

2011 NOV 21 PM 12: 54

ORDINANCE NO. 13102 C.M.S.

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**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04, PURCHASING SYSTEM, TO AUTHORIZE A PRE-QUALIFICATION PROCESS AND MANDATORY AND OPTIONAL PREFERRED SMALL LOCAL BUSINESS PROGRAMS FOR THE PURCHASE OF PRE-CONSTRUCTION AND OTHER PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES**

**WHEREAS**, the City Council is amending Oakland's Local and Small Local Business Enterprise ("L/SLBE") program policy to improve and maximize City contracting opportunities for Oakland's small local businesses, and to make the City's contracting process more efficient for small businesses; and

**WHEREAS**, the City Council wishes to establish a program targeting Oakland certified small local businesses for all of the City's pre-construction (professional services) and construction contracts under \$250,000.00; and

**WHEREAS**, the amended L/SLBE program includes *Mandatory* Preferred Small Local Business ("MPSLB") programs for Oakland certified small businesses to be pre-qualified for professional pre-construction services contracts, such as architectural and engineering services, or construction services contracts under \$250,000; and

**WHEREAS**, the amended L/SLBE program includes an *Optional* Preferred Small Local Business (OPSLB) program for Oakland certified small businesses to be pre-qualified for other professional services contracts under \$250,000; and

**WHEREAS**, under the mandatory and optional preferred programs the City shall first solicit proposals or bids from businesses that are on the MPSLB or OPSLB lists; and

**WHEREAS**, Oakland certified small businesses on the MPSLB or OPSLB pre-qualified lists shall be exempt from Oakland's Local and Small Local Business Enterprise program requirements because they will meet the requirements by virtue of the "local business" certification; and

**WHEREAS**, MPSLB and OPSLB contracts will be subject to the lowest responsible, responsive bid or qualifications criteria required under Oakland Municipal Code sections 2.04.050.E, 2.04.060 and 2.04.051, as well as insurance and bond requirements and Oakland social equity policies such as prevailing wage, Living Wage, local hire and Equal Benefits, as applicable; and

**WHEREAS**, MPSLB and OPSLB contracts over \$100,000 shall be subject to Council approval in accord with Oakland Municipal Code Section 2.04.030; and

**WHEREAS**, Oakland Municipal Code Chapter 2.04, *Purchasing System*, sets forth Oakland’s purchasing requirements for professional and construction services and does not authorize the City Administrator to establish pre-qualified lists for construction services and limit bidding to businesses on the lists, and it is periodically in the best interests of the city to use this process to expedite work; and

**WHEREAS**, Oakland Municipal Code Chapter 2.04, *Purchasing System*, requires an amendment to implement the MPSLB and OPSLB programs to implement the City Council’s new social equity policies targeting Oakland certified small businesses adopted under amendments to Ordinance No. 12389 C.M.S., which adopted Oakland’s Local and Small Local Business Enterprise Programs;

**Now, therefore, the Council of the City of Oakland does ordain as follows:**

**Section 1.** Oakland Municipal Code Title 2, Chapter 2.04, *Purchasing System*, is amended, adding (underscored) and deleting (strikethrough), as follows:

**Chapter 2.04, Purchasing System**

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2.04.040 – Contracting procedures.

- A. Contracts Subject to Council Appropriation and Allocation of Program or Contract Funds. All contracts authorized by the Council or City Administrator shall be subject to the prior appropriation and allocation of funds by the City Council for the City programs, activities, functions or operations, which the purchase of any supplies, professional or other services or combination are intended to support.
- B. Limits for Informal and Formal Solicitation Procedures and Exemptions.
  - 1. Solicitation of Qualifications and Bids and Proposals for Pre-Qualified Contractors. Pre-qualification activities for the Preferred Small Local Business (PSLB) pre-construction and construction programs are exempt from the advertising and/or formal bidding/request for proposal requirements of this section, and are instead subject to the requirements set forth in sections 2.04.045.B and 2.04.051.C for solicitation of qualifications and bids or proposals.
  - 2. Informal Advertising and Bidding. Informal advertising and bidding procedures established by the City Administrator are required for purchase orders or contracts for supplies, services or combination involving expenditures between five hundred dollars (\$500.00) and fifty thousand dollars and one cent (\$50,000.01) in any single transaction or term agreement;
  - 23. Formal Advertising and bidding. Formal advertising and bidding, described in Section 2.04.050, is required for purchase orders or contracts for supplies, services or combination involving expenditures in excess of fifty thousand dollars (\$50,000.00) in any one transaction or term agreement.
  - 34. Informal RFP/RFQ Process. Informal advertising and solicitation of proposals/qualifications is required for professional services contracts involving expenditures of twenty-five thousand dollars (\$25,000.00) or less;

45. Formal RPF/RFQ Process. Formal advertising and solicitation of proposals/qualifications described in Section 2.04.051 is required for professional services contracts involving expenditures of more than twenty-five thousand dollars (\$25,000.00).

C. Purchase Orders, Contract Format, Petty Cash.

1. Purchase orders shall be used for all purchases of supplies, services or combination or professional services in excess of five hundred dollars (\$500.00). The purchase order shall incorporate by reference all relevant agreements, including but not limited to the City of Oakland Professional Services Agreement, negotiated agreements, vender agreements and exhibits, attachments, addendums and other supporting documents that, together, constitute the entire agreement.
2. All purchases and contracts for supplies, services or combination of professional services in excess of five hundred dollars (\$500.00) shall be in writing, in a format approved by the City Attorney.
3. The City Administrator shall institute control procedures for petty cash funds without prior use of purchase orders or contracts.

D. Miscellaneous Procedures.

1. Notwithstanding the above, nothing shall preclude the City Administrator from placing any purchase, procurement or contract within the City Administrator's approval limit on the City Council agenda for discussion or approval.
2. The City Administrator shall institute informal contacting procedures for the purchase of supplies, services or combination.
3. The City Administrator shall institute informal and formal contracting procedures for the purchase of professional services.
4. The City Administrator shall maintain a centralized list of all contracts executed by the City Administrator, or the City Administrator's designees, within the City Administrator's authorization limit, for the prior year.
5. Pursuant to the City Charter, the City Attorney will draft standardized contract terms and conditions and standardized contracts for professional services, purchasing, procurement and for supplies, services or combination.
6. Pursuant to the City Charter, the City Attorney will approve the form and legality of all contracts before their execution.

2.04.045 – Pre-qualification and bid processes for general construction services and the Preferred Small Local Business (“PSLB”) program.

A. *Optional* Prequalification for Construction Work over \$250,000. The City may, in its discretion and when deemed by the City Administrator to be in the best interests of the City, establish a list of pre-qualified businesses to perform as-needed and specified construction work in excess of \$250,000 (“Large Projects”).

1. When deemed by the City Administrator to be in the best interests of the City, the City will advertise a request for qualifications for licensed construction services in accord with OMC 2.04.050.A, below, to perform as-needed or specified construction work exceeding \$250,000.

2. When a pre-qualified list is established for Large Projects, the City may limit solicitations for bids for such work to 3 or more business on the pre-qualified list.

3. Contracts awarded through a pre-qualified process are subject to the City's insurance, bond, labor and all social equity policies such as, but not limited to, payment of prevailing wages, local and small local business participation and local hire.

B. Mandatory Preferred Small Local Business Program (MPSLB) – Pre-qualification for Construction Work under \$250,000. The City will establish a list of pre-qualified businesses to perform as-needed and specified construction work less than \$250,000 (“Small Projects”).

1. The City will solicit qualifications solely from Oakland certified small, local business enterprises in order to establish a MPSLB pre-qualified list of small local businesses to perform Small Project construction contracts.

2. When a pre-qualified list is established the City will limit solicitations for bids for such work to 3 or more business on the MPSLB pre-qualified list.

4. MPSLB Contracts are exempt from the requirements of Oakland's Local and Small Local Business Enterprise (L/SLBE) program for construction contracts.

5. With the exception of the L/SLBE program, MPSLB contracts are subject to insurance, bond, labor and social equity policies such as, but not limited to, payment of prevailing wages and local hire.

6. Circumstance for Open Market Solicitation. The City Administrator may solicit bids on the open market, without advertising, when all responsive bids exceed the engineer's estimate.

C. Award of Construction Contracts. Contracts awarded through a pre-qualification process shall be awarded to the lowest responsible, responsive bidder.

D. Construction contracts awarded through a pre-qualification process exceeding \$100,000 are subject to Council approval in accord with section 2.04.030, above.

E. Removal From Pre-qualified List. Businesses that lose necessary qualifications to perform the work, including, but not limited to, licenses or insurance, or that become disqualified or debarred, shall be removed from the pre-qualified list.

#### 2.04.050. Bid Procedure

A. When Advertising Required. Where the cost of services, supplies or combination required by the city exceeds fifty thousand dollars (\$50,000.00), the City Clerk shall call for formal bids by advertising at least once in the official newspaper of city not less than ten calendar days before

the date for receiving bids. The City Administrator may deem it advisable to require more than one advertising of the call for bids.

Notwithstanding the foregoing, the requirements of this section shall not apply to the Mandatory Preferred Small Local Business (MPSLB) Pre-qualification Program in section 2.04.045.B, above, for construction services.

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- E. Opening of Bids and Awards. All bids submitted under this section shall be sealed, identified as bids on the envelope and submitted to the City Clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the City Administrator or the City Administrator's designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. The contract shall be let to the lowest responsible bidder, as defined herein and taking into account current bid discounts and/or preference points awarded under Oakland's social equity programs, by the City Council at any time not exceeding sixty (60) calendar days after bid opening. The City Council may reject any and all bids and waive informalities or minor irregularities in the bids.

In the bid for Public Works Construction Projects, the City Administrator may deem it advisable to delay the submission of a list of subcontractors to be on the project. Such list shall be sealed, identified as a subcontractor list on the envelope and submitted to the City Clerk at the place and time specified in the public notice inviting bids.

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- I. Exceptions to Competitive Bidding. Upon a finding in each instance by the City Council that any of the following conditions exist, the provisions of this section shall not apply:
  - 1. To contracts involving professional or specialized services such as, but not limited to, services rendered by architects, engineers and other specialized professional consultants;
  - 2. When calling for bids on a competitive basis is impracticable, unavailing or impossible;
  - 3. Placement of insurance coverage;
  - 4. When public work is performed by the city with its own employees;
  - 5. In other cases when specifically authorized by the City Council after a finding and determination that it is in the best interests of the city.

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2.04.051 – Competitive process and qualification-based awards for professional services contracts.

- A. Request for Qualifications or Proposal for Professional Services Contracts in Excess of Twenty-Five Thousand Dollars (\$25,000.00). The City Administrator or the City Administrator's designee, shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") for the award of contracts that exceed Twenty-Five Thousand Dollars (\$25,000.00) and are exempt from bidding under Section 2.04.050.I.1. The city's RFP or RFQ processes shall be set forth in a City Administrator's administrative instruction. The RFP or RFQ requirement applies, but is not limited to, contracts for

professional, technical or specialized services. The selection and award of contracts for professional services shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the city, but shall also take into account preference points awarded under Oakland's social equity policies and compliance with applicable Oakland's purchasing policies such as Living Wage and Equal Benefits.

B. Waiver. Upon a finding by the City Council or its designee that it is in the best interests of the city, the City Council may waive the requirement for an RFP or RFQ process.

C. Pre-qualification for Pre-Construction and Other Professional Services Work under \$250,000 – Mandatory and Optional Preferred Small Local Business Programs (MPSLB and OPSLB).

1. Mandatory Preferred Small Local Business (MPSLB) program for pre-construction services. The City shall establish a list of pre-qualified businesses to perform as-needed and specified pre-construction work, such as architectural and engineering work, less than \$250,000 ("Small Projects"). The City shall solicit qualifications solely from Oakland certified Small, Local Business Enterprises to establish the pre-qualified business list for MPSLB professional pre-construction services.
2. Optional Preferred Small Local Business (OPSLB) program for other professional services (pre-construction services excluded). The City may, in its discretion and when deemed by the City Administrator to be in the best interests of the City, establish a list of pre-qualified Oakland certified small local businesses to perform as-needed or specified professional services (pre-construction excluded) under \$250,000 ("Small Projects"). When authorized by the City Administrator, the City shall solicit qualifications solely from Oakland certified Small, Local Business Enterprises to establish a pre-qualified business list for OPSLB professional (non-pre-construction) services.
3. When a pre-qualified list is established for Small Projects, the City will limit solicitations for proposals for such work to 3 or more business on the MPSLB or OPSLB pre-qualified lists.
3. MPSLB and OPSLB contracts are exempt from the requirements of Oakland's Local and Small Local Business Enterprise (L/SLBE) program for professional services.
4. With the exception of the L/SLBE program, MPSLB and OPSLB contracts are subject to insurance and social equity policies such as, but not limited to, Living Wages and Equal Benefits.
5. Circumstance for Open Market Solicitation. The City Administrator may solicit proposals on the open market, without advertising, if less than three proposals are submitted by MPSLB or OPSLB pre-qualified businesses.
6. MPSLB or OPSLB contracts exceeding \$100,000 are subject to Council approval in accord with section 2.04.030, above.

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7. Removal From Pre-qualified List. Businesses that lose necessary qualifications to perform the work, including, but not limited to, licenses or insurance, or that become disqualified or debarred, shall be removed from the MPSLB or OPSLB pre-qualified list.

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**SECTION 2. Severability.**

If any section, subsection, subpart or provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Ordinance and the application of such to other persons or circumstances shall not be affected thereby.

**SECTION 3. Effective Date.**

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption; otherwise it shall become effective upon the seventh day after final adoption.

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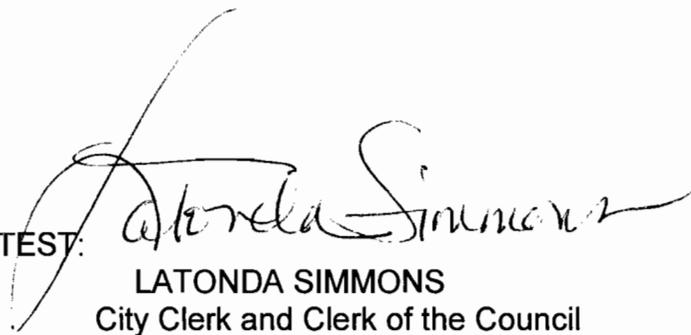
IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

DEC 20 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF AND  
PRESIDENT REID - 8

NOES- 0  
ABSENT- 0  
ABSTENTION- 0

ATTEST:   
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: 1-5-2012

Introduction Date DEC 6 2011

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

NOTICE AND DIGEST

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MANDATORY AND OPTIONAL PREFERRED SMALL LOCAL  
BUSINESS PROGRAMS FOR THE PURCHASE OF PRE-  
CONSTRUCTION AND OTHER PROFESSIONAL SERVICES  
AND CONSTRUCTION SERVICES**

This ordinance will amend Oakland's purchasing ordinance, codified at Municipal Code, Title 2, Chapter 2.04, *Purchasing System*, to authorize mandatory and optional pre-qualification processes for the purchase of professional and construction services, and to authorize implementation of new local and small local business contracting policies ~~that~~ <sup>for</sup> ~~targeting~~ Oakland's certified small local businesses adopted under amendments to Ordinance No. 12389 C.M.S., which adopted Oakland's Local and Small Local Business Enterprise Programs.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

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