

CHAPTER 10 GENERAL EQUAL OPPORTUNITY CONTRACTING PROGRAM REQUIREMENTS

A. INTRODUCTION

1. This document sets forth the following specifications:
 - a) City's general EOCB requirements for all construction contracts.
 - b) Special Provisions for contracts subjects to SLBE and ELBE requirements only.
2. Additional requirements may apply for state or federally funded projects in lieu of (1a) and (1b) above.
3. These requirements shall be included as contract provisions for all Subcontracts.
4. The City specified forms, instructions, and guides are available for download from the EOCB's web site at: <http://www.sandiego.gov/eoc/forms/index.shtml>

B. GENERAL.

1. The City of San Diego promotes equal employment and subcontracting opportunities. The City is committed to ensuring that taxpayer dollars spent on public contracts are not paid to businesses that practice discrimination in employment or subcontracting. The City encourages all companies seeking to do business with the City to share this commitment.

C. DEFINITIONS. For the purpose of these requirements:

1. Terms "Bid" and "Proposal," "Bidder" and "Proposer," "Subcontractor" and "Subconsultant," "Contractor" and "Consultant," "Contractor" and "Prime Contractor," "Consultant" and "Professional Service Provider," "Suppliers" and "Vendors," "Suppliers" and "Dealers," and "Suppliers" and "Manufacturers" may have been used interchangeably.
2. The following definitions apply:

Emerging Business Enterprise (EBE) means a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing Municipal Code Chapter 2, Article 2, Division 36. The City Manager shall review the threshold amount for EBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace.

Emerging Local Business Enterprise (ELBE) means a Local Business Enterprise that is also an Emerging Business Enterprise.

Minority Business Enterprise (MBE) means a certified business which is at least 51% owned by African Americans, American Indians, Asians, Filipinos, Latinos, or combination and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least 51% of the stock shall be owned by, and the business operated by, one or more members of the identified ethnic groups.

Women Business Enterprise (WBE) means a certified business which is at least 51% owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least 51% of the stock shall be owned by, and the business operated by, one or more women.

Disadvantaged Business Enterprise (DBE) means a certified business which is at least 51% owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least 51% of the stock shall be owned by, and the business operated by, socially and economically disadvantaged individuals.

Disabled Veteran Business Enterprise (DVBE) means a certified business which is at least 51% owned and operated by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies) The firm shall be certified by the State of California's Department of General Services, Office of Small and Minority Business.

Other Business Enterprise (OBE) means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

Small Business Enterprise (SBE) means a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing Municipal Code Chapter 2, Article 2, Division 36. The City Manager shall review the threshold amount for SBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace. A business certified as a Disabled Veteran Business Enterprise by the State of California, and that has provided proof of such certification to the City Manager, shall be deemed to be an SBE.

Small Local Business Enterprise (SLBE) means a Local Business Enterprise that is also a Small Business Enterprise.

D. CITY'S EQUAL OPPORTUNITY COMMITMENT.

1. Nondiscrimination in Contracting Ordinance.

1. The Contractor and Subcontractors shall comply with requirements of the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code §§22.3501 through 22.3517.

2. Disclosure of Discrimination Complaints. As part of its Bid or Proposal, the Bidder shall provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
3. The following language shall be included in contracts for City projects between the Prime Contractor and Subcontractors and Suppliers:

“The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. The Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.”
4. Upon the City's request, the Contractor agrees to provide to the City, within 60 days, a truthful and complete list of the names of all Subcontractors and Suppliers that the Contractor has used in the past 5 years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Contractor for each subcontract or supply contract.
5. The Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance, Municipal Code §§22.3501 through 22.3517. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in remedies being ordered against the Contractor up to and including contract termination, debarment and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of the Ordinance.

E. EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM.

1. The Contractor and Subcontractors, shall comply with the City's Equal Employment Opportunity Outreach Program, San Diego Municipal Code §§22.2701 through 22.2707.
2. The following language shall be included in contracts for City projects between the Prime Contractor and Subcontractors and Suppliers:

“The Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractor shall ensure their subcontractors comply with this program. Nothing in this section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.”

3. If the Contract is competitively solicited, the selected Bidder shall submit a Work Force Report (Form BB05), within 10 Working Days after receipt by the Bidder of Contract forms to the City for approval as specified in the Notice of Intent to Award letter from the City.
4. If a Work Force Report is submitted, and the City determines there are under-representations when compared to County Labor Force Availability data, the selected Bidder shall submit an Equal Employment Opportunity Plan.
5. If the selected Bidder submits an Equal Employment Opportunity Plan, it shall include the following assurances:
 1. The Contractor shall maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work.
 2. The Contractor reviews its EEO Policy, at least annually, with all on-site supervisors involved in employment decisions.
 3. The Contractor disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings.
 4. The Contractor reviews, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews.
 5. The Contractor discusses its EEO Policy Statement with subcontractors with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request.
 6. The Contractor documents and maintains a record of all bid solicitations and outreach efforts to and from subcontractors, contractor associations and other business associations.
 7. The Contractor disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request.
 8. The Contractor disseminates its EEO Policy to union and community organizations.
 9. The Contractor provides immediate written notification to the City when any union referral process has impeded the Contractor's efforts to maintain its EEO Policy.
 10. The Contractor maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses.
 11. The Contractor maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and

referrals from unions, recruitment sources, or community organizations with a description of the employment action taken.

12. The Contractor encourages all present employees, including people of color and women employees, to recruit others.
13. The Contractor maintains all employment selection process information with records of all tests and other selection criteria.
14. The Contractor develops and maintains documentation for on-the-job training opportunities, participates in training programs, or both for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Contractor's employment needs.
15. The Contractor conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities.
16. The Contractor ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes.

F. SUBCONTRACTING.

1. The City encourages all eligible business enterprises to participate in City contracts as Contractor, Subcontractor, and joint venture partner with the Contractor, Subcontractors, or Suppliers. The Contractor is encouraged to take positive steps to diversify and expand their subcontractor solicitation base and to offer subcontracting opportunities to all eligible business firms including SLBEs, ELBEs, MBEs, WBEs, DBEs, DVBEs, and OBEs.
2. For subcontractor participation level requirements, see the Notice Inviting Bids, RFP, or Special Notice included in the Contract Documents where applicable.
3. For the purpose of achieving the mandatory subcontractor participation percentage, the City will not account for the Field Orders, Additive or Deductive, and Allowance – Type II Bid Items in the calculation. Allowance – Type I Bid Items are part of the Base Bid integral to the SOW.
4. Each joint venture partner shall be responsible for a clearly defined scope of work. In addition, an agreement shall be submitted, signed by all parties, identifying the extent to which each joint venture partner shares in ownership, control, management, risk and profits of the joint venture.

G. LISTS OF SUBCONTRACTORS AND SUPPLIERS.

1. The Bidders shall comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code §§4100 through 4113, inclusive.
2. The Bidders shall list all Subcontractors who will receive more than 0.5% of the total Bid amount or \$10,000, whichever is greater on the form provided in the Contract Documents i.e., a subcontractors list.

3. The subcontractor list shall include the Subcontractor's name, , telephone number including area code, physical address, scope of work, the dollar amount of the proposed subcontract, Subcontractor's certification status, and name of the certifying agency.
4. The listed Subcontractor shall be appropriately licensed pursuant to the Contractor License Law.
5. For Design-Build Contracts, refer to the RFQ and RFP for each Project or Task Order.

H. SUBCONTRACTOR AND SUPPLIER SUBSTITUTIONS.

1. Listed Subcontractors and Suppliers shall not be substituted without the Express authorization of the City or its duly authorized agent.
2. Request for Subcontractor or Supplier substitution shall be made in writing to the Public Works Contracting Group, Attention Contracts Specialist, 1200 Third Avenue, Suite 200, San Diego, CA 92101 with a copy to the Engineer.
3. The request shall include a thorough explanation of the reason(s) for the substitution, including dollar amounts and a letter from each substituted Subcontractor or Supplier stating that they (the Subcontractors or Suppliers) release all interest in working on the Project, written confirmation from the new Subcontractor or Supplier stating that they agree to work on the Project along with the dollar value of the work to be performed.
4. Written approval of the substitution request shall be received by the Contractor, from the City or its authorized officer, prior to any unlisted Subcontractor or Supplier performing work on the Project.
5. Substitution of Subcontractors and Suppliers without authorization shall subject the Contractor to those penalties set forth in Public Contract Code §4110.
6. Requests for Supplier substitution shall be made in writing at least 10 days prior to the provision of materials, supplies or services by the proposed Supplier, and shall include proof of written notice to the originally listed Supplier of the proposed substitution.
7. A Contractor whose Bid is accepted may not:
 1. Substitute a person as Subcontractor or Supplier in place of the Subcontractor, Supplier listed in the original bid, except that the City, or it's duly authorized officer, may consent to the substitution of another person as a Subcontractor or Supplier in any of the following situations:
 - a) When the Subcontractor or Supplier listed in the Bid after having a reasonable opportunity to do so fails or refuses to execute a written contract with the Contractor, when that written contract, based upon the Contract Documents or the terms of that Subcontractor's or Supplier's written bid is presented to the Subcontractor or Supplier by the Contractor.
 - b) When the listed Subcontractor or Supplier becomes bankrupt or insolvent.

- c) When the listed Subcontractor or Supplier fails to perform its contract.
 - d) When the listed subcontractor fails or refuses to meet bond requirements as set forth in Public Contract Code §4108.
 - e) When the Contractor demonstrates to the City or its duly authorized officer, subject to the provisions set forth in Public Contract Code §4107.5, that the name of the Subcontractor was listed as the result of an inadvertent clerical error.
 - f) When the listed Subcontractor is not licensed pursuant to the contractors license laws.
 - g) When the listed Subcontractor is ineligible to work on a public works project pursuant to work on a public works project pursuant to §§1777.1 or 1777.7 of the Labor Code.
 - h) When the City or its duly authorized agent determines that the listed Subcontractor is not a responsible contractor.
 - i) When the City, or its duly authorized officer, determines that the work performed by the listed Subcontractor or that the materials or supplies provided by the listed Supplier are substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the Subcontractor or Supplier is substantially delaying or disrupting the progress of the work.
2. Permit a contract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original Subcontractor, Supplier listed in the original bid without the consent of the City, or its duly authorized officer.
 3. Other than in the performance of "Change Orders" causing changes or deviations from the Contract, sublet or subcontract any portion of the work, or contract for materials or supplies in excess of 0.5% of the Contractor's total bid or \$10,000, whichever is greater as to which his or her original bid did not designate a Subcontractor or Supplier.
8. Following receipt of notice from the Contractor of the proposed substitution of a Subcontractor or Supplier, the listed Subcontractor or Supplier who has been so notified shall have 5 Working Days within which to submit written objections to the substitution to the Contract Specialist with a copy to the Engineer. Failure to file these written objections shall constitute the listed Subcontractor or Supplier's consent to the substitution. If written objections are filed, the City shall give notice in writing of at least 5 Working Days to the listed Subcontractor or Supplier of a hearing by the City on the Contractor's request for substitution.

I. PROMPT PAYMENT.

1. The Contractor or Subcontractor shall pay to any subcontractor, not later than 7 days of receipt of each progress payment, unless otherwise agreed to in writing; the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In cases of subcontractor performance deficiencies, the Contractor shall make written notice of any withholding to the Subcontractor with a copy to the Contracts Specialist. Upon correction of the deficiency, the Contractor shall pay the Subcontractor the amount previously withheld within 14 days after payment by the City.

2. Any violation of California Business and Professions Code, §7108.5 concerning prompt payment to Subcontractors shall subject the violating Contractor or Subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by the Prime Contractor, deficient subcontract performance, or noncompliance by a subcontractor.

J. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS.

1. The City will hold retention from the Contractor and will make prompt and regular incremental acceptances of portions, as determined by the Engineer, of the Work, and pay retention to the Contractor based on these acceptances.
2. The Contractor or Subcontractor shall return all monies withheld in retention from a Subcontractor within 30 days after receiving payment for Work satisfactorily completed and accepted including incremental acceptances of portions of the Work by the City.
3. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of this provision shall subject the violating the Contractor or Subcontractor to the penalties, sanctions and other remedies specified in §7108.5 of the Business and Professions Code.
4. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor, deficient subcontract performance, or noncompliance by a subcontractor.

K. CERTIFICATION. The City accepts certifications of MBE, WBE, DBE, or DVBE by any of the following methods:

1. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;
2. Current MBE or WBE certification from the California Public Utilities Commission. Additional information may be obtained from:
<http://www.cpuc.ca.gov/PUC/SupplierDiversity/CertInfo.htm>;
3. Current MBE certification from the San Diego Regional Minority Supplier Diversity Council. Additional information may be obtained from:
www.supplierdiversitysd.org;
4. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business (916) 322-5060 or go to their link at:
<http://www.pd.dgs.ca.gov/smbus/default.htm>.

5. Current certification by the City of Los Angeles as DBE, WBE or MBE. For more information go to:

http://bca.lacity.org/index.cfm?nxt_body=tutorials_c.cfm

Subcontractors' valid proof of certification status e.g., copy of MBE, WBE, DBE, or DVBE certification shall be submitted as required.

L. CONTRACT RECORDS AND REPORTS.

1. The Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.
2. The Contractor shall retain all records, books, papers, and documents directly pertinent to the Contract for a period of not less than 5 years after Notice of Completion; and allow access to said records by the City's authorized representatives.
3. The Contractor shall submit the following reporting using the City's web-based contract compliance i.e., Prism® portal:
 1. *Monthly Employment Utilization.* You and your Subcontractors and Suppliers must submit *Monthly Employment Utilization Reporting* by the 5th day of the subsequent month.
 2. *Monthly Payment.* You and your Subcontractors and Suppliers must submit *Monthly Payment Reporting* by the 5th day of the subsequent month.

Incomplete and/or delinquent reporting may cause payment delays, non-payment of invoice, or both.

CHAPTER 11
EQUAL OPPORTUNITY CONTRACTING PROGRAM
SUBCONTRACTING REQUIREMENTS
(SLBE-ELBE ONLY)

THESE SPECIAL PROVISIONS SUPPLEMENT THE POLICIES AND REQUIREMENTS ESTABLISHED BY THE CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM SPECIFIED IN THE CITY'S GENERAL EOC REQUIREMENTS FOR CONTRACTS SUBJECT TO SLBE-ELBE REQUIREMENTS.

A. GENERAL:

1. It is the City's policy to encourage greater availability, capacity development, and contract participation by SLBE firms in City contracts. This policy is, in part, intended to further the City's compelling interest to stimulate economic development through the support and empowerment of the local community, ensure that it is neither an active nor passive participant in marketplace discrimination, and promote equal opportunity for all segments of the contracting community.
2. The City is committed to maximizing subcontracting opportunities for all qualified and available firms.
3. This policy applies to City-funded construction contracts. Bidders shall be fully informed of this policy as set forth in these specifications. Mandatory or voluntary subcontracting percentages, Bid Discounts, and restricted competition are specified in the Notice Inviting Bids.
4. The Bidders shall make subcontracting opportunities available to a broad base of qualified Subcontractors and shall achieve the minimum SLBE-ELBE subcontractor participation identified for this project.
5. Failure to subcontract the specified minimum (i.e., mandatory) percentages of Bid to qualified available SLBE-ELBE Subcontractors will cause a Bid to be rejected as non-responsive unless the Bidder has demonstrated compliance with the affirmative steps as specified in the City's document titled "Small Local Business (SLBE) Program, INSTRUCTIONS FOR BIDDERS COMPLETING THE GOOD FAITH EFFORT SUBMITTAL" and has submitted documentation showing that all required positive efforts were made prior to Bid submittal due date. The required Good Faith Effort (GFE) documentation shall be submitted to the Contract Specialist.
6. The current list of certified SLBE-ELBE firms and information for completing the GFE submittal can be found on the City's EOC Department website: <http://www.sandiego.gov/eoc/boc/slbe.shtml>
7. At the City's sole discretion, these requirements may be waived in advance on projects deemed inappropriate for subcontracting participation.

B. DEFINITIONS. The following definitions shall be used in conjunction with these specifications:

Bid Discount – Additional inducements or enhancements in the bidding process that are designed to increase the chances for the selection of SLBE firms in competition with other firms.

Commercially Useful Function – An SLBE-ELBE performs a commercially useful function when it is responsible for execution of the Work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SLBE-ELBE shall also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether an SLBE-ELBE is performing a commercially useful function, an evaluation will be performed of the amount of work subcontracted, normal industry practices, whether the amount the SLBE-ELBE firm is to be paid under the contract is commensurate with the Work it is actually performing and the SLBE-ELBE credit claimed for its performance of the Work, and other relevant factors. Specifically, an SLBE-ELBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SLBE-ELBE participation, when in similar transactions in which SLBE-ELBE firms do not participate, there is no such role performed.

Good Faith Efforts (GFE) – Documentation of the Bidder’s intent to comply with SLBE Program goals and procedures included in the City’s SLBE Program, Instructions for Completing Good Faith Effort Submittal available from the City’s EOCP website or the Contract Specialist.

Independently Owned, Managed, and Operated – Ownership of a SLBE-ELBE firm shall be direct, independent, and by individuals only. Business firms that are owned by other businesses or by the principals or owners of other businesses that cannot themselves qualify under the SLBE-ELBE eligibility requirements shall not be eligible to participate in the Program. Moreover, the day-to-day management of the SLBE-ELBE firm shall be direct and independent of the influence of any other businesses that cannot themselves qualify under the SLBE-ELBE eligibility requirements.

Joint Venture - An association of two or more persons or business entities that is formed for the single purpose of carrying out a single defined business enterprise for which purpose they combine their capital, efforts, skills, knowledge, or property. Joint ventures shall be established by written agreement to qualify for this program.

Local Business Enterprise (“LBE”) - A firm having a Principal Place of Business and a Significant Employment Presence in San Diego County, California that has been in operation for 12 consecutive months and a valid business tax certificate. This definition is subsumed within the definition of Small Local Business Enterprise.

Minor Construction Program – A program developed for bidding exclusively among SLBE-ELBE Construction firms.

Principal Place of Business – A location wherein a firm maintains a physical office and through which it obtains no less than 50% of its overall customers or sales dollars.

Protégé – A firm that has been approved, is an active participant in the City’s Mentor-Protégé Program, has signed the required program participation agreement and has been assigned a mentor.

Significant Employee Presence – No less than 25% of a firm’s total number of employees are domiciled in San Diego County.

C. SUBCONTRACTOR PARTICIPATION. SLBE–ELBE firms will be recognized as participants in the Contract according to the following criteria:

1. For credit to be allowed toward respective participation level, all listed SLBE-ELBE firms shall have been certified by the Bid due date.

2. The Subcontractor shall perform a commercially useful function for credit to be allowed toward subcontractor participation levels. The Subcontractor shall be required by the Contractor to be responsible for execution of a distinct element of the Work and shall carry out its responsibility by actually performing and supervising its own workforce.
3. If the Bidder is seeking the recognition of materials, supplies, or both towards achieving any mandatory subcontracting participation level, the Bidder shall indicate on Form AA40 with the Bid.
 1. If the materials or supplies are obtained from a SLBE-ELBE manufacturer, the Bidder will receive 100% of the cost of the materials or supplies toward SLBE participation. For the purposes of counting SLBE-ELBE participation a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 2. If the materials or supplies are obtained from a SLBE-ELBE supplier, the Bidder will receive 60% of the cost of the materials or supplies toward SLBE participation. For the purposes of counting SLBE-ELBE participation a Supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a supplier, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a supplier in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of suppliers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 3. If the materials or supplies are obtained from a SLBE-ELBE, which is neither a manufacturer nor a supplier, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees or transportation charges for the delivery of materials or supplies required on a job site will be counted toward SLBE-ELBE participation, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves will be counted toward SLBE-ELBE participation.
4. If the Bidder is seeking the recognition of SLBE-ELBE Trucking towards achieving any mandatory subcontracting participation level, the Bidder shall indicate on Form AA35 with the Bid. The following factors will be evaluated in determining the credit to be allowed toward the respective participation level:
 1. The SLBE-ELBE shall be responsible for the management and supervision of the entire trucking operation for which it is getting credit on a particular contract, and there cannot be a contrived arrangement for the purpose of counting SLBE-ELBE participation.

2. The SLBE-ELBEE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The SLBE-ELBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The SLBE-ELBE may lease trucks from another SLBE-ELBE firm including an owner-operator, who is certified as a SLBE-ELBE. The SLBE-ELBE who leases trucks from another SLBE-ELBE receives credit for the total value of the transportation services the lessee SLBE-ELBE provides on the contract.
5. The SLBE-ELBE may also lease trucks from a non-SLBE-ELBE firm, including an owner operator. The SLBE-ELBE who leases trucks from a non-SLBE-ELBE is entitled to credit for the total value of transportation services provided by non-SLBE-ELBE lessees not to exceed the value of transportation services provided by SLBE-ELBE owned trucks on the contract. Additional participation by non-SLBE-ELBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
6. A lease shall indicate that the SLBE-ELBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the SLBE-ELBE, so long as the lease gives the SLBE-ELBE absolute priority for use of the leased truck.

D. SLBE-ELBE SUBCONTRACTOR PARTICIPATION PERCENTAGES.

1. Contracts valued at \$1,000,000 and above include a mandatory subcontractor participation requirement for SLBE-ELBE firms.
 - a) The Bidder shall achieve the mandatory subcontractor participation requirement or demonstrate GFE.
 - b) The Bidders shall indicate the participation on Forms AA35 and AA40 as applicable regardless of the dollar value.
 - c) An SLBE-ELBE Bidder may count its own participation toward achieving the mandatory goal as long as the SLBE-ELBE Bidder performs 51% of the Contract Price.
2. Contracts Valued over \$500,000 and under \$1,000,000 shall include the mandatory subcontractor participation requirements described above and the following:
 - a) 5% bid discount for SLBE-ELBE firms.
 - b) Non-certified Contractor will receive 5% bid discount if they achieve the specified mandatory subcontracting participations.
 - c) Bid discounts shall not apply if the award will result in a total contract cost of \$50,000 in excess of the apparent lowest Bid.
 - d) In the event of a tie bid between a SLBE-ELBE Bidder and a non-SLBE-ELBE Bidder, the SLBE-ELBE Bidder will be awarded the Contract.
 - e) In the event of a tie bid between a discounted Bid and a non-discounted Bid, the discounted Bid will be awarded the Contract.
3. Minor Public Works Projects - Contracts valued over \$250,000 up to \$500,000 will be considered Minor Construction Projects and will be awarded through a competitive bid process open only to City certified SLBE-ELBE firms. If there are no bidders or no

responsible bidders, the Contract will be made available to all Bidders and subject to requirements listed in “Major Public Works Projects” sections above.

4. Contracts valued at \$250,000 and below will also be considered Minor Construction Projects and will be awarded through a competitive bid process open only to City certified ELBEs unless there are less than 2 firms available at which it will be awarded through a competitive process open only to the City certified SLBE-ELBE firms. If there are no bidders or no responsible bidders, the Contract will be made available to all Bidders and subject to requirements listed in Major Public Works Projects above.

E. JOINT VENTURES.

1. The City may allow for Joint Venture bid discounts on some contracts. Contracts that allow for Joint Venture bid discounts will be designated in Bid documents. A firm that is bidding or competing for City contracts may partner with a certified SLBE or ELBE to compete for contracts as a Joint Venture.
2. A Joint Venture shall be between two entities with the same discipline or license as required by the City. Joint ventures will receive bid discounts depending on the SLBE or ELBE percentage of participation. To be eligible for a discount, a Joint Venture Agreement shall be approved by the City at the time of Bid submittal. The maximum allowable discount shall be 5%. The parties shall agree to enter in the relationship for the life of the projects.
3. Joint Venture shall submit a Joint Venture Management Plan, a Joint Venture Agreement, or both at least 2 weeks prior to the Bid due date. Copies of the Joint Venture applications are available upon request to the Contract Specialist. Each agreement or management plan shall include the following:
 1. Detailed explanation of the financial contribution for each partner;
 2. List of personnel and equipment used by each partner;
 3. Detailed breakdown of the responsibilities of each partner;
 4. Explanation of how the profits and losses will be distributed;
 5. Description of the bonding capacity of each partner; and
 6. Management or incentive fees available for any one of the partners (if any).
4. Commercially Useful Functions Performed by Joint Venture Partners – Each Joint Venture partner shall perform a “commercially useful function” as the term is defined herein. An SLBE or ELBE that relies on the resources and personnel of a non-SLBE or ELBE firm will not be deemed to perform a “commercially useful function”.
5. License Requirements – Each Joint Venture partner shall 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 Joint Venture partner shall possess the requisite specialty license for that trade bid.
6. Delineation of Work – The SLBE or ELBE partner shall clearly define the portion of the Work to be performed. This work shall be of the similar type of work the SLBE or ELBE partner performs in the normal course of its business. The Joint Venture Participation Form shall specify the Bid items to be performed by each individual Joint Venture partner. Lump sum Joint Venture participation shall not be acceptable.

7. Responsibilities of the SLBE or ELBE Joint Venture Partner:
 1. The SLBE or ELBE partner shall share in the control, management responsibilities, risks and profits of the Joint Venture in proportion with the level of participation in the project.
 2. The SLBE or ELBE partner shall perform work that is commensurate with its experience.
 3. The SLBE or ELBE partner shall use its own employees and equipment to perform its portion of the Work.
 4. The Joint Venture as a whole shall perform Bid items that equal or exceed 50% of the Contract Price, excluding the cost of manufactured items, in order to be eligible for a Joint Venture discount.

F. MAINTAINING PARTICIPATION LEVELS.

1. Credit and preference points are earned based on the level of participation proposed prior to the award of the Contract. Once the Project begins the Contractor shall achieve and maintain the SLBE-ELBE participation levels for which credit and preference points were earned. The Contractor shall maintain the SLBE-ELBE percentages indicated at the Award of Contract and throughout the Contract Time.
2. If the City modifies the original scope of Work, the Contractor shall make reasonable efforts to maintain the SLBE-ELBE participation for which creditor preference points were earned. If participation levels shall be reduced, approval shall be received from the City prior to making changes.
3. The Contractor shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE-ELBE subcontractor. Failure to do so shall constitute a material breach of the Contract.
4. If the Contractor fails to maintain the SLBE-ELBE participation listed at the time the contract is awarded, and has not received prior approval from the City, the City may declare the Contractor in default of its contract with the City.
5. The Contractor shall submit its Final Payment Report including all subcontracting activities to the City within 15 days after the Work has been accepted. Failure to comply may result in assessment of liquidated damages or withholding of retention. The City will review and verify 100% of subcontract participation reported in the Final Payment Reporting prior to approval and release of final retention to the Contractor. In the event such withheld retention includes sums that are due to Subcontractors for successfully completed work, the City may authorize payment by the City of that portion of the withheld retention via a joint check.

G. SUBCONTRACTING EFFORTS REVIEW AND EVALUATION.

1. Documentation of Bidder's subcontracting efforts will be reviewed by EOCP to verify that the Bidder made subcontracting opportunities available to a broad base of qualified subcontractors, negotiated in good faith with interested subcontractors, and did not reject any bid for unlawful discriminatory reasons. The EOCP review is based on the federal "Six Good Faith Efforts" model.
2. The GFE are required methods to ensure that all ELBE and SLBE firms have the opportunity to compete for the City's Public Works procurements. The Six Good Faith Efforts also known as affirmative steps represent GFE to attract and utilize ELBE and SLBE firms:

1. Ensure ELBE firms are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.
2. Make information of forthcoming opportunities available to SLBE-ELBE firms and arrange time for contracts and establish delivery schedules, where requirements permit, in a way that encourages and facilitates participation by SLBE-ELBE firms in the competitive process. This includes posting solicitations for bids or proposals for a minimum of 10 Working Days before the Bid or Proposal due date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with SLBE-ELBE firms.
4. Encourage contracting with a consortium of ELBE-SLBE firms when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the City's EOC Office and the SLBE-ELBE Directory.
6. If the Contractor awards subcontracts, it shall require the Subcontractors to take the steps in subparagraphs (a)-(e) of this subsection.

H. GOOD FAITH EFFORT DOCUMENTATION.

If the specified SLBE-ELBE subcontractor participation percentages are not met, the Bidder shall submit information necessary to establish adequate GFE were taken to meet the contract subcontractor participation percentages. See the City's document titled "Small Local Business (SLBE) Program, INSTRUCTIONS FOR BIDDERS COMPLETING THE GOOD FAITH EFFORT SUBMITTAL" for the documentation requirements posted on the City's website at the time of Bid.

I. SUBCONTRACTOR SUBSTITUTION. Evidence of fraud or discrimination in substitution of subcontractors will result in sanctions including assessment of penalty fines, termination of contract or debarment. This section does not replace applicable California Public Contract Code.

J. FALSIFICATION OF SUB-AGREEMENT AND FRAUD. Falsification or misrepresentation of a sub-agreement as to company name, contract amount or actual work performed by Subcontractor, or any falsification or fraud on the part of Bidders in the submission of documentation and forms pursuant to this program, will result in sanctions against the Bidder including assessment of penalty fines, termination of the Contract, or debarment. Instances of falsification or fraud which are indicative of an attempt by Bidders to avoid subcontracting with certain categories of subcontractors on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability, shall be referred to the Equal Opportunity Contracting Program's Investigative Unit for possible violations of Article 2, Division 35 of the City Administrative Code, §§22.3501 et seq. (Nondiscrimination in Contracting).

K. RESOURCES. The current list of certified SLBE-ELBE firms and information for completing the GFE submittal can be found on the City's EOC Department website: <http://www.sandiego.gov/eoc/boc/slbe.shtml>

(((((((((((((((END OF EOC PROVISIONS))))))))))))))))