



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Deborah Barnes
Director, Department of
Workplace and Employment
Standards

SUBJECT: Emergency Ordinance to Amend
Ordinance No. 13640 C.M.S.

DATE: April 13, 2021

City Administrator Approval 

Date: April 22, 2021

RECOMMENDATION

Staff Recommends That The City Council Adopt An Emergency Ordinance Amending Ordinance No. 13640 C.M.S., Which Revised Oakland's Local And Small Local Business Enterprise (L/SLBE) Program, To Make Clarifying Edits To And Delete Unnecessary Language In The Local And Small Local Business Enterprise Program Manual, Including But Not Limited To: Deleting Language Regarding Waiver of Small Local Business Enterprise Subcontracting Requirements; Clarifying How Bid Discounts and Preference Points Will Be Awarded For Very Small Local Business Enterprise (VSLBE) Participation; Clarifying Program Certification Criteria; And Deleting Definition of Sheltered Market Program, As Set Forth In Exhibit 1 Attached Hereto.

EXECUTIVE SUMMARY

On February 24, 2021, the City of Oakland adopted Ordinance No. 13640 C.M.S. which provides for revisions to the City's Local and Small Local Business Enterprise Program (L/SLBE). District 6 Councilmember Loren Taylor and City staff found that the City's program contained several areas warranting revision to better address the needs of the business community. Specifically, the Ordinance revised Oakland's L/SLBE program provisions to change local and small local trucking participation requirements, add new local business categories and certification criteria, change the definition of "substantial presence," define "local-based manufacturer", add and change bid discounts, limit modifications to L/SLBE schedules after bid opening, and provisions related to disposition and development agreements and cooperative agreements, and update the list of applicable schedules.

After its enactment, staff reviewed the Ordinance against the LBE Program document and noted some additional points that warranted refinement to make the Program and the Ordinance consistent.

City Council
May 4, 2021

REASON FOR URGENCY

The urgency for enactment of an emergency ordinance is predicated on the fact that the revised program has already been enacted and the need to have a finalized document for inclusion in bid specifications and contract documents currently moving forward. Any delays in adoption of the Program changes would cause delays in the contracting process.

BACKGROUND / LEGISLATIVE HISTORY

On February 24, 2021, the City Council enacted Ordinance No. 13640 C.M.S., amending Ordinance No. 13101 C.M.S., which revised Oakland's L/SLBE program provisions, to change local and small local trucking participation requirements, add new local business categories and certification criteria, change the definition of "substantial presence," define "local-based manufacturer", add and change bid discounts, limit modifications to L/SLBE schedules after bid opening, and provisions related to disposition and development agreements and cooperative agreements, and update the list of applicable schedules.

ANALYSIS AND POLICY ALTERNATIVES

Changes to the Program are enumerated as follows (strike through indicates language deleted and boldface type indicates language added). These proposed modifications are recommended to further clarify and/or correct language in the L/SLBE Program for the sake of consistency.

Page 5, #5 – changes application of a bid discount of 5 percent to 10 percent (for construction) and changes the award of preference points from 5 percent to 10 percent (for professional services) for Very Small Local Business Enterprises (VSLBE) prime contractor where the VSLBE meets a 50 percent subcontractor goal. This change reflects the City's policy to double the award for VSLBE participation

Page 6, paragraph 5– strikes the language "*The City has waived small local business enterprise (SLBE) subcontracting requirement to Oakland certified local businesses that apply for professional services contracts as the prime contractor with the City. The SLBE requirement still applies for non-certified LBE and non-local business enterprises*" This language no longer applies.

Page 7, paragraph 2 – adds "*with minimum participation*" to the sentence "If the proposal **with minimum participation** is selected, the proposer shall be able to adjust up in order to meet the 50% requirement." Language added for greater clarity.

Page 14, paragraph 1 – 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. ~~Over and above the~~ **If the proposed L/SLBE participation exceeds the minimum participation requirement, bid discounts are 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 VLSBE participation.** ~~except by VSLBEs, for which no more than ten percent (10%) preference points may be earned.~~ Tables I and II below show the distribution of bid discounts: This language was changed to better clarify the award of bid discounts.

Table I adds "L/SLBE" to the title of the table

Table II – adds "Prime Contractor" to the title of the table

Page 14, paragraph 2 – 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.** ~~Over and above the 50%, requirement~~ 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 VLSBE participation.** ~~except by VSLBEs for which no more than ten percent (10%) preference points may be earned.~~ **Tables III, IV and V below show the distribution of preference points.**

Page 15 – add language to table title: Table III – **L/SLBE Preference Points for Professional Services Projects for Non-Certified and Non-Local Businesses**

Add language to table title: Table IV – **L/SLBE Preference Points for Professional Service Projects for Certified Businesses**

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 ~~5~~10% shall be applied to the VSLBE prime contractor during bid evaluation, and for professional services contract proposals a ~~bid discount of 5~~10 preference points shall be applied to the VSLBE prime contractor that meets a 50% subcontractor goal.

Page 21, LBE Certification Criteria – part 1 a. – Headquartered (primary office location) within the Oakland geographic region (City of Oakland) ~~and or...~~

LBE Certification Criteria – part 2 – Fully operational with a valid business tax ~~license~~ certificate for at least twelve (12) months

SLBE Certification criteria – ~~All of the above except~~ **1. Last most recent three years of tax returns, 2. Three years' average gross receipts must fall at or below 20% of the SBA size standard for the relevant industry sector, 3. Headquartered in Oakland, 4. Home-based office whereby a valid certification is in place 12 months prior to the closing date of a competitive process (additional minimum certification criteria : Fixed home-based offices should have the owner's residence as the business' sole headquarters at least twelve (12) consecutive months 6. Operations and employees in fixed office space 7. Current**

permits and fees, 8. Valid documents certifying business operations (e.g. contracts, bills etc) 9. Registration in City's iSupplier system Language was added to make this definition consistent with the definition of LBE

3. VSLBE Certification Criteria – ~~All of the above~~ **Same as SLBE certification, plus** Language to clarify definition and make it consistent with related criteria

4. LPG/LBE Certification Criteria – Same as LBE criteria ~~except~~ **plus**

5. NFP/LBE (Not for Profit/ Local Business Enterprise – Same as LBE **certification criteria**

6. NFP/SLBE (Not for Profit/ Small Local Business Enterprise – Same as SLBE **certification criteria**

7. Remove “JV (Joint Venture) – ~~Same as L/SLBE certification criteria, plus~~”: as it is not a certification category

8. SBA-LBE (Small Business Administration – ~~Sized~~ Local Business Enterprise – Same as LBE **certification criteria**

Page 24 – add **Copies of most recent Quarterly Wage and Withholding Reports (DE-6)** to the list of documents reviewed to make a determination of eligibility for certification.

Page 37 – delete the paragraph describing Sheltered Market Program – deleted per request of the District 6 Councilmember and inadvertently left in.

All changes to the policy can also be found in the redline version, attached as **Exhibit 1** to the proposed ordinance.

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. There are no fiscal impacts because of this action.

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 the District 6 Council Office to assist with shaping the policy changes.

COORDINATION

The forgoing modifications were made in coordination with the Department of Workplace and Employment Standards, the Office of the City Attorney, the Budget Office, the Office of the City Administrator and the District 6 Council Office.

SUSTAINABLE OPPORTUNITIES

Economic: Adoption of the forgoing amendments to Ordinance No. 13640 C.M.S. will serve to further enhance the participation of local, small local, and very small 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. 13640 C.M.S. will serve to provide greater opportunities for people of color and women who own and operate local and small local businesses whose participation in the City's procurement process would be otherwise adversely impacted.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt An Emergency Ordinance Amending Ordinance No. 13640 C.M.S., Which Revised Oakland's Local And Small Local Business Enterprise (L/SLBE) Program, To Make Clarifying Edits To And Delete Unnecessary Language In The Local And Small Local Business Enterprise Program Manual, Including But Not Limited To: Deleting Language Regarding Waiver of Small Local Business Enterprise Subcontracting Requirements; Clarifying How Bid Discounts and Preference Points Will Be Awarded For Very Small Local Business Enterprise (VSLBE) Participation; Clarifying Program Certification Criteria; And Deleting Definition of Sheltered Market Program, As Set Forth In Exhibit 1 Attached Hereto.

For questions regarding this report, please contact Deborah Barnes, Director, at (510) 238-6270.

Respectfully submitted,

Deborah Barnes

DEBORAH BARNES
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Employment Standards

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City Council
May 4, 2021