

**Meeting Date:** 12/17/2013

**Report Type:** Consent

**Report ID:** 2013-00919

**Title: Ordinance Amendments: Article VIII of Chapter 3.60, sections 3.60.020, and 3.56.020 of the Sacramento City Code, relating to the Small and Emerging Business Enterprise and Local Business Enterprise Programs [in lieu of Pass for Publication published within 10 days after adoption as required by Sacramento City Charter section 32(d)]**

**Location:** Citywide

**Issue:** On November 19, 2013, City Council passed a resolution recognizing expiration of the City's Emerging and Small Business Development (ESBD) program, and authorizing increasing the City's Local Business Enterprise Preference (LBE) program from two percent to five percent, and establishing a five percent LBE participation requirement for all City procurement opportunities of \$100,000 or more. Adopting the ordinance amendment implements City Council's prior action.

**Recommendation:** Pass an Ordinance amending Article VIII of Chapter 3.60, sections 3.60.020, and 3.56.020 of the Sacramento City Code, relating to the Small and Emerging Business Enterprise and Local Business Enterprise Programs.

**Contact:** Veronica Smith, Senior Project Manager, (916) 808-1046, Economic Development Department

**Presenter:** None

**Department:** Economic Development Dept

**Division:** Citywide Development

**Dept ID:**

**Attachments:**

- 1-Description/Analysis
- 2-Background
- 3-Clean ESBD-LBE Ordinance
- 4-Redlined ESBD-LBE Ordinance Amendment

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### **City Attorney Review**

Approved as to Form

Lan Wang

12/11/2013 4:22:17 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Jim Rinehart - 12/11/2013 2:09:29 PM

James Sanchez, City Attorney

Shirley Concolino, City Clerk

Russell Fehr, City Treasurer

**John F. Shirey, City Manager**

## Description/Analysis

**Issue Detail:** If adopted, the ordinance will amend Article VIII of Chapter 3.60 of the Sacramento City Code relating to the Small and Emerging Business Enterprise (SBE/EBE) and Local Business Enterprise (LBE) Programs and Sections 3.60.020 and 3.56.020 of the Sacramento City Code relating to Determination of Lowest Responsible Bidder.

**Policy Considerations:** November 19, 2013, City Council passed Resolution No. 2013-0373 modifying the City's Local Business Enterprise Program, and Resolution No. 2013-0372 recognizing expiration of the Emerging and Small Business Development program. This ordinance implements City Council's prior action.

**Economic Impacts:** N/A

### **Environmental 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:** Pursuant to the City Council Rules of Procedure ("Rules"), Chapter 13, section B, subsection 1.b., ordinances that are deemed urgent by the City Manager do not require Law and Legislation Committee review. This ordinance implements City Council's prior action and has been deemed urgent by the City Manager.

**Rationale for Recommendation:** In order to implement the five percent minimum participation on the procurement of supplies and nonprofessional services a code amendment is required.

**Financial Considerations:** None

**Local Business Enterprise (LBE):** Not applicable

## **BACKGROUND**

### **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.)

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.

On November 19, 2013, City Council passed a resolution recognizing expiration of the City's Emerging and Small Business Development (ESBD) program.

### **Local Business Enterprise Program**

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; unemployment, commercial office vacancy rates, and other regulatory taxes.

On November 19, 2013, City Council passed a resolution authorizing increasing the City's Local Business Enterprise Preference (LBE) program from two percent to five percent and establishing a five percent LBE participation requirement for all City procurement opportunities of \$100,000 or more, unless waived by the City Manager or his designee.

In order to implement the five percent LBE participation requirement for all City procurement opportunities of \$100,000 or more, an ordinance amendment is required.

**Ordinance – Clean**

**ORDINANCE NO. 2013-**

Adopted by the Sacramento City Council

Date Adopted

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

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

**SECTION 1.**

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

**Article VIII. Participation of Local Business Enterprises**

**3.60.260 Local business enterprise (LBE) programs.**

The city council may adopt by resolution, programs to promote and provide incentives for the participation of local business enterprises in city contracts or agreements awarded under the provisions of chapters 3.56, 3.60, or 3.64. The city manager may adopt administrative procedures to implement the provisions of the programs. For purposes of this article, the term “LBE” shall refer to any business entity that is defined as a local business enterprise under the city manager’s administrative procedures.

**3.60.270 LBE participation levels.**

The specifications or request for bids or proposals for any contract or agreement awarded under the provisions of chapters 3.56, 3.60, or 3.64 may establish minimum levels for participation in the contract or agreement by 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 LBE participation levels established for the contract or agreement, in accordance with the administrative procedures authorized by section 3.60.260.

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

The LBE programs 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.

### **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), or disadvantaged business enterprise (DBE) participation goals. Such contracts or agreements shall be awarded in accordance with the applicable MBE, WBE, 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 representative, for the purpose of establishing the status of any business entity, including a sole proprietorship, as a MBE, WBE, DBE, or LBE.

B. No person shall submit false information to the city or the city's representative in connection with any bid or proposal regarding the MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or regarding efforts made by that person to meet the 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. This shall be in addition to any other remedies authorized by any other provisions of this code or provided for by any federal, state, or local law or regulation.

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

Whenever any bid or proposal to be submitted to the city calls for the bidder or proposer to submit information about the 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 MBE, WBE, DBE, or LBE participation goals included in a city contract or agreement, such information shall be submitted under penalty of perjury.

## **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: (1) the quality of a public project to be provided by the bidder; (2) the ability, capacity and skill of the bidder to perform the contract; (3) the ability of the bidder to perform the contract within the time specified, without delay; (4) the character, integrity, reputation, judgment, experience and efficiency of the bidder; and (5) the quality of the bidder's performance on previous contracts with the city.

B. The city council may by resolution adopt standard minimum qualifications for bidders on competitively bid contracts for public projects. If the 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, and also meets the 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: (1) review information contained in a bid, and additional relevant information, and determine whether the bidder is a responsive or responsible bidder; or (2) establish different or additional qualification requirements for specific contracts.

C. The city council may by resolution adopt programs or procedures to provide bid price preferences, including, but not limited to, preferences to promote the participation and utilization of 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 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.**

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 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 the 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 adopt programs or procedures to provide bid price preferences, including, but not limited to, preferences to promote the participation and utilization of 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. This calculation of preferences shall be in addition to any deduction of sales or use tax required by subsection B of this section.

**Ordinance – Redline Draft**

**ORDINANCE NO. 2013-**

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE AMENDING ARTICLE VIII OF CHAPTER 3.60 OF THE SACRAMENTO CITY CODE RELATING TO SMALL AND EMERGING BUSINESS ENTERPRISE (SBE/EBE) AND LOCAL BUSINESS ENTERPRISE (LBE) PROGRAMS AND AMENDING SECTIONS 3.60.020 AND 3.56.020 OF THE SACRAMENTO CITY CODE RELATING TO DETERMINATION OF LOWEST RESPONSIBLE BIDDER**

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

**SECTION 1.**

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) programs.**

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 Chapters ~~3.56,~~ 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 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: (1) the quality of a public project to be provided by the bidder; (2) the ability, capacity and skill of the bidder to perform the contract; (3) the ability of the bidder to perform the contract within the time specified, without delay; (4) the character, integrity, reputation, judgment, experience and efficiency of the bidder; and (5) 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, 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: (1) review information contained in a bid, and additional relevant information, and determine whether the bidder is a responsive and/or responsible bidder; or (2) 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.**

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.