



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: Emylene Aspilla, Director
Department of Workplace &
Employment Standards

SUBJECT: Inclusive Contracting Update

DATE: June 28, 2023

City Administrator Approval


Jestin Johnson (Jun 30, 2023 07:16 PDT)

Date: Jun 30, 2023

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report From The City Administrator On Recent And Planned Efforts To Broaden And Deepen Participation From Local And Small Local Businesses And Improve Fairness And Equity In The City's Contracting Process.

EXECUTIVE SUMMARY

The purpose of this Informational Report is to provide a high-level summary of recent and planned efforts to advance greater contracting equity and increase the participation of diverse local and small local businesses in the City of Oakland's contracting opportunities.

BACKGROUND / LEGISLATIVE HISTORY

In 2015, the City Council passed [Ordinance No. 13319 C.M.S.](#), which established the Department of Race and Equity, committed to intentionally integrate the principles of "fair and just" in all the City of Oakland (City) does, and charged the City Administrator with supporting the development of actions that improve fairness and opportunity in business practices such as contracting and procurement. (See [Oakland Municipal Code Section 2.29.170.](#))

On [October 11, 2021, the Finance & Management Committee received an update](#) on items that the City identified to increase contracting opportunities for local and diverse firms, including the convening of numerous stakeholder groups.

On [August 17, 2022, an Informational Memo was distributed to the Mayor and City Council](#) that provided a brief summary of the status of various programs and initiatives being undertaken by the City in support of increasing the participation of local and diverse vendors in the City's contracting process.

On [July 18, 2023, the City Council will receive an Informational Report](#) on the Disparities in Contracting Study by Mason Tilman Associates (MTA). While the findings and policy recommendations of the study will not be available until later this year, the City has engaged in implementing and planning several initiatives that aim to remove barriers for local and small local businesses seeking to do business with the City of Oakland. This Informational Memo summarizes these recent and planned efforts.

ANALYSIS AND POLICY ALTERNATIVES

1. Contracting for Equity Framework

The [Government Alliance on Race and Equity \(GARE\)](#), a national network of government agencies working to achieve racial equity and advance opportunities for all, published an [Issue Brief on Contracting for Equity](#) that examines three levels within the government contracting and procurement process:

1. **Policy** – establishing an overall policy that advances equity within the localized context
2. **Strategy** – developing and implementing specific strategies that are implemented and tracked to ensure meaningful results
3. **Practice and Regulation** – ensuring practices of the contracting process allow for a well implemented inclusive contracting and procurement strategy

This Informational Report will summarize the City's recent and planned efforts that focus on the **Strategy** and **Practice and Regulation** levels, within the overall policy of the integration of "fair and just" in City contracting and procurement.

All the efforts within these two areas have been driven by diverse stakeholder input gathered over the past couple of years through meetings of the Contracting Disparity Action Team (CDAT), a survey designed to inform CDAT discussions, a townhall listening session, focus groups, targeted interviews, and formal/informal complaints. These efforts were also informed by a careful review of the recommendations from the 2020 Draft Disparity Study, particularly those focused on outreach, capacity building, compliance monitoring, and data collection/reporting. Research on best practices in other municipalities was also considered in prioritizing the design and implementation of initiatives.

Further **Policy** considerations will be brought to Council after the findings and recommendations of the Disparity Study by MTA, **Process Map of the City's Contracting Process** (described below) and the **Racial Equity Impact Analysis** (also described below) of the current Local and Small Local Business Enterprise (L/SLBE) Program have been presented to Council for their consideration.

2. Strategy

Below summarizes the City's efforts related to educating bidders, facilitating outreach and networking, and building contractor capacity:

	Executed/Ongoing	Planned/Pending
Outreach and Networking		
Events	<ul style="list-style-type: none"> Held “Doing Business with the Departments of Public Works (OPW) and Transportation” (OakDOT) in December, 2022 (virtual) and March, 2023 (hybrid – virtual and in-person). In addition to OPW and OakDOT presenting upcoming opportunities, the Department of Workplace and Employment Standards (DWES) provided information on the L/SLBE Program, and the Economic and Workforce Development Department (EWDD) presented capacity building resources, including bonding assistance services for contractors. Will continue to offer this event on a quarterly basis. 	<ul style="list-style-type: none"> In July, 2023, hosting the City’s first “Capital Improvement Program (CIP) Matchmaking Event” – this event will include an overview of the 2023-2025 CIP, and include one-on-one meetings between small businesses and larger businesses to discuss potential CIP partnering opportunities. Hosting: <ul style="list-style-type: none"> Project-specific “Meet and Greet” events. Events focusing on specific trades. Events focusing on professional services, and goods and services purchasing opportunities.
Forecasts	<ul style="list-style-type: none"> Published the first formal OPW and OakDOT Contracting Forecasts in December, 2022. Have published two forecasts to date and will continue publishing these on a quarterly basis. 	<ul style="list-style-type: none"> Publishing: <ul style="list-style-type: none"> Trade-specific forecasts across projects. Forecasts for professional services, and goods and services purchasing opportunities.
Inclusion Plan	<ul style="list-style-type: none"> DWES, the Department of Race and Equity (DRE) and the Office of the City Attorney (OCA) have worked on developing solicitation language that requires contractors to make genuine efforts to ensure that all available business enterprises— including small, historically underutilized, woman-owned, and BIPOC-owned businesses that reflect the diversity of the City in terms of gender, age, ethnicity, and race—have equal opportunity to participate in subcontract opportunities. 	<ul style="list-style-type: none"> Including the newly developed “inclusion language” into a bigger effort to require all bidders to submit a mandatory “Inclusion Plan” detailing their outreach efforts and/or detailing new partnerships with small and historically underutilized businesses, including BIPOC-owned and woman-owned businesses, along with other businesses. A good faith effort will be expected in all Plans. Bids will be considered non-responsive if an Inclusion Plan is not submitted – anticipate implementation of this requirement in Fall/Winter, 2023, with plans to socialize the Inclusion Plan throughout Summer 2024 with local businesses and community partners.

	Executed/Ongoing	Planned/Pending
<i>Outreach and Networking – continued</i>		
Website Enhancements	<ul style="list-style-type: none"> In Fall 2022, fully transitioned the L/SLBE Certification process from I-Supplier to B2GNow, a more streamlined, user-friendly web-based system used by numerous other municipalities as well as the California Unified Certification Program (CUCP) run by Caltrans. 	<ul style="list-style-type: none"> Implementing a new platform on the City’s website to enable prospective bidders and members of the public to more easily access proposal and bid information. Several information gathering and planning meetings have occurred. The Information Technology Department (ITD) is currently working on a prototype platform with an anticipated rollout in Spring, 2024.
Outreach Distribution Lists and Advertising of Opportunities	<ul style="list-style-type: none"> DWES is working on coordinating email distribution lists from across departments so that stakeholders do not receive duplicative and/or a voluminous number of messages, and communication to stakeholders is more coordinated, streamlined, and targeted. Also working to ensure distribution lists are comprehensive and include diverse small businesses, ethnic chambers of commerce, neighborhood merchant associations, and other community stakeholders. Stakeholders will also be asked to opt-in to specific kinds of messages. 	<ul style="list-style-type: none"> Advertising contracting opportunities in more than the required publications such as small business, industry, and trade publications. Sending curated and targeted messages versus “blanket messages” to everyone. Utilizing press releases and social media to promote events and contracting opportunities.
<i>Capacity Building</i>		
Contractor Resource Center	<ul style="list-style-type: none"> EWDD finalized an agreement with the Contractor Resource Center (CRC) to act as a “one-stop-shop” for small construction contractors. CRC supports contractors with addressing a variety of barriers such as how to respond to bids and how to manage back-office and legal concerns. CRC also offers educational workshops on topics such as project management and how to implement trade software. CRC also coordinates closely with the City of Oakland on community outreach and L/SLBE certification, and with Merriwether and Williams Insurance Services on other supports. 	<ul style="list-style-type: none"> Continuing to build out various offerings for small construction contractors.

	Executed/Ongoing	Planned/Pending
Capacity Building – continued		
Bonding	<ul style="list-style-type: none"> EWDD finalized an agreement with Merriweather & Williams Insurance Services (MW) to provide technical assistance, insurance and bonding, and access to capital supports to small contractors. In addition to working directly with contractors, MW participates in the City’s contractor outreach efforts. 	<ul style="list-style-type: none"> Leveraging MW’s other supports for contractors.
Technical Assistance	<ul style="list-style-type: none"> On an ad-hoc basis, have worked with contractors on understanding the City of Oakland contracting process. 	<ul style="list-style-type: none"> Formalizing training for small businesses to learn about the City’s contracting and purchasing systems – workshops, cheat-sheets, FAQs, on-demand training, etc. Formalizing debriefing sessions with bidders/reviewing successful bids.
Workshops and Events	<ul style="list-style-type: none"> Revamped the “Certification 101” Workshop to include a step-by-step guide for how to use the City’s new B2GNow certification system – have continued to provide certification workshops in the community. 	<ul style="list-style-type: none"> Offering a variety of skill-building workshops, expert panels, and other events, such as a “City of Oakland Small Business Summit,” virtually (online), on-demand (recorded videos) and in-person, both at the City of Oakland, and in the community at small business expos, small business week, conferences, tradeshow, cultural events, celebrations, etc.

3. Practice and Regulation

Below summarizes the City’s efforts related to maximizing existing contracting mechanisms, strengthening compliance activities, and laying the groundwork for larger scale system enhancements:

	Executed/Ongoing	Planned/Pending
Contracting Mechanisms		
On-call Contracts	<ul style="list-style-type: none"> OPW's Bureau of Design & Construction revamped how it solicits bids for its On-Call Sewer and On-Call Construction Pools to include two tiers of contracting with small and large contracts. These tiers make opportunities more accessible to small contractors, with the potential for small contractors to act as both primes on small contracts and subs on larger contracts. This approach increased the On-call Sewer Contractors from 2 to 9 and On-call Construction from 8 to 14. Additionally, L/SLBE participation is evaluated at the Task Order level versus at the end of each contract – this will help ensure local and small local business enterprises are being engaged throughout the life of a contract. The On-Call pool will also re-open on an annual basis to allow potential new entrants. Historically, On-Call pools only re-opened every five years. 	<ul style="list-style-type: none"> Exploring how this mechanism can be combined with a formal contractor rotation program, as well as applied to other On-Call pools across the City, including professional services.
Bonding	<ul style="list-style-type: none"> Changed bonding requirements on On-Call public works contracts to “bond as you go” so that a contractor’s bonding capacity is not maxed out when there are no active tasks on the contract. 	<ul style="list-style-type: none"> Analyzing bonding requirements to ensure bonding levels are commensurate with the type of project.
Unbundling & Direct Contracting	<ul style="list-style-type: none"> OPW and OakDOT have been successfully unbundling projects into smaller contracts for various scopes of work, including sidewalk repair and tree maintenance, allowing small businesses to contract directly with the City. 	<ul style="list-style-type: none"> Continuing to determine what portions of large projects might be suitable for smaller standalone contracts across all the City’s business lines.

	Executed/Ongoing	Planned/Pending
Contracting Mechanisms – continued		
Solicitation Pre-planning Questionnaire & Checklist	<ul style="list-style-type: none"> DWES is developing a questionnaire (to be piloted in Fall, 2023) to use with departments in the pre-planning of a solicitation that will help departments evaluate a contracting opportunity to ensure it is developed to maximize the participation of small businesses, and offers opportunities for small businesses to build their capacity related to the specific contract scope. The assessment areas will review: <ul style="list-style-type: none"> Minimum Qualifications and Scoring Scope and Potential Unbundling Opportunities Availability/Small Business Participation Goals Length of Agreement/Impacts of Time Extensions Small Business Skill Building/Capacity Building Efforts Targeted Business Community Outreach 	
Administrative Instruction (AI) on Inclusive Procurement Planning	<ul style="list-style-type: none"> DWES and DRE are partnering on developing an Administrative Instruction (AI) that lays out various strategies to improve contracting access for small businesses, women-owned businesses, and BIPOC-owned businesses, at all stages of the contracting process, from the development of the contracting opportunity, to the close out of the contracting opportunity. The solicitation language, Inclusion Plan, and Solicitation Pre-planning Questionnaire & Checklist (all described above) will be included as required strategies in the AI – will finalize the AI in early, 2024 after the Contracting Process Mapping Report (described below) is finalized. The AI has three equity goals: <ol style="list-style-type: none"> Every small Oakland business, including BIPOC- and women-owned businesses that have been disproportionately underrepresented in City contracts, has equitable access to City contracts to increase economic security. Identify and Remove barriers- both historic and current in the City of Oakland’s contract policies, practices, and procedures- to access contract opportunities for the most impacted populations. Provide department staff with guidance on strategies and best practices to increase participation of under-represented local businesses and small local businesses. 	
Staff Training	<ul style="list-style-type: none"> Updated the Agenda Report Training to clarify what information, including L/SLBE outreach and participation, should be included in Agenda Reports for contract awards. 	<ul style="list-style-type: none"> In Fall, 2023, offering updated Citywide Trainings on the City’s requirements related to local and local small business participation (L/SLBE), local hiring, and wages and benefits in contracts for construction, goods and services, and professional services from the initial stages of procurement, to the close-out of projects and contracts.

	Executed/Ongoing	Planned/Pending
Contracting Mechanisms – continued		
Professional Services Contracting Function Moved to Finance	<ul style="list-style-type: none"> In an effort to improve the efficiency of procurement for professional services and grants, the Contracts Unit in DWES moved to the Finance Department, Controller’s Bureau, effective June 12, 2023. 	<ul style="list-style-type: none"> Continuing to implement contracting efficiencies.
DWES Compliance Monitoring		
DWES Staffing Reorganization	<ul style="list-style-type: none"> Given frozen positions, recently pivoted compliance staff responsibilities so that tasks are redistributed, and compliance officers now function as compliance specialists versus compliance generalists. Staff are now organized across two program divisions, each with two units. 	<ul style="list-style-type: none"> Assessing how the reorganization is functioning and course correcting as necessary. Creating Standard Operating Procedures/Training Manual for all compliance activities to ensure consistency. Building capacity/strategies to: <ul style="list-style-type: none"> Monitor compliance during the life of a contract (Ex. payments and change orders). Maximize L/SLBEs in the City’s purchasing of goods and commodities. Expedite certifications and compliance reviews. Respond promptly and thoroughly to complaints.
Compliance Software & Tools	<ul style="list-style-type: none"> Purchased additional B2GNow software modules that focus on monitoring contracting compliance. 	<ul style="list-style-type: none"> Continuing to implement various process improvements.
Forms & Schedules	<ul style="list-style-type: none"> Working on updating/automating Forms and Schedules. 	
Data Collection & Reporting	<ul style="list-style-type: none"> Performed an initial analysis of certification data to determine the impact of implementing a headquarters requirement for L/SLBE certification. Have since completed a data/systems audit and created a data insights “dream list,” including contracting data broken down by race, ethnicity, business size, and industry/type of work. 	<ul style="list-style-type: none"> Transforming DWES into a data-driven department with regular public reports available to the public. Aligning fiscal information with L/SLBE certification status.

	Executed/Ongoing	Planned/Pending
Systems Enhancements		
Racial Equity Impact Analysis (REIA)	<ul style="list-style-type: none"> Currently performing a Racial Equity Impact Analysis to systematically examine how different racial and ethnic groups 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. Did a preliminary review of data related to restricting certification to businesses only headquartered in Oakland. Currently compiling contract awards from 7/1/2021 to date to analyze trends. Anticipate completing analysis in the first quarter of 2024. 	
Contracting Mapping	<ul style="list-style-type: none"> Finalized a contract with Management Partners to prepare a Process Map of the City's Contracting Process and develop a report of observations and recommendations for improvement. 	<ul style="list-style-type: none"> Identifying and operationalizing opportunities for improvement identified in the report that will maximize contracting equity.
Cooperative Agreements, Licensing Agreements, Gifts in Place	<ul style="list-style-type: none"> Worked with Departments to negotiate with their contractors to honor the spirit of the L/SLBE requirements in agreements in which the L/SLBE Program does not apply. 	<ul style="list-style-type: none"> Suggesting proposed edits to the L/SLBE Program to ensure L/SLBE requirements can be consistently included in the different kinds of City agreements.
Equity in Infrastructure Project (EIP)	<ul style="list-style-type: none"> The Directors of Workplace and Employment Standards, Oakland Public Works, Race & Equity, and Oakland Department of Transportation met with Phil Washington, CEO of Denver International Airport, and co-founder of the Equity in Infrastructure Project (EIP), along John D. Porcari, former Deputy Secretary of the U.S. Department of Transportation. EIP was founded in anticipation of the \$1.2 trillion Infrastructure Investment and Jobs Act, along with regional and state infrastructure investments, and works to fulfil President Biden's Justice 40 Initiative and Executive Order 14008 which strive to have 40% of Federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution. The four Department Directors that met with Phill Washington have recommended that the City sign on to the EIP Pledge. In addition to potentially increasing the City of Oakland's competitive advantage for federal and state funding opportunities, signing on to the EIP Pledge affirms the City of Oakland's commitment to building greater racial equity and aligns the City with other early adopters across the United States that are making bold and innovative efforts to improve public contracting processes to create more opportunities for minority and women-owned businesses. 	
Small Business Advisory Council Recommendations	<ul style="list-style-type: none"> Researched various models of small business advisory councils and made recommendations for a possible small advisory council structure for the City of Oakland. 	

The efforts that are being conducted through this process will continue to help with the citywide priority of **responsive and trustworthy government**.

FISCAL IMPACT

There is no fiscal impact associated with the preparation of this Informational Report.

PUBLIC OUTREACH / INTEREST

No public outreach has been conducted for this Informational Report beyond the required posting to the City's website. However, all of the efforts summarized above have been driven by engagement with various stakeholders, including those who do business with the City, those who have been unsuccessful in doing business with the City, and those who have chosen not to do business with the City. Community input is central to the people-powered approach to ensuring inclusive and responsive government.

COORDINATION

Preparation of the Informational Report was done in coordination between the Department of Workplace & Employment Standards and the Offices of the City Administrator and City Attorney's Office.

The initiatives detailed in this report have been designed and operationalized in coordination with the Department of Workplace & Employment Standards, Offices of the City Administrator and City Attorney, and the departments of Economic and Workforce Development, Finance, Information Technology, Public Works, Race & Equity, and Transportation.

SUSTAINABLE OPPORTUNITIES

Economic: The City's volume of procurement activity provides significant opportunity for advancing City goals and supporting local and small businesses, particularly from communities that have been historically disadvantaged.

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

Race & Equity: Equity is the main driver of all the initiatives described in this report. These strategies strive to provide greater opportunities for all Oakland businesses and residents, including black, indigenous, and people of color who own and operate small local businesses. Historical and present inequities have led to exclusion of these groups and inequitable representation in City contracts. These strategies will remove barriers, improve access to City contracts, and increase participation opportunities for historically excluded business-owners. Further strategies, practices, and policy and regulatory considerations will be recommended based on the findings of the Disparity Study, the Process Map of the City's Contracting Process, and the Racial Equity Impact Analysis that are underway.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive An Informational Report From The City Administrator On Recent and Planned Efforts to Broaden and Deepen Participation From Local and Small Local Businesses And Improve Fairness and Equity in the City's Contracting Process.

For questions regarding this report, please contact Emylene Aspilla, Director, Department of Workplace & Employment Standards, at easpilla@oaklandca.gov.

Respectfully submitted,



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