

Meeting Date: 11/19/2013

Report Type: Staff/Discussion

Report ID: 2013-00852

Title: Emerging and Small Business Development and Local Business Enterprise Preference Programs

Location: Citywide

Issue: In accordance with Resolution No. 2001-123, Administrative Policy Instructions (APIs) and other program policies and procedures referencing the Emerging and Small Business Development (ESBD) program require amendments and modifications as necessary. An increase to the existing Local Business Enterprise Preference (LBE) program and establishing a LBE participation requirement requires City Council approval.

Recommendation: 1) Pass a Resolution a) recognizing expiration of the City's Emerging and Small Business Development (ESBD) program; b) ratifying implementation and use of the ESBD program from March 12, 2006 to the present; and c) authorizing the City Manager or his designee to amend and modify Administrative Policy Instructions (APIs), ESBD program policies, and administrative procedures, and to take such necessary additional actions to reflect recognition of the expired ESBD program; and 2) pass a Resolution a) increasing the City's Local Business Enterprise Preference (LBE) program from two percent to five percent; b) establishing a five percent LBE participation requirement in all City procurement opportunities of \$100,000 or more, unless waived by the City Manager or his designee; and c) authorizing the City Manager or his designee to amend the 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 approved LBE Program preference increase and participation requirement.

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Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

- 1-Description/Analysis
- 2-Resolution 1 (ESBD)
- 3-Resolution 2 (LBE)

City Attorney Review

Approved as to Form
Lan Wang
11/12/2013 3:42:07 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
11/5/2013 11:54:01 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 11/7/2013 4:22:57 PM

Description/Analysis

Issue:

Emerging and Small Business Development

On February 9, 1999, City Council adopted an Emerging and Small Business Development (ESBD) program to provide enhanced opportunities for the participation of emerging business enterprises and small business enterprises (ESBEs) in the City's contracting and procurement activities (Ordinance No. 99-07 and Resolution No. 99-055.) This program replaced the City's previous Minority, Women and Small Business (M/WBE) Program. On February 27, 2001 City Council adopted Resolution No. 2001-123 to continue the program for a five-year period. In accordance with Resolution No. 2001-123, the ESBD program expired on March 11, 2006. However, the City has continued the program since then as if the City Council had adopted a resolution to extend it.

The ESBD program has been available to ESBEs state-wide, not just businesses in the Sacramento area. More recently, the City Council approved a Local Business Enterprise program that provides a preference to Sacramento businesses or those in the unincorporated area of Sacramento County. Of the current 1,413 certified ESBEs registered with the City, only 32% are city of Sacramento businesses.

Given priority changes, staff is recommending City Council recognize expiration of the ESBD program and also ratify implementation and use of the program from March 12, 2006 to the present. Accordingly, all Administrative Policy Instructions (APIs) referencing the ESBD program would require amendments as necessary.

Local Business Enterprise Preference

On April 3, 2012, the City Council authorized and adopted a Local Business Enterprise preference (LBE) program to provide enhanced opportunities for the participation of local business enterprises in the City's contracting and procurement activities. The LBE program awards a two percent preference on all City procurement opportunities under \$100,000 and professional service contracts of \$100,000 or more to businesses located within Sacramento city and/or the unincorporated county of Sacramento. Implementation of the new program started in May 2012 and was recommended after reviewing other Local Business Preference programs and after conducting an analysis of three economic indicators: (1)

unemployment; (2) commercial office vacancy rates; and (3) other regulatory taxes. While regulatory taxes have not changed for the city, slight decreases in the city's unemployment and office vacancy rates have occurred.

(1) Unemployment: In May 2012, the average unemployment rate for the city and county was 11.3%, while the state's unemployment rate for May 2012 was 10.4%. The most recent average unemployment rate for the city and county, as of August 2013, was 10%. The state's unemployment rate for August 2013 was 8.9%.

(2) Commercial Office Vacancy Rates: The Sacramento office vacancy rate in the 4th quarter of 2012 was over 22%. While the office market has recorded positive net absorption for five consecutive quarters, the office vacancy rate for the first quarter of 2013 was still over 21%.

(3) Other Regulatory Taxes: Businesses operating within city limits are subject to a 7.5% Utility User Tax (UUT). The City of Sacramento's 7.5% UUT is five percentage points higher than that of any of the neighboring jurisdictions and equal to the cities of San Francisco and Oakland. Since May 2012, sales taxes in the city and state have increased. Measure U, a temporary 1/2-cent local sales tax, and Proposition 30 increased the statewide sales and use-tax rate one quarter of one percent (0.25%). Both were approved by voters in November 2012. The state tax went into effect on January 1, 2013, while the City tax increase went into effect on April 1, 2013. Combined, the state and local sales tax in the city of Sacramento is 8.5%. The City's higher UUT and sales tax rates can place higher operating costs on businesses, putting them at a competitive disadvantage. In a sampling of 465 executed City contracts (for procurement opportunities under \$100,000 in fiscal year 2012-13), 43% or 200 contracts were awarded to local Sacramento businesses. These contracts accounted for over \$6 million in local spending.

To replace the expired ESD program and to give stronger support to local businesses, staff is recommending an increase in the LBE preference from two percent to five percent. Additionally, staff is recommending City Council establish a minimum LBE participation requirement of five percent in all City procurement opportunities of \$100,000 or more, in order to encourage LBE participation in contracts subject to competitive bidding requirements, unless waived by the City Manager or the City Manager's designee. One instance

where the LBE participation requirement may be waived is when the City anticipates that there are not sufficient LBEs available to perform the work available on the contract. Another instance is with respect to the procurement of supplies and nonprofessional services, which will require a minor code amendment. Until such time as this is accomplished, the five percent minimum participation with respect to the procurement of supplies and nonprofessional services shall be waived by the City Manager or his designee.

Community Outreach

Staff reached out to the local and ethnic Chambers of Commerce, Downtown Sacramento Partnership, Power Inn Alliance, and The River District to discuss and solicit feedback on the proposed policy changes. All of the organizations generally support the idea of strengthening the LBE program while eliminating the statewide ESD program. Staff will continue to look at how feedback and suggestions from the outreach can be incorporated into the implementation of the LBE program.

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. Local business incentives, such as bid and/or point preferences for City contracts, are effective tools to stimulate local business participation and create a business-friendly environment.

If the City Council adopts the recommendations in this report, some clean-up amendments will be presented to the City's Law and Legislation Committee. The clean-up amendments are regarding Article VIII of Chapter 3.60 relating to the small and emerging business (SBE/EBE) and local business enterprise (LBE) programs. This does not prevent City Council from adopting the recommendations in this report. The five percent minimum participation as applied to the procurement of supplies and nonprofessional services will require a minor code amendment; until such time as this is accomplished, the five percent minimum participation with respect to the procurement of supplies and nonprofessional services shall be waived by the City Manager or his designee.

Economic Considerations:

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

CEQA Guidelines.

Sustainability: None

Commission/Committee Action: None. Some clean-up amendments will be presented to the City's Law and Legislation Committee as noted under the Policy Considerations of this report.

Rationale for Recommendation: The ESBD program was designed to give small businesses better opportunities to participate in City contracting and procurement activities. While the City has met its ESBD goals, priorities have changed and are now primarily focused on the support of a strong local economy.

The LBE program is intended to promote and provide incentives for the participation of local business. Promoting businesses within the unincorporated county of Sacramento has direct economic benefits to the City, including more jobs and indirect sales taxes. An increase in local spending and sales tax, within Sacramento, could lead to a continued increase in local jobs and private sector expenditures and growth.

Financial Considerations: None

Emerging Small Business Development (ESBD): Not applicable

RESOLUTION NO. 2013-

Adopted by the Sacramento City Council

REGOGNIZING EXPIRATION OF THE EMERGING AND SMALL BUSINESS DEVELOPMENT (ESBD) PROGRAM

BACKGROUND

- A. On February 9, 1999, City Council adopted an Emerging and Small Business Development (ESBD) program to provide enhanced opportunities for the participation of emerging business enterprises and small business enterprises (ESBEs) in the City's contracting and procurement activities (Ordinance No. 99-07 and Resolution No. 99-055.) This program replaced the City's previous Minority, Women and Small Business (M/WBE) Program.
- B. On February 27, 2001 City Council adopted Resolution No. 2001-123 to continue the program for a five-year period.
- C. In accordance with Resolution No. 2001-123, the ESBD program expired on March 11, 2006.
- D. City Council has not adopted any resolutions to extend the ESBD program. However, the City has continued the program since March 11, 2006 as if the City Council had adopted a resolution to extend it.
- E. As established, the ESBD program was available to ESBEs state-wide.
- F. The City Council has expressed a stronger interest in supporting the local business community.

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

- Section 1.** The ESBD program is hereby recognized as having expired.
- Section 2.** The implementation and use of the ESBD Program from March 12, 2006 up to the present is hereby ratified.
- Section 3.** The City Manager or the City Manager's designee is hereby authorized to amend and modify Administrative Policy Instructions (APIs), ESBD program

policies, and administrative procedures, and to take such necessary additional actions to reflect recognition of the expired ESD program.

RESOLUTION NO. 2013-

Adopted by the Sacramento City Council

APPROVING AN INCREASE TO THE LOCAL BUSINESS ENTERPRISE PREFERENCE (LBE) PROGRAM AND ESTABLISHING A LBE PARTICIPATION REQUIREMENT; FINDINGS

BACKGROUND

The Sacramento City Council hereby finds and declares as follows:

- A. On March 20, 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 of the Sacramento City Code 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.
- B. On April 3, 2012, City Council adopted Ordinance No. 2012-011, which amended Sections 3.56.020, 3.60.020, and Article VIII of chapter 3.60 as described above.
- C. On April 3, 2012, City Council authorized and adopted a Local Business Enterprise Preference (LBE) Program to provide enhanced opportunities for the participation of LBEs in the City's contracting and procurement activities.
- D. The LBE program awards a two percent preference on all City procurement opportunities under \$100,000 and professional service contracts of \$100,000 or more to businesses located within Sacramento city and/or the unincorporated county of Sacramento.
- E. In order to maintain competitive bidding process requirements, this preference does not apply to supply, non-professional service, or public project expenditures of \$100,000 or more.
- F. In May 2012, the average unemployment rate for the city and county was at 11.3%, while the state's unemployment rate for May 2012 was 10.4%. The most recent average unemployment rate for the city and county, as of August 2013, is 10%. The state's unemployment rate for August 2013 is 8.9%.
- G. The Sacramento office vacancy rate in the 4th quarter of 2012 was over 22%. While the office market has recorded positive net absorption for five consecutive quarters, the office vacancy rate for the first quarter of 2013 is still over 21%.
- H. Voter approved Measure U, a temporary 1/2-cent local sales tax, and Proposition 30, increased the statewide sales and use-tax rate one quarter of one percent

(0.25%). Combined, the state and local sales tax in the city of Sacramento is 8.5%.

- I. In a sampling of 465 executed City contracts (for procurement opportunities under \$100,000 in fiscal year 2012-13), 43% or 200 contracts were awarded to local Sacramento businesses. These contracts accounted for over \$6 million in local spending.
- J. The City continues to seek stronger support of the local business community.
- K. Promoting businesses within the unincorporated county of Sacramento has direct economic benefits to the City, including increased employment and indirect sales taxes.
- L. An increase in local spending and sales tax within Sacramento could lead to continued increases in local jobs and private sector expenditures and growth.

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

Section 1. An increase to the Local Business Enterprise (LBE) preference program from two percent to five percent on all City procurement opportunities under \$100,000 and professional service contracts of \$100,000 or more is hereby approved.

Section 2. A minimum LBE participation requirement of five percent in all City procurement opportunities of \$100,000 or more, unless waived by the City Manager or the City Manager's designee, is hereby approved.

Section 3. The City Manager or the City Manager's designee is hereby authorized to amend 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 approved LBE Program preference increase and participation requirement.