



REPORT TO COUNCIL

City of Sacramento

8

915 I Street, Sacramento, CA 95814-2604

www.CityofSacramento.org

Consent

June 22, 2010

**Honorable Mayor and
Members of the City Council**

Title: Ordinance Amendment: Participation of Local Small and Emerging Business Enterprises

Location/Council District: City-wide

Recommendation: Adopt an Ordinance amending Section 3.56.020, and Article VIII of Chapter 3.60 of the Sacramento City Code authorizing the adoption by resolution a program to promote and provide incentives for the participation of local small and emerging business enterprises.

Contact: Trevor Walton, Economic Development Project Manager, 808-6764

Presenters: N/A

Department: Economic Development

Division: Citywide

Organization No: 18000

Description/Analysis

Issue: Local small businesses form the backbone of our neighborhoods as they make a significant investment in the economic health of our City and the quality of life of its citizens and visitors. Fostering a vibrant network of local small businesses is in the public interest. A Local Emerging and Small Business Enterprise preference recognizes that local businesses provide employment opportunities for local residents and provide other local benefits. A Local Emerging and Small Business Enterprise preference is seen as a regional economic development tool. Staff proposes that the Sacramento City Code be amended to authorize adoption by resolution, a program to provide a Local Emerging and Small Business Enterprises preference.

Policy Considerations: As a tool to stimulate small business, the City of Sacramento currently provides a five percent (5%) bid price preference and point evaluation preference to certified Emerging and Small Business Enterprise

(ESBE) firms when bidding for contracts or agreements governed by Sacramento City Code Chapter 3.56 (purchasing of materials, supplies and non-professional services); and Sacramento City Code Chapter 3.64 (professional services). The bid evaluation preferences are applied to all qualified ESBE firms domiciled in California. Small business bid price and point preferences are used to enhance the utilization of small business enterprises in the performance of City of Sacramento procurement and contracting activities. Fostering a vibrant network of local small businesses is in the public interest. The City should aid and assist, to the maximum extent possible, the interest of local small businesses to ensure that a fair proportion of total purchases and contracts or subcontracts for procurement of goods or services for the City are placed with such entities.

Environmental Considerations:

California Environmental Quality Act (CEQA): Adoption of the proposed ordinance constitutes policy and procedure making that is exempt from CEQA review under Section 15378(b)(2) of the CEQA Guidelines.

Rationale for Recommendation: Providing a bid preference for local ESBEs may lead to increased activities for companies, with employees retaining the jobs which would lead to increased local spending by companies and individuals on consumer goods. A local ESBE preference could help individual companies maintain their viability and keep the business operating within the City of Sacramento.

Committee/Commission Actions: On March 16, 2010, the Law and Legislation Committee heard this item and approved moving the item forward to City Council. Relatively minor, non-substantive changes were made to the ordinance after it was heard by the Law and Legislation.

Financial Considerations: Contracting locally benefits the City economic and revenue base through which public safety and other services are provided. Approval of the ordinance imposes no additional expense upon the City. The bid price or point preference is used as a calculation for determining the lowest bidder and does not affect the actual amount paid to the vendor.

Emerging Small Business Development (ESBD): Fostering the participation of local small business in the City contracting and procurement activities enhances their ability to be awarded a greater proportion of the total purchases and contracts of goods or services for the City.

Respectfully Submitted by Trevor Walton
Trevor Walton, Program Manager

Approved by James R. Rinehart
James R. Rinehart, Economic Development Director

Recommendation Approved:

Gus Vina
Gus Vina
Interim City Manager

Table of Contents:

Report	Pg	1-3
Attachments		
1 Ordinance, red-line	Pg	4-7
2 Ordinance, final	Pg	8-10

REDLINE VERSION

ORDINANCE NO. 2010-XXXX

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 3.56.020 AND ARTICLE VIII OF CHAPTER 3.60 OF THE SACRAMENTO CITY CODE, RELATING TO THE LOCAL SMALL AND EMERGING BUSINESS 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: (i) the quality and performance of the supplies to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract or effectuate the transaction; (iii) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (v) the quality of the bidder's performance on previous purchases by, or contracts with, the city; (vi) 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 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.

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 program and local small and emerging business (local SBE/EBE) enterprise 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 ~~of this title~~. For purposes of this article, the terms "SBE", and "EBE", "local SBE", and "local EBE" shall refer to any business entity that is defined as a SBE, EBE, local SBE, and local EBE, respectively ~~small business enterprise or emerging business enterprise, respectively, by said program(s)~~. The city manager may from time to time adopt administrative procedures to implement the provisions of ~~said~~the program(s).

3.60.270 SBE/EBE and local SBE/EBE 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 ~~of this title~~ may establish minimum level(s) for participation in the contract or agreement by one or more of the following: SBEs, and/or EBEs, local SBEs, or local EBEs. No bidder or proposer on ~~the said~~ contract or agreement shall be considered a responsive bidder or proposer unless its bid or proposal meets the minimum SBE, and/or EBE, local SBE, or local EBE 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, local SBE/EBE program(s), and their respective administrative procedures authorized by Section 3.60.260 ~~of this chapter~~.

3.60.280 Sheltered market program.

The SBE/EBE program(s), local SBE/EBE program(s), and their respective administrative procedures authorized by Section 3.60.260 ~~of this chapter~~ may provide for a sheltered market program that restricts bidding and awards ~~to EBEs and/or SBEs,~~ 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 ~~of this title~~ to one or

more of the following: EBEs, SBEs, local EBEs, or local SBEs.

3.60.290 MBE/WBE/DBE bid requirements.

Sections 3.60.260 through 3.60.280, inclusive, ~~of this chapter,~~ 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, ~~or DBE,~~ local SBE, or local EBE.

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

C. Any ~~violation of 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 ~~penalty~~ shall be in addition to any other remedies ~~penalties~~ 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, ~~or DBE,~~ local SBE, or local EBE, 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, ~~or DBE,~~ local SBE, or local EBE 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, ~~or DBE,~~ local SBE, or local EBE 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 chapter are severable.

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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 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.

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3.60.270 SBE/EBE and local SBE/EBE 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. 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 EBE 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, local SBE/EBE 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/EBE 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.

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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 EBE.

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 EBE 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 EBE 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.

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