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## **SUPPLEMENTAL AGENDA MATERIAL**

**Meeting Date: May 25, 2021**

**Item Number: 31**

**Item Description: COVID Economic Recovery - Expanding Local Purchasing Preferences to Rebuild the City's Local Economy and Tax Base**

**Submitted by: Councilmember Sophie Hahn**

Adds Mayor Jesse Arreguin and Councilmember Terry Taplin as Co-Sponsors, and corrects a formatting error in the recommendation.



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**CONSENT CALENDAR**

May 25, 2021

To: Honorable Members of the City Council  
From: Councilmember Sophie Hahn (Author), Councilmember Ben Bartlett (Co-Sponsor), Mayor Jesse Arreguin (Co-Sponsor) and Councilmember Terry Taplin (Co-Sponsor)  
Subject: COVID Economic Recovery - Expanding Local Purchasing Preferences to Rebuild the City's Local Economy and Tax Base

**RECOMMENDATION**

1. To support urgently needed economic recovery in the wake of the COVID-19 crisis and direct more City of Berkeley dollars to Berkeley businesses, adopt a Resolution to expand Berkeley's existing local vendor preference program, effective September 1, 2021, by increasing the value of eligible contracts as follows:
  - a. Contracts for supplies, equipment, materials, and other goods, raise the eligible contract value to \$100,000.
  - b. Contracts for non-professional services, raise the eligible contract value to \$250,000.
2. Direct the City Manager to develop and implement a local vendor preference program for contracts for professional services of up to \$250,000 in value (or up to a higher amount), to be effective January 1, 2022, to further support economic recovery in the City of Berkeley.
3. Refer to the City Manager to reach-out to Berkeley businesses to publicize, offer training and provide other meaningful access to the City's expanded local preferences programs including outreach to businesses owned by people of color, people with disabilities, women, immigrants, and other traditionally marginalized business communities to ensure equitable access to contracting opportunities with the City of Berkeley.
4. Refer to the City Manager to quickly incorporate, when available, any relevant or actionable results of the Mason Tillman Associates study reviewing and identifying disparities in the awarding of contracts affecting local, small, emerging enterprises and other enterprises with possible barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts.<sup>1</sup>

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/05\\_May/Documents/2019-05-28\\_Item\\_28\\_Budget\\_Re-ferral\\_Berkeley\\_Inclusion.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/05_May/Documents/2019-05-28_Item_28_Budget_Re-ferral_Berkeley_Inclusion.aspx)

5. Refer to the City Manager to track and issue periodic reports to Council (or include in existing reports such as the annual Economic Dashboard), and/or to track on an online dashboard, the City's success expanding contracting for goods, equipment, and services with local vendors.

## **SUMMARY**

To support recovery from the COVID-related economic downturn and address the disadvantages Berkeley businesses face in the Bay Area's public contracting marketplace, Berkeley must take immediate action to expand its local preferences program for goods, equipment and non-professional services and implement a program of preferences for professional services.

Small local businesses are the heart and soul of Berkeley. They offer high quality goods and services that reflect our eclectic tastes and are infused with the care and expression of their owners. Berkeley's unique and distinctive small enterprises link neighbors in economic and social relationships and bind us together as a community.

Local enterprises are also key to Berkeley's economic health. Compared to national chains, local businesses invest a larger share of their revenues back into the local economy.<sup>2</sup> Locally owned businesses hire local workers and often provide better wages and benefits than national chains. Statewide, small businesses employ nearly half of the private workforce and account for nearly two-thirds of new jobs.<sup>3</sup> Local businesses also give life to our community, impacting not only the reality but also our perception of economic well-being.

The economic downturn caused by the COVID-19 health emergency has profoundly impacted Berkeley's local business community.<sup>4</sup> In the weeks and months following the initial outbreak, many small businesses experienced a severe drop in revenue, putting them at risk of shutting down. A year later, small businesses in some sectors have yet to recover, as necessary health and safety restrictions remain in place.<sup>5</sup>

Expanding local vendor preferences will increase local business participation in meeting the City's needs for goods, equipment, and services and serve as an important local stimulus as our economy recovers from the current economic downturn. Supporting Berkeley's small businesses has always been an important means to strengthen our local economy, employ local workers, and broaden Berkeley's tax base. Particularly now,

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<sup>2</sup> <https://ilsr.org/why-support-locally-owned-businesses/>

<sup>3</sup> <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04142955/2020-Small-Business-Economic-Profile-CA.pdf>; <https://www.dir.ca.gov/smallbusiness/index.htm>

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_26\\_Berkeley\\_Economic\\_Dashboards\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx)

<sup>5</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_26\\_Berkeley\\_Economic\\_Dashboards\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx)

as we seek to rebuild our local economy in the wake of the COVID-19 downturn, we must use every tool at our disposal, especially when we are spending public dollars.

A report by the consulting firm Civic Economics found that local businesses reinvest a higher percentage of their profits into the local economy, recirculating 45% of their revenue, compared to 17% recirculated locally by chain stores.<sup>6</sup> This is because local businesses hire local graphic designers to design their signs and materials, local contractors to build-out their work or retail spaces, employ local accountants, attorneys and tax preparers, and more. Local vendors thus have a significant economic multiplier effect, recirculating dollars that boost local economic activity, employ more local workers and professional services firms, and generate multiple layers of economic activity -- and tax revenue -- for the City.

Since 1983, the City of Berkeley has extended a local vendor preference program for certain goods and services. Today, the City provides a 5% preference on bids to local business enterprises for supplies, equipment, and nonprofessional services from \$100 to \$25,000.<sup>7</sup>

Neighboring jurisdictions including Oakland, San Francisco, San Jose, and Marin County also extend preferences to local businesses, including for professional services and higher value contracts. They recognize that when public dollars are spent, local businesses -- and their local economies -- will benefit. Berkeley's small businesses, particularly professional services such as engineering, architecture, environmental, legal, surveying, auditing, and other specialized and technical services, are thus at a competitive disadvantage seeking contracts in the region, while enjoying no equivalent preferences in their own City -- potentially resulting in a double-disadvantage.

Some Bay Area cities have enacted complex programs to advance opportunities for contracting with local businesses. Other jurisdictions, such as Marin County, have adopted simpler policies to promote similar goals. With respect to contracts for supplies, equipment, materials, and other goods and for non-professional services, which are already subject to a local preference program in Berkeley, this item raises the dollar amount of contracts eligible for this preference from \$25,000 to \$100,000 and \$250,000, respectively.

With respect to contracts for professional services, this item refers to the City Manager to develop and implement a similar local vendor preference based on models other cities and counties have implemented, adapting whatever approach they feel is most appropriate for Berkeley. In addition, the City Manager is encouraged to incorporate any actionable or relevant results of the forthcoming Mason Tillman Associates study reviewing and identifying disparities in the awarding of contracts affecting local, small,

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<sup>6</sup> <http://nebula.wsimg.com/31f003d5633c543438ef0a5ca8e8289f?AccessKeyId=8E410A17553441C49302&disposition=0&alloworigin=1>

<sup>7</sup> A local business is defined as "a business firm with fixed offices or distribution points located within the City of Berkeley boundaries and listed in the Permits and License Tax paid file, with a Berkeley business street address."

emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts.<sup>8</sup> Based on the findings from that study, a further expansion of Berkeley's preferences policies beyond the actions required by this item may be warranted to account for disparities that may be found.

In the meantime, to support Berkeley's urgent need to stimulate economic recovery, this item immediately raises the value of contracts for goods eligible for the City's existing local preferences and requires the City to extend local preferences to contracts for non-professional services no later than September 2021.

## **BACKGROUND**

### **Economic Emergency for Berkeley's Local Businesses**

The COVID-19 health emergency has created unprecedented challenges for Berkeley's small, local enterprises.<sup>9</sup> In the months following the initial outbreak, and subsequent Shelter in Place orders and other restrictions, many local businesses saw a dramatic drop in gross receipts as compared to the previous year.<sup>10</sup> A survey found that more than two fifths of Berkeley businesses expected greater than 80% revenue loss over the three months from when the pandemic began impacting the community.<sup>11</sup> A number of small businesses, lacking the financial cushion to absorb such a steep loss of revenue, were forced to close, reduce services, or lay off workers. Among Berkeley's largest employers, more than 3,000 people have been laid off, and countless more from smaller companies have lost their jobs.<sup>12</sup> Some owners and organizations face the possibility that the enterprises into which they have poured their lives may never return.

In March 2020, the Berkeley City Council acted quickly to meet the crisis, creating a tax-exempt relief fund to provide gap resources to small businesses, arts organizations, and others significantly impacted by the COVID-19 emergency.<sup>13</sup> Recently, resources have also been made available to support Berkeley's struggling childcare and early childhood education sectors.<sup>14</sup> Thanks to the generosity of the community and \$3 million approved

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<sup>8</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/05\\_May/Documents/2019-05-28\\_Item\\_28\\_Budget\\_Re-ferral\\_Berkeley\\_Inclusion.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/05_May/Documents/2019-05-28_Item_28_Budget_Re-ferral_Berkeley_Inclusion.aspx)

<sup>9</sup> <https://www.cityofberkeley.info/covid19-business/>

<sup>10</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/03\\_Mar/Documents/2020-03-17\\_Spe-cial\\_Item\\_03\\_Berkeley\\_COVID-19\\_Relief\\_Fund\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-17_Spe-cial_Item_03_Berkeley_COVID-19_Relief_Fund_pdf.aspx)

<sup>11</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_26\\_Berke-ley\\_Economic\\_Dashboards\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berke-ley_Economic_Dashboards_Update.aspx)

<sup>12</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_26\\_Berke-ley\\_Economic\\_Dashboards\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berke-ley_Economic_Dashboards_Update.aspx)

<sup>13</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/03\\_Mar/Documents/2020-03-17\\_Spe-cial\\_Item\\_03\\_Berkeley\\_COVID-19\\_Relief\\_Fund\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-17_Spe-cial_Item_03_Berkeley_COVID-19_Relief_Fund_pdf.aspx)

<sup>14</sup>

[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/01\\_Jan/Documents/2021-01-19\\_Item\\_20\\_Re-lief\\_for\\_Child\\_Care\\_Providers.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Documents/2021-01-19_Item_20_Re-lief_for_Child_Care_Providers.aspx)

by the Berkeley City Council, over \$4.5 million has been distributed to qualified organizations by the Office of Economic Development (OED).<sup>15</sup>

In April 2020, the City Council approved the creation of a special structured financial recovery loan fund -- the Save Our Small (SOS) Business Loan Fund -- to provide a supplemental source of capital for small businesses impacted by the COVID-19 emergency.<sup>16</sup> The State of California later announced a statewide loan fund based on the SOS model Berkeley passed, making these kinds of loans available to small businesses in Berkeley and across the state.<sup>17</sup>

Despite these and other bold actions by the City of Berkeley, our small businesses, non-profits, arts organizations, childcare providers, and other locally-based organizations continue to face extraordinary hardship. Small, local enterprises are key to Berkeley's economic health. Nothing signals economic distress to a community like empty storefronts and "for rent" signs on commercial buildings. It is therefore imperative that the City adopt additional policies to support recovery of a robust, locally-based economy and, by extension, the City of Berkeley's tax base.

### **Benefits of Local Preferences**

At least 45 states and numerous counties and cities across the U.S. have procurement policies designed to give local preferences to businesses meeting certain criteria.<sup>18</sup> These jurisdictions, which include Berkeley, extend preferences to local businesses in contracting for a variety of materials, services, and supplies and have established criteria to certify companies that qualify for preferences.

Preferences for local vendors have an economic multiplier effect on the local economy and tax base as local enterprises rely on the local supply chain, re-circulate dollars that boost local economic activity, employ local contractors, professional services, and employees, and thus generate multiple layers of tax revenue for the community. A 2009 study found that the State of California generated approximately \$4.2 billion in additional economic activity and 26,000 new jobs over a two-year period by contracting with disabled veteran-owned businesses and local small businesses instead of larger companies.<sup>19</sup>

According to the Institute for Local Self-Reliance, the most effective preference policies include active recruitment of local businesses for contracting, systems for setting and tracking goals, and strong definitions of what constitutes a "local" small business.<sup>20</sup>

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<sup>15</sup> <https://berkeleyrelieffund.org/about/>

<sup>16</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/04\\_Apr/City\\_Council\\_04-14-2020\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/04_Apr/City_Council_04-14-2020_-_Regular_Meeting_Agenda.aspx)

<sup>17</sup> <https://www.connect2capital.com/p/californiarebuildingfund/>; [https://haas.berkeley.edu/wp-content/uploads/CA-Rebuilding-Fund\\_Local-Government-Forum.pdf](https://haas.berkeley.edu/wp-content/uploads/CA-Rebuilding-Fund_Local-Government-Forum.pdf)

<sup>18</sup> <https://ilsr.org/rule/local-purchasing-preferences/>

<sup>19</sup> <https://ilsr.org/rule/local-purchasing-preferences/>

<sup>20</sup> <https://ilsr.org/rule/local-purchasing-preferences/>

Across the United States, preferences programs have been successful in New York City; Cleveland; Montgomery County, Maryland; San Diego; and Phoenix.<sup>21</sup>

In the Bay Area, San Francisco and Oakland, the two largest nearby jurisdictions, as well as San Jose, Marin County, and others, have adopted preferences policies to promote purchasing local goods and services. These neighboring communities recognize the benefits of local preferences, and have updated their policies in recent years to reflect a large and renewed interest in supporting local businesses, and all of the economic and equity goals that are served by directing a City's public dollars to local vendors.

## **REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS**

### **Local Preferences in the City of Berkeley**

The City of Berkeley purchases and contracts for a wide variety of supplies, services, equipment, and expert assistance to provide the City a full range of municipal services and programs. General Services – Procurement actively seeks socially responsible businesses, vendors, suppliers, and contractors to provide quality products and services to the City at competitive prices.<sup>22</sup>

The City of Berkeley first adopted a local business preference program for contracting in 1983.<sup>23</sup> The objective was to increase local business participation in meeting the City's needs for goods and services and to stimulate the local economy.

At the time, the concept of a bid preference program for local businesses was relatively new. The Berkeley City Manager identified just two existing programs: the State of California Preference Program for Small Businesses, and the City of Oakland Preference Program for Local Businesses and Local Minority Businesses.

Berkeley's local business preference program was designed to stimulate the local economy, thus benefiting the City by facilitating the stabilization of existing businesses and encouraging the development of new businesses in the City, increasing employment opportunities for Berkeley residents, and generating more revenues from the business license fees and sales taxes.<sup>24</sup> Further, at the time the preference program was adopted, it was hoped that by extending the local preference program to local minority- and female-owned businesses, the City would make progress toward its goal of placing a fair proportion of purchasing dollars within reach of minority- and female-owned businesses. Preferences for minority-owned and female-owned businesses are no longer valid in

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<sup>21</sup> <https://ilsr.org/procurement-more-than-a-policy-change/>

<sup>22</sup> [https://www.cityofberkeley.info/Finance/Home/Doing\\_Business\\_with\\_the\\_City.aspx](https://www.cityofberkeley.info/Finance/Home/Doing_Business_with_the_City.aspx)

<sup>23</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Local%20Business%20Preference.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Local%20Business%20Preference.pdf)

<sup>24</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Local%20Business%20Preference.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Local%20Business%20Preference.pdf)



California under Proposition 209, so those elements of Berkeley's original program are inoperative.<sup>25</sup>

The City Council thus adopted a local businesses preference program for purchases of supplies and nonprofessional services and established the following general guidelines for the program's implementation:

- a. That the City Manager, in the awarding of purchases from \$100 to \$10,000, extend a monetary preference to a local business, and an additional 5% monetary preference to local minority/female/[disabled] businesses;
- b. That the proposed "local bid preference program" shall refer to a monetary preference to a local business or local minority/female/[disabled] business in an amount equal to 5% or an additional 5% respectively, of the lowest monetary bid, if that low bid has been submitted by a bidder who does not qualify as a local business or local minority/female business;<sup>26</sup>
- c. That the local bid preference program be applied to supply and nonprofessional services, within the dollar ranges specified in (a) above;
- d. That for the purpose of implementing the local business preference program, location shall be a factor in determining the lowest responsible bidder; and
- e. That the City Manager shall prepare administrative directives and controls sufficient to carry out the intent of the preference program, to go into effect on or before July 1, 1983.

In the City Council's original request to the City Manager to examine the feasibility of establishing a preference policy, the Council did not specify the type of contract (construction, services, or supplies) to which a monetary bid preference should be extended. However, in analyzing the various types of City supplies, the City Manager recommended that a bid preference would be best suited for supplies and nonprofessional service purchases, and purchases that would not exceed \$10,000. The City of Berkeley currently extends a 5% preference on bids to local business enterprises for supplies, equipment, and nonprofessional services from \$100 to \$25,000 in value.<sup>27</sup>

In practice, bids received from local vendors for contracts on goods are reduced by the applicable percentage before an evaluation is made to determine the lowest responsible bidder. After this determination is made, an award is recommended in the amount shown in the vendor's bid. For example, a local business bidding \$1,000 for a pencil contract to the City would be evaluated as if it had bid \$950. If the bid is awarded to the local business, it is paid the bid price of \$1,000.

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<sup>25</sup> [https://ballotpedia.org/California\\_Proposition\\_209\\_Affirmative\\_Action\\_Initiative\\_\(1996\)](https://ballotpedia.org/California_Proposition_209_Affirmative_Action_Initiative_(1996))

<sup>26</sup> For example, if the bid of a local business, after deduction of the 5% for a local business is equal to or lower than the low bid, from a firm that is not local, the award shall be made to the local business.

<sup>27</sup> A local business is defined as "a business firm with fixed offices or distribution points located within the City of Berkeley boundaries and listed in the Permits and License Tax paid file, with a Berkeley business street address."



A Berkeley business can become a certified local vendor by completing a Vendor Information Application,<sup>28</sup> including Products & Services List and a federal Taxpayer ID & Certification Form W-9. In addition to submitting these required documents to General Services - Procurement, vendors who subscribe to the City's Current Bid & Proposal Opportunities page can receive notifications of upcoming bidding opportunities on a regular basis.<sup>29</sup>

Though Berkeley's local vendor preferences program was once a groundbreaking policy initiative to boost small businesses, it has not been updated to track inflation or other changes to the economy. Meanwhile, Oakland, San Francisco, and other nearby markets where Berkeley businesses may seek contracts, have taken steps to adopt policies that provide more robust preferences on their own businesses. This means Berkeley businesses have fewer opportunities in their own City, where they compete with often larger firms from adjacent cities, and suffer disadvantages when seeking contracts in neighboring markets. This double-disadvantage has negative consequences all for Berkeley businesses and for the City's tax base.

To address the disadvantages Berkeley businesses face in the Bay Area's public contracting marketplace and support recovery from the COVID-related economic downturn, we must take immediate action to expand our local preferences program for goods and implement a program of preferences for professional services.

The following are examples of local vendor preference programs in the area that include preferences for professional services. Oakland is presented first, as it's the closest large jurisdiction where Berkeley professional services firms may compete - at a disadvantage - for public contracts. Oakland's program is more complex and nuanced than some other jurisdictions', but less involved than San Francisco's.

San Jose and Marin County, also presented below, offer much simpler professional services preference programs and likely provide the best models for quick implementation in Berkeley. The "perfect" should not be "the enemy of the possible" when we are facing an unprecedented economic downturn that is decimating our local business community. Should further refinements of Berkeley's program be warranted, they can be brought forward at a later date.

### **City of Oakland Local and Small Local Business Enterprise Program**

In March 1979, the City of Oakland adopted a preference program for local businesses.<sup>30</sup> Among other things, the program granted the Oakland City Manager authority to extend a 3% preference for a local business in the award of all purchase orders.<sup>31</sup> In

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<sup>28</sup> [https://www.cityofberkeley.info/uploadedFiles/Online\\_Service\\_Center/Level\\_3\\_-\\_General/VendorInformation-Application\[1\].pdf](https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Level_3_-_General/VendorInformation-Application[1].pdf)

<sup>29</sup> <https://www.cityofberkeley.info/RFP/>

<sup>30</sup> [https://www.cityofberkeley.info/uploadedFiles/Online\\_Service\\_Center/Level\\_3\\_-\\_General/VendorInformation-Application\[1\].pdf](https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Level_3_-_General/VendorInformation-Application[1].pdf)

<sup>31</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Local%20Business%20Preference.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Local%20Business%20Preference.pdf)

1981, Oakland increased the preference point for local businesses to 5% preference for a local business. The basis for the increase was the fact that initially established point preferences only minimally benefited local businesses in the bidding process.

Oakland's Local and Small Local Business Enterprise (L/SLBE) Program was created to use 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.<sup>32</sup>

The intended impacts of Oakland's L/SLBE Program included:

- Increasing the number of Oakland certified businesses participating in City contracting and in development projects;
- Increasing the circulation of city dollars within the Oakland community and thus stimulating a stronger economic base; and
- Promoting the development of Oakland certified businesses through joint ventures, and mentor/protégé relationships.

The policy was aimed at providing economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for goods and services. At the same time, the program did not intend to obstruct efforts to attract outside investments that are critical to the City's economic growth.

In 2011, the City of Oakland adopted legislation to more narrowly tailor the mandates that govern participation of local and small local business enterprises in contracting.<sup>33</sup> Oakland currently requires a 50% minimum participation for all construction contracts at or over \$100,000, all professional services contracts over \$50,000, and all purchases of commodities, goods and associated services over \$50,000.<sup>34</sup> 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 are included in the solicitation.

Incentives are earned based on the level of participation proposed prior to the award of a contract. Bid discounts are applied at a rate of one percent (1%) or one (1) preference point for every 10% of contract dollars attributable to certified firms. No more than five percent (5%) in bid discounts or five (5) preference points may be earned.

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<sup>32</sup> <https://cao-94612.s3.amazonaws.com/documents/oak029719.pdf>

<sup>33</sup> <https://cao-94612.s3.amazonaws.com/documents/oak029719.pdf>

<sup>34</sup> 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.

<b>Level of L/SLBE Participation Achieved</b>		<b>Bid Discounts To Be Awarded to Contractors (Construction)</b>	<b>Preference Points to be Awarded to Consultants (Professional Services)</b>
50%	25% LBE and 25% SLBE	2%	2 pts
60%	30% LBE and 30% SLBE	3%	3 pts
70%	35% LBE and 35% SLBE	4%	4 pts
80%	40% LBE and 40% SLBE	5%	5 pts

In those instances where VSLBE participation is evident, the value of preference points and bid discounts associated with VSLBE participation will be double-counted towards meeting the requirement.

Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “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. Staff recommends awarding preference points for an Oakland workforce according to the percentage of Oakland residents as follows:

<b>Years in Oakland</b>		<b>Oakland Resident Workforce</b>	
<b>Years in Oakland</b>	<b>Additional Points</b>	<b>Workforce</b>	<b>Additional Points</b>
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

Local and non-local businesses may earn up to a maximum of 2.5 additional 5 preference points for having a workforce that is made up of Oakland residents and committing to Oakland new hires.

To incentivize contracting with local business, the City Administrator awards a certificate of achievement each year to the city agency that reaches the highest level of support to small local businesses.

**City of San Jose Local and Small Business Preferences**

The City of San Jose extends preferences in contracting with local and small businesses through a relatively simple preferences regime.<sup>35</sup>

For Local Business Enterprises (LBEs), suppliers must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If the basis of award is price determinative (awarded to the low bidder) then the amount of the preference shall be 2.5% of cost. If the basis of award is points determinative (“best value”) then the amount of the preference shall be 5% of total points.

For Small Business Enterprises (SBEs), in order to claim the additional SBE Preference suppliers must first qualify as an LBE and have a total number of employees of 35 or less (regardless of where they are located). If the basis of award is price determinative (awarded to the low bidder) then the amount of the preference shall be an additional 2.5% of cost. If the basis of award is points determinative (“best value”) then the amount of the preference shall be an additional 5% of total points.

Application of the preferences for LBEs and SBEs shall not be made in the procurements where legal constraints on the expenditure of funds prohibit the application of the preference or in grant programs.

### **Marin County Preference in Contracts and Purchases**

Like others in the Bay Area, the Marin County Board of Supervisors has found that it promotes the public interest to encourage the development and maintenance of local businesses in Marin County to insure a viable and balanced economy, provide local jobs for residents of the county, reduce commuter traffic, promote the development of the county's tax base, stimulate sales tax receipts, and enhance the number of and type of services available in Marin County for the benefit of its residents.<sup>36</sup>

Marin County thus concluded that these goals and objectives are promoted by the provision of appropriate preferences to local businesses which contract with, and sell services and supplies to the county. The county's program is another relatively simple model Berkeley may wish to adapt.

In Marin County, preferences apply to contracting with local businesses for goods and services, with “local business” defined as any business that has its principal place of business in Marin; has a business license issued in Marin County for a period of six months prior to any claim of preference; or maintains an office or other facility in Marin in which not less than five persons are employed substantially full time.

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<sup>35</sup> <https://www.sanjoseca.gov/your-government/departments/finance/purchasing/local-and-small-business>; [https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT4REFIB-UTA\\_CH4.12PRGOSE\\_PT4AWCO\\_4.12.320APPRAWCO](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT4REFIB-UTA_CH4.12PRGOSE_PT4AWCO_4.12.320APPRAWCO)

<sup>36</sup> [https://library.municode.com/ca/marin\\_county/codes/municipal\\_code?nodeId=TIT3REFI\\_CH3.10PRCOPU](https://library.municode.com/ca/marin_county/codes/municipal_code?nodeId=TIT3REFI_CH3.10PRCOPU)

When Marin County acquires services and/or supplies by purchase or contract, the director of purchasing, in evaluating the price or bid, must award a 5% preference on the price submitted by a local business.<sup>37</sup>

### **San Francisco Local Business Enterprise Ordinance**

San Francisco extends preferences to local businesses in contracting through its Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance.<sup>38</sup> The program is designed to assist qualified local small businesses in competing for the award of City contracts by adding points to proposals for contracts that are awarded based on the highest score, or applying discounts to proposals for contracts that are awarded based on the lowest costs. In addition, the ordinance provided contracting set asides, subcontracting goals, City payment provisions, and training programs to assist small local businesses to compete for City contracts.

In adopting its preferences ordinance, the San Francisco Board of Supervisors found that small businesses were a significant sector of the local economy, contributing hundreds of millions of dollars to the City's economy each year, and formed the backbone of the City's neighborhoods. The Board further found that the expansion of local small businesses would advance the public interest, contribute to the economic well-being of all San Franciscans, and tend to minimize the burden on the City's General Fund to provide for general welfare.

The Board of Supervisors found that the disadvantages suffered by very small and micro local businesses in competing as prime contractors on public contracts could be reduced by discounting their bids and ratings by 10%. Granting a 10% discount would not unduly burden businesses not eligible for such discounts, and is similar to the corrective adjustments given to small and very small micro businesses in other jurisdictions. The Board found that the additional disadvantages suffered by micro local businesses could be reduced by setting aside appropriate small contracts for competition only among micro businesses.

San Francisco has a long history of working to end discrimination in all aspects of public contracting. For example, the Board of Supervisors initially passed Ordinance No. 139-84 on April 2, 1984 to combat the San Francisco's own active and passive participation in discrimination against minority- and women-owned businesses, both in its own contracting for goods and services, and in the private market for such goods and services. At the time of passage, women- and minority-owned businesses were virtually excluded as contractors on prime City contracts.

Since that time, San Francisco has actively and extensively documented and studied discrimination against and disadvantages faced by groups to gauge the effectiveness of

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<sup>37</sup> In addition, whenever the county acquires supplies by purchase or contract, the director of purchasing, in evaluating the price or bid of recycled products shall award a fifteen percent preference on the price submitted on recycled products. In no case shall the total of all preferences for which a bid is eligible exceed fifteen percent.

<sup>38</sup> <https://sfgov.org/cmd/sites/default/files/Administrative%20Code%20Chapter%2014B.pdf>;  
[https://sfgov.org/cmd/sites/default/files/Images/13050-CH14B\\_Rules\\_07012015\\_Final.pdf](https://sfgov.org/cmd/sites/default/files/Images/13050-CH14B_Rules_07012015_Final.pdf)

the prior Minority, Women and Local Business Enterprise Ordinances (the "M/W/LBE Ordinances") and to assess the need for further and continuing action.

In 2014, the San Francisco Board of Supervisors amended the Administrative Code to comprehensively revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance (Chapter 14B).<sup>39</sup> Under the revised ordinance, Contract Awarding Authorities must apply discounts to each evaluation stage of the selection process, including qualifications, proposals, and interviews.

For contracts estimated to cost in excess of \$10,000 but less than \$10,000,000, the Contract Awarding Authority must apply a 10% discount to any bid from a Small or Micro-LBE. If after the application of this discount the apparent low bidder or highest ranking proposer is not a Small or Micro-LBE, Contract Awarding Authorities shall apply a 5% discount to any bid from an SBA-LBE. Contract Awarding Authorities shall apply this five percent (5%) discount to contracts, except that the five percent (5%) discount for SBA-LBEs shall not be applied at any stage if it would adversely affect a Small or Micro-LBE.

For Contracts estimated to cost in excess of \$10,000,000 but less than \$20,000,000, the Contract Awarding Authority must apply a 2% discount to any bid from a Small, Micro, or SBA-LBE for Public Works/Construction, Architect/Engineering, Professional Services, or General Services Contracts. Bids from Small, Micro, or SBA-LBEs for Commodities Contracts in excess of \$10,000,000 are not eligible for the Discount.

For contracts with Joint Ventures For Professional Services and Architect/Engineering estimated to cost in excess of \$10,000 but less than \$10,000,000, Contract Awarding Authorities are required to apply the following discount to bids from Joint Ventures with a Small and/or Micro-LBE Joint Venture partner participation on professional services and Architect/Engineering prime contracts:

1. Five percent (5%) to a Joint Venture with Small and/or Micro-LBE Prime Contractor participation that equals or exceeds thirty-five percent (35%) but is under forty percent (40%);
2. Seven and one-half percent (7.5%) to a Joint Venture with Small and/or Micro-LBE Prime Contractor participation that equals or exceeds forty percent (40%);
3. Ten percent (10%) to a Joint Venture exclusively among Small and/or Micro-LBE Prime Contractors.

San Francisco's Contract Monitoring Division (CMD) is required to issue quarterly written reports to the Mayor and the Board of Supervisors to document each Contract Awarding Authority's progress toward achieving the goals of this City's local preferences program. In addition, each fiscal year, the City Administrator must submit an annual report on the progress of the City toward achieving the goals of the preferences program,

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<sup>39</sup> <https://sfgov.legistar.com/LegislationDetail.aspx?ID=1912573&GUID=E3DA17DA-4E88-4C43-BEBD-0FDAC03794B5>

together with an identification of problems and specific recommendations for improving participation by all categories of LBEs in City contracting.

### **Conclusion**

Berkeley's local vendor preferences program has long played an important role in supporting local businesses in contracting, but the program needs to be updated for the 21st Century. Currently, the program omits preferences for professional services, such as engineers, surveyors, and architects, which are central to Berkeley's culture and economy. Moreover, the relatively low maximum contracts for goods and non-professional services eligible for local preferences are insufficient to substantially increase local business participation in meeting the City's needs and to stimulate the local economy.

Meanwhile, neighboring Bay Area cities have extended and enhanced their preferences programs, including for professional services extended in Oakland and San Francisco, as well as higher value contracting opportunities. These programs to preference local businesses place Berkeley firms at a disadvantage compared to their Bay Area peers.

For these reasons, this item increases the maximum value of contracts for goods and non-professional services eligible for preferences and directs the City Manager to expand the City's Local Vendor Preferences programs to include Berkeley businesses engaged in professional services by January of 2022. It requires the City Manager to provide outreach and training to Berkeley businesses about expanded Local Vendor Preferences and takes into account the potential to incorporate actionable and relevant results of the Mason Tillman Associates study currently underway, if any, when those results become available. Finally, this item refers to the City Manager to track and issue periodic reports to Council (or include in existing reports such as the annual Economic Dashboard), and/or to track on an online dashboard the City's success in contracting with local vendors.

### **ACTIONS/ALTERNATIVES CONSIDERED**

Considered a higher increase in the value of contracts eligible for local preferences in the City of Berkeley. A review of local preferences programs in nearby jurisdictions revealed that the City of Oakland, one of Berkeley's closest neighbors, implemented its Preferred Small Local Business Program for all projects valued at an amount not to exceed \$250,000. This limit, established by Oakland before the COVID-19 crisis, was recommended for Berkeley, where possible, as a means to achieve consistency with contracting policies in neighboring jurisdictions.

A limit of \$250,000 for contracts for supplies, equipment, materials, and other goods was considered but would have required amending BMC Section 7.18.010 D to raise the limit on purchases the City Manager may approve without Council action. For this reason, the limit for eligible contracts of these types is being raised to only \$100,000, paralleling the current limit in BMC Section 7.18.010 D. No such conflict exists for contracts for services (non-professional or professional) so the limit on eligible contracts for



services is recommended at \$250,000, to increase the economic power of the preference program, level the playing field for Berkeley vendors, and parallel Oakland's program.

Council may wish to raise the contract dollar amount ceiling higher in light of the current economic crisis and the power of local contracting to support rebuilding of the local economy. The City Manager is also encouraged to return to Council any proposed adjustments to this limit in accordance with the needs of Berkeley businesses and any future changes in policy or economic circumstances in the Bay Area.

## **CONSULTATION/OUTREACH OVERVIEW AND RESULTS**

The author consulted with city staff regarding an earlier version of this proposal. Staff raised potential nuances that may require additional consideration as the City Manager works to develop and implement a local vendor preference program for contracts for professional services. Given the urgency of supporting needed economic recovery in the wake of the COVID-19 crisis and directing more City dollars to Berkeley businesses, this item adopts an increase in the value of eligible contracts for goods, equipment and non-professional services (the program we already have in place) by September 1, 2021 while providing until January 1, 2022 for staff to establish a policy relating to local preferences for professional services.

Because of the urgent need to stimulate the local economy as we emerge from the COVID-19 crisis, additional outreach will be conducted simultaneous with submission of the item, including outreach to Berkeley Chamber and to locally-owned businesses and professional services providers, to offer opportunities for further input. It is expected that local businesses will appreciate the opportunity to improve access to contracting opportunities with the City of Berkeley, especially when they are disadvantaged in larger neighboring jurisdictions.

## **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

The City of Berkeley currently operates a local vendor preference program. Raising the limit on the value of contracts for goods, equipment, and nonprofessional services will not require any new programs to be implemented, while resulting in the award of more contracts to Berkeley vendors. Some procedures and/or forms will require adjustment, so the increases are effective approximately 4 months from the time of adoption of the resolution. Creating a program for preferences for professional services contracts will require adopting a new set of regulations or procedures, but turnkey models exist in the Bay Area that can be easily adapted and implemented.

This item refers to the City Manager to conduct outreach to Berkeley businesses to publicize, offer training, and provide other meaningful access to the City's expanded preferences programs. While this is an important component of any meaningful and equitable preference program, it is not a precondition to putting the program in place. It is hoped that staff will do initial outreach through the expanded network of businesses and more

active BIDs and business organizations that have been successful in communicating with the business community during COVID, and follow up with more targeted ongoing outreach and technical assistance over time.

Economic recovery is an urgent and important task for the City to undertake in addressing the impacts of the COVID-19 crisis, and the measures required by this item, while requiring some staff time to implement, have the potential to yield significant benefits for local businesses and for the City of Berkeley, helping to build a robust tax base over the long run.

## **ENVIRONMENTAL SUSTAINABILITY**

Contracting with local businesses will reduce emissions of greenhouse gases and pollution associated with transporting goods and equipment, and related travel. Local businesses tend to purchase locally, requiring less transportation. Businesses based in and doing business in Berkeley contribute to less sprawl and traffic congestion, and more sustainable land use.

## **OUTCOME AND EVALUATION**

This item refers to the City Manager to track and issue reports to Council on the City's success expanding contracting for goods, equipment, and services with local vendors. These reports will serve as the basis for evaluating and making any changes to the local preferences program that may be warranted.

## **FISCAL IMPACTS**

Preferences for local vendors have an economic multiplier effect on the local economy and tax base as local enterprises rely on the local supply chain, re-circulate dollars that boost local economic activity, employ local contractors, professional services, and employees, and thus generate multiple layers of tax revenue for the community. Stimulating the expansion of small firms or development of new enterprises fosters economic growth and independence for the City of Berkeley and its taxpayers. The expansion of local small businesses advances the public interest, contributes to the economic well-being of all Berkeleyans, and tends to minimize the burden on the City's general fund to provide for general welfare. As the economic crisis recedes, public dollars need to be leveraged to the greatest extent possible to support Berkeley small businesses and boost the local economy through the multiplier effect preferences have on the circulation of each City dollar spent on locally-based vendors.

Regarding potential out-of-pocket costs for contracting with Berkeley vendors, it's important to note that the impact of the preferences is not to add a 5% cost to each contract awarded under the preference, but rather to pay "up to" 5% more for a contract with a qualified Berkeley vendor. For example, if the lowest bidder (pre-preference) for a contract for goods was \$20,000, but the contract was awarded to a Berkeley business that bid a pre-preference amount of \$20,050, the City will only pay an extra \$50 for the

contract, *not*  $\$20,000 + 5\% = \$21,000$ . In addition, not all contracts will be bid on by Berkeley vendors, and not all Berkeley vendors bidding, even with the preferences in place, will be awarded all contracts. In the contract for goods example provided above, if the Berkeley vendor had bid  $\$23,000$  and an out-of-town vendor bid  $\$20,000$ , the preference of 5% would have converted the Berkeley vendor's bid into a bid at  $\$21,800$  - and they would not have been awarded the contract.

For contracts that *are* awarded to Berkeley vendors through operation of the preference program, the extra dollars spent are a small and worthy investment in the long term viability of the City's businesses, and in rebuilding our own tax base.

### **CONTACT INFORMATION**

Councilmember Sophie Hahn, 510-682-5905 (cell)

### **ATTACHMENTS**

1. Resolution
2. City of Oakland Local and Small Local Business Enterprise Program

RESOLUTION NO. ##, ####-N.S.

TO EXPAND EXISTING LOCAL VENDOR PREFERENCE PROGRAM  
BY INCREASING THE VALUE OF ELIGIBLE CONTRACTS  
FOR GOODS TO \$100,000 AND THE VALUE OF ELIGIBLE CONTRACTS  
FOR NON-PROFESSIONAL SERVICES TO \$250,000

WHEREAS, small local businesses are the heart and soul of Berkeley, offering high quality goods that reflect our eclectic tastes and are infused with the care and expression of their owners; and

WHEREAS, small local businesses are key to Berkeley's economic health, investing a larger share of their revenues back into the local economy, hiring local workers, and often providing better wages and benefits than national chains; and

WHEREAS, the economic downturn caused by the COVID-19 health emergency has profoundly impacted Berkeley's local businesses, contributing to drops in revenue, layoffs of workers, and in some cases business closures; and

WHEREAS, expanding local vendor preferences by raising the value of eligible contracts will increase local business participation in meeting the City's needs and serve as an important local stimulus as our economy recovers from the current economic downturn; and

WHEREAS, neighboring jurisdictions including Oakland, San Francisco, San Jose, and Marin County extend preferences to local businesses, including for professional services and higher value contracts; and

WHEREAS, there exists an urgent need to support economic recovery in the wake of the COVID-19 crisis and to direct more City of Berkeley dollars to Berkeley businesses;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby expands Berkeley's existing local vendor preference program by increasing the value of eligible contracts for supplies, equipment, materials, and other goods to \$100,000, and the value of eligible contracts for non-professional services to \$250,000, effective September 1, 2021.



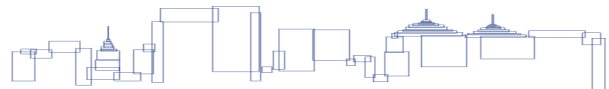
City of  
**OAKLAND**  
California



*Office of the City Administrator, Contracts and Compliance*  
250 Frank Ogawa Plaza, Suite 3341  
Oakland, California 94612  
(510) 238-3970

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



**CITY OF OAKLAND  
LOCAL AND SMALL LOCAL  
BUSINESS ENTERPRISE PROGRAM**

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## **OVERVIEW/EXECUTIVE SUMMARY**

In order to provide economic opportunity for its residents and businesses, and stimulate economic development, the City of Oakland has developed and implemented various 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.

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 community and thus stimulating a stronger economic base; and
- Promoting the development of Oakland certified businesses through joint ventures, and mentor/protégé relationships.
- The new policies provide economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for goods and services. At the same time, the program does not obstruct efforts to attract outside investments that are critical to the City's economic growth.

To that end, In November of 2011, the City Council modified Ordinance No. 12389 C.M.S in order to more narrowly tailor the mandates that govern participation of local and small local business enterprises in city contracting. Changes to the Local and Small Local Business Enterprise Program are summarized as:

1. Increase the current level of local and small local business participation by 15% Small Local Business Enterprise (SLBE) and 15% Local Business Enterprise (LBE) participation, thereby increasing the current 20% L/SLBE Program (10% LBE and 10% SLBE) to the new 50% L/SLBE Program with 25% participation for LBE's and 25% participation for SLBEs; and
2. 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 (VSLBE) category and (2) a Local Business Enterprise of Locally Produced Goods (LBE-LPG) category;
3. Increase the value of preference points and bid discounts for the VSLBE and LBE-LPG certification categories by double-counting the value towards meeting the 25% SLBE participation; and

4. Define a Small Local Business Enterprise (SLBE) according to 30% of the most recently published Small Business Administration (SBA) size standards and to adjust those standards as SBA standards are updated; and
5. Allow firms the ability to earn up to a total of 5% bid discounts for L/SLBE participation on construction and commodities and associated services bids, or 5 preference points for L/SLBE participation on professional services in the following manner:
  - a. With 50% L/SLBE participation (25% local and 25% small local) a firm earns– a minimum 2% bid discounts or 2 preference points;
  - b. With 60% L/SLBE participation (30% local and 30% small local) a firm earns– 3% bid discounts or 3 preference points;
  - c. With 70% L/SLBE participation (35% local and 35% small local) a firm earns– 4% bid discounts or 4 preference points;
  - d. With 80% L/SLBE participation (40% local and 40% small local) a firm earns– a maximum 5% bid discounts or 5 preference points; and
6. 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 as follows: Up to 2.5 preference points for operating a business with a substantial business presence in Oakland and up to 5 points for employing Oakland residents and new hires; and
7. Implement a Mandatory “Preferred Small Local Business Program” for 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 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.
8. The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime contractor with the City.

## **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 over \$50,000, and all purchases of commodities, goods and associated services 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 are included in the solicitation.

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.

The City of Oakland also has a 50% L/SLBE trucking participation requirement to demonstrate the importance of including 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 identify 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.

As a new element of the 2012 L/SLBE Program, the City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime contractor with the City.

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 from 50 % to 0%.

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

Contractors are required to submit a completed Subcontractor Listing (Schedule R) for construction and Schedule E Project Consultant Listing 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.

Schedule R and/or 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. 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, Office of the City Administrator, Contracts and Compliance Division. The certification letter and certificate include the certification number and date of expiration.

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.

### **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 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.

### **Substitution of Listed Subcontractors**

Prime consultants or 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.

The City will substitute a person 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 person 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 or her 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 subcontractors 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. 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 approval of the City. Contractors are required to contact the Contract Compliance Office to request a substitution hearing.

### **Emergency Contracts**

Local businesses will be given first priority in the performance of emergency work as defined in Ordinance No. 7937 C.M.S, 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 this 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 schedule must be submitted with the bid package in order for the bid to be considered responsive.

- Bid Bond Form
- Schedule A - Scope of Work/Outline of Services to be Performed
- Combined Schedules
  - Schedule B-1 - Arizona Resolution
  - Schedule C-1 - Compliance With The Americans With Disabilities Act
  - Schedule D - Ownership, Ethnicity and Gender Questionnaire
  - Schedule K - Pending Dispute Disclosure Form
  - Schedule M - Part A, 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 P - Nuclear Weapons Proliferation Ordinance
  - Schedule U - Compliance Commitment Agreement
  - Schedule V - Affidavit Of Non-Disciplinary Or Investigatory Action
- Schedule E - Project Consultant Team Form
- 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 and Preference Points**

Incentives are earned based on the level of participation proposed prior to the award of a contract. Bid discounts are applied at a rate of one percent (1%) or one (1) preference point for every 10% of contract dollars attributable to certified firms. No more than five percent (5%) in bid discounts or five (5) preference points may be earned.

<b>Level of L/SLBE Participation Achieved</b>		<b>Bid Discounts To Be Awarded to Contractors (Construction)</b>	<b>Preference Points to be Awarded to Consultants (Professional Services)</b>
50%	25% LBE and 25% SLBE	2%	2 pts
60%	30% LBE and 30% SLBE	3%	3 pts
70%	35% LBE and 35% SLBE	4%	4 pts
80%	40% LBE and 40% SLBE	5%	5 pts

In those instances where VSLBE participation is evident, the value of preference points and bid discounts associated with VSLBE participation will be double-counted towards meeting the requirement.

**Request for Proposal (RFP) and Request for Qualifications (RFQ) Preference Points for Local Hire or Non-Construction Contracts**

Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “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. Staff recommends awarding preference points for an Oakland workforce according to the percentage of Oakland residents as follows:

<b>Years in Oakland</b>		<b>Oakland Resident Workforce</b>	
<b>Years in Oakland</b>	<b>Additional Points</b>	<b>Workforce</b>	<b>Additional Points</b>
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

Given the above, local and non-local businesses may earn up to a maximum of 2.5 additional 5 preference points for having a workforce that is made up of Oakland residents and committing to Oakland new hires.

### **Preference Points for Local Certified Firms Regardless of Size and Participation**

On Request for Proposals, Request 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.

### **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 5% 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 Contracts and Compliance 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 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 Division of Contracts and Compliance with a monthly report of the kinds of mentor skills provided to the protégé, which shall include but not 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**

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 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.

### Basic Elements of the Joint Venture Agreement

A Joint Venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement two weeks prior to the bid due date. Copies of the JV applications are available upon request to the Contract compliance & Employment Services Division (510) 238-3970. Each agreement or management plan must include, but 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 use 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 joint venture 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 joint venture 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 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 contract award authority. Unless permission is granted by the City Manager or his 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 upon request, cancelled checks and any other financial records to the City.

#### **City –Assisted Private Developments**

For City-assisted private developments (e.g. Disposition and 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 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**

For 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 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 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 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 Oakland's social equity programs.
- e. 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.
- 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

CERTIFICATION CATEGORIES	CERTIFICATION CRITERIA
<b>Local Business Enterprise (LBE)</b>	<ul style="list-style-type: none"> <li>• substantial presence in Oakland</li> <li>• operational for at least twelve (12) consecutive months</li> <li>• valid business tax license</li> <li>• fixed office space</li> <li>• employees in fixed office</li> <li>• permits and fines and fees are current</li> <li>• documents certifying the existence of the business (contracts, leases bills, etc)</li> <li>• registration in the City’s iSupplier system</li> </ul>
<b>Small Local Business Enterprise (SLBE)</b>	All of the above plus: <ul style="list-style-type: none"> <li>• Documentation of 3 years average annual gross receipts that are less than 30% of the SBA’s size standard for the firm’s industry sector.</li> </ul>
<b>Very Small Local Business Enterprise (VSLBE)</b>	All of the above except: <ul style="list-style-type: none"> <li>• Fully operational for six consecutive months</li> <li>• Average annual gross receipts at or below \$375,000</li> </ul>
<b>Local Business Enterprise –Locally Produced Goods (LBE-LPG)</b>	Same as LBE except: <ul style="list-style-type: none"> <li>• Business must manufacture goods within the Oakland geographic boundaries</li> </ul>
<b>Not for Profit Local Business Enterprise (NPLBE)</b>	Same as LBE plus: <ul style="list-style-type: none"> <li>• Business must produce documentation of nonprofit status</li> </ul>
<b>Not for Profit Small Local Business Enterprise (NPSLBE)</b>	Same as SLBE plus: <ul style="list-style-type: none"> <li>• Business must produce documentation of nonprofit status</li> </ul>

#### Certification Categories

The City of Oakland has added two new certification categories. 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) were added in order to enhance opportunities for small emerging firms and firms that produce goods locally.

#### 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 geographical boundaries of the City of Oakland.
2. Fully operational for at least twelve (12) consecutive months prior to applying for certification. (or 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 geographical 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 truck inventory must be located within the city limits. 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 (person 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 citing 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 its eligibility for



certification. The City may wish to review additional documents that may include, but may not be limited to:

- Commercial advertising
- On-site signage
- Letterhead
- Previous Lease Agreements
- Marketing materials
- Listing in the telephone book.

Small local businesses must present or make available copies of federal tax returns showing gross revenues for the three 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 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 of the contract, and the degree to which 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 firm. Also, the owner shall make the day-to-day, as well as major decisions on matters of management, policy and operations. The firm 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. (i.e. bylaws provisions, partnership agreements or charter requirements for cumulative voting rights)

Where the actual management of the firm 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 firm shall be real and substantial. Newly formed firms and firms 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 firm.

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 non- SLBE, which has an interest in the SLBE, is carefully reviewed to determine if the interest 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 SLBEs participation. 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 thirty percent (30%) 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 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:**

Down load Applications from the website maintained by Contracts and Compliance through the City's website. Go to <http://www.oaklandnet.com>, and select Contracting Opportunities under the "Jobs and Contracts" link. Then click on Certification and select the form and the appropriate supporting documents. Requests for certification applications can be made by phone, facsimile, electronic mail, in writing or in person. When submitting the application, remember to attach a copy of the most recent Business Tax Certificate and have the application notarized. If you are applying as a small business, attach the last three most recent business tax returns.

#### **Step 2 – The Review Process:**

All new certification applicants must undergo a desk audit and site visit. The desk audit and site visit will be conducted within 15 working days or upon submission of complete documentation. All parties are asked to cooperate fully with the investigation. Failure or refusal to furnish requested information or failure to cooperate voids the application. If the audit and review results in a satisfactory determination, analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days after the site visit.

During the process of certification, the City may review any documentation or information it deems necessary to determine whether the applicant meets the definition of a local business as found in the glossary in the Appendix of this document..

To ensure complete and accurate determination in a timely fashion, it is requested that all potential applicants submit an application for certification a minimum of three (3) weeks prior to a bid opening or submittal of a proposal. In order to receive credit for listed subcontractors and suppliers certifications must be complete and existing at the date and time of bid opening or submittal due dates.

Certification with another agency does not constitute certification with the City of Oakland. The City reserves the right to approve LBE/SLBE status from other government or City agencies. Firms or individuals who knowingly submit false information concerning their certification status are subject to action or 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.

### **Other Considerations**

In addition to the above the City shall give special consideration to the following circumstances in determining eligibility:

Newly formed firms and firms 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 firm.

Previous and/or continuing employer-employee relationships between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.

Any relationship between an LBE/SLBE and a business that is not an LBE/SLBE, which has an interest in the LBE, is carefully reviewed to determine if the interest of the non-LBE conflicts with the ownership and control requirements.

A joint venture is eligible for certification if the LBE/SLBE partner of the joint venture meets the standards for an eligible LBE. The LBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture. The City Attorney's office must approve joint venture agreements.

The mentor and protégé must be certified prior to the submittal of a mentor-protégé agreement for approval.

### **Re-Certification**

A City of Oakland certification is valid for a period of two 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.

**Appeal**

Any firm that believes that it has been wrongfully denied certification as an LBE/SLBE or joint venture may file an appeal in writing. The written appeal must be signed and dated.

The appeal shall be filed no later than 30 days after the date of denial. 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 parties, who have reason to believe that another firm has been wrongfully denied or granted certification as an LBE/SLBE or joint venture, may advise the City in writing. This information is not considered an appeal.

The City ensures a prompt investigation, and may at its discretion; decertify the LBE/SLBE or joint venture pending the outcome of the investigation.

## **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 Dispositions 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 Contract Compliance & Employment Services 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 Contract Compliance & Employment Service 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 onsite 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. In order 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 CC&ES 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 CC&ES.
- d. The CC&ES 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.

Unavailability Exemption (applicable to both union shop and open shop requests)

When the Contractor has taken the steps above and an Oakland resident is not available, the City shall issue a limited exemption. Unavailability exemptions will be issued in maximum increments of 160 hours per worker request.

### **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

The City Manager's Office, Contract Compliance & Employment Services Division 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 (journeyman 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 contractor 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 Manager 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 work hour's apprentices are required to work on public works projects

**Availability** - The number of certified L/SLBE firms, 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) 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 small local business enterprise.

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

**Preference Points:** a predetermined number of points awarded during the Request for Proposal and Request for Qualification 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.

**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 thirty percent (30%) of the United States Small Business Administration's size standard.

**Small Local Business Enterprise (SLBE)** –A business with (a) a substantial presence in the city of Oakland's geographic boundaries (b) a full operation conducting business for 12 consecutive months and (c) 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 of the obligations of another's contract

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

**Subsidy** - A grant, loan, credit, tax rebate, or any other way 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 both within and 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:

Independent Office Site - 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.

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

**Waiver** - An intentional action by City Council, excusing a contractor or a department from (1) adhering to and/or complying with a City policy.

## **FORMS AND SCHEDULES**

Forms and Schedules can be found on the City Of Oakland's Contracts and Compliance Division website. There you will find all the forms and schedules needed to contract with the City of Oakland. To go to our website click or copy and paste the web address to your web browser <http://www2.oaklandnet.com/government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>