LOCAL BUSINESS ENTERPRISE (LBE) PARTICIPATION REQUIREMENTS (For City Contracts without federal funds)

I. LBE PARTICIPATION REQUIREMENT

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise (LBE) Preference Program to provide enhanced opportunities for the participation of LBEs in the City’s contracting and procurement activities. On November 19, 2013, City Council increased the LBE preference percentage from 2% to 5% and authorized City departments to require minimum LBE participation levels in specific contracts. Under City Code section 3.60.270, when the bid specifications for a City contract establish a minimum participation level for LBEs, no bidder on the contract shall be considered responsive unless its bid meets the minimum LBE participation level required by the bid specifications.

The City has established a minimum 5% participation level for LBEs on certain contracts of $100,000 or more as illustrated below.

<table>
<thead>
<tr>
<th>When Does the LBE Program Apply?</th>
<th>Contracts Under $100,000</th>
<th>Contracts $100,000 or More</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Supplies / Non-Professional</td>
<td>Professional</td>
</tr>
<tr>
<td>5% LBE Preference Applies to Bid Evaluation?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>5% Minimum Participation Requirement? *</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

* Requirement may be waived by the City Manager or the City Manager’s designee (e.g. Department Directors)

II. LBE QUALIFICATION

A. To meet the LBE participation requirement, bidders must meet the requirements for an LBE prior to the deadline for submission of bids.

B. Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the City or unincorporated areas of Sacramento County. Proof of legitimate business presence in the City or unincorporated areas of Sacramento County shall include:
1. Be an established business entity operating in the City or unincorporated County of Sacramento for at least twelve (12) consecutive months prior to submission of bid; and
2. Having either:
   a. a principal business office or workspace; or
   b. regional, branch, or satellite office with at least one full-time employee located and operating legally in the city or unincorporated county of Sacramento.

III. LBE PARTICIPATION LEVEL REQUIREMENTS

A. LBE Participation: The percentage of LBE participation is determined based on the dollar value of the work to be performed. LBE credit may be obtained by utilizing LBE qualified subcontractors or suppliers as outlined below.

B. Participation Credit: To receive credit for participation: (1) an LBE subcontractor must be responsible for the execution of a distinct element of the work, must possess any license or certification required for the work, and must actually perform, manage, or supervise the work without subcontracting or otherwise shifting any portion of the work to another subcontractor; and (2) an LBE supplier must furnish materials or equipment that the supplier sells as a recurring, although not necessarily primary, part of its business, and that are necessary for performance of the work.

C. Suppliers: Credit for an LBE supplier of materials or equipment is counted as 100% of the amount paid to the supplier for the materials or equipment. To receive this credit, LBE suppliers must be listed on the bidder’s Subcontractor and LBE Participation Verification Form.

D. Subcontractors (including truckers): To receive credit for an LBE subcontractor, the subcontractor must be listed on the bidder’s Subcontractor and LBE Participation Verification Form.
   • Truckers: Credit for an LBE trucker is counted as 100% of the amount paid to the trucker for trucking services, not including any amount paid to the trucker for the cost of any materials or equipment being transported by the trucker.

IV. LBE REQUIREMENTS FOR CONTRACTOR

A. LBE Records: The Contractor shall maintain records of all subcontracts with verified LBE subcontractors and records of materials purchased from verified LBE suppliers for one year after receiving final payment from the City. Such records shall show the name and business address of each LBE subcontractor or supplier and the total dollar amount actually paid to each LBE subcontractor or supplier.

No later than 30 days after completion of the work performed under the contract, a summary of these records shall be prepared, certified correct by the Contractor's authorized representative and furnished to the City. The Contractor shall provide such
other information, records, reports, certifications or other documents as may be required by the City, to determine compliance with any provision of the LBE program or these specifications.

B. Performance of LBE Subcontractors and Suppliers: The LBEs listed by the Contractor shall perform the work and supply the materials or equipment for which they are listed, unless the Contractor has received prior written authorization from the City to perform the work with other forces or to obtain the materials or equipment from other sources. Reasons for requesting such authorization would include:

1. The listed LBE fails to execute a written contract based upon the general terms, conditions, plans, and specifications for the project.
2. The listed LBE becomes bankrupt or insolvent.
3. The listed LBE subcontractor fails to meet the bond requirements of the Contractor.
4. The work performed or the materials or equipment provided by the listed LBE are unsatisfactory or are not in accordance with the plans and specifications, or the listed LBE fails to perform its contractual obligations.
5. It would be in the best interest of the City.

C. Subcontractor Substitution: No substitution of an LBE subcontractor shall be made at any time without compliance with the Subletting and Subcontracting Fair Practices Act. If an LBE subcontractor is unable to perform successfully and is to be replaced, the Contractor shall make reasonable efforts to replace the original LBE subcontractor with another verified LBE subcontractor. The new LBE subcontractor must be verified at the time of substitution.

D. Reporting and Utilization Requirements and Sanctions: Failure to provide specific information, records, reports, certifications, or any other documents required for compliance with these specifications, or failure to utilize one or more LBEs in substantial compliance with the LBE utilization indicated in the Contractor’s bid (unless otherwise authorized by the City as provided herein, or when such failure results from changes to the work approved by the City), shall be considered a breach of the contract. A deduction may be made from the contract amount and the deduction shall be not more than 10% of the value of the work or materials or equipment that the subject LBE(s) were listed to perform or provide in the Contractor’s bid, and shall also be deducted from any payment due to the Contractor. This is in addition to any deduction that may be made under any other provision of the contract, the Sacramento City Code, or State law.

E. Hearing and Review of Division Manager Decision: Prior to making a deduction pursuant to Section IV (D), above, the City shall provide written notice of the proposed
The Contractor may, no later than five working days after receiving such notice, provide a written request to the City for a hearing to contest the proposed deduction. Upon receipt of a timely written request from the Contractor, the City shall schedule a hearing before the Division Manager (as defined in the City’s Standard Specifications for Public Construction), and written notice of the date, time and location of the hearing shall be provided to the Contractor not less than five working days prior to the date of the hearing. The hearing shall be conducted in the manner specified in Section 4-8 of the Standard Specifications, and the Division Manager shall prepare and forward to the Contractor a written decision as soon as practicable after the hearing. The Division Manager’s decision shall be subject to review in accordance with the provisions of Section 4-9 of the Standard Specifications. Failure to request such review in compliance with the requirements set forth in Section 4-9 shall constitute acceptance of the Division Manager’s decision by the Contractor.

The written notices and requests described above shall be provided by registered or certified mail (return receipt requested), by facsimile, by personal delivery, or by any other method that provides reliable evidence of the date of receipt. Written notice provided by facsimile shall be deemed received on the date that it is transmitted and transmission is confirmed by the transmitting machine. Written notice provided by personal delivery shall be deemed received on the date of delivery.

V. DEFINITIONS

A. Local Business Enterprise (LBE): A business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or any other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento.

B. Contractor: The sole proprietorship, partnership, limited liability company, corporation, or any other business entity entering into a contract with the City of Sacramento.

C. Subcontractor: The sole proprietorship, partnership, limited liability company, corporation, or other business entity entering into a contract with the prime contractor to perform a portion of the work.

D. Supplier: The sole proprietorship, partnership, limited liability company, corporation, or other business entity to provide materials, equipment, or supplies necessary for performance of the work.

E. Proposal: Any response to a City solicitation for Proposals or Qualifications.

F. Bid: Any response to a City solicitation for bids.

G. Waiver: Request to department director to waive or reduce LBE participation requirement.