

# ORDINANCE NO. 2012-011

Adopted by the Sacramento City Council

April 3, 2012

## 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.

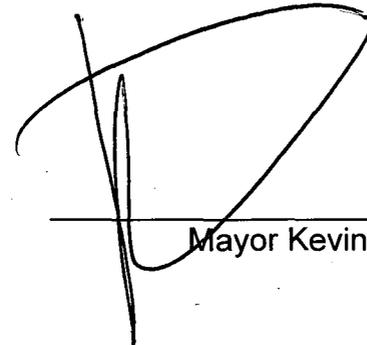
Adopted by the City of Sacramento City Council on April 3, 2012 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

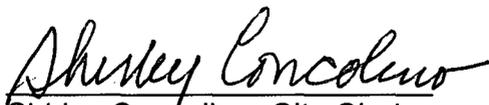
Abstain: None.

Absent: None.

A handwritten signature in black ink, consisting of a large, stylized 'K' or 'J' shape with a vertical line through it, positioned above a horizontal line.

Mayor Kevin Johnson

Attest:

  
Shirley Concolino, City Clerk

Passed for Publication: March 27, 2012

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