplace & Employment Standards ("DWES"). The certification letter and certificate must include the certification number and date of expiration.

### **Maintaining Participation**

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 in the Schedule R or Schedule E at the time of a contract award and throughout the term of the contract.

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 one and one half times the amount that should have been awarded to the 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.

### **Disposition and/or Development Agreement Project Award Schedule Transparency**

All developers engaged via a Disposition and/or Development Agreement (DDA) shall submit a schedule of the projected award of construction and construction-related agreements, with all of the agreements to include the L/SLBE Program requirements. The goals set forth must be maintained for the duration of the project.

## Debarment

City Ordinance No. 12926 C.M.S., as amended by Ordinance No. 13169 C.M.S., provides for the debarment of contractors for egregious misconduct in the transaction of duties related to a project. "Debarment" means an administrative action taken by the City that results in a contractor, and any affiliate of the contractor, being prohibited from bidding on or being awarded a contract with the City and/or performing a contract in connection with covered or related transactions for a period of up to five (5) years. A contractor and affiliate who has been determined by the City to be subject to such a prohibition is "debarred."

In accordance with Section 2.12.030 of the Ordinance, the *City* may debar a *contractor* if the *City* finds, in its discretion, that the *contractor* has, or is engaged in, any of the following:

1. Willful or intentional misconduct in connection with any *City bid*, request for qualifications, request for *proposals*, purchase order and/or *contract* including, without limitation, (a) collusion in obtaining a *City contract* or payment thereunder, (b) submission of false information in response to a solicitation, advertisement or invitation for *bids* or quotes, (c) submission of false information in response to a solicitation or request for qualifications or *proposals*, (d) submission of false claims as defined in California Government Code, Section 12650 et seq. and Title 31 U.S.C. Section 3729 et seq., (e) issuance of a verdict, judgment, settlement, stipulation or plea agreement establishing the *contractor's* violation of any civil or criminal law against any government entity relevant to the *contractor's* ability or capacity to honestly perform under or comply with the terms and conditions of a *City contract*;
2. Willful or intentional failure to perform in accordance with the terms of one or more *contracts* including, but not limited to, terms pertaining to *City contracting policies*;
3. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public agreement or transaction;
4. Violation of Federal or State antitrust statutes, including those prescribing price fixing between competitors, allocation of customers between competitors, and *bid rigging*;
5. Commission of embezzlement, theft, forgery, bribery, making false statements, submitting false information, attempting to commit a fraud against the *City*, receiving stolen property, making false claims to any public entity, obstructing justice, fraudulently obtaining public funds;
6. Taking or misappropriating *City* property or using *City* property, including real and personal property, in an unauthorized manner;
7. Performance or conduct on one or more private or public agreements or transactions that caused or may have caused a threat to the health or safety of the *contractor's* employees, any other persons involved with the transaction, the general public or property;
8. *Debarment* by any other governmental agency for the period imposed by that agency;

9. Violation of federal regulations for disadvantaged business entity status including, but not limited to, violation of 49 CFR part 26 et seq. and misrepresenting minority or disadvantaged business entity status;
10. Noncompliance with the prevailing wage requirements of the Labor Law, including any pending violations by the *contractor* or any *affiliate*. A “pending violation” is defined as an investigation by any governmental entity (e.g. another city, county, school district, etc.). Investigations by private businesses will not be recognized.
11. Violation of any nondiscrimination provisions included in any public agreement or transaction;
12. Any other significant Labor Law violations, including, but not limited to, child labor violations, failure to pay wages, or unemployment insurance tax delinquencies.
13. Violation of any licensing, subletting or sub-listing laws;
14. Falsification, concealment, withholding and/or destruction of records;
15. Violation of settlement agreements and/or consent decrees which impose obligations on the *contractor* to perform certain activities and/or to refrain from certain acts;
16. Violation of any law, regulation or agreement relating to conflict of interest with respect to government funded contracting;
17. Knowingly or negligently doing business with a debarred, *suspended*, ineligible, or voluntarily excluded contractor in connection with a *covered* or *related transaction*;
18. Violation of a material provision of any settlement of a *debarment* action;
19. Commission of an egregious act or unlawful offense which indicates a lack of business integrity or business honesty;
20. Failure to perform or history of unsatisfactory performance of one or more *contracts* including, without limitation, default on *contracts* with the *City* or any other public agency;
21. Failure to perform or unsatisfactory performance of one or more *City contracting policies*;
22. Commission of any act or omission which negatively reflects on the *contractor's* quality, fitness or capacity to perform a *contract* with the *City* or any other public entity, or which negatively reflects on same including, but not limited to, deficiencies in on-going *contracts*, false certifications or statements, fraud in performance or billing or lack of financial or technical resources;
23. Any other cause of so serious or compelling a nature that it affects the present responsibility of a *contractor*.

## **Substitution of Listed Subcontractors**

Prime consultants or prime 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. 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 City's approval. Contractors are required to contact the Department of Workplace and Employment Standards to request a substitution hearing.

The City will substitute an entity as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another entity as a subcontractor in any of the following situations:

1. When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
2. When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.
3. When the listed subcontractor fails or refuses to perform his/her/its subcontract.
4. When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.
5. When the prime contractor demonstrates to the awarding authority, or duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
6. When the listed subcontractor is not licensed pursuant to the Contractor's License Law.
7. When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.
8. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
9. When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to the approval of the prime contractor's request for substitution, the City shall give notice, in writing, to the listed subcontractor, of the prime contractor'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 subcontractor. The subcontractor 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 subcontractor's consent to the substitution.

If written objections are filed, the City shall give written notice of a hearing date to the prime and sub-contractor within five (5) working days. At the hearing, the prime and subcontractor 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, as amended, which formulates and establishes procedures for bidding, contracting, and purchasing goods and services.

The City has 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., upon request prior to commencement of work. For public works projects valued over \$1,000.00, the State's Labor Code requires contractors to pay their employees in accordance with general prevailing wages. The prime contractor and all subcontractors including truckers and owner/operators are required to submit weekly certified payroll records five (5) days after each pay period in accordance with Labor Code section 1776. Failure to submit weekly certified payroll records could result in withholding of progress payment(s).

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 with executed copies of its subcontractor/sub-consultant agreements to verify dollar amounts stated for all L/SLBEs upon request. 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 must be attached to the final progress payment application.



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.

### **Prevailing Wages**

The payment of prevailing wages is taken very seriously by the City of Oakland. 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 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](http://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.*

All contractors, regardless of tier, shall pay prevailing wages. The contractor shall include in its subcontractor agreements 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 prevailing wage requirements contained in Resolution 57103 CMS, passed March 28, 1978.

The prevailing wage requirement will be monitored and enforced by the City of Oakland. 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 the agreement.

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.

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. A list of the individual forms and schedules is shown below and are provided in the Appendix under Forms and Schedules. It is important to note that certain forms and schedules must be submitted with the bid package for the bid to be considered responsive.

- [Bid Bond Form](#)
- [Schedule A](#) - Scope of Work/Outline of Services to be Performed
- [Schedule B-2](#)- Arizona Resolution
- [Schedule C-1 P U V](#) Combined Form
  - Schedule C-1 - Compliance With The Americans With Disabilities Act
  - Schedule P - Nuclear Weapons Proliferation Ordinance
  - Schedule U - Compliance Commitment Agreement
  - Schedule V - Affidavit Of Non-Disciplinary Or Investigatory Action
- [Schedule D](#) - Ownership, Ethnicity and Gender Questionnaire
- [Schedule E](#) - Project Consultant Team Form
- [Schedule E-1](#) – Business Workforce for Certification
- [Schedule K](#) – Pending Dispute Disclosure Form
- Schedule M - [Part A Part B](#) Independent Contractor Questionnaire
- [Schedule N](#) - Declaration Of Compliance With Living Wage Ordinance (Professional Services and Design Build Projects only)
- [Schedule N-1](#) - Equal Benefits Declaration Of Nondiscrimination
- [Schedule O](#) - Disclosure of Campaign Contributions Form
- [Schedule R](#) - Subcontractor, Supplier, Trucking Listing
- [Schedule Q](#) – Construction Services Insurance Requirements
- [Schedule Q – Professional & Specialized Services Insurance Requirements](#)
- [Jobsite Waste Reduction & Recycling Plan Form](#) (Recycling & Waste Reduction)

**PART II: PROGRAM INCENTIVES**

**Bid Discounts**

Bid discounts are earned based on the level of participation proposed prior to the award of a contract. A two percent (2%) bid discount is earned for achieving the 50% participation requirement. If the proposed L/SLBE participation exceeds the minimum participation requirement, bid discounts will be applied at a rate of one percent (1%) for every 10% of contract dollars attributable to certified firms. If the proposed VSLBE participation exceeds the minimum participation requirement, bid discounts will be applied at a rate of two percent (2%) for every 10% of contract dollars attributable to certified firms. No more than a five percent (5%) bid discount can be earned for L/SLBE participation and no more than a ten percent (10%) bid discount can be achieved for VSLBE participation. Tables I and II below show the distribution of bid discounts:

**TABLE I – L/SLBE Bid Discounts for Construction Projects**

Level of L/SLBE <sup>1</sup> Participation Achieved		Bid Discounts (Construction)
50%	25% LBE and 25% SLBE	2%
60%	30% LBE and 30% SLBE	3%
70%	35% LBE and 35% SLBE	4%
80%	40% LBE and 40% SLBE	5%

**TABLE II – VSLBE Bid Discounts to Prime Contractor for Construction Projects**

Level of VSLBE Participation Achieved		Bid Discounts (Construction)
50%	25% VSLBE x2	4%
60%	30% VSLBE x2	6%
70%	35% VSLBE x2	8%
80%	40% VSLBE x2	10%

**Preference Points**

Local and non-local businesses may earn up to a maximum of five (5) preference points for local business participation. Businesses earn 2 points for achieving the L/SLBE minimum 50% participation requirement and 4 points for achieving the VSLBE minimum 50% participation requirement. If L/SLBE participation exceeds 50%, preference points are applied at a rate of one (1) point for every 10% incremental increase in contract dollars attributable to certified firms. If VSLBE participation exceeds 50%, preference points are applied at a rate of two (2) points for every 5% incremental increase in contract dollars attributable to certified firms. No more than five (5) preference points may be earned for L/SLBE participation and no more than 10 preference points may be earned for VSLBE participation. Tables III, IV and V below show the distribution of preference points:

<sup>1</sup> Table I shall be used to award bid discounts for SBA-LBE participation when the Department of Workplace and Employment Standards determines that SBA-LBE participation may be used to satisfy L/SLBE participation requirements.

**TABLE III – L/SLBE Preference Points for Professional Services Projects (Non-Certified/Non-Local Businesses)**

<b>Level of L/SLBE Participation Achieved for Non-certified and Non-local businesses</b>	<b>Preference Points (Professional Services)</b>
LBE participation + SLBE participation = 50%	2 pts
LBE participation + SLBE participation = 60%	3 pts
LBE participation + SLBE participation = 70%	4 pts
LBE participation + SLBE participation = 80%	5 pts

**TABLE IV – L/SLBE Preference Points for Professional Services Projects (Certified Businesses)**

<b>Level of L/SLBE Participation Achieved for Certified Local and Small Local Businesses</b>	<b>Preference Points</b>
25% LBE and 25% SLBE	2 pts
30% LBE and 30% SLBE	3 pts
35% LBE and 35% SLBE	4 pts
40% LBE and 40% SLBE	5 pts

**TABLE V – VSLBE Preference Points for Professional Service Project (Certified Businesses)**

<b>Level of VSLBE Participation Achieved for Certified Local and Small Local Businesses</b>	<b>Preference Points</b>
25% VSLBE x2	4 pts
30% VSLBE x2	6 pts
35% VSLBE x2	8 pts
40% VSLBE x2	10 pts

For both bid discounts and preference points, VSLBE participation will be double-counted towards achieving the SLBE participation requirement. For construction contract bids, a bid discount of 10% shall be applied to the VSLBE prime contractor during bid evaluation, and for professional services contract proposals 10 preference points shall be applied to the VSLBE prime contractor that meets a 50% subcontractor goal.

Application of SBA-LBE will depend upon the scope of the work, overall value and available market. Where the Department of Workplace & Employment Standards determines that there are not sufficient SLBEs/VSLBEs available, it may authorize prime contractors to satisfy the LBE subcontractor participation requirement by also using SBA-LBEs. In addition, for Projects in excess of \$5M, prime contractors may use SBA-LBEs to satisfy the SLBE requirement.

**Request for Proposal (RFP) and Request for Qualifications (RFQ) Preference Points for Oakland Resident Workforce on Non-Construction Contracts**

Earning extra preference points for having an existing workforce that includes Oakland residents is considered added value. The Request for Proposals (RFP) “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.

On Requests for Proposals, Requests 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 presence in Oakland for 25 or more years. Given the above, businesses may earn additional preference points during the evaluation phase of the competitive process.

**TABLE VI – Preference Points Award Based on Tenure and Workforce Composition**

Years in Oakland		Oakland Resident Workforce	
Years in Oakland	Additional Points	Workforce	Additional Points
5 yrs	.50 pt	Up to 24%	1.00 pt
10 yrs	1.00 pt	25%- 49%	2.00 pts
15 yrs	1.50 pts	50% -74%	3.00 pts
20 yrs	2.00 pts	75%-99%	4.00 pts
25 yrs	2.50 pts	100%	5.00 pts

**Mentor-Protégé Agreements**

The City of Oakland strongly supports “Mentor-Protégé” relationships because they help to build capacity in underutilized service areas. On a case-by-case basis, the City will allow a 10% 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 DWES 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 terms of the agreement must ensure that there is a genuine opportunity for capability and capacity-building/expansion of the mentee, including at least 30% participation of the protégé, and a commitment to a 3<sup>rd</sup> party review of the effectiveness of SLBEs participation in the relationship. 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 DWES with a monthly report of the kinds of mentor skills provided to the protégé, which shall include but not be 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 (Approved and Project-Specific)**

There are two types of joint ventures (JV): (1) The approved joint venture is one where the two parties form a relationship for bidding on any project. (2) The project-specific joint venture is one that is formed for one project in particular and is good only for that project. While both categories share the basic rules for joint ventures, each has criteria that are specific to it depending on the nature of the project.

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 City 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. On a case-by-case basis, the City will allow an additional 5% preference points for JVs where the junior partner is a certified SLBE or VSLBE.

### Basic Elements of the Joint Venture Agreement

A Joint Venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement two (2) weeks prior to the bid due date. Copies of the JV applications are available upon request to the Department of Workplace and Employment Standards, which can be contacted at (510) 238-3970. Each agreement or management plan must include, but is 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 useful 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 JV 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 JV 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 the 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 City contract awarding authority. Unless permission is granted by the City Administrator or a 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 Administrator or a 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 Administrator or designee. In addition to any other information required by conditions specified herein, each LBE/SLBE joint venture must provide cancelled checks and any other financial records to the City upon request.

Contractors attempting to obtain a JV certification should review further below for more information on that topic.

### **City-Assisted Private Developments**

For City-assisted private developments (*e.g.*, Disposition and/or 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 program 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 Administrator will award a certificate of achievement to the City agency that reaches the highest level of support to small local businesses.

### **Mandatory Preferred Small Local Business ("MPSLB") Programs for Professional Pre-Construction and Construction Services**

Applicable to 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 City 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.



The City will be required to establish pre-qualified lists for Oakland certified small businesses for professional pre-construction services, such as architectural and engineering services, and construction services for contracts costing less than \$250,000.00, as follows:

- a. Mandatory Preferred Small Local Business (MPSLB) - The City will issue a request for qualifications for pre-construction and construction services for the design and/or construction of projects costing less than \$250,000 solely from Oakland certified Small Local Business Enterprises.
  - i. Qualified professional and construction firms will be included on the MPSLB pre-qualified list.
  - ii. The City will solicit proposals or bids for these contracts from at least three (3) businesses on the MPSLB pre-qualified lists.
- b. MPSLB contracts under \$250,000 will be exempt from Oakland's Local and Small Local Business Enterprise participation requirements because the contractors will meet the requirements by virtue of their Oakland certified small local business status
- c. For pre-construction and other professional services, the selection and award of contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City, in addition to preference points awarded under Oakland's social equity policies and in compliance with Oakland's purchasing programs, such as Living Wage and Equal Benefits.
- d. For construction services, contracts shall be awarded to the lowest, responsible, responsive bidder, taking into account current bid discounts and/or preference points awarded under the City's social equity programs.
- e. For professional services, the City Administrator may solicit proposals on the open market without advertising if at least three (3) proposals are not submitted by firms on the pre-qualified list.
- f. For construction services, the City Administrator may solicit bids on the open market, without advertising, if all responsive bids exceed the engineer's estimate.

**PART III: CERTIFICATION**

<b>Certification Categories</b>	<b>Certification Criteria</b>
<p>1. <b><u>LBE:</u></b> Local Business Enterprise</p>	<ol style="list-style-type: none"> <li>1. Must have a substantial presence in the Oakland geographic region as defined by:               <ol style="list-style-type: none"> <li>a. Headquartered (Primary Office location) within the Oakland geographic region ( City of Oakland); or</li> <li>b. Either twenty percent (20%) of the total company workforce or a minimum of 50 employees must work in the Oakland <del>headquarters</del> <u>office</u>; or</li> <li>c. Headquarters must be located in a commercial office with a lease agreement signed 12-months prior to <del>the closing date of a competitive process</del> <u>submitting the certification application</u>; or</li> <li>d. <u>home-based office</u> whereby a valid <del>certification</del> <u>business tax certificate</u> is in place 12 months prior to <del>the closing date of a competitive process</del> <u>submitting the certification application</u>.</li> </ol> <p>(Additional minimum <u>certification</u> criteria: Fixed Home-based offices should have the owner(s) residence as the business' sole headquarters);</p> </li> <li>2. Fully operational with a valid business tax certificate for at least twelve (12) consecutive months;</li> <li>3. Operations and employees must occur in fixed office space;</li> <li>4. Current permits, and current on fines and fees owed;</li> <li>5. <u>Valid</u> documents certifying business operations (<i>i.e.</i> contracts, bills, etc.)</li> <li>6. Registration in the City’s iSupplier system.</li> </ol> <p><i>Please Note Temporary Provision for Local Certified firms impacted by COVID-19:</i> To the extent that Local Certified Firms were impacted by COVID, including if, operating offices were closed, and functions moved to home offices, local Oakland certified firms’ certification status will be reenacted. This exception shall be valid up to six months after Oakland’s local state of emergency is removed.</p>

<p>2. <b><u>SLBE</u></b> Small Local Business Enterprise</p>	<ol style="list-style-type: none"> <li>1. Last most recent three years of tax returns.</li> <li>2. Three-year average gross receipts must fall at or below 20% of the SBA’s size standard for the relevant industry sector.</li> <li>3. Headquartered in Oakland or <u>Home-based office</u> whereby a valid <del>certification</del> <b>business tax certificate</b> is in place 12 months prior to <del>the closing date of a competitive process</del> <b>submitting the certification application</b>. (Additional minimum <u>certification</u> criteria: Fixed Home- based offices should have the owner(s) residence as the business' sole headquarters);</li> <li>4. Fully operational with a valid business tax certificate for at least twelve (12) consecutive months;</li> <li>5. Operations and employees in fixed office space;</li> <li>6. Current permits, fines and fees;</li> <li>7. Valid documents certifying business operations (<i>e.g. contracts, bills, etc.</i>)</li> <li>8. Registration in the City's iSupplier system.</li> </ol>
<p>3. <b><u>VSLBE</u></b> Very Small Local Business Enterprise</p>	<p>Same as SLBE certification criteria, plus,</p> <ol style="list-style-type: none"> <li>1. Fully operational for six consecutive months.</li> <li>2. Average annual gross receipts at or below \$375,000.</li> <li>3. Headquartered in Oakland.</li> </ol>
<p>4. <b><u>LPG /LBE</u></b> Locally Produced Goods/LBE</p>	<p>Same as LBE certification criteria, plus:</p> <ol style="list-style-type: none"> <li>1. Business must manufacture goods within the Oakland geographic boundaries.</li> <li>2. Business must present proof of sales.</li> <li>3. Business must possess the current permit and license(s) required to conduct a manufacturing operation in an area zoned as industrial.</li> </ol>
<p>5. <b><u>NFP/LBE</u></b> Not for Profit Local Business Enterprise</p>	<p>Same as LBE certification criteria, plus:</p> <ol style="list-style-type: none"> <li>1. Business must produce documentation of non-profit status.</li> </ol>
<p>6. <b><u>NFP/SLBE</u></b> Not for Profit Small Local Business Enterprise</p>	<p>Same as SLBE certification criteria, plus:</p> <ol style="list-style-type: none"> <li>1. Business must produce documentation of non-profit status.</li> </ol>
<p>7. <b><u>SBA-LBE</u></b> Small Business Administration-Local Business Enterprise</p>	<p>Same as LBE certification criteria, plus:</p> <ol style="list-style-type: none"> <li>1. Satisfies the size standard as published by the <b><u>Small Business Administration’s (SBA) definition of a “small business.”</u></b></li> <li>2. Headquartered in Oakland.</li> </ol>

## **Certification Categories**

The City of Oakland has added a new certification category. In addition to Local Business Enterprise (LBE), Small Local Business Enterprises (SLBE), Very Small Local Business Enterprise (VSLBE), and Local Produced Goods Local Business Enterprise (LPG-LBE), an SBA-sized Local Business Enterprise (SBA-LBE) category was added in order to enhance opportunities for larger Oakland-based firms that qualify as small businesses according to national standards.

## **Certification Criteria**

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 geographic boundaries of the City of Oakland.
2. Fully operational for at least twelve (12) consecutive months prior to applying for certification (or for six (6) consecutive months for VSLBE).
3. A valid City of Oakland Business Tax certificate issued no less than twelve (12) consecutive 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 geographic 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 business must have a substantial presence in the City. 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 (persons 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. The business must comply with all applicable Federal, State and local regulations, including, but not limited to, the City of Oakland Zoning Regulations.
7. All taxes, fees, permit fees, and fines shall be current.

8. Upon request by the City's certifying officer, the business must possess and make available for inspection the following documentation that cite the Oakland business street address:
  - Executed (*i.e.*, signed by all parties) copies of past/current contracts;
  - Oakland Business Tax Certificate and federal tax identification number;
  - Executed lease or other written agreement for occupancy of the Oakland office;
  - 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 eligibility for certification. The City may wish to review additional documents that may include, but are not limited to:
  - Commercial advertising
  - On-site signage
  - Letterhead
  - Previous Lease Agreements
  - Marketing materials
  - Listing in the telephone book
  - Copies of last most recent Quarterly Wage & Withholding Reports (DE-6)

Small local businesses must present or make available copies of federal tax returns showing gross revenues for the three (3) 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 by the City as a Small Local Business Enterprise:

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 required by the contract, and the degree of financial, equipment leasing and other relationships with non-local firms.

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 business. The owner shall also make the day-to-day, as well as major, decisions on matters of management, policy and operations. The business 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. (e.g., bylaws provisions, partnership agreements or charter requirements for cumulative voting rights).

Where the actual management of the business 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 business shall be real and substantial. Newly formed businesses and businesses 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 business.

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 a non-SLBE that has an interest in the SLBE is carefully reviewed to determine if the interests 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 participation by SLBEs. 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 defines a small business as twenty percent (20%) of the most recently published United States Small Business Administration's Small Business Size standards (U.S. SBA). Size is based on the average gross revenues for the three (3) most recent years in doing business. The City of Oakland will adjust its small business size standards according to the most recently published U.S. SBA size standards.

## **LBE/SLBE Certification Process**

### **Step 1 – The Application:**

Applicants may apply for certification online or may request a hard copy from DWES. For the online process, applicants may download the application from the website maintained by DWES through the City’s website, found at <http://www.oaklandnet.com>. The applicant then selects Contracting Opportunities under the “Jobs and Contracts” link; click on “Certification;” and select the form and appropriate supporting documents. Requests for certification applications can be made by phone, facsimile, electronic mail, in writing or in person. When submitting the application, an applicant must remember to attach a copy of its most recent Business Tax Certificate and have its application notarized. If the applicant is applying as a small business, it must remember to attach the last three (3) most recent business tax returns. These are essential in determining if the applicant’s business meets the small business size standard.

### **Step 2 – The Review Process:**

The City conducts 100% site visits and desk audits for all first-time certification applications. Re-certifications may be subject to site visits by the City based on factors such as change in address, ownership and/or size.

The site visits will be scheduled within 10 working days of the City’s receipt of all required documentation. Pending no further questions or changes in status or conditions, a determination will be rendered within 10 working days of the site visits.

All applicants are asked to participate fully with the certification process. Failure or refusal to furnish requested information or to participate in the process will void the application. During the process of certification, the City may review any documentation or information necessary to determine eligibility.

To ensure timely processing of certification applications, it is strongly suggested that all applicants submit an application for certification and re-certification a minimum of four (4) weeks prior to a bid opening or proposal submittal due date.

Please remember that all certified businesses must have a valid certificate and/or a signed certification letter in order to receive credit for participation. 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 and businesses will only earn credit for business participation if there is a valid certification in place. If a certification has lapsed, a business will not earn credit for local Oakland business participation.

Certifications with another agency do not constitute certification with the City of Oakland. The City enjoys a collaborative relationship with other agencies and as such may be able to reduce paperwork, but the City reserves the right to approve LBE/SLBE status from other government or City agencies and request additional documentation.

Firms or individuals who knowingly submit false information concerning their certification status are subject to 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.

### **Re-Certification**

A City of Oakland certification is valid for a period of two (2) years, unless otherwise specified. At the end of the certification period the business must 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.

To ensure timely processing of re-certifications, even if a site visit may not be necessary, it is strongly suggested that the business reapplies a minimum of four (4) weeks prior to a bid opening or proposal submittal due date.

### **Appeal**

If an applicant does not agree with a certification determination, the applicant may file with the City an appeal in writing within 10 working days of the written determination. The written appeal must be signed and dated.

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 Party Claims**

The City invites reports of misconduct or wrongful actions. Third parties who have reason to believe that another firm has been wrongfully denied or granted certification may advise the City in writing. If the claim is warranted, an investigation is conducted and both the third party and affected party are informed of the findings.



## **PART IV: LOCAL EMPLOYMENT PROGRAM**

### **Program Objective**

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

### **Program Goals**

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

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

### **General Provisions**

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

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

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

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

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

## **Winning Compliance**

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

### Exemptions

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

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

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

### Conditional Exemptions

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

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

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

## **PART IV –A: LOCAL CONSTRUCTION EMPLOYMENT REFERRAL PROGRAM (LCERP)**

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

### **Referrals and Dispatching Oakland Residents**

For Open Shop – In the absence of a collective bargaining agreement the Contractor shall:

- a. Contact the City to request a referral from the Local Construction Employment Referral database; and
- b. Submit a completed “Job Request & Referral Form” by fax or e-mail.
- c. City staff will refer an Oakland resident (matching the qualifications identified by the contractor on the Job Request & Referral form) to the Contractor within three business days.

For Union Shop – Contractors working under a collective bargaining agreement shall:

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

### **Incentives and Penalties**

#### **Incentives (credit or banking of hours)**

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

1. When a contractor exceeds the LEP workforce hour goal on an existing project, those surplus hours will be banked for application on a subsequent City project.
2. When a contractor employs Oakland residents on non-City projects during the year prior to issuance of a notice to proceed on the City contract, those hours will apply toward the 50% workforce hour requirement.
3. When a Contractor employs Oakland residents on non-City projects during the six months following completion of a City Contract or Subcontract, those hours will be banked for application on a subsequent City project.

4. The general contractor may utilize the hours performed by its Oakland-resident employees that exceed LEP goals to meet the LEP goals of a Subcontractor that fails to achieve its own LEP goals. However, the City may designate a contractor as ineligible to receive excess-hours credit under this section for demonstrated prior non-compliance.

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

### Penalties

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

When a Contractor finishes its contract without meeting the LEP requirements, and a penalty is warranted, the City will withhold from final payment up to 150% of the wages for the deficient hours of the non-complying Contractor's contract. The Contractor will have one year to work off the hours owed by working Oakland residents on non-City projects. If at the end of this period all the deficient hours have not been eliminated, the Contractor will forfeit 150% of the wages for any remaining deficient hours to the City as a fine.

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

### **Outreach**

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

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

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

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

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

DWES will conduct at least three "Winning Compliance" Workshops per year. Contractors are encouraged to attend at least one such workshop. Forms and information listed above under post-award meeting will be the major topics of discussion. Attendance at these workshops will assist the contractor in complying with the LEP and apprentice utilization policies.

### **Reporting**

The developer or contractor must submit reports for compliance with the LEP as required by the City. These reports may include weekly certified payroll records for all crafts covered under these Program provisions within fifteen working days of the end of each payroll period. In addition to the weekly-certified payroll records, the City may require a weekly or monthly summary of the information that would be obtainable from the certified payroll regarding local-hire by craft. These reports must show the person-hours on a craft-by-craft basis and, in the case of certified payroll records, identify the address, Social Security number, new hire, ethnicity, gender and trade and status (journey person or apprentice) of all employees on the project. All reports must have an original signature and be signed by an authorized officer of the company under penalty of perjury. The City will make a copy of required forms available to Contractors. These forms will be available in hard copy or digitally.

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

### **Monitoring**

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

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

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

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

### **Other Conditions**

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

### **Program Amendments**

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

### **Conflicts**

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

### **Severability**

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

## **PART V: APPENDIX**

### **GLOSSARY**

**Apprentice** – An individual who is registered with an apprenticeship program approved by the Division of Apprenticeship Standards (DAS).

**Apprenticeship Coordinator** – An individual who supervises apprenticeship-training activities.

**Apprentice Work Hours** – The workhours apprentices are required to work on public works projects.

**Availability** - The number of certified L/SLBE firms/businesses, by trade, ready and willing to compete for work with the City of Oakland.

**Bay Area Construction Sector Intervention Collaborative (BACSIC)** – A coalition of community-based organizations, union representatives and apprenticeship coordinators partnering to provide necessary support services to assist job seekers in obtaining employment in the construction industry.

**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.

**Business Suppliers/Prefabricators** - An individual or business entity that makes available a certain commodity for meeting demand or for purchase at a given price.

**City** - Reference to the City or City Council, and reference to the City Administrator includes the Agency Administrator.

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

**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.

**Community Based Organization (CBO)** – A non-government agency created to provide training or employment assistance to job seekers.

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

**Core Employee** – An apprentice or journey level employee who: Possesses any license required by state or federal law for the project work to be performed; has worked a total of at least 1000 hours in the construction craft during the prior three years; was on the Contractor’s active payroll for at least 60 out of the 180 calendar days prior to the contract award; and has the ability to perform safely the basic functions of the applicable trade.

**Craft-by-Craft** – Measuring the hours worked by an apprentice or journey person with regard to each craft, as defined in the Federal and State Wage Determination.

**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.

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

**Division of Apprenticeship Standards (DAS)** – The agency responsible for apprenticeship in the state of California

**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

**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.

**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.



**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.

**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) has a valid business tax certificate.

**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 local business enterprise. The LBE-LPG must satisfy all criteria for a local business and must possess the permits and licenses required to conduct a manufacturing operation in an industrial zone within the City.

**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.

**Local Construction Employment Referral Program (LCERP)** – The Employment Services Unit of the Office of the City Administrator created to identify Oakland residents for employment on City of Oakland and Oakland Redevelopment Agency construction projects.

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

**Monitoring** – The system established to measure compliance with the Local Employment Program Policy and the 15% Apprenticeship Utilization Policy. This system includes tracking the employment status (as reported by certified payrolls) on all public works projects. Monitoring occurs for:

- Payment of prevailing wages
- Apprenticeship Hours
- Resident workforce hours
- New Hires

**New Hire** – Any employee of a contractor who is not listed on the contractor’s quarterly tax statements for the tax period that has been hired prior to the commencement of work, unless the employee qualifies as a Core Employee.

**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.

**Owner Operator** – a contractor who operates their own leased or rented equipment and uses that equipment on the public works project, and that hires no other employees.

**Post Award** – The meeting held between the City and contractors after the award of a public works project and before the issuance of a notice to proceed. Post award meetings occur at the request of either the using agency or contractor/consultant.

**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 the total amount includes the cost of include change orders, amendments and extensions.

**Preference Points** – A predetermined number of points awarded during the Request for Proposals and Request for Qualifications evaluation phase of a competitive process.

**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.

**Resident** - Any person whose primary residence is in Oakland. An individual designated as a journey-level worker must have established residency at least two (2) weeks prior to commencement of work, and an individual designated as an apprentice must have established residency at least six (6) months prior to commencement of work.

**Small Business Administration Sized Local Business Enterprise (SBA-LBE)** - An Oakland business (a) with a substantial presence in the city of Oakland’s geographic boundaries; (b) fully operational for 12 consecutive months; (c) with a valid business tax certificate; and (d) that meets (does not exceed) the Small Business Administration (SBA) definition of “small business.”

**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 twenty percent (20%) of the United States Small Business Administration’s size standard.

**Small Local Business Enterprise (SLBE)** – A business (a) with a substantial presence in the City of Oakland’s geographic boundaries; (b) that has a full operation conducting business for 12 consecutive months; (c) with a valid business tax certificate, and (d) is an independent business headquartered in Oakland.

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

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

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

**Substantial Presence** – A fixed and established place where work is carried on of a clerical, administrative, and 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 within and/or 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. Headquartered within the City of Oakland **OR**
- B. Located in a commercial office with a current lease signed at least 12 months prior to the bid date and the office must be the primary location for either (i) at least 20% of the business' workforce or (ii) at least 50 employees, **OR**
- C. If the business had or has its headquarters in a home-based office, the requirements for that home-based office will have to have been met over the prior 12 months, **AND**
- D. Home-based offices should have the owner's residence as the business' sole headquarters.

\* The term "Office" as used in this "Substantial Presence" definition is further clarified as below -  
The local office can and does function as an independent office site. Criteria for consideration include:

- The local office is not merely a sham operation set up by a non-local business for the purpose of gaining L/SLBE certification.
- 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.
- 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.
- 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.
- 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.
- The owner of a virtual office must have their primary residence in the City of Oakland.

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

**Trucking** – The transport of any bulk material such as steel, lumber, rebar, sheetrock, equipment, spoils, gravel, base course, excess, excavated materials, asphalt, imported fill and any other type of manufactured or fabricated bulk material that is imported and/or exported to and from the job site.

**Very Small Local Business Enterprise (VSLBE)** - A business (a) with a substantial presence in the City of Oakland’s geographic boundaries; (b) with a full operation conducting business for six (6) consecutive months; (c) that has a valid business tax certificate; (d) is an independent business headquartered in Oakland; and (e) gross receipts that do not exceed \$375,000.

**Waiver** - An intentional action by City Council excusing a contractor or a department from adhering to and/or complying with a City policy.

## **FORMS AND SCHEDULES**