



# REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT  
February 21, 2012

Honorable Members of the  
Law and Legislation Committee

**Title: Ordinance Amendments: Local Business Enterprise (LBE) Program and Procurement Streamlining**

**Location/Council District:** Citywide

**Recommendation:** Approve and forward to the full City Council: (1) ordinances amending Sections 3.56.020 and 3.60.020; Article VIII of Chapter 3.60; and Section 3.64.040 of Chapter 3.64 of the Sacramento City Code relating to the adoption by resolution of a Local Business Enterprise (LBE) Program; (2) an ordinance amending section 3.54.040 of Chapter 3.54 relating to non-discrimination in the provision of benefits; and (3) approve and forward to the full City Council, streamlining changes to the City's procurement process.

**Contact:** Melissa Anguiano, Economic Development Manager, 808-5864; Craig Lymus, Procurement Services Manager, 808-5524

**Presenters:** Melissa Anguiano, Economic Development Manager

**Department:** Economic Development; General Services; City Attorney's Office

**Division:** Citywide; Procurement

**Organization No:** 18001001; 13001061

## **Description/Analysis**

**Issue:** In 2011, City Council requested that staff explore options to streamline business opportunities for small and local businesses to bid and execute contracts with the City of Sacramento. City staff, inclusive of Economic Development, General Services, Risk Management and the City Attorney's Office, have developed proposed streamline measures including:

- A. Simplified standard form city contracts;
- B. A local business preference program; and
- C. Increased business outreach efforts.

**A. Proposed Simplified Contract Changes:** The City Attorney's Office, along with Risk Management and General Services, has simplified the standard contract forms for professional and non-professional services for \$25,000 and

less, by combining related provisions, eliminating non-relevant provisions or exhibits, and placing standard contract provisions and exhibits on the City's website and incorporating these exhibits and provisions by reference, where applicable.

In addition, the threshold for application of the Equal Benefit Ordinance (EBO) will be increased from \$25,000 to \$100,000. The proposed changes enable small businesses to be more competitive for City contracting opportunities and create an easier contracting process for small businesses.

**B. Proposed Local Business Enterprise (LBE) Preference Program:** The City Council has expressed an interest in creating a local business preference that promotes and bolsters the local economy. Other jurisdictions in the state have also adopted local procurement preference programs in an effort to stimulate their local economies. Most recently Fremont and Los Angeles adopted preference programs based on comparing certain local economic indicators to the state and nation as a whole. After review of other Local Business Preference programs, staff conducted similar analysis of economic indicators and developed a Local Business Enterprise (LBE) Program for consideration. Analyzed economic indicators included: (1) unemployment; (2) commercial office vacancy rates; and (3) other regulatory taxes.

Taking into consideration the analyzed economic indicators and City Council requests, staff recommends a Local Business Enterprise (LBE) Program that awards a 2% preference on all City procurement opportunities under \$100,000 and professional service contracts over \$100,000. The proposed preference would extend to businesses located within Sacramento city and the unincorporated county of Sacramento. In order to maintain competitive bidding process requirements, this preference would not apply to supply, non-professional service, or public project expenditures over \$100,000.

This preference would be in addition to the City's current 5% Emerging and Small Business Enterprise (ESBE) certification preference. Thus, businesses that are located within the city or unincorporated county and certified as an ESBE could receive up to a 7% bidding preference (5% + 2%). By comparison, the bidding preferences in Oakland and San Francisco can range up to 5 to 10%, respectively. Local businesses enterprises (LBEs) not certified as an ESBE would receive only the 2% local bidding preference.

**C. Business Outreach Update:** The Procurement Division of General Services recently unveiled "Planet Bids", an online bidding system that permits electronic bid submission. Electronic bidding will reduce both submission time and errors in the bidding process. The City will utilize its partners, including the local and ethnic Chamber of Commerce organizations, Property and Business Improvement Districts (PBIDs) and business associations to promote and market the new streamlined contract changes, LBE program and Planet Bids.

**Policy Considerations:** Local small businesses make a significant contribution to the economic health of the city and the quality of life of its citizens and visitors. Fostering the local business community with incentives, such as bid and/or point preferences for City contracts, is an important policy discussion. Further promoting practices of streamlined contracting facilitate a perception of a business-friendly environment.

**Environmental Considerations:** Policy and procedure items are exempt from California Environmental Quality Act (CEQA) review under Section 15378(b)(2) of the CEQA Guidelines.


**Sustainability Considerations:** None

**Committee/Commission Action:** None

**Rationale for Recommendation:** The proposed contract changes are intended to simplify the City's process and to facilitate a more business-friendly contracting environment. The Local Business Enterprise (LBE) Program is intended to promote and provide incentive for the participation of local business. Promoting businesses within the unincorporated county of Sacramento has direct economic benefits to the City, including employment and indirect sales-taxes. An increase in local spending and sales tax, within Sacramento, could lead to an increase in local jobs and private sector expenditures and growth.

**Financial Considerations:** The proposed recommendations have no financial impacts. The proposed Local Business Enterprise (LBE) Program would ensure that a preference is applied only during and for the purpose of evaluating bids and proposals. The preference would not increase the price to be paid by the City for goods and services after the contract has been awarded.

**Emerging Small Business Development (ESBD):** None

Respectfully Submitted by:  \_\_\_\_\_  
Melissa Anguiano  
Division Manager, Economic Development Department

Approved by:  \_\_\_\_\_  
James R. Rinehart  
Director, Economic Development Department

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### **Background Information**

City staff, inclusive of Economic Development, General Services, Risk Management and the City Attorney's Office, have developed proposed contract changes to the City's contacting process and a Local Business Enterprise (LBE) Program for consideration.

**Proposed Simplified Contract Changes:** Both professional and non-professional service agreements are comprised of a face page and several exhibit attachments. In general, the 4 exhibits are (A) Scope of Services; (B) Fee Schedule/manner of Payment; (C) Facilities and Equipment to be provided by the City; and (D) General Provisions. Provisions in the face page have been combined with provisions in Exhibit A, the Scope of Services. Exhibit C has been removed (any provisions related to the use of City facilities or equipment can be included in the scope of services) and Exhibits B and D will be placed on the City's website and incorporated into the contracts by reference. In addition, exhibits and attachments pertaining to the Living Wage Ordinance (LWO) and Equal Benefit Ordinance (EBO) were also removed based on the existing LWO threshold application and the proposed EBO threshold increase. The proposed EBO increase is consistent with the threshold for application of the LWO.

These contract changes reduce the amount of paperwork small businesses need to process and submit to enter into agreements of \$25,000 or less.

**Proposed Local Business Enterprise (LBE) Preference Program:** The Cities of San Jose, Oakland and San Francisco have all adopted Local Business Preference programs ranging from a 2-10% potential preference. Three years ago, the City of Fremont, for example, increased its Local Business Preference from 2.5% to 5% (for a period of 3 years) by evaluating multiple factors related to Fremont, including unemployment, vacancy rates and the desire by the City Council to focus on creating jobs and sustainability within the city. This preference compared certain Fremont economic indicators to the state and nation as a whole, instead of neighboring cities or Metropolitan Statistical Areas (MSA). Indicators included unemployment and commercial vacancy rates, which were higher than the nation and higher than they had ever been. In October 2011, the City of Los Angeles adopted an 8% local business preference with no sunset anticipated. Los Angeles unemployment and vacancy rates were also compared to the nation as a whole and with other states.

After reviewing other Local Business Preference programs, staff conducted similar analyses of economic indicators, including: (1) unemployment; (2) commercial office vacancy rates; and (3) other regulatory taxes.

(1) **Unemployment:** Over the last five years, both the Sacramento city and county unemployment rates have been steadily higher than both the national and state unemployment rates. As of December 2011, the average unemployment rate for the city and county was at 11.9%. While the national and state's unemployment rates for December 2011 were at 8.5% and 10.9%, respectively.

Higher unemployment rates also contribute to declining sales tax revenues in the City's General Fund.

(2) **Commercial Office Vacancy Rates:** The downturn in the economy has also affected the Sacramento commercial office market. The Sacramento office vacancy rate in the 4<sup>th</sup> quarter of 2011 was over 23%, compared to a vacancy rate of 16% nationally. At the close of 2011, the Sacramento office market experienced approximately half a million square feet of negative net absorption and its fourth consecutive year of negative absorption. Negative absorption occurs when the quantity of space becoming available in the market exceeds the quantity of space being taken off the market. Negative absorption, essentially, leads to increased vacancy rates. With the public sector accounting for one of Sacramento's largest industry sectors, it is likely absorption in the office market will be reliant on private sector activity.

(3) **Other Regulatory Taxes:** The cost of doing business in California compared to other states is significantly more expensive – primarily due to state taxes and environmental and labor regulations. In addition to state taxes and regulations, businesses choosing to operate within city limits are subject to a 7.5% Utility User Tax (UUT). The City of Sacramento's 7.5% UUT is 5 percentage points higher than that of any of the neighboring jurisdictions and equal to the cities of San Francisco and Oakland. The City's higher UUT can place higher operating costs on businesses, putting them at a competitive disadvantage.

**Business Outreach Update:** The City continues to work with the local small business community by executing annual (for the last three-years) contracts with the Black, Hispanic, Asian-Pacific and Slavic Chambers of Commerce to provide additional outreach to Sacramento small businesses. The Economic Development Department continues to coordinate business retention walks along vital commercial corridors with local business associations, property and business improvement districts and chambers. The City also has a dedicated staff person, within the Economic Development Department, assigned to the Emerging and Small Business Certification program.

**REDLINE VERSION**

**ORDINANCE NO. 2012-XXXX**

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE AMENDING SECTIONS 3.56.020, 3.60.020, AND ARTICLE VIII OF CHAPTER 3.60 OF THE SACRAMENTO CITY CODE, RELATING TO THE LOCAL BUSINESS ENTERPRISE PROGRAM**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

**SECTION 1.**

Section 3.56.020 of the Sacramento City Code is amended to read as follows:

**3.56.020 Determination of lowest responsible bidder.**

Where any provision of the City Charter or this chapter requires award of the contract for supplies or nonprofessional services to the lowest responsible bidder, the lowest responsible bidder shall be determined as follows:

A. In determining whether a bidder is responsible, consideration shall be given to: (1) the quality and performance of the supplies to be provided by the bidder; (2) the ability, capacity and skill of the bidder to perform the contract or effectuate the transaction; (3) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (4) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (5) the quality of the bidder's performance on previous purchases by, or contracts with, the city; (6) the ability of the bidder to provide future maintenance, repair parts and services for the supplies provided.

B. Based on the information provided in the bids, the city council or the city manager, as the case may be, shall identify those bids that are subject at the time of bid opening to the city's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of this code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the city is deducted from such bids. This deduction shall be in addition to the application of any bid price preferences authorized by subsection C of this section.

C. The city council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including, but not limited to, preferences

to promote the participation and utilization of small and emerging business enterprises, or local ~~small and emerging businesses~~ enterprises in the city's contracting for supplies and nonprofessional services. The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences. The calculation of such preferences shall be in addition to any deduction of sales or use tax required by subsection B of this section.

## **SECTION 2.**

Section 3.60.020 of the Sacramento City Code is amended to read as follows:

### **3.60.020 Determination of lowest responsible bidder.**

Where any provision of the city charter or this chapter requires competitive bidding and award of the contract for a public project to the lowest responsible bidder, the lowest responsible bidder shall be determined as follows:

A. In determining whether a bidder is responsible, consideration shall be given to: (i) the quality of a public project to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract; (iii) the ability of the bidder to perform the contract within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; and (v) the quality of the bidder's performance on previous contracts with the city.

B. The city council may by resolution, from time to time, adopt standard minimum qualifications for bidders on competitively bid contracts for public projects. If such standard minimum qualifications are included in the bid specifications for a contract, no bidder shall be considered "responsible" unless it is determined to be responsible in consideration of the factors set forth in subsection A, above, and also meets such standard minimum qualifications at the time of bid opening. The adoption and use of standard minimum qualifications shall not in any way limit or affect the city's ability to: (i) review information contained in a bid, and additional relevant information, and determine whether the bidder is a responsive and/or responsible bidder; or (ii) establish different and/or additional qualification requirements for specific contracts.

C. The city council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including but not limited to, preferences to promote the participation and utilization of small and emerging business enterprises or local business enterprises in the city's contracting for public projects. The lowest responsible bidder shall be the responsible bidder whose bid is responsive to the bid requirements, including without limitation any small and emerging business enterprise program requirements or local business enterprise program requirements included in the bid specifications, and whose bid price is the lowest, after all bid prices are calculated to include any applicable bid price preferences.



### **SECTION 3.**

Article VIII of Chapter 3.60 of the Sacramento City Code is amended to read as follows:

#### **Article VIII. Participation of Small and Emerging Business Enterprises and Local ~~Small and Emerging~~ Business Enterprises.**

##### **3.60.260 Small and emerging business ~~(SBE/EBE)~~ enterprise (SBE/EBE) program and local ~~small and emerging~~ business ~~(local SBE/EBE)~~ enterprise (LBE) program.**

The city council may from time to time adopt by resolution a program or programs to promote and provide incentives for the participation of small and emerging business enterprises, local ~~small and emerging~~ business enterprises, or both, in city contracts or agreements awarded under the provisions of Chapters 3.56, 3.60, or 3.64. For purposes of this article, the terms "SBE", "EBE", "~~local SBE~~", and "~~local EBELBE~~" shall refer to any business entity that is defined as a SBE, EBE, ~~local SBE~~, and ~~local EBELBE~~, respectively. The city manager may from time to time adopt administrative procedures to implement the provisions of the program(s).

##### **3.60.270 SBE/EBE and ~~local SBE/EBELBE~~ participation levels.**

The specifications or request for bids or proposals for any contract or agreement awarded under the provisions of Chapter 3.60 or 3.64 may establish minimum level(s) for participation in the contract or agreement by one or more of the following: SBEs, EBEs, ~~local SBEs~~, or ~~local EBEs~~ LBEs. No bidder or proposer on the contract or agreement shall be considered a responsive bidder or proposer unless its bid or proposal meets the minimum SBE, EBE, ~~local SBE~~, or ~~local EBELBE~~ participation level(s) established for the contract or agreement. A bidder's or proposer's compliance with this section shall be determined in accordance with applicable provisions of the ~~SBE/EBE~~, and ~~local SBE/EBE~~ LBE program(s), and their respective administrative procedures authorized by Section 3.60.260.

##### **3.60.280 Sheltered market program.**

The SBE/EBE program(s), ~~local SBE/EBELBE~~ program(s), and their respective administrative procedures authorized by Section 3.60.260 may provide for a sheltered market program that restricts bidding and awards for contracts and agreements that do not exceed the contract approval authority of the city manager under Sections 3.56.080, 3.60.080, and 3.64.030 to one or more of the following: EBEs, SBEs, ~~local EBEs~~, or ~~local SBEs~~ LBEs.

##### **3.60.290 MBE/WBE/DBE bid requirements.**

Sections 3.60.260 through 3.60.280, inclusive, shall not apply to any contract or agreement awarded under or funded by any federal or state program that includes minority business enterprise (MBE), women business enterprise (WBE) and/or

disadvantaged business enterprise (DBE) participation goals. Such contracts or agreements shall be awarded in accordance with the applicable MBE, WBE and/or DBE requirements and procedures.

**3.60.300 Provision of false information a misdemeanor.**

A. No person shall submit false information to the city, or to the city's agent, for the purpose of establishing the status of any business entity, including a sole proprietorship, as a SBE, EBE, MBE, WBE, DBE, ~~local SBE~~, or ~~local EBELBE~~.

B. No person shall submit false information to the city or the city's agent in connection with any bid or proposal regarding the SBE, EBE, MBE, WBE, DBE, ~~local SBE~~, or ~~local EBELBE~~ status of any business entity, including a sole proprietorship, or regarding efforts made by that person to meet the SBE, EBE, MBE, WBE, DBE, ~~local SBE~~, or ~~local EBELBE~~ participation levels included in a city contract or agreement.

C. Any person who violates this section is guilty of a misdemeanor punishable as provided in Section 1.28.010(A) of this code. The foregoing criminal sanctions shall be in addition to any other remedies authorized by any other provisions of this code and/or provided for by any federal, state or local law or regulation.

**3.60.310 Information to be provided under penalty of perjury.**

A. Whenever any business entity, including a sole proprietorship, submits information to the city, or to an agent of the city, for the purpose of establishing such entity's status as a SBE, EBE, MBE, WBE, DBE, ~~local SBE~~, or ~~local EBELBE~~, such information shall be submitted under penalty of perjury.

B. Whenever any bid or proposal to be submitted to the city calls for the bidder or proposer to submit information about the SBE, EBE, MBE, WBE, DBE, ~~local SBE~~, or ~~local EBELBE~~ status of any business entity, including a sole proprietorship, or about the efforts made by the bidder or proposer to meet the SBE, EBE, MBE, WBE, DBE, ~~local SBE~~, or ~~local EBELBE~~ participation goals included in a city contract or agreement, such information shall be submitted under penalty of perjury.

**SECTION 3.**

If any of the provisions of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of the ordinance are severable.

**REDLINE VERSION**

**ORDINANCE NO. 2012-**

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 3.54.040 OF CHAPTER 3.54 OF THE SACRAMENTO CITY CODE, RELATING TO THE PROVISION OF EMPLOYEE BENEFITS TO EMPLOYEES OF CITY CONTRACTORS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

**SECTION 1.** Section 3.54.040 of the Sacramento City Code is amended as follows

A. Subsection A of section 3.54.040 is amended to read as follows:

A. Contractors that enter into a contract with the city in an amount exceeding \$100,000.00 ~~twenty-five thousand dollars (\$25,000.00)~~ are subject to the requirements of this chapter.

B. Except as specifically amended by the amendment to subsection A, Section 3.54.040 remains unchanged and in full force and effect.

**CLEAN VERSION**

**ORDINANCE NO. 2012-XXXX**

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE AMENDING SECTIONS 3.56.020, 3.60.020, AND ARTICLE VIII OF CHAPTER 3.60 OF THE SACRAMENTO CITY CODE, RELATING TO THE LOCAL BUSINESS ENTERPRISE PROGRAM**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

**SECTION 1.**

Section 3.56.020 of the Sacramento City Code is amended to read as follows:

**3.56.020 Determination of lowest responsible bidder.**

Where any provision of the City Charter or this chapter requires award of the contract for supplies or nonprofessional services to the lowest responsible bidder, the lowest responsible bidder shall be determined as follows:

A. In determining whether a bidder is responsible, consideration shall be given to: (1) the quality and performance of the supplies to be provided by the bidder; (2) the ability, capacity and skill of the bidder to perform the contract or effectuate the transaction; (3) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (4) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (5) the quality of the bidder's performance on previous purchases by, or contracts with, the city; (6) the ability of the bidder to provide future maintenance, repair parts and services for the supplies provided.

B. Based on the information provided in the bids, the city council or the city manager, as the case may be, shall identify those bids that are subject at the time of bid opening to the city's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of this code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the city is deducted from such bids. This deduction shall be in addition to the application of any bid price preferences authorized by subsection C of this section.

C. The city council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including, but not limited to, preferences

to promote the participation and utilization of small and emerging business enterprises, or local business enterprises in the city's contracting for supplies and nonprofessional services. The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences. The calculation of such preferences shall be in addition to any deduction of sales or use tax required by subsection B of this section.

## **SECTION 2.**

Section 3.60.020 of the Sacramento City Code is amended to read as follows:

### **3.60.020 Determination of lowest responsible bidder.**

Where any provision of the city charter or this chapter requires competitive bidding and award of the contract for a public project to the lowest responsible bidder, the lowest responsible bidder shall be determined as follows:

A. In determining whether a bidder is responsible, consideration shall be given to: (i) the quality of a public project to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract; (iii) the ability of the bidder to perform the contract within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; and (v) the quality of the bidder's performance on previous contracts with the city.

B. The city council may by resolution, from time to time, adopt standard minimum qualifications for bidders on competitively bid contracts for public projects. If such standard minimum qualifications are included in the bid specifications for a contract, no bidder shall be considered "responsible" unless it is determined to be responsible in consideration of the factors set forth in subsection A, above, and also meets such standard minimum qualifications at the time of bid opening. The adoption and use of standard minimum qualifications shall not in any way limit or affect the city's ability to: (i) review information contained in a bid, and additional relevant information, and determine whether the bidder is a responsive and/or responsible bidder; or (ii) establish different and/or additional qualification requirements for specific contracts.

C. The city council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including but not limited to, preferences to promote the participation and utilization of small and emerging business enterprises or local business enterprises in the city's contracting for public projects. The lowest responsible bidder shall be the responsible bidder whose bid is responsive to the bid requirements, including without limitation any small and emerging business enterprise program requirements or local business enterprise program requirements included in the bid specifications, and whose bid price is the lowest, after all bid prices are calculated to include any applicable bid price preferences.

**SECTION 3.**

Article VIII of Chapter 3.60 of the Sacramento City Code is amended to read as follows:

**Article VIII. Participation of Small and Emerging Business Enterprises and Local Business Enterprises.**

**3.60.260 Small and emerging business enterprise (SBE/EBE) program and local business enterprise (LBE) program.**

The city council may from time to time adopt by resolution a program or programs to promote and provide incentives for the participation of small and emerging business enterprises, local business enterprises, or both, in city contracts or agreements awarded under the provisions of Chapters 3.56, 3.60, or 3.64. For purposes of this article, the terms “SBE”, “EBE”, and “LBE” shall refer to any business entity that is defined as a SBE, EBE, and LBE, respectively. The city manager may from time to time adopt administrative procedures to implement the provisions of the program(s).

**3.60.270 SBE/EBE and LBE participation levels.**

The specifications or request for bids or proposals for any contract or agreement awarded under the provisions of Chapter 3.60 or 3.64 may establish minimum level(s) for participation in the contract or agreement by one or more of the following: SBEs, EBEs, or LBEs. No bidder or proposer on the contract or agreement shall be considered a responsive bidder or proposer unless its bid or proposal meets the minimum SBE, EBE, or LBE participation level(s) established for the contract or agreement. A bidder’s or proposer’s compliance with this section shall be determined in accordance with applicable provisions of the SBE/EBE and LBE program(s), and their respective administrative procedures authorized by Section 3.60.260.

**3.60.280 Sheltered market program.**

The SBE/EBE program(s), LBE program(s), and their respective administrative procedures authorized by Section 3.60.260 may provide for a sheltered market program that restricts bidding and awards for contracts and agreements that do not exceed the contract approval authority of the city manager under Sections 3.56.080, 3.60.080, and 3.64.030 to one or more of the following: EBEs, SBEs, or LBEs.

**3.60.290 MBE/WBE/DBE bid requirements.**

Sections 3.60.260 through 3.60.280, inclusive, shall not apply to any contract or agreement awarded under or funded by any federal or state program that includes minority business enterprise (MBE), women business enterprise (WBE) and/or disadvantaged business enterprise (DBE) participation goals. Such contracts or agreements shall be awarded in accordance with the applicable MBE, WBE and/or DBE requirements and procedures.

**3.60.300 Provision of false information a misdemeanor.**

A. No person shall submit false information to the city, or to the city's agent, for the purpose of establishing the status of any business entity, including a sole proprietorship, as a SBE, EBE, MBE, WBE, DBE, or LBE.

B. No person shall submit false information to the city or the city's agent in connection with any bid or proposal regarding the SBE, EBE, MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or regarding efforts made by that person to meet the SBE, EBE, MBE, WBE, DBE, or LBE participation levels included in a city contract or agreement.

C. Any person who violates this section is guilty of a misdemeanor punishable as provided in Section 1.28.010(A) of this code. The foregoing criminal sanctions shall be in addition to any other remedies authorized by any other provisions of this code and/or provided for by any federal, state or local law or regulation.

**3.60.310 Information to be provided under penalty of perjury.**

A. Whenever any business entity, including a sole proprietorship, submits information to the city, or to an agent of the city, for the purpose of establishing such entity's status as a SBE, EBE, MBE, WBE, DBE, or LBE, such information shall be submitted under penalty of perjury.

B. Whenever any bid or proposal to be submitted to the city calls for the bidder or proposer to submit information about the SBE, EBE, MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or about the efforts made by the bidder or proposer to meet the SBE, EBE, MBE, WBE, DBE, or LBE participation goals included in a city contract or agreement, such information shall be submitted under penalty of perjury.

**SECTION 3.**

If any of the provisions of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of the ordinance are severable.

**CLEAN VERSION**

**ORDINANCE NO. 2012-**

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 3.54.040 OF CHAPTER 3.54 OF THE  
SACRAMENTO CITY CODE, RELATING TO THE PROVISION OF EMPLOYEE  
BENEFITS TO EMPLOYEES OF CITY CONTRACTORS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

**SECTION 1. Section 3.54.040 of the Sacramento City Code is amended as follows**

A. Subsection A of section 3.54.040 is amended to read as follows:

A. Contractors that enter into a contract with the city in an amount exceeding \$100,000.00 are subject to the requirements of this chapter.

B. Except as specifically amended by the amendment to subsection A, Section 3.54.040 remains unchanged and in full force and effect.



**RESOLUTION NO. 2012-**

Adopted by the Sacramento City Council

[DATE]

**APPROVING A LOCAL BUSINESS ENTERPRISE (LBE) PROGRAM; FINDINGS**

**BACKGROUND**

The Sacramento City Council hereby finds and declares as follows:

- A. In 2011, City Council requested staff explore options to streamline business opportunities for small and local businesses bidding and executing contracts with the City of Sacramento.
- B. On February 21, 2012, the Law and Legislation Committee heard a proposed Ordinance amending Sections 3.56.020, 3.60.020, and Article VIII of Chapter 3.60 to authorize City Council to adopt by resolution a program or programs to promote and provide incentives for the participation of local business enterprises (LBEs) in City contracts and agreements. The Law and Legislation Committee approved moving the Ordinance forward to the City Council for adoption.
- C. On \_\_\_\_\_, 2012, City Council adopted Ordinance No. \_\_\_\_\_, which amended Sections 3.56.020, 3.60.020, and Article VIII of chapter 3.60 as described above.
- D. In an effort promote the participation of local business enterprise and stimulate local economies, many jurisdictions across the state have adopted local procurement preference programs.
- E. An increase in local spending and sales tax, within Sacramento, could lead to an increase in local jobs and private sector expenditures and growth.
- F. Over the last five years, both the Sacramento city and unemployment rates have been steadily higher than both the national and state unemployment rates.
- G. As of December 2011, the average unemployment rate for the city and county was at 11.9%. While the national and state's unemployment rates for December 2011 were at 8.5% and 10.9%, respectively. Higher unemployment rates also contribute to declining sales tax revenues in the City's General Fund.
- H. The Sacramento Office Vacancy Rate in the 4<sup>th</sup> quarter of 2011 was over 23%, compared to a vacancy rate of 16% for the Nation. At the close of 2011, the

Sacramento office market experienced approximate half a million square feet of negative net absorption and its fourth consecutive year of negative absorption.

- I. Negative absorption occurs when the quantity of space becoming available in the market exceeds the quantity of space being taken off the market. Negative absorption, essentially, leads to increased vacancy rates.
- J. In addition to state taxes and regulations, businesses choosing to operate within city limits are subject to a 7.5% Utility User Tax (UUT). The City of Sacramento's 7.5% UUT is 5% higher than that of any of the neighboring jurisdictions and equal to the cities of San Francisco and Oakland.
- K. The Local Business Enterprise (LBE) Program will award a 2% local preference on all City procurement opportunities under \$100,000 and professional service contracts over \$100,000.
- L. The proposed preference would extend to businesses located within Sacramento city and the unincorporated county of Sacramento. Promoting businesses within the unincorporated county of Sacramento has direct economic benefits to the city, including employment and indirect sales-taxes.
- M. In order to maintain competitive bidding process requirements, this preference would not apply to supply, non-professional service or public project expenditures over \$100,000.
- N. The proposed local preference would be in addition to the City's current 5% Emerging and Small Business Enterprise (ESBE) certification preference.
- O. Businesses that are located within the city or unincorporated county and certified as an ESBE could receive up to a 7% bidding preference.
- P. Local businesses enterprises (LBEs) not certified as an ESBE would only receive the 2% local bidding preference.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

**Section 1.** A Local Business Enterprise (LBE) Program that awards a 2% preference on all City procurement opportunities under \$100,000 and professional service contracts over \$100,000 is hereby adopted.

**Section 2.** The City Manager or the City Manager's designee is hereby authorized to adopt LBE program policies, administrative procedures, certification standards to qualify as an LBE, LBE participation goals, and to take such necessary additional actions to implement the LBE Program.