



AGENDA REPORT

TO: Oakland City Council, Mayor Libby
Schaaf, and City
Administrator Ed Reiskin

FROM: Loren M. Taylor
Councilmember – District 6

SUBJECT: Local Business Empowerment
Through Contracting (LBETC)
Resolution

DATE: December 10, 2020

RECOMMENDATION

RESOLUTION DIRECTING THE CITY ADMINISTRATOR TO EXPLORE THE FEASIBILITY OF AND DEVELOP AN IMPLEMENTATION PLAN AND REPORT BACK TO COUNCIL BY APRIL 2021 FOR: (1) ESTABLISHING AND OPERATING AN OWNER-CONTROLLED INSURANCE PROGRAM (OCIP); AND (2) ESTABLISHING AND OPERATING A CONTRACTOR DEVELOPMENT PROGRAM; AND (3) IMPLEMENTING A PLAN THAT ENSURES A MORE TRANSPARENT AND EQUITABLE ON-CALL CONTRACTING SELECTION AND SOLICITATION PROCESS; AND (4) MODIFYING THE PREFERRED SMALL LOCAL BUSINESS PROGRAM TO INCLUDE ALL PROFESSIONAL SERVICES AND GRANTS; AND (5) ESTABLISHING AND FUNDING TWO (2) CONTRACT COMPLIANCE OFFICERS POSITIONS AND ONE (1) ADMINISTRATIVE ASSISTANT II POSITION NECESSARY TO IMPLEMENT THE L/SLBE PROGRAM ENHANCEMENTS IN ORDINANCE [INSERT ORDINANCE #]; AND (6) ESTABLISH AN SLBE/VSLBE SET ASIDE PROGRAM FOR ENSURING GREATER ACCESS FOR SLBES AND VSLBES AS PRIME CONTRACTORS; AND (7) ESTABLISHING A LOCAL HOMEGROWN CREDIT; AND (8) IMPLEMENTING OTHER PROGRAM ENHANCEMENTS TO ADDRESS ISSUES OF RACIAL AND GENDER EQUITY

EXECUTIVE SUMMARY

Based on feedback from the City of Oakland business community, other community advocates, and staff the City Council requests that staff explore and report back on the feasibility of implementing the following opportunities and where feasible include a proposed implementation plan.

- 1) To establish and operate an **Owner Controlled Insurance Program (OCIP)** either independently or in partnership with the Port of Oakland for construction and professional services projects. The report should include an assessment of OCIP programs being administered in other jurisdictions including San Francisco and Los Angeles, and include in such report a roadmap toward full implementation by April, 2021, and
- 2) To establish and operate a **Contractor Development Program** including the potential for SLBE Bonding (similar to the Alameda County program) and SLBE contract financing support (similar to the San Francisco contracting program), which could be implemented

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in coordination with other local jurisdictions such as the Port of Oakland, OUSD, Alameda County or Peralta Colleges; and

- 3) To **combine the on-call contracts procurement process and the local/small local business enterprise program** so that public works contracts are transparently and equitably distributed across the full list of certified SLBE vendors for construction projects less than \$100,000 in value and professional services contracts less than \$50,000 in value; and
- 4) To modify the preferred small local business program to **include all professional services and grants** and not just professional pre-construction services; and
- 5) To establish and fund two (2) Contract Compliance Officer and one (1) Administrative Assistant position necessary to implement the L/SLBE Program enhancements in Ordinance [*Insert Ordinance #*] within the Contracts & Compliance Division of the Department of Workforce & Employment Standards.
- 6) To establish an SLBE/VSLBE set aside program ensuring greater access for SLBEs and VSLBEs as prime contractors.
- 7) **To Establish a Local Homegrown Credit** incentive for LBE/VSLBEs who are born and raised in Oakland such that their businesses receive an even greater competitive advantage when competing with non-native Oaklanders to ensure that our youth are given opportunities to build their livelihoods in the city they grew up in.

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. 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 and establish new LBE categories, increase local and small 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.

In response to concerns raised by local businesses and other community stakeholders, Councilmember Taylor in partnership with City staff developed a list of recommendations to enhance the L/SLBE Program and ensure it delivers on its goals of eliminating race and gender disparities in City Contracting. This resolution and its accompanying ordinance propose solutions that can be implemented immediately or within the next several months. On November 17th, the CED Committee forwarded this legislation to the full council for adoption.

Extensive engagement with community stakeholders has continued allowing for further enhancements of the legislation which is expected to create greater access to small Oakland business and address disparities that are more heavily impacting Black and women-owned businesses.

ANALYSIS AND POLICY ALTERNATIVES

The City of Oakland faces a significant economic crisis as a result of the COVID-19 pandemic which has forced many Oakland businesses to close, threatens the existence of many others, and has resulted in significant loss of jobs and high unemployment in Oakland. In addition, to proposed Ordinance changes that will affect the City's Local and Small Business Enterprise Program, the Council is requesting that staff provide feedback on the following policy issues by April 2021:

- 1) To establish and operate an Owner Controlled Insurance Program (OCIP) either independently or in partnership with the Port of Oakland for construction and professional services projects. The report should include an assessment of OCIP programs being administered in other jurisdictions including San Francisco and Los Angeles, and include in such report a roadmap toward full implementation**

Insurance is needed to protect the property owner against contractor negligence, or other issues that may arise for which the property owner could be deemed liable. The insurance costs are a standard requirement for contractors to have, and the costs are usually similar regardless of the contractor's size. This regressive requirement disproportionately impacts small contractors compared with their larger competitors and leads to a competitive disadvantage.

An OCIP or owner-controlled insurance program is an insurance policy held by the property owner during the construction of a property which eliminates the disproportionate burden from being placed on small local and minority contractors. These OCIP programs can also be a cost savings for cities because they allow for aggregating insurance costs and economies of scale compared to the individual insurance cost that is otherwise priced into the cost of each product and passed through to the City by contractors.

Partnering with the Port (or another jurisdiction) to implement an OCIP program could further reduce costs by increasing economies of scale. The goal is to move quickly to create a solution to a recognized barrier if City staff finds that the Port is open to a partnership with regards to an OCIP.

- 2) To establish and operate a Contractor Development Program including the potential for SLBE Bonding (similar to the Alameda County program) and SLBE contract financing support (similar to the San Francisco contracting program), which could be implemented in coordination with other local jurisdictions such as the Port of Oakland, OUSD, Alameda County or Peralta Colleges**

In recognition of the need for more focused support to strengthen small, local, minority, and women-owned businesses, many jurisdictions have created programs to increase

their ability to access and succeed in securing contracting and procurement opportunities. These programs often include improving overall business health, bonding services, and contract financing support. Oakland should explore either creating its own program or collaborating on existing program offered by Alameda County or one of the other local jurisdictions given the overlap between contractors that are targeted.

- 3) To combine the on-call contracts procurement process and the L/SLBE program so that public works contracts are transparently and equitably distributed across the full list of certified SLBE vendors for construction projects less than \$100,000 in value and professional services contracts less than \$50,000 in value**

As stated in the 2017 Race and Gender Disparities Study:

The Department of Public Works is authorized to use on-call procurement method to award small construction and professional services projects without competition or additional approval. The contractors that receive the small construction and professional services projects are selected by the department manager who is authorized to award the contract.

This procurement method limits competition for many small construction and professional services projects and allows a project manager to determine the businesses awarded many small projects. There is also evidence that either large contracts are being awarded using this procurement method or select businesses are receiving multiple small projects because the total payments to some contractors far exceed the \$25,000 threshold that defines a small project.

The City Council recognizes that the current use of the on-call contracting process and subjectivity around the contract award decision-making contribute to a lack of transparency and equitable decision-making that likely contributes to disparities that disproportionately impact Black and women-owned local businesses. The proposal is to City staff to return with a plan to address these issues by strengthening the alignment between the On-Call Contracting process and the L/SLBE Program goals and practices.

- 4) To modify the preferred small local business program to include all professional services and not just professional pre-construction services**

The goal of this item is to include all professional services to increase the number of City contracting opportunities for Oakland businesses. While a significant portion of the L/SLBE program is focused on construction and pre-construction opportunities, the City Council recognizes the significant opportunity to ensure greater contracting and procurement spend goes through the LBE/SLBE program from a broader range of City of Oakland departments.

- 5) To establish and fund the two (2) Contract Compliance Officers and one (1) Administrative Assistant position necessary to implement the L/SLBE Program enhancements in Ordinance [insert ordinance #] within the Contracts & Compliance Division of DWES.**

A critical factor to the success of this program is both the startup costs and ongoing operational costs of monitoring and compliance. According to the 2017 Race and Gender Disparities Study, "The existing staffing levels in the Contracts and Compliance Division should be augmented to increase the personnel in at least three functional areas: certification, data management, and contract compliance." This legislation prioritizes the addition of two additional staff members proposed to support enhanced program monitoring and compliance. Similarly, when the City adds parking enforcement officers to the city budget, there is no anticipated net financial impact to the city of Oakland given the fact that the added positions are expected to be revenue neutral given the anticipated fees and fines that will be levied and collected due to findings of non-compliance.

As recommended in the 2017 Race and Gender Disparities Study, below are the proposed scope and duties of the positions that must be funded along with the adoption of these Program enhancements

1. Business Analyst (Administrative Assistant II)

The business analysis should implement compliance systems for tracking certification, verifying and reporting monthly subcontractor payments, recording exemptions to program requirements in a digital format, producing utilization reports, and querying the Oracle Financial System. The business analyst should manage all solicitations received from the user departments and develop comprehensive outreach strategies and communication with businesses using digital media vehicles. Supplier redesign and data management should be a critical responsibility

The Business Analyst's information technology capabilities, experience, and knowledge of databases, including the design, data collection and manipulation functions should support the department and the Contracts & Compliance staff's management of records and generation of reports. This role would also require the ability to work with businesses with diverse interests and backgrounds.

2. Two Contract Compliance Officers

The Contract Compliance Officer should advise, monitor, and when appropriate levy fees and fines related to L/SLBE and M/WBE contract compliance. This will include subcontractor pre-award goal fulfillment, commercially useful function review, certification site visits and desk audits, compliance investigations, and dispute resolution. In addition, the Compliance Officer should participate in business outreach activities to increase the applicant pool

6) To establish a set-aside program for SLBE businesses to access formal contacts as prime contractors

San Francisco as well as other jurisdictions have set-aside programs where a specific percentage of their spending is dedicated for small local businesses to serve as Prime Contractors. Staff should look at other programs in place within other jurisdictions in developing their recommendations. The analysis shall include consideration of which contracting requirements should be waived and not be applied to SLBE/VSLBEs who

participate as prime contractors through this program to reduce burden on an emerging business with less resources than other competitors.

- 7) **To Establish a Local Homegrown Credit** incentive for LBE/VSLBEs who are born and raised in Oakland such that their businesses receive an even greater competitive advantage when competing with non-native Oaklanders to ensure that our youth are given opportunities to build their livelihoods in the city that they grew up in.

FISCAL IMPACT

A critical factor to the success of this program is both the startup costs and ongoing operational costs of monitoring and compliance. According to the 2017 Race and Gender Disparities Study, “The existing staffing levels in the Contracts and Compliance Division should be augmented to increase the personnel in at least three functional areas: certification, data management, and contract compliance.” This legislation prioritizes the addition of three additional staff members proposed to support enhanced program monitoring and compliance. Similar to when the city adds parking enforcement officers to the city budget, there is no anticipated net financial impact to the city budget given the fact that the added positions are expected to be revenue neutral given the anticipated fees and fines that will be levied and collected due to findings of non-compliance.

POSITION	BASE	FRINGE	TOTAL COST
CONTRACT COMPLIANCE OFFICERS (2)	193,314.96	151,102.70	344,417.66
LBE/SLBE ADMINISTRATIVE ASSISTANT II	65,433.00	51,145.05	116,578.05
TOTALS	258,747.96	202,247.75	460,995.71

BUDGETED AT STEP 3

PUBLIC OUTREACH / INTEREST

In developing and refining this proposal, outreach was made in coordination with District 6 Councilmember Loren Taylor’s office to several City of Oakland contractors and professional services providers, the Oakland Chambers of Commerce (including the Metropolitan Chamber, and the African American Chamber), representatives from Labor, and counterparts with the Port of Oakland who oversee and manage their diverse contractors and supplier program.

COORDINATION

This report was prepared in coordination between the City Attorney’s Office, City Administrator’s Office, Workplace & Employment Standards, Public Works, Transportation and various other departments.

SUSTAINABLE OPPORTUNITIES

Economic:

By empowering Local businesses and providing them greater access to contracting opportunities with the City of Oakland, they will be able to increase revenue and increase their ability to reinvest into the local economy through job creation, increased contracting and subcontracting with other local businesses.

Environmental: No direct environmental impacts have been identified.

Social Equity: The proposed changes to the L/SLBE Program directly address barriers that are experienced by Minority and Women owned businesses as documented in the 2017 Race and Gender Disparities study – specifically, African-American owned and Women owned businesses in Oakland. By removing these barriers, the proposed measures are expected to increase opportunities for equitable access to city contracting opportunities and reduce the disparities.

ACTION REQUESTED OF THE CITY COUNCIL

That the city council approve a resolution directing the city administrator to explore the feasibility of and if feasible, develop an implementation plan for (1) establishing and operating an owner controlled insurance program (OCIP); and (2) establishing and operating a contractor development program; and (3) implementing a plan that ensures a more transparent and equitable on-call contracting selection and solicitation process; and (4) modifying the preferred small local business program to include all professional services and grants; and (5) establishing and funding two (2) contract compliance officers positions and one (1) business analyst position necessary to implement the L/SLBE program enhancements in ordinance *[insert ordinance #]*; and (6) establish an SLBE/VSLBE set aside program for ensuring greater access for SLBEs and VSLBEs as prime contractors ; and (7) establishing a local homegrown credit; and (8) implementing other program enhancements to address issues of racial and gender equity, reporting back to council by April 2021.

For questions regarding this report, please contact Councilmember Loren Taylor's office at (510) 238-7006.

Respectfully submitted,



LOREN M. TAYLOR
Councilmember, District 6
Chair, Life Enrichment Committee
Member, Community & Economic Development
AND Public Safety Committees