

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: July 10, 2023

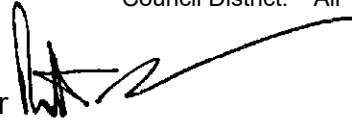
CAO File No. 0220-06027-0000

Council File No. 22-0098

Council District: All

To: City Council

From: Matthew W. Szabo, City Administrative Officer



Subject: **INCREASING AND DIVERSIFYING PARTICIPATION IN CITY CONTRACTING**

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### RECOMMENDATIONS

That the City Council:

- 1) Instruct City departments, with assistance from the Office of Procurement (OOP) and Bureau of Contract Administration (BCA), to identify contracts appropriate for Community-Level Contracting (CLC); and,
- 2) Direct OOP to report on identified contract opportunities by City departments, applicable next steps for adopting the practice of CLC citywide, and resources that may be required.

### SUMMARY

The City has various programs to increase supplier diversity and participation in the City's contracting process. Administration of these programs may vary because of the decentralized nature of the City's procurement processes and applicability to proprietary departments. Evaluation of the effectiveness of these programs are difficult to ascertain given the lack of citywide bid, award, and payment information. OOP's efforts to consolidate procurement training and resources can help towards a more effective implementation of existing programs. In addition, OOP is developing an end-to-end procurement platform, available for all City departments, to enable timely and accurate reporting of procurement related information. The OOP, with assistance from the BCA, will assist City departments to review and identify CLC contract opportunities.

### DISCUSSION

On June 3, 2022, City Council adopted an Economic Development and Jobs and Information Technology and General Services Committee report relative to participation of local and minority-owned businesses in City contracting. Council instructed the Chief Procurement Officer to review programs and initiatives aimed at increasing participation of small, local, women- and/or minority-owned businesses in City contracting, establish a process to implement CLC citywide, and review current mechanisms in place to monitor subcontracting activities among prime contractors.

## **A. CURRENT CITY PROGRAMS TO INCREASE PARTICIPATION IN CITY CONTRACTING**

The City has a number of existing programs and initiatives aimed at increasing supplier diversity and participation in the City's contracting process. The following provides a general description of each of these programs. An extended discussion on implementing CLC citywide is provided in accordance to Council's instruction.

**Business Inclusion Program (BIP)** was established to increase access to contracting opportunities and participation of small, emerging, disabled veteran, minority, and women business enterprises. The BIP is the primary tool utilized by non-proprietary City departments to require prime contractors and consultants to outreach to diverse and other business enterprises. The outreach must be documented through the Regional Alliance Marketplace for Procurement (RAMP) and completed at least 15 calendar days before the bid/proposal submittal deadline. In addition, BIP also has subcontractor reporting and utilization requirements to ensure that subcontractors and subconsultants award amounts are monitored and are not substituted without justification.

It should be noted that the BIP is not applicable for federally-funded projects for which federal Disadvantaged Business Enterprise (DBE) outreach requirements apply.

**Local Business Preference Program (LBPP)** was established to level the playing field for businesses located within Los Angeles County, decrease local unemployment, and encourage businesses to establish and maintain operations within the City, by providing a bid preference to or for use of Local Business Enterprises (LBE), Local Small Business Enterprises (LSBE), and Local Transitional Employer Enterprises (LTE). Application of the bid preference differs for contracts valued above \$150,000 and for those at and under \$150,000. Bid preferences and preferences for evaluation purposes range from one percent up to a maximum of 12 percent.

In June 2022, voters approved Measure BB, a Charter amendment allowing the City to grant a bid preference for businesses located within the City of Los Angeles. In December 2022, City Council approved amendments to the LBPP that provides up to a 12 percent preference for LBEs located within the City and up to a 10 percent preference for LBEs located within the County but outside of the City of Los Angeles (C.F. 22-0863). The draft ordinance with these changes is pending with the Office of the City Attorney.

Table 1 Citywide Awards to LBEs Under the LBPP

All Projects	LBE	LBE awards due to the LBPP	Cost to the City to award to LBE over non-LBEs
<b>FY 2018-19</b>			
3,789 Projects	377 awards	25 awards	--
Total Project Award Amount \$1,713.24 million	\$403.13 million	\$44.88 million	\$4.87 million
Percentage of Total Project Awarded	23.53%	2.62%	.28%
<b>FY 2019-20</b>			
3,106 Project	309 awards	13 awards	--
Total Project Award Amount \$2,899.16 million	\$559.19 million	\$36.07 million	\$1.09 million
Percentage of Total Project Awarded	19.29%	1.24%	.04%
<b>FY 2020-21</b>			
2,943 Project	378 awards	17 awards	--
Total Project Award Amount \$2,651.63 million	\$843.9 million	\$22.71 million	\$0.25 million
Percentage of Total Project Awarded	31.83%	0.86%	.01%

The information provided in Table 1 provides the LBE award information from the three most recent fiscal years provided by BCA. In 2020-21, the City awarded 17 opportunities to LBEs despite not being the lowest bidder or the highest rated proposer, at an additional cost of \$0.25 million to the City.

**Mandatory Subcontracting Minimum (MSM)** requirement was established by the Board of Public Works (BPW) to maximize subcontracting opportunities in construction contracts awarded by the BPW. This requirement provides the contractor with the flexibility to determine which portion of work to subcontract, method of outreach, and qualification process to determine with whom they will subcontract. Contractors who do not meet the MSM may not be awarded the contract, and there are penalties for not maintaining the minimum MSM identified for the contract. MSM ensures that subcontracting opportunities are created but provides the prime contractors with the choice of how to meet the requirement.

**Small Business Enterprise (SBE)/Disabled Veteran Business Enterprise (DVBE) Participation Program** is available through the Department of Water and Power (DWP). DWP's Program requires bidders or proposers to meet or exceed the contract specific mandatory SBE and/or DVBE participation requirement or will be deemed non-responsive. DWP has annual SBE and DVBE goals of 25 percent and three percent, respectively, but establishes contract-specific mandatory participation requirements based on subcontracting opportunities and available SBEs and/or DVBEs. The awarded Contractor is required to submit monthly subcontractor utilization reports as part of the required documentation for payment. Although designed as a subcontracting program, a certified SBE or DVBE prime bidder/proposer may receive SBE or DVBE credit for work performed by its own forces.

**SBE, Local Business Enterprise (LBE) and Local Small Business Enterprise (LSBE), and Disabled Veteran Business Enterprise (Local-State DVBE) Programs** are available through the Los Angeles World Airports (LAWA) and for projects valued greater than \$150,000. LAWA's programs require bidders or proposers to meet the contract specific mandatory SBE, LBE, LSBE, and Local-state DVBE participation levels or may be deemed non-responsive. LAWA has an annual departmental SBE goal of 25 percent, but establishes contract-specific mandatory SBE, LBE, LSBE, and Local-state DVBE participation requirements. The awarded Contractor is required to submit monthly subcontractor utilization reports as part of the required documentation for payment. Although designed as a subcontracting program, a certified SBE prime bidder/proposer will satisfy the SBE participation requirement; a certified LBE prime bidder/proposer will satisfy the SBE but not the LBE participation requirement; a certified LSBE prime bidder/proposer will satisfy the SBE, LBE, and LSBE participation requirements; and a certified DVBE prime bidder/proposer will satisfy the DVBE participation requirement.

**SBE and Very Small Business Enterprise (VSBE) Program** is available through the Port of Los Angeles (POLA). POLA requires bidders or proposer to perform outreach and utilize certified small businesses. It has an annual departmental SBE goal of 25 percent, including five percent VSBE. Although designed as a subcontracting program, a certified SBE prime bidder/proposer will satisfy the SBE participation requirement, and a certified VSBE prime bidder/proposer will satisfy the SBE and VSBE participation requirements.

**Accessing LA** is a series of three annual business networking events conducted by the Department of Public Works, Bureau of Contract Administration (BCA) – BuildWith, TeamWith, and RiseWith, to encourage the participation of local, small, minority, and women businesses. BuildWith focuses on the construction industry, TeamWith on professional/personal services, and RiseWith promotes business/contracting development. These events provide opportunities for diverse businesses to develop relationships with City departments and other public agencies, and gain a better understanding of the City's contracting process. BCA reports AccessingLA has over 1,500 attendees each year.

**LA Small Business Academy** is hosted by BCA in partnership with the Bureau of Engineering, POLA, DWP, and LAWA. Small businesses have to apply to participate. Each annual cohort has a particular emphasis such as construction-related, engineering-related, women-owned, and/or disabled veteran-owned businesses. The Academy is composed of a five-week curriculum to prepare attendees for City contracting opportunities and includes but is not limited to marketing, financing, insuring, and future City projects. BCA reports that, since 2014, the Small Business Academy has produced 220 graduates, including 43 percent minority-owned and 39 percent women-owned, as well as a number of veteran-owned and small businesses.

**Community-Level Contracting (CLC)** is the practice of unbundling large contracts to smaller dollar value contracts with the goal of creating opportunities for small businesses to contract with the City as prime contractors. These opportunities make City contracting more accessible to small businesses and is anticipated to provide them with the necessary experience to help increase capacity and confidence to pursue larger contracting opportunities with the City.

The advantages of CLC include eventually increasing market competition by building current small businesses' capacity that would otherwise not be able to compete for the City's procurement opportunities; promoting participation among small and diverse businesses; and developing a pipeline for the City's service providers.

The disadvantages of CLC include potentially losing savings from economies of scale, City staff administrative burden to manage additional solicitations and contracts, and potential exposure to the City in the event that a small business is unable to satisfactorily complete the scope of work.

In May 2021, the Board of Public Works adopted a motion implementing the practice of reviewing its projects for CLC opportunities. The bureaus of the Department of Public Works identified large contracting opportunities that were unbundled to smaller contracts of approximately \$100,000 and a list of pre-qualified contractors were used to provide services issued as task order solicitations or work packages to the pre-qualified contractors. The following are examples of solicitations where CLC was applied:

- Small Sidewalk Repair Program (Bureau of Engineering, Department of Transportation)
- Solar photovoltaic and energy storage design-build contractors for municipal facilities (Bureau of Engineering)
- Landscaping and site services (Bureau of Sanitation)
- Mobile fleet washing services (Bureau of Sanitation)
- On-call bus stop lighting contractors (Bureau of Street Lighting)

**Implementation.** The general process for implementing CLC, further outlined below, involves identifying the contract to be unbundled, recruiting, and providing training and support to both City staff and businesses throughout the process.

- a) Identifying contracts. Review upcoming contracts that are ideal for unbundling. Large contracts that include a variety of services should be reviewed to determine whether a portion could be used for CLC. Contracts for a similar service performed in multiple locations are also ideal for unbundling.
- b) Recruitment. Market research would have to be conducted to ensure that there are contractors that are able and willing to participate in providing the identified services for the City. In addition, the City should leverage City resources such as EWDD's Business Source Centers (BSC) and partner with community based organizations and other non-profit organizations to disseminate information regarding these opportunities.
- c) Training and support. City staff should receive training on how to identify contracts appropriate for unbundling, develop a pre-qualified list of contractors, and administer a contract with a bench list of pre-qualified contractors. In addition, contractor training should also be provided to help prospective bidders/proposers have a better understanding of the City's contracting process and expectations when conducting business with the City. In addition to EWDD's BSCs, the City has an existing contractor who assists businesses with obtaining necessary bonding or insurance, in addition to providing contractor training workshops. It would also be ideal for Contractors who participate to receive feedback in regards to their performance and support

including the administrative responsibilities related to working with the City.

- d) Report. Accountability through reporting is necessary to determine the effectiveness, challenges with implementation, and opportunities for improvement for this process.

OOP will survey City departments to determine the scope of contracting opportunities available for CLC, level of assistance needed in implementing the steps outlined above, and any additional consideration for implementation.

**Impact.** Establishing goals, resource requirements, and the fiscal impact to implement CLC citywide will be provided subsequent to the completion of the citywide survey. It is conceivable that CLC may require additional funding resources to provide the same services because of lost economies of scale; however, it may also generate innovation that result in cost savings. In light of the current rate of inflation, a comparison of the cost of services prior to unbundling may also not provide an accurate representation of the fiscal impact of CLC. The use of CLC may also require more city staff to administer the additional contracts as a result of unbundling existing large contracts; however, providing training and support to City staff may be sufficient to address the increased load. In addition, the breakdown of larger contracts to smaller contracts may increase the opportunity for departments to piggyback on each other's contracts which could result in efficiencies to balance the increase in the number of contracts.

**Role of OOP.** The OOP can provide assistance or training, in collaboration with BCA, track the participation of departments citywide, and report on non-proprietary departments' progress in identifying relevant CLC contract opportunities. Not all City departments are anticipated to be able to participate given the scope and nature of the services contracted, but an earnest review should be completed prior to excluding a department from participation.

## **B. MECHANISMS TO MONITOR SUBCONTRACTING OPPORTUNITIES**

There is currently no citywide mechanism to monitor subcontracting opportunities. However, opportunities wherein the BIP requirement is activated includes a requirement for the Awarding Authority to approve the use of all subcontractors/subconsultants (subs) and any changes to the subcontract award amount. Failure by a prime contractor to request for approval to use a sub can result in a penalty equal to 10 percent of the subcontract award amount. However, the extent in which subconsultant utilization is monitored is unknown. It is possible that many City staff are unaware of their BIP responsibilities as a result of a lack of training. Additionally, tracking, reporting, and confirming sub utilization citywide represents a largely manual effort. For this reason, OOP is also focusing on increasing functionalities in RAMP to enhance the ability to capture and automate the reporting of contract award and utilization information.

## **C. OFFICE OF PROCUREMENT INITIATIVES**

The OOP was established to bring transparency, strategy, and accountability to citywide procurement activities. This Office's current major initiatives that will improve the efficacy of the programs discussed in this report include:

- Coordinating staff development. The City has over 50 departments, each with their own procurement staff and internal processes, making efforts to train, standardize, and streamline a challenge. This challenge is compounded by staff vacancies and turnover resulting in a constant need to educate and train. To address this issue, OOP has been developing resources and templates and compiling information to help consolidate procurement related information and training materials to help fill the knowledge gap. OOP has also been conducting regular online training on topics requested by Department Contract Coordinators (DCCs). In addition, OOP is also in the process of developing an online training curriculum to provide a comprehensive on-demand training on the City's procurement process from developing a solicitation through executing a contract. Ensuring City staff are aware and trained of their contract administration responsibilities will help with the effectiveness of our programs.
- Collection of Data. The importance of data to inform policy decisions cannot be over emphasized. OOP is developing an end-to-end procurement system to help capture bid, award, and invoice information. OOP, in collaboration with the Information Technology Agency, is developing additional capabilities within RAMP to digitize the City's procurement process. This system will enable timely and accurate reporting of data related to the City's procurement activities which is anticipated to be built out by December 2025.

## **FISCAL IMPACT STATEMENT**

There is no immediate fiscal impact related to the recommendations of this report. However, as discussed in this report, the implementation of LBPP has a direct fiscal impact, resulting in an increased cost of \$0.25 million to the City for awards made in 2020-21. In addition, the implementation of CLC has an unknown fiscal impact potentially from losing economies of scale and additional staff support necessary to administer these contracts.

## **FINANCIAL POLICIES STATEMENT**

The recommendations in this report are in compliance with the City's Financial Policies Statement.