

ORDINANCE NO. _____

An ordinance amending Article 4 of Chapter 1, Division 10 of the Los Angeles Administrative Code to consolidate and update the existing Local Business Programs, and repealing Articles 5 and 21.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Article 4 of Chapter 1, Division 10 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

CHAPTER 1, ARTICLE 4

LOCAL BUSINESS PREFERENCE PROGRAM

Sec. 10.25. Findings and Statement of Policy.

Pursuant to City Charter Sections 371 and 372, the City Council hereby adopts a Local Business Preference Program and makes the following findings. The City has a proprietary interest in leveraging, to the greatest extent possible, the millions of dollars it spends yearly contracting with private firms for goods, equipment, and services to and for the benefit of the City and its residents. The policy of the City is to reduce unemployment, stimulate the expansion and retention of local jobs, and create sustainable local economic development. Significant benefits are associated with a Local Business Preference Program. These benefits include the creation of local jobs, which leads to increased consumer spending and a robust local economy. Preference programs in other jurisdictions have been successful where the business conditions approximate the conditions currently existing in the Los Angeles area. For example, preference programs work best where unemployment is high. As of February 2021, the unemployment rate in the City and County of Los Angeles was calculated at 10.9%, compared to 8.5% in California and 6.2% nationally.

Historically, many of the larger cities within the County of Los Angeles experience labor costs that are among the highest in the nation. Los Angeles area labor costs are higher than the competing neighboring cities and counties. The state and local minimum wage standards are higher when compared to other cities and states. City contractors are required to provide employees working on City contracts a higher living wage rate. Business space in the Los Angeles metropolitan area is more costly than comparable space in other cities and counties. All corporations in California are subject to a corporate tax that is among the highest in the county. On a national level, Los Angeles is one of the ten most expensive places to do business as a result of local labor costs and business costs, fees and taxes. These conditions create an expensive climate in which local businesses must compete against firms with lower labor and business costs from neighboring cities, counties, and states.

This narrowly tailored Local Business Preference Program is intended to encourage small and large businesses to compete for City contracting opportunities, establish and maintain local operations, and discourage existing local businesses from relocating to different, less expensive areas outside the City or to other states. Given that the City has limited financial resources available for social and workforce development services, this Local Business Preference Program provides a financially feasible way for the City to address the significant need to help people move away from chronic unemployment and into employment and economic self-sufficiency.

Many residents of Los Angeles County have been out of the workforce for an extended period of time and face considerable barriers when trying to re-enter the mainstream workforce. For the majority of this hardest-to-employ population, these barriers can be overcome by placement in a transitional job through which they can develop the job skills necessary to compete and succeed in a mainstream work environment. A transitional job provides an opportunity to earn wages while learning skills that lead to self-sufficiency and permanent employment.

Currently, most transitional jobs for the hardest-to-employ population are provided by business entities with transitional employment programs. Because these businesses have to pay for higher overhead costs, including supervision, counseling, and training of a transitional workforce, they are at a competitive disadvantage and obtain few City contracts. Consequently, the demand for transitional jobs for the hardest-to-employ is not met.

Along with providing a contracting preference for local and local small businesses in Los Angeles County, extending the preference to business entities working with the hardest-to-employ populations will allow the City to expand the number of transitional job opportunities available to the long-term unemployed in Los Angeles.

Sec. 10.25.1. Definitions.

(a) **“Awarding Authority”** means the governing body, board, officer, or employee of the City authorized to award a Contract and includes a department that has control of its own funds if the department adopts policies consistent with the provisions of this article.

(b) **“Bid”** means a response to a City solicitation for bids pursuant to Charter Sections 371 and 372.

(c) **“Bidder”** means a Person who submits a Bid to the City.

(d) **“Broker”** means a manufacturer’s representative, packager, or other Person who arranges or expedites a transaction of equipment, goods or materials that are manufactured in the County of Los Angeles.

(e) **“City”** means the City of Los Angeles.

(f) **“Contract”** means a written agreement for the purchase of equipment, goods, or materials, or the performance of any work or services by or for the benefit of the City or its residents.

(g) **“Contractor”** means any Person who enters into a Contract with the City.

(h) **“Dealer”** or **“Supplier”** means any Person who owns, operates, or maintains a store, warehouse, or other establishment in the County of Los Angeles in which the equipment, goods, or materials of the general character described in the Bid or Proposal specifications and required under the Contract are regularly sold or leased to the public from its own inventory or otherwise procured in the usual course of its business. A “Dealer” or “Supplier” does not include a packager, broker, manufacturer’s representative, or other person who arranges or expedites a transaction without taking ownership of the finished or assembled equipment, goods or materials prior to the sale or lease to the City.

(i) **“Designated Administrative Agency (DAA)”** means the Department of Public Works, Bureau of Contract Administration.

(j) **“Local Business”** means a Person certified by the DAA as a Local Business.

(k) **“Local Small Business”** means a Person certified by the DAA as a Local Small Business.

(l) **“Local Transitional Employer”** means a Person certified by the DAA as a Local Transitional Employer.

(m) **“Person”** means any individual, business, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, organization, or other entity that may enter a Contract.

(n) **“Proposal”** means a response to a City solicitation for proposals pursuant to Charter Sections 371 and 372.

(o) **“Proposer”** means any Person who submits a Proposal to the City.

(p) **“Subcontractor”** means any Person awarded a subcontract by a Contractor.

(q) **“Supportive Services”** include, but are not limited to, counseling services, individual case management, pre-employment job readiness training, daily monitoring of participants while on the job, provision of competitive employment

opportunities, and assistance in applying for, obtaining, and maintaining competitive employment.

(r) **“Transitional Job”** means short-term, wage-paying employment that combines real work, skill development, and Supportive Services to help participants overcome barriers to employment and transition to competitive employment.

Sec. 10.25.2. Eligibility Criteria for Preferences.

To be eligible for any preference under this article, a Bidder or Proposer must be certified and approved by the DAA, pursuant to its rules and procedures, as a Local Business, a Local Small Business, and/or a Local Transitional Employer.

Sec. 10.25.3. Application of Preference to Bids and Proposals for Services and Goods.

The preferences awarded under this article shall be subject to the following additional requirements:

(a) A Bid or Proposal for services shall be eligible for a preference if two thirds of the services under the Contract are to be produced or performed in the County of Los Angeles.

(b) A Bid or Proposal for equipment, goods, or materials shall be eligible for a preference if the Local Business, Local Small Business, or Local Transitional Employer:

(1) Designs, manufactures, or assembles the equipment, goods, or materials where a minimum of two thirds of the work, based on the dollar amount under the Contract, is performed in the County of Los Angeles;

(2) Is a Dealer or Supplier; or

(3) Is a Broker.

Sec. 10.25.4. Awarding Preferences – Contracts up to \$150,000.

(a) **Award of Local Small Business and Local Transitional Employer Preference.** An Awarding Authority shall grant a 10% preference to a Local Small Business or Local Transitional Employer. The preference shall be applied to Bids and Proposals in the following manner:

(1) **Bid.** The Awarding Authority shall apply the preference to a Bid price solely for Bid evaluation purposes such that the total Bid price shall be reduced by 10% of the Bid amount, and the reduced Bid amount shall be deemed the amount Bid by that Bidder.

(2) **Proposal.** The Awarding Authority shall apply the preference to a Proposal solely for Proposal evaluation purposes such that the score awarded to a Proposal shall be increased by 10% of the total possible evaluation points.

(b) **Award of Subcontractor Preference.** The Awarding Authority shall provide a preference of up to 5% to a contractor's Bid or Proposal that does not qualify for the Local Small Business or Local Transitional Employer Preference, but that identifies a Subcontractor certified as a Local Small Business or Local Transitional Employer. The Bid or Proposal must identify each Subcontractor, the proposed work of the Subcontractor, and the cost of the work for each Subcontractor. The Subcontractor preference shall be applied to Bids or Proposals in the following manner:

(1) **Bid.** The Awarding Authority shall provide a 1% preference to the Bid price for every 10% of the cost of the proposed work to be performed by the qualifying Subcontractor.

(2) **Proposal.** The Awarding Authority shall provide a 1% increase of the total possible evaluation points for every 10% of the total cost of the proposed work under the Contract to be performed by the qualifying Subcontractor.

Sec. 10.25.5. Awarding Preferences – Contracts over \$150,000.

(a) **Award of Local Business Preference.** An Awarding Authority shall grant an 8% preference to a Local Business. The preference shall be applied to a Bid and Proposal in the following manner:

(1) **Bid.** The Awarding Authority shall apply the preference to a Bid price solely for Bid evaluation purposes such that the total Bid price by a Local Business shall be reduced by 8% of the Bid amount, and the reduced Bid amount shall be deemed the amount Bid by the Bidder. If the Local Business also receives any of the preferences in subsection 10.25.5(b), the total Bid price shall be further reduced by the additional preferences awarded.

(2) **Proposal.** The Awarding Authority shall apply the preference to a Proposal solely for Proposal evaluation purposes such that the score awarded to a Proposal submitted by a Local Business shall be increased by 8% of the total possible evaluation points. If the Local Business also receives any of the preferences in Section 10.25.5(b), the Proposal's score shall be further increased by the additional preferences awarded.

(b) **Award of Additional Preferences.** A Local Business that is awarded the 8% preference in subsection 10.25.5(a) may receive up to an additional 4% preference as provided in this subsection.

(1) A Local Business that is also certified by the DAA as a Local Small Business or a Local Transitional Employer shall receive a 2% preference for each additional certification.

(2) A Local Business that is not eligible for the additional preference in Section 10.25.5(b)(1), but that identifies a Subcontractor that is certified by the DAA as a Local Small Business or a Local Transitional Employer, shall receive up to a 2% preference for each Subcontractor certification. The additional preference under this subsection shall be applied as follows:

a. A Local Business that identifies a Subcontractor certified by the DAA as a Local Small Business shall receive a 1% preference to the Bid or Proposal for every 10% percent of the cost of the proposed work to be performed by the qualifying Subcontractor. The maximum additional preference under this subsection shall not exceed 2%.

b. A Local Business that identifies a Subcontractor certified as a Local Transitional Employer shall receive a 1% preference to the Bid or Proposal for every 10% percent of the cost of the proposed work to be performed by the qualifying subcontractor. The maximum additional preference under this Subsection shall not exceed 2%.

c. The Bid or Proposal must identify each Subcontractor, the proposed work of the Subcontractor, and the cost of the work for each Subcontractor.

(c) **Award of Subcontractor Preference.** A Bid or Proposal that does not qualify for the Local Business preference in Subsection 10.25.5(a), may receive up to a 5% preference if it identifies a Subcontractor that is certified by the DAA as a Local Business, Local Small Business, or Local Transitional Employer.

(1) The Bid or Proposal must identify each Subcontractor, the proposed work of the subcontractor, and the cost of the work for each Subcontractor.

(2) The Subcontractor preference shall be applied to Bids or Proposals as provided in Section 10.25.4(b)(1) and (2).

(d) **Preference Cap.** The maximum combined preferences that may be awarded to a Bid or Proposal under this article shall not exceed 12% and the value of the combined preferences shall not exceed one million dollars.

Sec. 10.25.6. Failure to Comply with this Article and the Rules and Procedures, Remedies.

(a) The penalties in Subsection (b) may be assessed on any Contractor that:

(1) Fails to qualify or maintain its status as a Local Business, Local Small Business, or Transitional Employer for more than 60 days during the entire term of the Contract;

(2) Fails to utilize the Subcontractor that provided the basis for the preference or, in the event the Subcontractor is unable to perform the work, fails to replace the Subcontractor, within 60 days of non-performance, with another Subcontractor that has qualifying criteria for providing a basis for a Subcontractor preference;

(3) Provides false or incorrect information for certification as a Local Business, Local Small Business, or Local Transitional Employer, and because of such classification, is awarded a Contract to which it would not otherwise be entitled;

(4) Fails to cooperate with the DAA pursuant to Section 10.25.8; or

(5) Fails to comply with the rules and procedures for this article.

(b) The Awarding Authority may impose the following remedies:

(1) Withhold or recover funds from the Contractor up to an amount that represents the value of the Bid or Proposal preference. The amount shall be determined as follows:

a. For Bids – The difference between the amounts paid to the Contractor pursuant to the Contract and what the City's costs would have been if the Contract had been awarded to the next lowest responsive responsible Bidder.

b. For Proposals – Multiplying the percentage of the preference evaluation points awarded to the Contract dollar amount.

(2) Additional costs and expenses to the City resulting from the Contractor's failure to comply with this article.

(3) Termination of all or part of the Contract.

(c) The remedies available to the City under this section are in addition to all other contractual or legal rights and remedies available to the City under law.

Sec. 10.25.7. Exceptions and Waiver.

(a) This article applies only to Contracts that involve the expenditure of funds entirely within the City's control and shall not apply to Contracts that involve the

expenditure of funds that are not entirely within the City's control, such as state and federal grant funds that, due to legal restrictions, prohibit its application.

(b) This article shall not apply to a Bid or Proposal if it would violate or conflict with federal or state law.

(c) An Awarding Authority may award a Contract to a Bidder or Proposer without applying a Bid or Proposal preference pursuant to this article if the General Manager, Director, or their designee makes a written determination that it is not in the City's best interest to grant a Bid or Proposal preference.

Sec. 10.25.8. Administration

The DAA shall promulgate and amend rules and procedures to implement, administer, and enforce the provisions of this article. The DAA shall have discretion to determine whether a business qualifies as a Local Business, a Local Small Business, or a Local Transitional Employer. The DAA may audit Contractors and Subcontractors and monitor compliance, including the investigation of alleged violations of this article. The Contractor and Subcontractor shall cooperate with the DAA and the Awarding Authority in the course of an audit or investigation.

Sec. 10.25.9. Timing of Application.

The provisions of this article shall apply to a Contract if the solicitation for the competitive Bid or Proposal resulting in the Contract is issued by the Awarding Authority after the effective date of the ordinance.

Sec. 10.25.10. Severability.

If any subsection, sentence, clause, or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this section, and each subsection, sentence, clause, and phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Sec. 2. Subsection F of Section 187.02 of the Los Angeles Municipal Code is amended by deleting the term "10.31.1(h)" and replacing it with the term "10.25.1(l)" and deleting the term "10.31.1(g)" and replacing it with the term "10.25.1(r)."

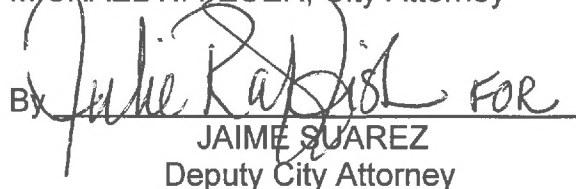
Sec. 3 Article 5 of Chapter 1, Division 10 of the Los Angeles Administrative Code is repealed in its entirety.

Sec. 4. Article 21 of Chapter 1, Division 10 of the Los Angeles Administrative Code is repealed in its entirety.

Sec. 5. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  FOR
JAIME SUAREZ
Deputy City Attorney

Date APR 28 2021

File Nos. 15-0850 and 18-0255

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____