



SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PROGRAM

(Effective July 2010; Revised July 2022)

Equal Opportunity Contracting Program
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POLICY

It is the City of San Diego's policy to encourage greater availability, capacity development, and contract participation by Small Local Business Enterprises (SLBEs) in City contracts. This policy is, in part, intended to further the City's compelling interest to stimulate economic development through the support and empowerment of the local community, ensure that it is neither an active nor passive participant in marketplace discrimination, and promote equal opportunity for all segments of the contracting community.

INTENDED IMPACTS

The SLBE Program is intended to:

- Provide an additional race- and gender-neutral tool for the City to use in its efforts to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in City contracts;
- Further the City's public interest to foster effective broad-based competition from all segments of the contractor, consultant and vendor community, including, but not limited to, disadvantaged business enterprises, emerging business enterprises, minority business enterprises, woman business enterprises, small business enterprises, microbusiness enterprises, disabled veteran business enterprises and local business enterprises; and
- Provide additional avenues for the development of new capacity and sources of competition for City contracts from the growing pool of small and locally based businesses.

OBJECTIVES

To meet the objectives of this Program, the City is committed to:

1. Increasing the participation of Small Local Business Enterprises (SLBEs) and Emerging Local Business Enterprises (ELBEs) in City contracting, and, to the extent possible, ameliorate through race- and gender-neutral means any disparities in the participation of minority business enterprises or women business enterprises on City contracts;
2. Regularly evaluating the progress of the Program using accumulated availability and utilization data to determine specific program provisions that require modification, expansion, and/or curtailment;
3. Establishing a Goal Setting Committee (GSC) to provide guidance on the implementation of the rules under this Policy. The City's Chief Financial Officer shall approve the size and composition of the GSC as recommended by the Purchasing & Contracting Department Director. The GSC is to be chaired by the Equal Opportunity Contracting Program (EOCP) Manager. Members of the GSC shall include management level representatives from the City's Purchasing & Contracting, Engineering and Capital Projects, Successor Agency, and other City departments deemed appropriate. The City Attorney will provide legal guidance as required; and

4. Provide accountability and accuracy in reporting program results through the implementation of a mandatory centralized bidder registration process. The centralized process can identify, with specificity, the universe of firms that are available and interested in bidding on and/or performing on City contracts. It will also provide the means of tracking actual City bids, contract awards, and prime contract and subcontract payments to registered bidders based on firm ownership status, commodity or sub-industry codes, firm location, and firm size. Accordingly, Prime Contractors and Subcontractors will be required to register and input data into the Vendor Registration System or other related forms and systems as a condition of engaging in business with the City.

ROLES AND RESPONSIBILITIES

At a minimum, the EOCP Manager shall:

1. Report to the Mayor and the City Council on at least an annual basis the City's progress towards satisfying SLBE program objectives;
2. Evaluate, approve, and/or deny program waivers; improvements and adjustments to the GSC goal-setting methodology and other Program functions;
3. Have substantive input in a contract specification review process to be undertaken in advance of the issuance of City's Request for Proposals (RFPs) and bid solicitations to ensure that contract bid specifications are not unnecessarily restrictive and unduly burdensome to small, local, disadvantaged, minority-owned, woman-owned and other businesses;
4. Receive and analyze internal and external information including statistical data and anecdotal testimonies it deems appropriate to effectively accomplish its duties;
5. Monitor and support the implementation of the rules under this Program; and
6. Explore additional policies and programs to enhance the effectiveness of the SLBE program, including but not limited to cooperative agreements with other governmental agencies.

At a minimum, the Goal Setting Committee may:

1. Meet as often as it deems necessary to accomplish its duties but not less than once annually;
2. Develop the SLBE/ELBE goal setting methodology to be implemented by the EOCP Manager and Engineering and Capital Projects Department on a project-by-project basis;
3. Monitor and support the implementation of the rules under this Program policy; and
4. Review and recommend sizing and delivery methods of upcoming construction projects to enhance participation levels of SLBEs/ELBEs for approval by the City's Executive Team.

TERMS AND DEFINITIONS

Aspirational Goal: Goal established prior to the beginning of a new fiscal year that is based on historical trends and forecasting for construction, professional services, and goods and services contracts.

Award: The final selection of a bidder or offeror for a specified prime contract. Awards are made by the City to prime contractors, consultants or vendors or by prime contractors, consultants or vendors to subcontractors, subconsultants or sub-vendors, usually pursuant to an open invitation to bid (ITB) or request for proposal (RFP) process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are to be paid to a bidder or offeror under an awarded contract).

Bid Incentives: Additional inducements or enhancements in the bidding process that are designed to increase the chances for the selection of SLBE firms in competition with other firms. These bid incentives may be applied to all solicitations, contracts, and letter agreements for Architecture and Engineering services, Construction, Goods & Services, and Professional services.

Bidder: A firm submitting a price or proposal in response to an Invitation to Bid (ITB) or Request for Proposal (RFP).

Broker: An individual or firm employed by others to plan and organize sales or negotiate contracts for a commission.

City: Refers to the City of San Diego, California.

Commercially Useful Function: A SLBE/ELBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SLBE/ELBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SLBE/ELBE is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the SLBE/ELBE firm is to be paid under the contract is commensurate with the work it is actually performing and the SLBE/ELBE credit claimed for its performance of the work, and other relevant factors. Specifically, an SLBE/ELBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SLBE/ELBE participation, when in similar transactions in which SLBE/ELBE firms do not participate, there is no such role performed.

Emerging Business Enterprise (EBE): Any for-profit enterprise, that is independently owned and operated; that is not a subsidiary or franchise of another business and that is not dominant in its field of operation whose average gross annual revenue in the prior three fiscal years do not exceed:

- \$3.50 million – Construction
- \$2.25 million – Specialty Construction
- \$2.25 million – Goods/Materials/Services
- \$2.25 million – Trucking
- \$1.75 million – Professional Services and Architect/Engineering

If a business has not existed for three (3) years, the gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business. This definition is subsumed within the definition of Emerging Local Business Enterprises.

Emerging Local Business Enterprise (ELBE): A Local Business Enterprise that is also an Emerging Business Enterprise.

Equal Opportunity Contracting Program (EOCP) Manager: The City employee responsible for the oversight, tracking, monitoring, administration, and implementation of the SLBE program, ensuring that compliance with contract participation requirements is maintained, and overall program goals and objectives are met.

Goal: SLBE/ELBE subcontract participation requirement included in all City formal procurement.

Goal Setting Committee: A committee established by the Purchasing & Contracting Department Director and approved by the Chief Financial Officer of the City (that includes management level representatives from: Purchasing & Contracting, Engineering & Capital Projects and Successor Agency) and chaired by the Equal Opportunity Contracting Program (EOCP) Manager that establishes annual SLBE Program goals for the City based upon industry categories, vendor availability, and project-specific characteristics.

Good Faith Efforts (GFE): Documentation of the Bidder's intent to comply with SLBE Program goals and procedures, including, but not limited to the following:

- 1) Documentation within a bid submission or proposal reflecting the Bidder's commitment to comply with the project SLBE/ELBE subcontracting goals as established by the Goal Setting Committee for a particular contract; or
- 2) Documentation of efforts made towards achieving the project SLBE/ELBE subcontracting goals. Instructions for Bidders completing the good faith effort submittal can be found here: <https://www.sandiego.gov/sites/default/files/legacy/eoc/pdf/slbegfeinst.pdf>.

Gross Annual Revenue: The "total gross receipts or sales" less "returns and allowances," as reported on the business' income tax returns, as filed with the federal Internal Revenue Service.

Independently Owned, Managed, and Operated: Ownership of a SLBE/ELBE firm must be direct, independent, and by individuals only. Business firms that are owned by other businesses, or by the principals or owners of other businesses, or have Directors or Officers associated with other businesses, shall not be eligible to participate in the Program. Moreover, the day-to-day management of the SLBE/ELBE firm must be direct and independent of the influence of any other business(es).

Industry Categories: Procurement groupings for City contracts for purposes of the administration of the programmatic elements shall be inclusive of Architecture and Engineering, Construction, Professional Services, and Goods & Services procurement (manufacturing, wholesale and retail, and non-professional services). Industry Categories may also be referred to as “business categories”.

Joint Venture: An association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by a written agreement.

Local Business Enterprise (LBE): A firm having a Principal Place of Business and a Significant Employment Presence in San Diego City or County, California that has been in operation for 12 consecutive months and a valid business tax certificate. This definition is subsumed within the definition of Small Local Business Enterprise.

Mandatory Goal: SLBE/ELBE subcontract participation requirement that is established on a project-by-project basis based on availability of certified firms. A bidder shall meet the mandatory goal requirement or submit good faith effort documentation.

Minor Construction Program: A program developed for bidding exclusively among SLBE/ELBE Construction firms.

Minor Consultant/Services Program: A program developed for bidding exclusively among SLBE/ELBE Consultant/Service firms.

Points: The quantitative assignment of value for specific evaluation criteria in the selection process.

Prime Contractor: The vendor or contractor to whom a purchase order or contract is awarded by the City for purposes of providing goods or services to the City.

Principal Place of Business: A location wherein a firm is headquartered and through which it obtains no less than fifty percent (50%) of its overall customers or sales dollars. Firms certified in the program must maintain their headquarters within San Diego County for the duration of the certification period.

Professional Service: A service provided by an individual who was required to complete special training in their respective profession. This includes but not limited to professions such as architects, auditors, engineers, doctors, and lawyers, who are required to hold a professional license.

Protégé: A firm that has been approved, is an active participant in the City of San Diego's Mentor-Protégé Program, has signed the required program participation agreement and has been assigned a mentor.

Public Works Contract: A contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works.

Responsible: A bidder's quality, fitness and capacity to perform the particular requirements of the proposed work.

Responsiveness: A bidder's compliance with the bidding instructions.

Services: All work provided by persons other than consultants, including maintenance contracts. Excludes public works and goods.

Significant Employee Presence: No less than twenty-five (25) percent of a firm's total number of employees are domiciled in either the City of San Diego and/or San Diego County.

SLBE/ELBE Directory: A listing of the small and emerging local businesses that have been certified by the EOCP for participation in the SLBE Program.

Small Business Enterprise (SBE): Any for-profit enterprise that is independently owned and operated; that is not a subsidiary, franchise, or affiliate of another business; and that is not dominant in its field of operation whose average gross annual revenue in the prior three fiscal years do not exceed:

- \$7.0 million – Construction
- \$4.5 million – Specialty Construction
- \$4.5 million – Goods/Materials/Services
- \$4.5 million – Trucking
- \$3.5 million – Professional Services and Architect/Engineering

A California State certified Micro Business (MB) and/or Disabled Veteran Business Enterprise (DVBE) may also satisfy the requirements to be defined as a Small Business Enterprise. MB and DVBE certification may only waive the income requirement for the firm applying to the SLBE program. If applicant(s) has an additional business interest(s), the applicant(s) will be required to provide income documentation for the additional business(es). This revenue will be factored into the overall average gross annual revenue.

If a business has not existed for three (3) years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business. This definition is subsumed within the definition of Small Local Business Enterprises.

Small Local Business Enterprise (SLBE): A Local Business Enterprise that is also a Small Business Enterprise.

Subcontractor/Subconsultant: An individual, firm, or corporation, having a direct contract with a Prime Contractor or with any other Subcontractor or Subconsultant for the performance of a part of work or service.

Supplier: A person, company, or organization that maintains on its premises something such as goods or equipment to sell or supply to its customers.

Vendor Registration System: A software application used by the City of San Diego to track and monitor subcontractor availability and utilization (i.e., "Spend" or "Payments") on City contracts.

I. PROGRAM ELEMENTS – PUBLIC WORKS CONTRACTS

A. Major Public Works Contracts

1. Contracts valued at **\$1,500,000 and above** shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for SLBEs and/or ELBEs.
 - a. Prime bidders must achieve the mandatory subcontractor participation requirement or demonstrate good faith efforts.
 - b. Prime bidders shall submit, at the time of bid, on the appropriate form, the name of all SLBE and/or ELBE subcontractors and both the percentage of subcontracting and the work to be performed by the SLBE and /or ELBE.
 - c. A SLBE or ELBE bidder may count their own participation toward achieving the mandatory goal as long as the SLBE or ELBE prime bidder performs a minimum of 51% of the contract value.
2. Contracts Valued **over \$1,000,000 and under \$1,500,000** shall, on a project-by-project basis, include mandatory subcontractor participation requirement described above and the following:
 - a. 5% bid discount for SLBE or ELBE prime contractors.
 - b. 5% bid discount for non SLBE or ELBE prime contractors that meet or exceed the mandatory subcontractor participation goal.
 - i. Bid discounts would not apply if the award to the discounted bidder would result in a total contract cost of \$50,000 in excess of the low bid.
 - ii. In the event of a tie bid between a discounted bidder and a non-discounted bidder, the discounted bidder will be awarded the contract.

B. Minor Public Works Contracts

1. Contracts valued more than **\$500,000 but less than or equal to \$1,000,000 will be considered Minor Public Works Contracts** and will be awarded through a competitive bid process open only to City of San Diego certified SLBEs/ELBEs. In the event no responsible bids are received, these projects will be made available to all bidders and subject to requirements listed in “Major Public Works Projects” Sections “1 or 2” above.

2. Contracts valued at **\$500,000 and below** will also be considered Minor Public Works Contracts and will be awarded through a competitive bid process open only to City of San Diego certified ELBEs unless there are no firms available at which it will be awarded through a competitive process open only to City of San Diego certified SLBEs. Should no responsible bids be received, these projects will be made available to all bidders and subject to requirements listed in "Major Public Works Projects" Section "2" above.

C. Contract Sizing and Delivery Methods

The City's Executive Team will review recommendations from the Goal Setting Committee for sizing and delivery methods for upcoming construction projects on at least an annual basis. Annual targets for sizing and delivery methods will be established and monitored with adjustments made as necessary.

D. Mentor Protégé Program

The City's Mentor Protégé Program designed and approved in 1999 is incorporated into this Program. Mentors will be expected to assist their protégés with bidding on City projects. Examples of the types of assistance include but are not limited to: identifying potential city projects to submit bids, providing guidance and assistance with completing city required paperwork, providing feedback on bids submitted but not awarded, providing assistance, as needed, on city projects awarded and continue carrying-out the responsibilities delineated in the Mentor Protégé Program Performance Measurement section.

E. Joint Ventures (JV)

The City may allow for JV bid discounts on specific projects. Projects that allow for JV bid discounts will be designated in bid documents. A business that is bidding or competing for City contracts may partner with a certified SLBE or ELBE to compete for contracts as a JV. A JV must be between two entities with the same discipline or license as required by the City. JVs will receive bid discounts depending on the SLBE or ELBE percentage of participation. To be eligible for a discount, a Joint Venture Agreement must be approved by the City's EOCP Manager at the time of bid submittal. The maximum allowable discount shall be 5%. The parties must agree to enter in the relationship for at least the life of the projects.

1. Joint Venture Agreements: A JV must submit a Joint Venture Management Plan and/or a Joint Venture Agreement at least two weeks prior to the bid due date. Copies of the JV applications are available upon request to the Equal Opportunity Contracting Program Manager. Each agreement or management plan must include, but not limited to the following:
 - a. Detailed explanation of the financial contribution for each partner;
 - b. List of personnel and equipment used by each partner;

- c. Detailed breakdown of the responsibilities of each partner;
 - d. Explanation of how the profits and losses will be distributed;
 - e. Description of the bonding capacity of each partner; and
 - f. Management or incentive fees available for any one of the partners (if any).
2. Commercially Useful Functions Performed by Joint Venture Partners: Each JV partner must perform a “commercially useful function” as the term is defined herein. An SLBE or ELBE that relies on the resources and personnel of a non-SLBE or ELBE firm will not be deemed to perform a “commercially useful function”.
3. License Requirements: Each JV partner must possess licenses appropriate for the discipline for which a proposal is being submitted. If a JV is bidding on a single trade project, at the time of bid submittal, each JV partner must possess the requisite specialty license for that trade bid.
4. Delineation of Work: The SLBE or ELBE partner must clearly define the portion of the work to be performed during the project. This work must be of the similar type of work the SLBE or ELBE partner performs in the normal course of its business. The JV Participation Form must specify the project bid items to be performed by each individual JV partner. Lump sum JV participation is not acceptable.
5. Responsibilities of the SLBE or ELBE Joint Venture Partner:
- a. The SLBE or ELBE partner must share in the control, management responsibilities, risks and profits of the JV in proportion with the level of participation in the project.
 - b. The SLBE or ELBE partner must perform work that is commensurate with its experience.
 - c. The SLBE or ELBE partner must use its own employees and equipment to perform its portion of the project.
 - d. For construction contracts only, the JV as a whole, must perform bid item work that equals or exceeds twenty-five percent (25%) of the total value of the contract, excluding the cost of manufactured items, in order to be eligible for a JV discount.

F. Bonding and Insurance

The City, at its discretion, may consider exceptions to its bonding, and/or insurance requirements depending on the type of contract and whether the City determines that the bonding and or insurance requirements would deny the SLBE/ELBE an opportunity to perform the contract which the SLBE/ELBE has shown itself otherwise capable of performing. The City may also consider Owner and/or Contractor Controlled Insurance and Bonding Programs on specific projects when feasible. Decisions regarding these options will require the City's Executive Team approval.

The City may also partner with other Agencies/Organizations to provide bonding and/or insurance assistance to SLBE/ELBEs.

G. Waivers

The intent of this program shall be to maximize the opportunity for SLBE/ELBE prime and subcontract participation, to enhance contractor availability and to promote greater capacity development and competition in the construction industry. Accordingly, Equal Opportunity Contracting Program, in consultation with the City department issuing the bid, shall only consider issuing formal waivers of mandatory subcontracting goals on this program on a limited project-by-project basis when one or more of the following conditions is present:

1. Based upon an historical analysis of contracts of a similar size and industry type, there are no significant opportunities for subcontractors to perform a commercially useful function on this contract;
2. Based upon an analysis of prior City contracts of a similar nature and current availability data, there are no subcontractors available to perform a portion of the work; and/or
3. Based upon an historical analysis of contracts of a similar size and industry type, the nature of available subcontract opportunities will lead to gross inefficiencies that will significantly and adversely affect the overall cost of the project.

Final decisions regarding the applicability of this program to a contract shall rest with EOCP. In the event EOCP issues a waiver of this program's application to a given contract, that program waiver and the basis for the waiver shall be clearly stated in the bid documents. Moreover, the EOCP Manager shall prepare a justification memorandum that explains the basis and factual findings supporting that waiver decision. Program waiver justification memoranda shall be approved by the Purchasing & Contracting Department Director and reported to the Mayor and the members when requested.

II. PROGRAM ELEMENTS – CONSULTANT CONTRACTS

A. Contracts valued **over \$500,000** shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for SLBEs and/or ELBEs.

1. Prime consultants must achieve the mandatory subcontractor participation requirement or demonstrate good faith efforts.
2. Prime consultants shall submit, at the time of proposal due date, on the appropriate form, the name of all SLBE and/or ELBE subcontractors and both the percentage of subcontracting and the work to be performed by the SLBE and/or ELBE.
3. A SLBE or ELBE proposer may count their own participation toward achieving the mandatory goal as long as the SLBE or ELBE prime consultant performs a minimum of 51% of the consultant contract.

B. Minor Consultant Contracts

1. Contracts valued **more than \$250,000 but less than or equal to \$500,000** will be awarded through a competitive process open only to City of San Diego certified SLBEs/ELBEs. In the event no responsible proposals are received, these projects will be made available to all consultants and subject to requirements listed in "Section A" above.
2. Contracts valued at **more than \$25,000 but less than or equal to \$250,000** will be awarded through a competitive process open only to City of San Diego certified ELBEs unless there are no firms available at which it will be awarded through a competitive process open only to City of San Diego certified SLBEs. Should no responsible proposals be received, these projects will be made available to all proposers and subject to requirements listed in "Section A" above.

C. Bid Preference for Consultant Contracts

1. In the event mandatory subcontractor participation requirements for SLBE and/or ELBE consultant contracts cannot be applied, the following shall apply, for all consultant contracts valued at over \$25,000:
 - a. Incorporate a voluntary subcontractor participation requirement of 20% and allow for preference points.
 - b. Apply a maximum of an additional 12% of the total possible evaluation points to the proposer's final score for SLBE and/or ELBE participation as follows:

- i. If the proposer achieves 20% participation, apply 5% of the total possible evaluation points to the proposer's score; or
- ii. If the proposer achieves 25% participation, apply 10% of the total possible evaluation points to the proposer's score; or
- iii. If the prime proposer is a SLBE or an ELBE, apply 12% of the total possible evaluation points to the proposer's score.

III. PROGRAM ELEMENTS – GOODS & SERVICES CONTRACTS

A. Contracts valued over \$500,000 shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for SLBEs and/or ELBEs.

1. 5% bid discount for SLBE or ELBE prime contractors.
2. 5% bid discount for non SLBE or ELBE prime contractors that meet or exceed the mandatory subcontractor participation goal.
 - a. Bid discounts would not apply if the award to the discounted bidder would result in a total contract cost of \$50,000 in excess of the low bid.
 - b. In the event of a tie bid between a discounted bidder and a non-discounted bidder, the discounted bidder will be awarded the contract.
3. Prime bidders must achieve the mandatory subcontractor participation requirement or demonstrate good faith efforts.
4. Prime bidders shall submit, at the time of bid, on the appropriate form, the name of all SLBE and/or ELBE subcontractors and both the percentage of subcontracting and the work to be performed by the SLBE and/or ELBE.
5. A SLBE or ELBE bidder may count their own participation toward achieving the mandatory goal as long as the SLBE or ELBE prime bidder performs a minimum of 51% of the contract value.
6. In the event mandatory subcontractor participation requirements for SLBE and/or ELBE cannot be applied, a 20% voluntary goal will be incorporated.

B. Minor Goods and Services Contracts

1. Contracts valued **more than \$250,000 but less than or equal to \$500,000** will be awarded through a competitive process open only to City of San Diego certified SLBEs/ELBEs. In the event no responsible bids are received, these projects will be made available to all bidders and subject to requirements listed in "Section A" above.

2. Contracts valued at **more than \$25,000 but less than or equal to \$250,000** will be awarded through a competitive process open only to City of San Diego certified ELBEs unless there are no firms available at which it will be awarded through a competitive process open only to City of San Diego certified SLBEs. Should no responsible bids be received, these projects will be made available to all bidders and subject to requirements listed in "Section A" above.

C. Bid Preference for Goods and Services Contracts

1. For proposals, in the event mandatory subcontractor participation requirements for SLBE and/or ELBE cannot be applied, the following shall apply:
 - a. Incorporate a voluntary subcontractor participation requirement of 20% and allow for preference points.
 - b. Apply a maximum of an additional 12% of the total possible evaluation points to the proposer's final score for SLBE and/or ELBE participation as follows:
 - i. If the proposer achieves 20% participation, apply 5% of the total possible evaluation points to the proposer's score; or
 - ii. If the proposer achieves 25% participation, apply 10% of the total possible evaluation points to the proposer's score; or
 - iii. If the prime proposer is a SLBE or an ELBE, apply 12% of the total possible evaluation points to the proposer's score.

IV. PROGRAM ELEMENTS - COMPLIANCE

A. Maintaining Participation Levels

1. Credit, bid discounts, and additional points are based on the level of participation proposed prior to the award of a contract. Bidders are required to achieve and maintain the SLBE or ELBE participation levels throughout the duration of the contract.
2. If the City modifies the original specifications, the prime contractor or consultant shall make reasonable efforts to maintain the SLBE/ELBE participation for which credit/preference points were earned. The City must approve in writing a reduction in SLBE or ELBE participation levels.
3. The prime contractors shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE/ELBE subcontractor. Failure to do so shall constitute a material breach of its contract with the City.

4. Prime Contractor's failure to maintain SLBE or ELBE participation levels as specified shall constitute a default and grounds for debarment under Chapter 2, Article 2, Division 8, of the San Diego Municipal Code.
5. Remedies available to the City are cumulative to all other rights and remedies available to the City.

V. PROGRAM ELEMENTS - SLBE PROGRAM PERFORMANCE REVIEW

The Purchasing & Contracting Department Director or designee shall monitor the implementation of this Policy and the progress of this Program. On at least an annual basis, the Purchasing & Contracting Department Director or designee shall report to the Mayor and City Council on the goals established and the progress of achieving the goals for awards to certified SLBE firms, if any goals change, provide an explanation for the change, reporting both dollars awarded and expended. In addition, the Purchasing & Contracting Department Director or designee shall annually report on the progress in achieving the stated Program Objectives, including, but not limited to, enhancing competition, establishing and building new business capacity, and removing barriers to and eliminating disparities in the utilization of available minority business enterprises and women business enterprises on City contracts.

A. Periodic Review

The City shall periodically review the SLBE Program to determine whether the various contracting procedures used to enhance SLBE contract participation need to be adjusted or used more or less aggressively in future years to achieve the stated Program Objectives. The Mayor may conduct a public hearing at least once every two (2) years in order to solicit public comments on the Program.

B. Independent Audit

EOCP shall maintain contract files that contain good faith documentation and Final Summary Reports submitted by all bidders for a minimum of three (3) years after the close of each contract. The City's Independent Auditor or some other independent body or auditing firm identified by EOCP shall conduct periodic audits of the overall operation the program and the good faith documentation, as submitted, in no less than twenty-five percent (25%) of the construction contracts issued. These audits may include:

1. Verification of documentation reflecting bidders' good faith efforts.
2. Verification of the SLBE/ELBE certification process.
3. Verification of dollar payments to subcontractors and percentage subcontract participation as represented by bidders in Final Summary Report forms.
4. A review and summary of program waivers and the adequacy of justifications provided by EOCP for such waivers.

5. A review of EOCP implementation and compliance with the Small Local Business Enterprise Program standards and procedures.
6. A cost-benefit analysis of the bid discounts, minor construction projects including an assessment of administrative costs to the City, bidder compliance costs, and an assessment of the level of subcontract participation with and without application of the program, and recommendations regarding program amendments, program continuation, or program termination.

Findings from these audits shall be reported to EOCP, the Mayor and the City Council. To the extent any discrepancies appear regarding submitted bidder documentation, the findings of the Auditor shall be referred to EOCP for the appropriate enforcement actions for falsification and fraud.

C. Performance Audit

Conduct and report results of a Performance Audit within 18 months of initial City Council approval of the SLBE Ordinance.

VI. ELIGIBILITY FOR THE SLBE PROGRAM

For the purpose of this program, a firm will be certified as an ***Emerging Local Business Enterprise (ELBE) or Small Local Business Enterprise (SLBE)*** with the EOCP Office upon its submission of a completed application, supporting documentation, and a signed affidavit stating that it meets all of the eligibility criteria as set forth below:

- A. Is an independently owned and operated for profit business concern that is not a subsidiary or franchise of another business; and that is not dominant in its field of operation and is performing a commercially useful function.
- B. Is a Local Business Enterprise as defined by this program with a principal place of business and significant employment presence in the City and/or County of San Diego, California.
- C. The officers of the business (in the case of a corporation); officers and/or managers, or in the absence officers and/or managers, all members in the case of a limited liability company; partners in the case of a partnership; or the owner(s) in all other cases, are domiciled in San Diego County.
- D. The business has been in operation for 12 consecutive months.
- E. Owned by construction professionals licensed by the California Contractors State Licensing Board (If applicable).
- F. The business is in good standing with the City of San Diego and California Secretary of State.
- G. Have a City of San Diego Business Tax Certificate authorizing it to do business in this City.

- H. Provide a signed affidavit by an authorized representative of the business affirming that it meets the eligibility requirements of an SLBE or ELBE set forth in this program. The statement shall be signed under penalty of perjury under California law.
- I. Submit a completed application in accordance with procedures established by the EOCP Manager.
- J. Whose average gross annual revenue in the prior three fiscal years do not exceed:
 - 1. **For ELBE certification:**
 - \$3.50 million – Construction
 - \$2.25 million – Specialty Construction
 - \$2.25 million – Goods/Materials/Services
 - \$2.25 million – Trucking
 - \$1.75 million – Professional Services and Architect/Engineering
 - 2. **For SLBE certification:**
 - \$7.0 million – Construction
 - \$4.5 million – Specialty Construction
 - \$4.5 million – Goods/Materials/Services
 - \$4.5 million – Trucking
 - \$3.5 million – Professional Services and Architect/Engineering

If a business has not existed for three (3) years, the gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.

A business certified as a Minority-owned Business Enterprise, Woman-owned Business Enterprise, or Disadvantaged Business, by any department of the State of California or other public agency recognized by the City of San Diego as a certifying agency is not precluded from becoming eligible as an SLBE or ELBE. However, such certification does not eliminate the necessity for meeting the requirements for an SLBE or ELBE.

- K. All applicants must disclose any additional business interests as well as business interests for their spouse or domestic partner, if applicable. Any officers or directors associated with the business may be required to submit additional financial information. Revenue derived from additional business interests will be factored into the average gross annual revenue. Failure to disclose additional business interests may result in suspension and/or revocation.
- L. A business enterprise certified by the State of California, Department of General Services as a Micro Business (MB) and/or Disabled Veteran Business Enterprise (DVBE) may satisfy the income requirements to be certified as a **Small Business Enterprise**. MB and DVBE certification may only waive the income requirement for the firm applying to the SLBE program. If the applicant(s) has an additional business interest(s), the applicant(s) will be required to provide income documentation for the additional businesses. This revenue will be factored into the overall average gross annual revenue over a three (3) year period.

- M. If the applicant(s) has additional or multiple business interests, the revenue for these interests shall be factored into the average gross annual revenue to determine eligibility.
- N. All applicants will be required to submit an Internal Revenue Service (IRS) Form 4506-T, Request for Transcript of Tax Return, authorizing the IRS to send official transcripts of tax returns to the City. Transcripts of Tax Returns will be utilized to verify gross annual receipt information submitted by the applicant. Any variances found in the application and tax transcripts will result in an automatic denial of certification.
- O. Construction firms must have a valid contractor's license for the scope of work or service in which they are applying for certification. License must be current, reflect the legal company name (must include Doing Business As (DBA), if applicable), and the business entity as indicated on the application, for a minimum of twelve (12) months in order to be considered fully operational. Firm must maintain a valid license throughout the certification period or the firm may be removed from the program.
- P. Firms that perform work on Public Works projects must submit proof of their current Public Works Contractor Registration information from the Department of Industrial Relations (DIR). Firms must maintain a valid Public Works Contractor Registration throughout the certification period or firm may be removed from the program.
- Q. Professional Services & Architect or Engineering firms must have valid license or certification for the scope of work or service in which they are applying for certification. License or certification must be current, reflect the legal company name (must include Doing Business As (DBA) name, if applicable), and the business entity as indicated on the application, for a minimum of twelve (12) months to be considered fully operational.
- R. Firms will be asked to provide the primary business and professional activities the firm is engaged in to determine the appropriate industry category that will be assigned with the certification. The City will assign industry categories to firms with respect to specific type(s) of work in which the City has determined that the firm primarily controls the operation of.
- S. Applicants with multiple businesses or multiple business interests are only permitted to have one (1) certified business in the SLBE program at any point in time.
- T. Upon receipt of SLBE/ELBE certification or re-certification applications, the EOCP Manager or designated EOCP staff shall review all enclosed forms, affidavits, and other documentation to make a prima facie determination as to whether the applicant satisfies the SLBE/ELBE eligibility requirements as set forth in this policy. Applicants determined ineligible to participate as a SLBE/ELBE shall receive a letter from the EOCP Manager stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for one (1) year after the date of the notice of denial of eligibility.
- U. In order to determine eligibility of a business for certification as a SLBE/ELBE, the City may consider whatever information is provided to it from records gathered or held by any California state or local agency, any governmental agency of another state, or the federal government.

- V. Applicants determined eligible to participate in the SLBE program shall submit a complete application every two (2) years to the EOCP Office for review and continued certification. However, upon application for re-certification, an SLBE/ELBE firm must remain an independently owned and operated business concern and maintain a Principal Place of Business and Significant Employment Presence in the City and/or County of San Diego in accordance with Section VI. "Eligibility for the SLBE Program" of this Policy.

- W. In the course of considering the certification or re-certification status of any SLBE/ELBE firm, the EOCP Manager or his or her designees shall periodically conduct audits, inspect the office, job site, records, and documents of the firm, and shall interview the firm's employees, subcontractors, and vendors as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of the SLBE Program is maintained. Failure by a SLBE/ELBE business to provide requested information that supports its continued eligibility as a SLBE/ELBE, by the date and time specified by the City, shall be grounds for revocation.

VII. RECERTIFICATION CRITERIA

SLBE/ELBEs will be certified for a two (2) year period at which time they will be required to reapply. To qualify for recertification, SLBEs/ELBEs must meet all eligibility standards.

Firms whose SLBE or ELBE certification has expired must reapply within a six (6) month period after the original certification has expired to be considered a recertification application. If more than six (6) months have passed from certification expiration, the firm will need to apply as a new applicant.

VIII. CHANGES TO BUSINESS STATUS AND/OR STRUCTURE

Should a certified firm have a change in their business status and/or structure, a Notice of Change must be submitted to the City within 30 days of any change. A Notice of Change must include documentation describing the change in detail and may be subject to verification that eligibility requirements are still being met. Example of changes to business status or structure include, but are not limited to: ownership changes; business structure (i.e. sole proprietor to corporation); contractor license (or holder) change; location change; additional business interests.

Failure to disclose any changes to the business status and/or structure or additional business interests may result in the certified firm being suspended or revoked from the SLBE Program. Egregious violations shall result in automatic revocation.

Should a SLBE/ELBE business be sold during its certification period, the certification is not transferable to the new owners. Should the new business owners choose to do so, they may submit a new application for certification.

IX. SUSPENSION

Suspension is a temporary status of ineligibility pending a proceeding to determine whether the SLBE or ELBE is ineligible to participate in the program and consequently should be removed.

The City will suspend a certification when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

If a firm is suspended from doing business with the City of San Diego, their SLBE or ELBE certification shall also be suspended or revoked.

The City may immediately suspend a SLBE or ELBE's certification when:

- A. There is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the SLBE or ELBE firm to remain certified, or;
- B. When the SLBE or ELBE fails to notify the City in writing of any material change in circumstances as required.

In the event the City proposes to suspend an SLBE or ELBE, the City will follow procedures as described below:

1. When a certified firm is suspended, the City will immediately notify the firm of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the certified firm.
2. While suspended, the certified firm may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a contract's overall goal. The certified firm may continue to perform under an existing contract executed before the certified firm received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the certified firm is performing a commercially useful function under the existing contract.
3. Following receipt of the Notice of Suspension, if the certified firm believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the certified firm believes that its eligibility should be reinstated, it must provide to the City information demonstrating that the firm is eligible notwithstanding its changed circumstances.

X. REVOCATION

Firms who are found to have provided false or fraudulent information or documentation, or who have conducted themselves in a dishonest manner within the program, shall have their certification automatically revoked and will be ineligible for program benefits.

A SLBE or ELBE firm may also have its eligibility permanently revoked by the City if it fails to perform a Commercially Useful Function under a contract, or if it allows its certified status to be fraudulently used for the benefit of a non-certified firm or the owners of a non-certified firm so as to provide the non-certified firm or firm owners benefits from the Program for which the non-certified firm and its owners would not otherwise be entitled.

XI. APPEALS

- A. A business concern that is denied eligibility as an SLBE or ELBE, or who has its eligibility suspended or revoked, or who has been denied a waiver request can appeal the decision to the Director of the Purchasing & Contracting Department to the following address:

Director, Purchasing & Contracting Department
1200 Third Avenue, Suite 200, MS 56P
San Diego, CA 92101
RE: SLBE Certification Appeal

- B. A written notice of appeal must be received by the Director of Purchasing & Contracting within 15 days of the date of the decision. Upon receipt of a timely notice of appeal, the Director of Purchasing & Contracting, or designee (other than the EOCP Manager), shall conduct a hearing. The decision of the Director of Purchasing & Contracting, or designee, shall be the final decision of the City.