

SUBJECT: SMALL AND LOCAL BUSINESS PREFERENCE FOR GOODS,
SERVICES, AND CONSULTANT CONTRACTS

POLICY NO.: 100-10

EFFECTIVE DATE: [TBD]

BACKGROUND:

The City of San Diego expends millions of dollars annually in the procurement of goods, services, and consultants to meet the requirements of the various City departments. Historically, there has been a lack of diversity among City contracts. In particular, small and emerging local businesses have faced challenges competing against established businesses with greater resources and access to capital.

The City desires to provide contracting opportunities to a broader cross-section of the community in order to enhance diversity and increase competition. In addition, the City has a compelling interest in ensuring that it is neither an active nor passive participant in marketplace discrimination. The City also has a compelling interest in stimulating the local economy by providing opportunities for small and local businesses to grow, succeed, and create jobs for the citizens of San Diego.

The City Council has heard testimony from City staff and the community, considered statistical evidence, and reviewed programs in neighboring jurisdictions in an effort to identify a program best-suited to achieve these goals.

Based on this evidence, the City Council declares that a small and local business preference program would provide an effective, race and gender-neutral tool for achieving the City's goals of enhancing diversity in City contracts, ensuring open and fair competition, and promoting a robust local economy.

PURPOSE:

The purpose of this policy is to establish a small and local business preference program for goods, services, and consultant contracts. This program is intended to provide a race and gender-neutral tool to expand opportunities for, and develop the capacity of, small and local firms so that all segments of the community will be able to participate in City contracts. This Council Policy does not apply to consultant contracts that are entered into pursuant to a developer reimbursement agreement as defined in San Diego Municipal Code Chapter 14, Article 2, Division 6.

The program is intended as a companion program to Chapter 2, Article 2, Division 36 of the San Diego Municipal Code relating to a Small and Local Business Program for Public Works Contracts.

DEFINITIONS:

Defined terms used in this Council Policy appear in italics. For purposes of this Council Policy:

Bidder shall have the same meaning as set forth in Municipal Code section 22.3003.

Consultant contract shall have the same meaning set forth in Municipal Code section 22.3003.

Contract for goods shall have the same meaning set forth in Municipal Code section 22. 3003.

Contract for services shall have the same meaning set forth in Municipal Code section 22. 3003.

Emerging Business Enterprise or *EBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Emerging Local Business Enterprise or *ELBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Job order contract shall have the same meaning set forth in Municipal Code section 22.3603.

Local Business Enterprise or *LBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Maintenance shall have the same meaning set forth in Municipal Code section 22.3003.

Principle place of business shall have the same meaning set forth in Municipal Code section 22.3603.

Public works contract shall have the same meaning set forth in Municipal Code section 22.3003.

Significant employee presence shall have the same meaning set forth in Municipal Code section 22.3603.

Small Business Enterprise or *SBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Small Local Business Enterprise or *SLBE* shall have the same meaning set forth in Municipal Code section 22.3603.

POLICY:

1. Goods and Services Contracts

All *contracts for goods* and *contracts for services* shall comply with the advertising, bidding, and award requirements set forth in Chapter 2, Article 2, Divisions 30 and 32, of the San Diego Municipal Code. In addition, for all *contracts for goods* and *contracts for services* in which the Purchasing Agent is required to advertise for sealed bids or proposals in the City's official newspaper, the City Manager shall:

- a. For bids, apply a discount of: (1) 5% off the bid price for *SLBE* or *ELBE* prime contractors; or (2) 5% off the bid price for prime contractors achieving the voluntary goal of 20% for *SLBE* or *ELBE* subcontractor participation set forth in subsection (c) of this Section 1. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the low, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted *bidder* will be awarded the *goods* or *services contract*. The discount shall be taken off the total contract value, including contract option years.
- b. For proposals, apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:
 1. If the *bidder* achieves 20% participation, apply 5% of the total possible evaluation points to the *bidder's* score; or
 2. If the *bidder* achieves 25% participation, apply 10% of the total possible evaluation points to the *bidder's* score; or
 3. If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.
- c. Include a voluntary subcontractor participation requirement of 20% of the total bid price for *SLBEs* or *ELBEs*.

2. Consultant Contracts

All *consultant contracts* shall comply with the advertising, bidding, and award requirements set forth in Chapter 2, Article 2, Divisions 30 and 32, of the San Diego Municipal Code, Council Policy 300-7 (Consultant Services Selection), and Administrative Regulations 25.60 (Selection of Consultants for Work Requiring Licensed Architect and Engineering Skills) and 25.70 (Hiring of Consultants Other Than Architects and Engineers), as applicable. In addition, the City Manager shall, for all *consultant contracts* valued at over \$50,000:

- a. Apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:
 1. If the *bidder* achieves 20% participation, apply 5% of the total possible evaluation points to the *bidder's* score; or
 2. If the *bidder* achieves 25% participation, apply 10% of the total possible evaluation points to the *bidder's* score; or
 3. If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.

3. Maintaining Participation Levels

- a. Bid discounts and additional points are based on the *bidder's* level of participation proposed prior to the award of the *goods, services, or consultant contract*. *Bidders* are required to achieve and maintain the *SLBE* or *ELBE* participation levels throughout the duration of the *goods, services, or consultant contract*.
- b. If the City modifies the original specifications, the *bidder* shall make reasonable efforts to maintain the *SLBE* or *ELBE* participation for which the bid discount or additional points were awarded. The City must approve in writing a reduction in *SLBE* or *ELBE* participation levels.
- c. The *bidder* shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated *SLBE* or *ELBE* subcontractor.
- d. *Bidder's* failure to maintain *SLBE* or *ELBE* participation levels as specified in the *goods, services, or consultant contract* shall constitute a default and grounds for debarment under Chapter 2, Article 2, Division 8, of the San Diego Municipal Code.
- e. The remedies available to the City under this Council Policy are cumulative to all other rights and remedies available to the City.

4. Commitment to Diversity

Invitations to Bid (ITB) and Requests for Proposals (RFP) for *goods, services, and consultant contracts* may require *bidders* to address their commitment to diversity. The Purchasing Agent, in consultation with Equal Opportunity Contracting, may develop ITB and RFP evaluation criteria, including point allocation, to carry out the intent of this section. *Bidders* may be required to address their commitment to diversity, this includes, but is not limited to, describing their diversity policies, outreach and recruitment efforts, past participation levels, community activities and other programs. However, nothing in this Council Policy shall be construed to permit the City to consider the *bidder's* race or gender, or that of its employees, in awarding a contract.

5. Bonding and Insurance

The Purchasing Agent, in consultation with Equal Opportunity Contracting, may on a contract-by-contract basis, adjust bonding and insurance requirements on *goods, services, and consultant contracts* to enhance opportunities for *SLBEs* and *ELBEs* to the extent permitted by law. The Purchasing Agent and Equal Opportunity Contracting shall consult with the Risk Management Department before making any such adjustment to ensure that the City is adequately protected against liability.

6. Audit and Reporting Requirements

The City shall periodically conduct audits of the Small and Local Business Program for *goods, services, and consultant contracts*. The City Manager shall report annually to the City Council on the impact and costs of implementing the Small and Local Business Preference for *goods, services, and consultant contracts*.

7. City Manager to Adopt Regulations

The City Manager shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Policy.

HISTORY:

[History]