

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED

APPROVED AS TO FORM AND LEGALITY
[Signature]
CITY ATTORNEY

INTRODUCED BY COUNCIL MEMBER _____
2011 DEC 8 AM 11:09

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 12389 C. M. S., WHICH AUTHORIZED OAKLAND'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE (L/SLBE) AND OTHER SOCIAL EQUITY POLICIES, REVISING THE L/SLBE PROGRAM TO CHANGE BUSINESS SIZE STANDARDS, LOCAL AND SMALL LOCAL BUSINESS PARTICIPATION REQUIREMENTS, ESTABLISH NEW SMALL BUSINESS CATEGORIES, ADD BID DISCOUNTS AND PREFERENCE POINTS AND ESTABLISH MANDATORY AND OPTIONAL PRE-QUALIFICATION PROCESSES FOR OAKLAND CERTIFIED SMALL LOCAL BUSINESSES (PREFERRED SMALL LOCAL BUSINESS PROGRAM)

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

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

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

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

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

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

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

WHEREAS, Oakland businesses are underutilized in Oakland and in the greater Bay Area; and

WHEREAS, enhancements of Oakland's local business enterprise purchasing programs may increase the number of firms with primary business offices in Oakland by encouraging firms to move to Oakland and creating opportunities for the formation of new Oakland-based firms; and

WHEREAS, Oakland contracting opportunities present a significant financial opportunity for underutilized Oakland businesses to get work and thereby bolster Oakland's economy; and

WHEREAS, Oakland contracting opportunities present a significant opportunity for Oakland businesses to build capacity and experience in their fields, and will later assist them in gaining additional work in these fields in Oakland and other jurisdictions, which would significantly bolster Oakland's economy; and

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

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

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

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

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

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

WHEREAS, the existing requirement for 20% L/SLBE participation has been highly successful and demonstrates the capacity to reach at least a 50% level of L/SLBE participation in awarding contracts to L/SLBE firms as follows: (a) \$5,691,279 of \$8,311,541 (68.4%) paid to competitively bid construction contractors awarded in FY 2010-11 was paid to L/SLBE firms; (b) \$1,418,282 of the \$1,418,282 (100%) spent on On-Call Construction Contracts in FY 2010-

11 were made to L/SLBE firms; (c) \$ 12,470,354 of the \$18,404,238 (67.7%) committed to As-Needed Architecture and Engineering Contracts over the last three years was given to L/SLBE firms; and (d) 3,288,024 of the \$4,077,872 (80.6%) paid to As-Needed Environmental and Hazardous Waste Contracts was paid to L/SLBE firms; and

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

WHEREAS, the Council of the City of Oakland further finds that revised Local and Small Local Business Enterprise Program (L/SLBE) will include new mechanisms and methodologies to improve the effectiveness of City policy in maximizing participation of small local businesses in the City's contracting process while continuously improving the efficiencies with regard to doing business with the City of Oakland; and

WHEREAS, toward these objectives the Council wishes to: 1) increase local business participation requirements from 20% to 50% for professional services, construction and procurement contracts, 2) lower the small business size standard to 30% of the most recently published Small Business Administration (SBA) size standards, 3) establish new categories for very small businesses and local businesses that produce goods, 4) add or increase bid discounts and preference points to be taken into account for award of professional services, construction and procurement contracts, 5) add preference points for business duration in Oakland and Oakland resident workforce, and 6) implement mandatory and optional pre-qualification processes for professional and construction contracts under \$250,000 targeted to Oakland certified small local businesses;

Now, Therefore, The Council Of The City Of Oakland Does Ordain As Follows:

Section 1. Amendments to Ordinance No. 12389 C.M.S. Revising Oakland's Local and Small Local Business Enterprise Program.

Ordinance No. 12389 C.M.S., passed December 18, 2001, that adopted Oakland's Local and Small Local Business Enterprise Program (L/SLBE), is hereby amended to change business size standards and establish new categories, increase local and small local business participation requirements, establish new preference program requirements for Very Small Business Enterprises (VSBE) local businesses that produced goods (LBE-LPG) and increase penalties for noncompliance, as follows:

- The Local and Small Local Business Enterprise program requirements described herein will be implemented as a one-year pilot program effective January 1, 2012. Staff will return in December 2013 with a report on the progress achieved and issues identified along with suggested changes and/or conclusions moving forward.
- The City of Oakland will increase the current level of local and small local business participation for Small Local Business Enterprise (SLBE) and Local Business Enterprise

(LBE) participation. The new L/SLBE Program will include a 50% L/SLBE participation requirement with 25% participation for LBE's and 25% participation for SLBE's; and

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

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

- The new 50% L/SLBE Program will allow the assessment of penalties at 1.5 times the non-compliance shortfalls; and
- All using agencies and departments will consider un-bundling large procurements into smaller contracts where ever feasible.
- Mandatory and Optional Preferred Small Local Business (“MPSLB” and “OPSLB”) Programs for Professional Pre-Construction and Construction Services: 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 businesses on the MPSLB pre-qualified lists.
 - b. Optional Preferred Small Local Business (OPSLB). The City may, in its discretion and when deemed by the City Administrator to be in the best interests of the City, establish a list of pre-qualified businesses to perform as needed and specified professional services (pre-construction excluded) under \$250,000.
 - i. Qualified professional businesses will be included on the OPSLB pre-qualified lists.
 - ii. The City will solicit proposals for these contracts from at least three businesses on the OPSLB pre-qualified lists.
 - c. MPSLB contracts and OPSLB 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.
 - d. 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 compliance with Oakland’s purchasing programs such as Living Wage and Equal Benefits.

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 - d. 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 compliance with Oakland’s purchasing programs such as Living Wage and Equal Benefits.

- e. 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 Oakland's social equity programs.
- f. For professional services, the City Administrator may solicit proposals on the open market without advertising if at least three proposals are not submitted by firms on the pre-qualified list.
- g. For Construction services, the City Administrator may solicit bids on the open market, without advertising if all responsive bids exceed the engineer's estimate.
- Waiver of Small Local Business Enterprise Subcontracting Requirements for Local and Small Business Enterprises Applying for Professional Services Contracts. The City will waive small local business enterprise subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the primary contractor with the City.

SECTION 2. Severability.

If any section, subsection, subpart or provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Ordinance and the application of such to other persons or circumstances shall not be affected thereby.

SECTION 3. Effective Date.

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION:
