

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: February 10, 2016

TO: Honorable Members of the City Council

FROM: Sharon M. Tso
Chief Legislative Analyst

Council File No: 14-1277
Assignment No: 15-02-0132

Local Business Preference Program

SUMMARY:

This report is in response to Motion (Krekorian-Buscaino, C.F. 14-1277) relative to the evaluation of the effectiveness of the Local Business Preference Program (LBPP). The LBPP provides an eight percent preference to eligible Local Business Enterprises on Requests for Bids, Proposals or Qualifications on contracts valued at greater than \$150,000 for goods, equipment, supplies, construction, and personal services greater than \$150,000. On January 27, 2015 and August 25, 2015, the Economic Development Committee (Committee) considered Motion (Krekorian-Buscaino) relative to the LBPP. The Motion requested this Office, with assistance from City Attorney, City Administrative Officer, and any necessary departments to review: 1) the rate of participation in the LBPP; 2) its effectiveness at keeping City procurement dollars local; 3) any impacts the LBPP may have on the cost of procurement; and, 4) make recommendations to more effectively target local businesses and ensure cost-effectiveness of the LBPP. At the conclusion of the hearing, the Committee requested that the Office of the Chief Legislative Analyst collaborate with City departments for information and input on the LBPP, to identify any changes to the City Charter to better effectuate the LBPP, and make recommendations to improve the LBPP. The Office of the Chief Legislative Analyst and the Bureau of Contract Administration provided a verbal report on this matter and the Committee requested that staff report on the Los Angeles County Metropolitan Transportation Authority (Metro) Small Business Enterprise Preference Program.

This report includes the level of participation data for the LBPP and provides some initial recommendations to improve the Local Business Preference Program. Should the Council adopt these recommendations, further recommendations to improve the LBPP will be made in subsequent reports.

BACKGROUND

At the Committee meeting on January 27, 2015, the Committee emphasized the importance of using the City's purchasing power to assist small businesses, stimulate the economy and create jobs highlighting potential actions that the City can take to increase local procurement. Members also indicated that LBPP impacts can be studied in a variety of ways noting large amounts expended on City procurement for goods and services. Committee Members stated that while business activity outside the City can lead to benefits within the City, it is critical that the City specifically focus on supporting Los Angeles City businesses. The Committee also expressed concerns that businesses in the City encounter many challenges and raised the issue of the definition of "local" in the LBPP. At the August 25, 2015, Committee meeting, the Committee also discussed Motion (Price-Krekorian) relative to the Sheltered Market Place (C.F. 15-0235) and requested that the City Attorney review other cities' Sheltered Market Place programs as well as study the feasibility of establishing a women-only business set-aside program. City Attorney will report on the Sheltered Market Place under a separate cover.

RECOMMENDATIONS:

That the Council adopt the following recommendations relative to the Local Business Preference Program:

- 1) Instruct the Bureau of Contract Administration (BCA) and the Information Technology Agency in conjunction with other appropriate departments to present an action plan in six months to more effectively implement the Local Business Preference Program (LBPP), that includes:
 - Independent verification of applicant data to ensure businesses are local;
 - Reporting of City department contract award data on the Business Assistance Virtual Network (BAVN);
 - Enhanced promotion and outreach for the LBPP;
 - Monitoring and tracking of the level of participation by City departments; and,
 - Enhanced training by BCA for City departments;
- 2) Instruct the BCA to review potential additional staffing resources to carry out the LBPP;
- 3) Instruct the Office of Finance, Information Technology Agency, and BCA to coordinate and promote the BAVN to businesses registered with the Office of Finance;
- 4) Instruct CAO and CLA to establish a working group with relevant City Departments to develop a comprehensive Citywide action plan to include, but not be limited to, the following:
 - Review best practices;
 - Identify and evaluate small and local business programs;
 - Recommend short and long-term changes to small and local business programs;
 - Study the feasibility of potential consolidation of the Small, Local Business Program and the LBPP;
 - Identify opportunities for consolidation of programs that will provide greater benefits;
 - Study potential uniform definition of a small business and the feasibility of establishing specific goals;
 - Present options for streamlining certification methods;
 - Provide recommendations to enhance training with City department Contract Coordinators;
 - Develop processes to provide consistent communication;
 - Include benchmarks and performance metrics; and,
 - Create a comprehensive outreach plan to notify businesses of available contracting opportunities;
- 5) Instruct the CAO and CLA to provide recommendations for a preliminary staffing plan and budget to implement a new Citywide coordinated Local Business Action Plan, including the Proprietary Departments to the extent possible;
- 6) Request the City Attorney to report on the steps and findings necessary to re-define “local business” as “City” exclusively, including necessary Charter changes.

DISCUSSION

In 2011, Council established the LBPP to provide an eight percent preference to Local Business Enterprises (LBEs) within Los Angeles County (County). The preference is provided to eligible LBEs on Requests for Bids, Proposals or Qualifications on contracts valued at greater than \$150,000. The

purpose of the Program is to encourage businesses to compete for City contracting opportunities, to locate operations in the City, and to encourage existing local businesses to resist relocation to other areas. Regarding the issue of modifying the “local” definition in the LBPP to include Los Angeles City businesses only, our Office consulted with City Attorney. Upon consultation with City Attorney, it has been determined that a Charter amendment would be required. Further analysis by City Attorney is required to determine findings and steps necessary to make such a change.

Our Office consulted with the Bureau of Contract Administration (BCA), City Attorney, Office of Finance (Finance) and the Information Technology Agency (ITA) regarding this report. For participation levels in the LBPP, BCA requested information from 37 City Departments. Twenty-seven departments responded and 26 provided complete information. Participation data provided in this report is therefore limited to the 26 responsive departments. The level of participation is provided based on the number and percentage of LBEs that were awarded City contracts for commodities, equipment, supplies, construction and personal services, per the LBPP.

Data provided by City departments to BCA indicate that over the course of the four years of the Program from Fiscal Years 2011-2012 to 2014-2015, the percentage of the number of contracts awarded to LBEs ranges from 16 percent to 33.4 percent, at a value of \$1.1 million. The average participation of the LBEs during the four year period is 25.0 percent (509/2,043) on City contracts. As a result of the LBPP, three out of 2,043 contracts (0.14 percent) were awarded to LBEs. The fiscal impact to the City was approximately \$39,000. The value of these three contracts is \$5.2 million

Because much of the information provided by vendors is self-reported, improvements can be made by refining and verifying data to ensure the accuracy of data received. The following steps may be taken: independent verification of applicant data to ensure businesses are local; reporting of City departments contract award data on BAVN; enhanced promotion and outreach to local businesses; monitoring and tracking of the level of participation by City departments; enhanced training by BCA for City departments; review of potential additional staffing resources to carry out the LBPP; and, evaluation of the similar Small, Local Business Program for potential consolidation with the LBPP. Further discussion with BCA and other departments is needed to outline a plan to enhance this LBPP.

While this report primarily addresses the LBPP, we note that there are other programs in the City that were established to increase the rate of participation for small, local and disadvantaged businesses, including the Small, Local Business Program and Business Source Centers. The City could benefit from a more comprehensive action plan that would provide detailed objectives and goals to increase local business participation and stimulate job creation.

Local Business Preference Program

The LBPP provides an eight percent preference to LBEs within Los Angeles County (County) that bid on City contracts for goods, equipment, supplies, and construction greater than \$150,000. Local businesses are identified as LBEs if they operate in the County and meet one of the following criteria: 1) demonstrate that at least 50 full-time employees perform at least 60 percent of regular work hours on an annual basis within the County; 2) demonstrate that at least half of the full-time employees perform at least 60 percent of regular work hours on an annual basis within the County; or 3) demonstrate that it is headquartered in the County. The “preference” is applied to the LBE bid or proposal solely for evaluation purposes. The LBPP also provides a preference of up to five percent to a bid or proposal submitted by a non-LBE business that uses a qualifying Local Subcontractor to perform work.

City contract opportunities for bids and proposals are available on BAVN. BAVN lists City departmental contract opportunities that require notification. Businesses then submit their proposals or bids directly to City departments who award the contract.

Request for Bids

Businesses interested in receiving City contracts for commodities, equipment, supplies, construction, and personal services submit bids directly to awarding City departments. Those identified as LBEs receive the “preference” in the form of an eight percent bid reduction during the bid evaluation process. For example, if an LBE provides a bid amount of \$1,000,000 for a commodity, the bid is evaluated at \$920,000. This is intended to assist local entities competing for City contracts, to assure the greatest level of competition possible, to decrease local unemployment, and to increase the City’s revenue. The contract is ultimately awarded to the lowest bid and paid the full amount.

Request for Proposals

Businesses interested in receiving City contracts for services submit their proposals directly to awarding City departments. Businesses identified as LBEs receive an eight percent increase, based on the points available, on their overall score. For example, on a scale of 100 points, if an LBE receives an overall score of 84 on a proposal, the LBE preference provides an additional 8.0 points and final score of 92 points. Again, this is intended to assist local businesses competing for City contracts. Based on the application of the Preference, the contract is awarded to the highest scoring proposer.

Administrator

BCA is the Designated Administrative Agency for the LBPP and performs two functions: 1) verify LBE certification on BAVN and 2) address contractor protests or appeals. BCA also maintains and distributes all current reporting templates for inclusion in the LBPP which are used by City departments.

Findings

To determine the number and percentage of City contracts awarded to LBEs, our office consulted with BCA to obtain data on the participation of LBEs in City contracts for commodities, equipment, supplies, construction, or personal services, per the LBPP. BCA emailed requests for information to City departments on two separate occasions in February 2015 and April 2015. Additionally, our Office coordinated with BCA to obtain complete City Department Program information for FY 14-15. Participation data in the LBPP includes information for prime and sub-prime vendors that qualify as LBEs.

As stated previously, data is limited to the 26 responsive City departments from Fiscal Years 2011-2012 to 2014-2015. Attachment I provides the level of participation in City departments with the number and percentage of City contracts awarded to LBEs under the LBPP. Below is a summary of the information.

Year 1 (FY2011-2012)

In Year 1 of the LBPP, the City awarded 241 contracts in the amount of approximately \$336M. Of the 241 contracts, 38 were awarded to LBEs (16%). The award amount for the 38 contracts amounts to approximately \$90,896,466. In Year 1, no contracts were awarded to LBEs as a result of the Preference. This may be due to limited time for implementation since the Ordinance was adopted on November 24, 2011 and the LBPP officially commenced on January 1, 2012.

Year 2 (FY2012-2013)

In Year 2 of the LBPP, the City awarded 706 contracts in the amount of approximately \$899M. Of the 706 contracts, 153 were awarded to LBEs (22%). The award amount for the 153 contracts amounts to approximately \$255 million. However, in Year 2, one LBE benefited from the LBPP and was awarded a contract (approximately \$3.5M). The cost to the City as a result of awarding the contracts to the LBEs over non-LBEs was approximately \$6,376.

Year 3 (FY2013-2014)

In Year 3 of the LBPP, the City awarded 743 contracts in the amount of \$1.2B. Of the 743 contracts, 200 were awarded to LBEs (27%). The award amount for the 200 contracts amounts to approximately \$555 million. In the third year one LBE obtained a contract through the Preference. The cost to the City in awarding LBEs over non-LBEs amounted to \$25,616.

Year 4 (FY2014-2015)

In Year 4 of the LBPP, the City awarded 353 contracts in the amount of approximately \$381M. Of the 353 contracts, 118 were awarded to LBEs (33%). The award amount for the 118 contracts amounts to approximately \$185 million. One LBE benefited from the Preference and was awarded a contract. The cost to the City in awarding contracts to LBEs over non-LBEs amounted to approximately \$6,876 in Year 4.

Over the course of the four years, three LBEs have benefited from the Local Business Preference which totaled approximately \$5.2M in contracts. The fiscal impact to the City to award to LBEs (due to the Preference application) over the last four years is approximately \$39,000. This is calculated as follows, for example, if a department awards a contract to a LBE whose bid is \$5,000 higher than a non-LBE whose bid is \$95,000, the total cost to the City is \$5,000 (\$100,000 - \$95,000).

For the same time period we note that 25.0 percent of City contracts (509/2043) have been awarded to LBEs without the Preference.

In our review, we consulted with ITA to identify the number of total LBEs registered on BAVN. As of January 25, 2016, 1,626 LBEs were registered, of these 427 have been awarded City contracts and 63 state they are located in the City. In examining the data, we note that 14.8 percent (63/427) of the LBEs were awarded contracts and 3.9 percent (63/1,626) of the total active LBEs are located in the City. This data is limited to contract awards data reported by City Departments on BAVN.

Redefinition of “local business”

The Council adopted the LBPP Ordinance on October 14, 2011, along with an instruction that staff determine whether a Charter Amendment was required to redefine “Local Business” to apply to eligibility on a City-wide criteria rather than a County-wide criteria. The City Attorney confirms that this criteria is specified in the Charter, therefore, a Charter amendment is required to change the definition of “local business.”

According to the City Attorney, the Charter limits permissible business preferences to the "County of Los Angeles." Thus, a Charter amendment would be required to change the ordinance to give preferences to "City of Los Angeles" businesses. If the Council wishes to pursue this change, a significant fact-based justification for such a preference would be required before the City would be allowed to effectively favor City-only businesses over non-City businesses or residents. The City would need to demonstrate through credible evidence, such as through a commissioned disparity study, that businesses located in the City of Los Angeles are at a distinct and demonstrable economic

disadvantage in comparison to other businesses located in the County, state, or out-of-state. Careful analysis should be conducted to ensure compliance with the Commerce Clause, Equal Protection Clause, and the Privileges and Immunities Clauses of the U.S. Constitution, as well as with any other applicable local, state or federal laws before adoption of a city-only preference.

If the Council wishes to further explore amending the Charter and redefining “local business,” the City Attorney should be requested to report on the steps required for implementation.

Outreach

City departments are required to list contract opportunities that require notification on BAVN per City’s contracting procedures. Some City departments also conduct outreach through seminars, business resource meetings, and contractor opportunity listings. In order to further encourage greater participation, our Office consulted with the Finance concerning outreach opportunities. Finance notifies registered City businesses of renewals electronically and through mail on an annual basis. Approximately 300,000 businesses are registered with the City. According to Finance, approximately 75 percent of City businesses renew online and receive postcard notifications. Finance adds that approximately 25 percent of City businesses renew in person at their offices or by mailing renewal payments. Notification of City contracting opportunities through annual business tax payment reminders may be feasible at an additional cost. Other options for business outreach, include promoting BAVN on the online renewal reminders and upon payment through Finance. Outreach should be directed at registered businesses.

Evaluation

The LBPP provides three possible requirements for local businesses to qualify and benefit from the preference provided the LBEs meet one of the following criteria: 1) demonstrate that at least 50 full-time employees perform at least 60 percent of regular work hours on an annual basis within the County; 2) demonstrate that at least half of the full-time employees perform at least 60 percent of regular work hours on an annual basis within the County; or 3) demonstrate that it is headquartered in the County. BCA as the Designated Administrative Agency validates and certifies LBEs for participation. Businesses are required to submit an affidavit to indicate their current address. As long as business records correspond with BAVN and are in the County, they are identified as an LBE. Of the three qualifications, BCA is able to certify the criteria for the business located in the County by ensuring the information matches BAVN and that they provide a lease or deed as proof. Some businesses have attempted to circumvent the process by providing a signed lease for “virtual offices” where they do not officially operate. Businesses have attempted to use that as proof of work space in the County. However, difficulty lies with BCA not having sufficient staff to perform physical validation of headquarter locations. In some instances, businesses have attempted to use satellite offices as “headquarters” to benefit from the preference.

In addition, relative to the other two qualification parameters, 50 full-time employees and half of the full-time employees working at least 60 percent of hours, BCA has monitored certification through LBEs tax forms and payroll records, but this has proved difficult to validate since businesses do not specifically track that information. We recommend that BCA report on additional staffing resources to more effectively implement the LBPP.

Reporting

Currently, there is no regular reporting of LBE participation and awarding of contracts. Without data it is a challenge to determine LBPP effectiveness and compliance by City Departments, and hinders the ability to accurately examine the LBPP. For example, the compilation of data for this report was the

first time that City departments were contacted for the information. The lack of a central database or system for City departments to easily report is also an issue. Additionally, the lack of data reporting may also be caused by insufficient staffing, training, and coordination by City departments. Fourth, another possible reason for the lack of complete Program participation data is that many City departments may not issue contracts greater than \$150,000. These issues should be addressed to effectively evaluate the actual effectiveness of the Program.

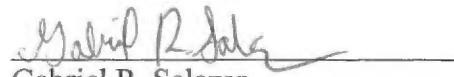
At this time, BAVN is primarily used to announce City contractor opportunities. However, BAVN, if used consistently by City departments, can be a data tracking tool and platform to identify the level of participation by LBEs on City contracts. Additionally, it can be used to identify geographically the location of businesses on City contracts. We recommend that BCA, ITA, and City Department Contract Coordinators work to ensure that all relevant City Departments report contract award data on BAVN.

The Los Angeles County Metropolitan Transportation Authority (Metro)

Metro has a Small Business Enterprise Program that provides a preference and contains a set-aside for small business enterprises (SBE). The Metro program applies to both federally and non-federally funded competitively negotiated contracts, sealed bids and public works projects with values from \$3,000 to \$5 million. Procurements are set aside for competition among SBEs when and if there is a competitive pool of three or more Metro certified SBE firms. Metro certifies SBE firms based on their North American Industry Classification System.

Similar to other public sector agencies the City of Los Angeles is unable to implement a similar program due to Charter restrictions, a required commissioned disparity study, and source of funding. Metro uses federal money which allows for more flexibility. Any implemented program must also be compliant with the Commerce Clause, Equal Protection Clause, and the Privileges and Immunities Clauses of the U.S. Constitution.

FISCAL IMPACT: No fiscal impact.



Gabriel R. Salazar
Analyst

Attachment: 1. City Contract Awards to Local Business Enterprises (LBEs) under the Program
2. Motion (Krekorian-Buscaino)

SMT:IS:JW

Citywide* Contract Awards to Local Business Enterprises (LBEs) under the Local Business Preference Program (LBPP)

FY 11-12				
<i>Jul 1, 2011 - Jun 30, 2012</i>	<i>LBE</i>	<i>LBE awards due to the LBPP</i>	<i>Total Cost to the City to award to LBEs over non-LBEs</i>	<i>Total Award Amount, all Projects (241 Awards)</i>
241 Projects	38 awards (16%)	0 awards		
dollars (\$)	\$90,896,466.07	\$0.00	\$0.00	\$335,905,067.04
percentage (%)	27.06%	0.00%	0.00%	
FY 12-13				
<i>Jul 1, 2012 - Jun 30, 2013</i>	<i>LBE</i>	<i>LBE awards due to the LBPP</i>	<i>Total Cost to the City to award to LBEs over non-LBEs</i>	<i>Total Award Amount, all Projects (706 Awards)</i>
706 Projects	153 awards (22%)	1 award		
dollars (\$)	\$255,607,161.52	\$3,523,715.00	\$6,376.00	\$899,416,001.66
percentage (%)	28.42%	0.39%	0.00%	
FY 13-14				
<i>Jul 1, 2013 - Jun 30, 2014</i>	<i>LBE</i>	<i>LBE awards due to the LBPP</i>	<i>Total Cost to the City to award to LBEs over non-LBEs</i>	<i>Total Award Amount, all Projects (743 Awards)</i>
743 Projects	200 awards (27%)	1 award		
dollars (\$)	\$555,314,946.68	\$1,200,000.00	\$25,616.15	\$1,152,707,478.65
percentage (%)	48.17%	0.10%	0.00%	
FY 14-15				
<i>Jul 1, 2014 - Jun 30, 2015</i>	<i>LBE</i>	<i>LBE awards due to the LBPP</i>	<i>Total Cost to the City to award to LBEs over non-LBEs</i>	<i>Total Award Amount, all Projects (353 Awards)</i>
353 Projects	118 awards (33%)	1 awards		
dollars (\$)	\$184,817,592.49	\$445,326.00	\$6,876.00	\$380,564,176.91
percentage (%)	48.56%	0.12%	0.00%	
Total # of Projects	509	3		512 Awards
Total Dollars Spent	\$1,086,636,166.76	\$5,169,041.00	\$38,868.15	\$1,091,805,207.76

*Requests for LBE- LBPP information were sent to all (37) City Depts. on 2/13, 4/16/15 & 8/2/15.

Notes:

A firm is credited as a LBE if certified by the City of LA, Bureau of Contract Administration on BAVN.

"Total Cost to the City to award to LBEs over non-LBEs" example- If after applying the LBPP, a Dept. awards a contract to a LBE whose bid is \$10,000 over a non-LBE whose bid is \$9,500, the Total Cost to the City to award to LBEs over non-LBEs is \$500 (\$10,000 - \$9,500).

14-1277
Refer to CF3 11-1673
10-2414

ECONOMIC DEVELOPMENT

BUDGET & FINANCE

MOTION

In October 2011, the City established the Local Business Preference Program (Program) (C.F. 10-2414, Krekorian/Parks and Cardenas) for the procurement of goods, equipment and services, including construction, for contracts with expenditures in excess of \$150,000. The Program provides eligible local vendors in Los Angeles County an eight percent competitive advantage on bids and proposals for City contracts. To continue efforts to stimulate economic activity, create jobs and improve existing programming, the City should instruct City departments to examine the Local Business Preference Program, make recommendations to ensure maximum success and evaluate how other City initiatives may complement the Program.

I THEREFORE MOVE that the Council instruct the Office of the Chief Legislative Analyst, with the assistance of the City Attorney, City Administrative Officer and any necessary departments, to review the rate of participation in the Local Business Preference Program, its effectiveness at keeping City procurement dollars local, and any impacts the program may have on the cost of procurement.

I FURTHER MOVE that the Council instruct the Office of the Chief Legislative Analyst to make recommendations for changes to the Local Business Preference Program, based on the results of its analysis, to more effectively target local businesses and to ensure cost-effectiveness of the program.

Presented by:


PAUL KREKORIAN
Councilmember, 2nd District

Seconded by:


JOE BACA

ORIGINAL


SEP 19 2014