

## MEMORANDUM

**DATE:** November 7, 2013

**TO:** Local Inclusion Policy Working Group members  
City Staff – with intent for forward to the San Leandro City Council

**FROM:** Surlene Grant, Group Moderator

**RE:** **Local Inclusion Policy**

The following is the “final” draft of Local Inclusion Policy being proposed to the City of San Leandro City Council.

The foundational policy initially came about after several meetings among San Leandro residents and business representatives. The subsequent result was a convening of the Local Inclusion Policy Working Group. The Working Group met four times to refine the policy suggestions.

On October 22, the Working Group held its final meeting resolve any remaining issues and concerns that various group members may have had. The result is a consensus document that is attached. As far as the Working Group is concerned, this version reflects the group’s best thinking and is acceptable for forwarding to the City Council. Thus, the use of “final” is in quotes, because the absolute final would result from the City Council deliberations and actions.

The Working Group consisted of approximately 20 members representing various stakeholders in San Leandro. Participation was totally voluntary. Some members of the working group participated in every meeting, others attended based on schedules. The following are the names and affiliations of the Local Inclusion Policy Working Group members who contributed to this effort by attending at least one meeting.

Surlene Grant, Moderator, SL resident and business owner  
Bernard Ashcraft, SL resident and business owner  
DeWayne Cornelius, SL resident and business owner  
John Gooding, business owner and Chamber member  
Jose Duenas, affiliated Chamber association  
Alton Jefferson, SL resident and business owner  
Rose Johnson, SL non profit director  
Arlene Lum, SL resident and business manager  
J Meza, SL business owner  
Ingrid Merriwether, SL resident and business owner  
Steve Song, SL business owner

Rafael Zamora, affiliated chamber association  
Andreas Cluuver, Building Trades  
Andrew Slivka, Building Trades  
Rob Stoker, Building Trades  
Matt Maloon, Building Trades  
Dave Johnson, CEO Chamber of Commerce  
Emily Griego, SL Chamber of Commerce  
Richard Pio Roda, City Attorney  
Jeff Kay, City of San Leandro  
Chris Zapata, City Manager, City of San Leandro  
Diana Souza, City Council member, City of San Leandro

## "LOCAL INCLUSION POLICY"

### COMPARISON OF BIDS

#### Findings

The City Council of the City of San Leandro hereby finds that it is in the City's interest to have a healthy local business community. The City Council also finds that San Leandro businesses, particularly small and nonprofit organizations, often encounter obstacles to participating in City projects and procurements, obtaining financing and credit, and bonding and insurance, which affects the economic viability and growth of these businesses and organizations.

#### Declaration of Policy and Purpose

(a) It shall be a policy of the City of San Leandro that San Leandro business enterprises, including small and nonprofit businesses, should be encouraged to participate as contractors and suppliers in the provision of goods and services to the City. Policies and programs that enhance opportunities and utilize the skills and expertise of San Leandro businesses, including small businesses and nonprofit organizations, serve the public interest, primarily because the growth and development of such businesses have a significant positive impact on the economic health of the City of San Leandro. A City ordinance that grants a preference for awarding contracts for projects and procurements to businesses located or operating within the City serves the public interest by encouraging businesses, including small and nonprofit businesses, to locate, hire residents and remain in San Leandro.

(b) Investment in San Leandro businesses is important to sustain and expand regional partnerships that connect workforce and local business participation ~~development~~, a vibrant arts community and educational development.

(c) It is a goal of this policy to encourage the enactment of legislation that mandates setting aside a percentage of the City's budget for all projects developed or built by the City for workforce training, local employment and the arts.

(d) Because many San Leandro businesses are small and may not have the resources, capability or experience to act as a prime contractor or to provide specialty services, it shall be a policy of the City of San Leandro to encourage qualified prime contractors to use San Leandro businesses, including small businesses and nonprofit organizations, as subcontractors and suppliers to participate in City projects and purchases and gain experience in a way that will enhance their ability to eventually compete for contracts as prime contractors.

## **Definitions.**

As used in this policy:

(a) "Contract" means any contract or agreement between the City and a person to provide or procure labor, goods, materials, equipment, furnishing, supplies or services to, for or on behalf of the City. Except as otherwise specifically defined in this section a contract does not include:

(1) Awards made by the City with federal or state grant monies or City general fund grants to a nonprofit entity where the City offers assistance, guidance or supervision on a project or program and the recipient of the grant award uses the monies to provide services to the community;

(2) Sales transactions where the City sells its personal or real property;

(3) Gifts of materials, equipment, supplies or services to the City;

(4) Contracts exempted from the provisions of Chapter 1-6 of the San Leandro Municipal Code; or

(5) Contracts that would violate any State or Federal law or grant requirements.

(b) "Contract Awarding Authority" or "CAA" means the City officer, department, employee or legislative body authorized and empowered by law to enter into contracts on behalf of the City. In the case of an agreement with a contractor to perform or fund the performance of construction related services, the term "contract awarding authority" or "CAA" shall mean the contractor receiving funds from the City to perform or fund the performance of such services.

(c) "Contractor" or "Prime Contractor" means any person who submits a bid or proposal to perform, perform any part of, agrees with a person to provide services in relation to or enters into any contract subject to this chapter with the CAA for public works or improvements to be performed, or for goods or services or supplies to be purchased at the expense of the City or to be paid out of monies deposited in the treasury or out of trust monies under the control of, or collected by, the City.

(d) "Joint Venture" means and may be referred to as an "association" of two or more businesses, one of which is a San Leandro business or San Leandro nonprofit organization acting as a contractor and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill and/or knowledge. The San Leandro business or nonprofit organization participating in the joint venture shall have a commensurate share of the profit or loss to be realized from the joint venture. The joint venture must conform to all pertinent laws that govern the creation of such entities.

(e) "Person" means one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, nonprofit organizations, and cooperatives.

(f) "San Leandro business" means any business which possesses or establishes all of the following at least six (6) months before bids or proposals are opened by the City. Such a business will be subject monitoring for validity of the following :

(1) A written agreement for City occupancy or proof of ownership of a San Leandro office;

(2) Proof that business is transacted in an office located in San Leandro;

(3) A conspicuously displayed business sign at the San Leandro business premises except where the business operates out of a residence.

(4) Proof that the office is appropriately equipped for the type of business for which certification as a San Leandro business is sought. Where equipment, such as computer and reproduction and communications machines are typically and routinely used in a non-San Leandro location, comparable equipment shall be installed and routinely used at the San Leandro office.

(5) In addition, such business must show a percent of revenue generated or earned in the City of San Leandro and a real San Leandro address for 6 months prior.

(6) A valid City of San Leandro business license.

### **Contracts Subject to the Local Inclusion Policy**

The provisions of this chapter shall apply to three categories of contracts awarded by the City:

(1) Construction and Public Works Contracts valued at or above one hundred thousand dollars (\$100,000.00); (2) Non-Professional and Professional Services contracts valued at or above twenty five thousand dollars (\$25,000.00); (3) Contracts for the procurement of goods, materials, equipment, furnishings or supplies valued at or above five thousand dollars (\$5,000.00).

### **I. Local Business Preference Policy**

Whenever, a competitive process is utilized by the City of San Leandro to award a contract identified in Section \_\_\_\_\_, the following shall apply:

(a) Solely for the purpose of calculating the lowest bid or proposal, a sum equal to ten percent (10%) of the total bid, or of the base bid and each alternate, or the proposal shall be deducted from the amount of the total bid, or the base bid and each alternate, respectively, of the bid or the proposal of a contractor or supplier whose principal place of business is located within the City of San Leandro. If, after performing the above calculation there is a tie for the lowest bid the contractor or supplier whose principal place of business is located

within the City of San Leandro shall be deemed the lowest bid subject to the qualifications concerning responsibility, as required by law. If the tie bidders both have as their principal place of business the City of San Leandro, then the City Council shall draw lots to determine to whom to award the contract.

- (b) Solely for the purpose of calculating the lowest bid a sum equal to five percent (5%) of the total bid, or of the base bid and each alternate, or the proposal shall be deducted from the amount of the total bid, or the base bid and each alternate, respectively, of a bid or proposal submitted by a contractor, or supplier that is a joint venture wherein one of the joint venturers is a business that has as its principal place of business, its headquarters, or a significant portion of its operations within the City of San Leandro.
- (c) Under no circumstances shall the real dollar amount of the percentage applied under sections (a) or (b) exceed \$50,000 in the reduction of the lowest bid, or the base bid and each alternate, or the proposal respectively.

## **II. Local Business Participation Goal**

- (a) Upon award of a contract governed by this Chapter that is at or exceeds \$100,000, the contractor, or supplier shall engage in good faith efforts to hire San Leandro businesses, nonprofit organizations or residents to perform the contract so that at least 25% of the total contract dollar amount is spent on local businesses.
- (b) Good faith efforts shall be established by any combination of five of the following activities. In order to show good faith efforts towards meeting the local business participation goal, the contractor or supplier shall certify that it has already, or will engage during the course of the project in the activities identified herein through submittal of a declaration at the time bids or proposals are due:
  - (1) Attending any pre-solicitation or pre-bid meetings scheduled by the City to inform all contractors, subcontractors, suppliers, and San Leandro residents of the project and the requirements of this ordinance;
  - (2) Convening a meeting within the City of San Leandro for San Leandro businesses, suppliers, nonprofit organizations and residents to identify specific items of work to be performed on the project in order to increase the likelihood of meeting the business participation local hiring goal and intent of this chapter, including breaking down contracts into smaller units;
  - (3) Listing all contact information for any San Leandro business or nonprofit organization that will participate in the project, or provide services or supplies to the prime contractor or supplier if a contract is awarded to the prime contractor or supplier;

- (4) Advertising for subcontracting, supplying or employment opportunities on the project not less than twenty (20) calendar days before the date bids are due in one or more daily or weekly newspapers, websites, trade association publications, trade journals or other media;
- (5) Documentation of personal contacts with San Leandro businesses or nonprofit organizations informing them of the opportunity to subcontract or supply to the project.
- (6) Documentation of good faith negotiations with San Leandro businesses and nonprofit organizations to subcontract or supply to the project;
- (7) Making the project plans, specifications and in the case of a construction, design or engineering contract, the City Engineer's estimates available for review upon the request of interested San Leandro businesses and San Leandro nonprofit organizations;
- (8) Documentation of requests for assistance from San Leandro community organizations, San Leandro contractors or professional groups, local, state or federal business assistance offices or other organizations that provide assistance in the recruitment and placement of San Leandro businesses and San Leandro nonprofit organizations, if any are available

**Compliance.**

- (a) In submitting bids for projects for which a contract will be awarded under this policy, contractors or suppliers shall be subject to a certification process and do the following:
  - (1) Demonstrate in their bids that they have used good faith efforts to utilize San Leandro businesses, San Leandro small businesses and/or San Leandro nonprofit businesses; or
  - (2) Identify the particular San Leandro businesses, San Leandro small businesses and/or San Leandro nonprofit businesses and suppliers to be utilized in performing the contract, specifying for each such business the dollar value of the participation, the type of work to be performed and such information as may be reasonably required to determine the responsiveness of the bid or proposal.
- (b) During the term of the contract, any failure to enact good faith efforts as certified in the bid documents may be grounds for breach of contract, or subsequent debarment from bidding or proposing on City contracts as specified further below.
- (c) The City is empowered to take actions to ensure compliance with the provisions of this chapter. The actions which the City is empowered to take may include, but are not limited to:
  - (1) Ordering the suspension of the selection process for the award of contract; or

- (2) Intervening in the selection process to correct contracting practices which hinder business opportunities for San Leandro businesses, San Leandro small businesses and San Leandro nonprofit businesses;
- (3) Declaring the contractor to be nonresponsive and ineligible to receive the award of contract;
- (4) Declaring an existing contract terminated;
- (5) Imposing penalties in the form of liquidated damages. The liquidated damages shall be in an amount equal to the contractor's and/or joint venture net profit on the contract, or ten percent (10%) of the total amount of the contract. All liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the contractor from any contract with the City and the City shall have the right to withhold payment due to the contractor.
- (6) Disqualifying the contractor from eligibility for providing goods or services to the City for a period not to exceed five (5) years. Any business disqualified under this subsection shall have a right to review and reconsideration by the City Manager after two (2) years upon a showing of corrective action indicating that violations are not likely to recur.

### **Incentive Program**

Per the City Council's findings and stated purpose, the City Manager is authorized to award, at his or her discretion, if permitted and available within the project budget, a monetary bonus for any prime contractor or supplier that exceeds the local Business Participation goal by 100% or more. At a minimum, should prime contractor or supplier achieve and exceed the Business Participation goal, the entity will receive 100% of bid value. If the entity does not, it will receive 90%.