

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: October 18, 2019

TO: Honorable Members of the City Council

FROM: Sharon M. Tso *KEK for*
Chief Legislative Analyst

Council File: 18-0255; 15-0850; 15-0850-s1
Assignment No.: 18-03-0266

Citywide Bid Preference Programs and First Source Hiring Ordinance

SUMMARY

On July 3, 2018, as initiated by Motion (Buscaino – Price), the Council instructed the Chief Legislative Analyst (CLA) to report with recommendations to update the Transitional Job Opportunities Program and First Source Hiring Ordinance. The Motion further directed the Board of Public Works to prepare and present an outreach plan for the updated programs (C.F. 18-0255).

In a related action, on May 9, 2019, the Council approved various modifications to the Local Business Preference Program and the Small Local Business Program. Modifications to the Local Business Preference Program and Small Local Business Program were requested as part of the Comprehensive Job Creation Plan approved by the Council (C.F. 15-0850).

The Transitional Job Opportunities Program, Local Business Preference Program, and Small Local Business Program are procurement programs administered by the Department of Public Works, Bureau of Contract Administration (BCA). These programs provide bid preferences to certified Local Business Enterprises located in Los Angeles County that bid on City contracts for goods, equipment, and supplies. The First Source Hiring Ordinance is administered by the BCA and the Economic and Workforce Development Department (EWDD). The First Source Hiring Ordinance differs from the Transitional Job Opportunities Program, Local Business Preference Program, and Small Local Business Program in that the First Source Hiring Ordinance does not offer a bid preference but is a requirement for all contractors who engage in business with the City. The First Source Hiring Ordinance requires a contractor to notify EWDD of a specific employment opportunity at least seven days before releasing the announcement to the public. The Transitional Job Opportunities Program and First Source Hiring Ordinance are intended to serve vulnerable populations, including homeless and formerly incarcerated individuals. BCA reports that these programs are underutilized or have not been used at all.

Inasmuch as increasing local business participation in City contracts and increasing employment opportunities for transitional workers are priorities for the Council, this report provides recommendations to restructure these programs to provide additional opportunities for businesses to qualify. The CLA has consulted with the BCA, City Attorney, Chief Procurement Officer, EWDD, Council Districts 2 and 15, and the Mayor's Office on proposed program modifications, as summarized below:

Relative to the Transitional Job Opportunities Program, Local Business Preference Program, and Small Local Business Program:

1. Combine the Transitional Job Opportunities Program, Small Local Business Program, and Local Business Preference Program into a single program, to be named the Local Business Preference Program.
2. Increase the current Transitional Job Opportunities Program contract threshold from \$100,000 to \$150,000.
3. Allow local Small Business Enterprises, local Transitional Job Opportunities Program, and local subcontractors additional opportunities to qualify for bid preferences.
4. Instruct the Board of Public Works to develop and implement an outreach plan to educate City staff and the public.
5. Revise criteria for businesses to qualify for these certifications.

Relative to the First Source Hiring Ordinance:

1. Instruct BCA to clarify guidance to EWDD on procedures after receiving an employment opportunity.
2. Require EWDD to change the period from seven to 14 days for the submittal of an employment opportunity required by the First Source Hiring Ordinance.
3. Instruct BCA to increase partnerships with other City Departments regarding the First Source hiring process, including training.

We recommend approval of these modifications and that the City Attorney be requested to prepare and present the necessary Ordinances. We further recommend that the BCA be instructed to report to Council in six months with a status update on the implementation of the revised programs, including additional recommendations as appropriate, and that such an update be provided annually in future years. Attachment 1 provides a summary of the recommended changes to these programs.

RECOMMENDATIONS

That the City Council:

1. ADOPT the following modifications to the Local Business Preference Program, Small Local Business Program, and Transitional Job Opportunities Program Ordinances:
 - a. Combine the Transitional Job Opportunities Program, Small Local Business Program, and Local Business Preference Program ordinances into a single program, to be named the Local Business Preference Program, to ensure a broader application of the Citywide bid preference.
 - b. Increase the Transitional Job Opportunities Program contract threshold from \$100,000 to \$150,000.
 - c. Allow local Small Business Enterprises, local Transitional Job Opportunities Program, and local subcontractors additional opportunities to qualify for the Local Business Preference Program, as follows:
 - i. In addition to the Local Business Enterprise eight percent preference, if the business submitting a proposal holds a Small Business Enterprise certification approved by the Designated Administrative Agency they will receive an additional two percent preference. If the business submitting a proposal holds a

Transitional Job Opportunities Program certification approved by the Designated Administrative Agency, they will receive an additional two percent preference.

- ii. If the business submitting the proposal is certified as a Small Local Business and the contract amount is valued at less than \$150,000, they will receive a ten percent preference.
 - iii. If the business submitting the proposal is not a local business, however, if they use subcontractors who hold an Local Business Enterprise certification approved by the Designated Administrative Agency, a Small Local Business certification approved by the Designated Administrative Agency, and/or a Transitional Job Opportunities Program certification approved by the Designated Administrative Agency, they will earn a one percent preference for every ten percent of the cost of the proposed work to be performed by the certified subcontractor up to a maximum of a five percent preference.
 - iv. Awarding Authorities shall grant up to twelve percent Local Business Preference to Local Businesses.
2. REQUEST the City Attorney, with the assistance of the Bureau of Contract Administration and the Chief Legislative Analyst, to prepare and present the necessary Ordinance(s) to:
- a. Effectuate the proposed changes to the Transitional Job Opportunities Program, Local Business Preference Program, and Small Local Business Program.
 - b. Revise the First Source Hiring Ordinance by increasing the time period from seven to 14 days for when a contractor is required to submit an employment opportunity to the Economic and Workforce Development Department.
 - c. Effectuate any other changes approved by the City Council.
3. INSTRUCT the Bureau of Contract Administration to:
- a. Implement the modifications to the Transitional Job Opportunities Program, Local Business Preference Program, and Small Local Business Program as described in this report.
 - b. Revise certification criteria for the revised Local Business Preference Program which will be included in the rules and regulations that will accompany the implementing ordinance(s) and be promulgated by the Bureau of Contract Administration.
4. INSTRUCT the Board of Public Works and Bureau of Contract Administration to conduct a marketing and educational campaign to the public on the revised programs as described in this report.
5. INSTRUCT the Bureau of Contract Administration, with the assistance of the Economic and Workforce Development Department, to:
- a. Develop revised rules and regulations for the implementation of the First Source Hiring Ordinance.
 - b. Conduct training sessions for City employees on the implementation of the revised First Source Hiring Ordinance.
 - c. Report to Council in six months with a status report on the implementation of the revised Local Business Preference Program and First Source Hiring Ordinance, including but not limited to the following: successes, challenges, and additional staffing requirements.

- d. Report to Council annually on program outcomes and ways to further enhance these programs, including but not limited to staffing and funding levels required for the new programs.

DISCUSSION

On July 3, 2018, as initiated by Motion (Buscaino – Price), the Council instructed the Chief Legislative Analyst (CLA) to report with recommendations to update the Transitional Job Opportunities Program and First Source Hiring Ordinance. The Motion further directed the Board of Public Works to prepare and present an outreach plan for these programs (C.F. 18-0255). We note that review of the Transitional Job Opportunities Program was occurring at the same time as related procurement programs (i.e., the Local Business Preference Program) were under review and being amended.

On May 3, 2019, the Council approved various modifications to the Local Business Preference Program and the Small Local Business Program. The modifications to the Local Business Preference Program and Small Local Business Program were included in the Comprehensive Job Creation Plan as part of a larger effort to improve the City's procurement process. The Council also instructed staff to evaluate the feasibility of the City adopting the Los Angeles County Social Enterprise Preference Program (C.F. 15-0850).

The City created the Small Local Business Program in 2001, Transitional Job Opportunities Program in 2005, and the Local Business Preference Program in 2011 and to date these programs have been underutilized. BCA reports that the Transitional Job Opportunities Program has never been used and that the Local Business Preference Program was applied 18 times in Fiscal Year 2017-18. The BCA does not currently collect data on the number of times the Small Local Business Program has been applied. A working group consisting of the CLA, City Attorney, and BCA met several times to discuss recommendations to enhance these programs.

Below are descriptions of the Transitional Job Opportunities Program, Local Business Preference Program, Small Local Business Program, and First Source Hiring Ordinance followed by the modifications proposed by the working group.

TRANSITIONAL JOB OPPORTUNITIES PROGRAM, LOCAL BUSINESS PREFERENCE PROGRAM, AND SMALL, LOCAL BUSINESS PROGRAM

Transitional Job Opportunities Program

The Transitional Job Opportunities Program was established in 2005 through the enactment of Ordinance No. 176,959. The Transitional Job Opportunities Program provides a 10 percent preference during the bid process to organizations that hire and provide supportive services to transitional employees, which include vulnerable populations such as homeless and/or formerly incarcerated individuals. The Transitional Job Opportunities Program Ordinance defines a transitional job as short-term, wage-paying, subsidized employment that combines skill development and supportive services to ensure success in the workplace. To date, no contractor has utilized this program. According to BCA, the use of this program has been hindered by a lack of awareness among the business community, City staff, and residents as well as insufficient funding and staffing.

Local Business Preference Program

The Local Business Preference Program provides an eight percent preference to eligible local businesses seeking City contracts greater than \$150,000. An eligible local business is defined as a business that occupies work space in Los Angeles County and can demonstrate that it is not delinquent on any City or County taxes. In addition, such businesses must meet one of the following criteria: (1) demonstrate that at least 50 full-time employees perform at least 60 percent of regular work hours on an annual basis

within the County; (2) demonstrate that at least half of the full-time employees perform at least 60 percent of regular work hours on an annual basis within the County; or (3) demonstrate that it is headquartered in the County. The Local Business Preference Program also provides a preference of up to five percent to a bid or proposal submitted by a non-local business that uses a qualifying Local Subcontractor to perform work. In contrast to other programs, this program has been utilized often by contractors. Most recently, in Fiscal Year 2017-18, the BCA reports that eighteen contractors took advantage of this program for contracts valued at \$65,782,258.

Small Local Business Program

The Small Local Business Program provides a 10 percent preference for all contracts valued at \$150,000 or less. This preference is provided to businesses that have annual receipts less than \$3 million for the previous fiscal year. The BCA has not collected any data on the usage of this program.

In order to raise awareness in the public and to make these programs more attractive to the business community, the City working group recommends the following changes:

1. Combine the Transitional Job Opportunities Program, Small Local Business Program, and Local Business Preference Program into a single program, to be named the Local Business Preference Program.

BCA states that combining the programs will increase awareness of the programs throughout the business community and provide more opportunities for them to be used. The BCA notes that this modification would be compatible with the modifications to the Local Business Preference Program approved by Council on May 3, 2019.

2. Increase the maximum Transitional Job Opportunities Program bid amount from \$100,000 to \$150,000

The BCA states that increasing the maximum Transitional Job Opportunities Program bid amount would account for inflation that has occurred since the program was initially created in 2005 and would enable additional businesses an opportunity to qualify for the Transitional Job Opportunities Program.

3. Increase preference percentages for Small Local Business Program, local Transitional Job Opportunities Program, and local subcontractors

The BCA has proposed the following:

- *Contract Amounts Less Than \$150,000*

For contract amounts below \$150,000, businesses that are certified as a Local Small Business would receive a ten percent preference.

- *Contract Amounts Greater than \$150,000*

Proposers that are certified as Local Business Enterprises would receive an eight percent preference. In addition, businesses would receive an additional two percent preference if they have obtained a Small Business Enterprise certification. Further, businesses that have obtained a Transitional Job Opportunities Program certification would receive an additional two percent preference. Such contractors would receive a maximum preference of 12 percent.

- *Subcontractors*

Contractors that are not local businesses would receive a one percent preference if they use subcontractors who hold either a Local Business Enterprise, Small Local Business Program, and/or Transitional Job Opportunities Program certification. Under this proposal, a bidder would receive a one percent preference for every ten percent of the cost of the proposed work to be performed by the certified subcontractor. Such contractors would receive a maximum preference of five percent.

4. Develop a plan to educate City employees and the public

On July 3, 2018 as part of its approval of Motion (Buscaino – Price), the Council instructed the Board of Public Works (BPW) to conduct an outreach program. BPW can begin implementing the outreach program upon adoption of the recommendations in this report.

To ensure that the outreach program begins as soon as possible, we recommend that the BPW be instructed to immediately begin a marketing, training, and outreach plan on the revised programs. This would ensure that City staff receive training on how to implement these ordinances consistently across the City. We further recommend that similar training be offered to the business community to ensure businesses are aware of the benefits and how to participate in these programs.

5. Revise Criteria for Businesses to Qualify for Certifications

Certification criteria should be clarified to provide greater opportunities for businesses to qualify for the preference. The BCA is currently preparing the list of revised criteria, including the definition of a local business. The revised criteria will be included in the rules and regulations that will accompany the Ordinance(s) and be promulgated by BCA.

FIRST SOURCE HIRING ORDINANCE

On October 3, 2007, the Council adopted Ordinance No. 184,291 to establish a First Source Hiring Program for contractors who have entered into service contracts with the City (C.F. 06-2433).

BCA is the Designated Administrative Agency for the First Source Hiring Ordinance. It should be noted that the First Source Hiring Ordinance is not a procurement program in that it does not involve businesses bidding on City contracts. The First Source Hiring Ordinance requires a contractor awarded a City contract to notify EWDD of any new job opportunity that is created as a result of the contract. A contractor or subcontractor is required to notify the EWDD of a specific employment opportunity at least seven days before releasing the employment opportunity to the public, so that EWDD can refer individuals for an interview. The most recent data available (Fiscal Year 2018-19), indicates that the EWDD referred 48 individuals to WorkSource Centers, and four individuals were referred from WorkSource Centers to employers. No individuals were hired.

BCA and EWDD state that this program has been underutilized for the following reasons: the program requires additional staffing resources for tracking and follow-up tasks; timeframes between award, notifications, and employers needing to fill positions are not aligned; and, there is no centralized database to expedite referrals, requests, and to determine if employees were hired as a result of the First Source Hiring Ordinance.

The BCA and EWDD have proposed the following changes to the First Source Hiring:

1. Provide Additional Instructions/Guidance to EWDD on Procedures After Receiving Employment Opportunity

While there are currently administrative guidelines that are followed by EWDD, there is a need to update the administrative regulations for the implementation of the First Source Hiring Ordinance. Inasmuch as the First Source Hiring Ordinance is being revised, we recommend that the BCA, in consultation with EWDD, be instructed to develop revised rules and regulations for this program.

2. Extend the Time Period for Job Referrals from Seven Days to 14 Days

The Ordinance requires a contractor to notify the EWDD of a specific employment opportunity at least seven days before releasing the employment opportunity to the public. The EWDD proposes to increase the seven day time period to 14 days. This would require contractors to provide First Source workers exclusive access to the job opportunity for an additional seven days before it is released to the public.

3. Increase Partnerships With City Departments

While BCA can recommend termination of a contract for violations of the First Source Hiring Ordinance, BCA reports that increased enforcement alone is not an effective method to increase use of the Ordinance. BCA recommends that the City provide incentives for employees to promote the First Source Hiring Ordinance, such as training City staff on the program to encourage compliance. It is recommended that the Board of Public Works, BCA, and the EWDD be directed to conduct training sessions for City employees on the implementation of the revised First Source Hiring Ordinance. It is further recommended that BCA report to Council on the results of these trainings and any resources needed for implementation.

To ensure that Council is informed on the BCA's progress in implementing the revised Local Business Preference Program and First Source Hiring Ordinance, we recommend that the BCA prepare a status report in six months with recommendations to further revise these programs, as necessary.

FEASIBILITY OF CITY ADOPTING SOCIAL ENTERPRISE PREFERENCE PROGRAM

On May 3, 2019, as part of its consideration of proposed modifications to the Local Business Preference Program, the Council instructed City staff to review Los Angeles County's Social Enterprise Preference Program (County Program) and report on the benefits of creating a similar program for the City (C.F. 15-0850).

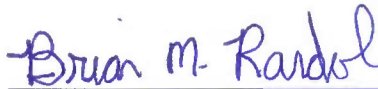
The County Program was designed to increase contracting opportunities for businesses whose focus is economic, social, and environmental sustainability. Eligible program participants receive a 15 percent bid price reduction or preference when bidding on certain goods and services.

The BCA has reviewed the County Program and does not believe it to be compatible with the City's efforts to assist individuals who face barriers to work. The BCA indicates that the County's definition of Social Enterprise is expansive and allows for certification and bidding preferences based on a company's mission statement or certification as a green business. While the BCA does not recommend that the City adopt the County's program at this time, BCA states that the County's bid preference for

social enterprises informed its recommendation to incorporate the Transitional Job Opportunities Program into the Local Business Preference Program.

FISCAL IMPACT

The recommendations in this report may have a fiscal impact to the General Fund which cannot be estimated at this time. Increases in the number of businesses that qualify for a Citywide bid preference certification may result in increased expenditures during the contract award process.



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Analyst

Attachment 1: Summary of Bid Preference Programs

SUMMARY OF BID PREFERENCE AND FIRST SOURCE HIRING PROGRAMS

Name of Program	Ordinance Number/ Date Enacted	Lead Dept.	Current	Proposed
Transitional Job Opportunities Program	176,959 September 16, 2005	BCA	Certified Transitional Job Opportunities Program employers receive a 10 percent preference applied to bid contracts of \$100,000 or less.	<ul style="list-style-type: none"> • Combine Transitional Job Opportunities Program, Small Local Business Program, and Local Business Preference Program. <ul style="list-style-type: none"> ○ Proposers holding a Local Small Business certification would receive a 10 percent preference on contracts less than \$150,000. ○ Proposers holding a Local Business Enterprise certification would receive an eight percent preference on contracts more than \$150,000. <ul style="list-style-type: none"> ▪ Proposers holding a Small Business Certification will receive an additional two percent preference. ▪ Proposers holding a Transitional Jobs Opportunities Program Certification will receive an additional two percent preference. ○ Maximum preference of 12 percent under this category. ○ If prime contractor is <i>not</i> local businesses but use subcontractors with Local Business Enterprise, Small Local Business Enterprise, and Transitional Job Opportunities Program certification will receive a 1 percent preference for every 10 percent cost of the work up to a maximum 5 percent preference.
Small, Local Business Program	174,048 June 28, 2001	BCA	<p>A proposer shall be granted a preference to all contracts of \$100,000 or less in an amount equal to 10 percent.</p> <p>Businesses with revenues of less than \$3 million for the previous fiscal year are eligible.</p>	
Local Business Preference Program	181,910 October 19, 2011	BCA	Provides an eight percent preference to eligible local businesses on requests for goods, equipment, supplies, construction, and personal services greater than \$150,000.	
First Source Hiring Ordinance	184,291 May 17, 2016	BCA; EWDD	A contractor shall notify EWDD of a specific employment opportunity at least <u>seven</u> days before releasing the employment opportunity announcement to the public.	A contractor shall notify EWDD of a specific employment opportunity at least <u>14</u> days before releasing the employment opportunity announcement to the public.

*BCA – BUREAU OF CONTRACT ADMINISTRATION

*EWDD –ECONOMIC AND WORKFORCE DEVELOPMENT DEPARTMENT

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OFFICE OF THE CHIEF LEGISLATIVE ANALYST