

ATTACHMENT A-13

LOCAL BUSINESS PREFERENCE PROGRAM (LBPP)

1. City of Los Angeles Ordinance No. 181910, Article 21, Sections 1 of the Los Angeles Administrative Code (8 pages)

Local Business Prime

8%

Or

Local Business Subcontractor (s)

Up to 5%

NOTE: Local Business Preference Program information and/or assistance may be obtained through the City's Office of Contract Compliance at bca.biphelp@lacity.org.

BOARD OF PUBLIC WORKS LOCAL BUSINESS PREFERENCE PROGRAM (LBPP) FOR USE ON CITY-FUNDED CONTRACTS GREATER THAN \$150,000.00

A. General

This Request for Qualifications (RFQ) is subject to the policies and requirements established by the City Council and the City of Los Angeles Mayors Office. The City is committed to maximizing opportunities for local businesses, as well as encouraging local businesses to locate and operate in Los Angeles. It is the policy of the City to prevent unemployment, encourage an increase in local jobs, and create high road economic development. The Local Business Preference Program (LBPP) aims to benefit the City by increasing local jobs and expenditures within the private sector. The LBPP is set forth herein. Bidders should be fully informed of this program. **Awarding Authorities shall opt out when the contract is funded by a grant or is federally funded and funding regulations prohibit the funding recipient from implementing the LBPP on the resulting contract. Secondly, the Awarding Authority can opt out of the program when full and open competition is limited because of a sole source vendor, provider, or supplier. However, the Awarding Authority is entitled to determine at anytime that it is not in the City's best interest to grant a Proposal preference to a qualifying Local Business, Local Subcontractor, or Provisionally Qualified Local Business. Failure to comply with the LBPP shall result in investigations by the Bureau of Contract Administration/ Office of Contract Compliance (BCA/OCC) in its role as the Designated Administrative Agency.**

B. Participation Criteria for Local Business Preference Program

To be eligible for participation in this program, the BCA/ OCC requires that the prospective local business submit an affidavit attesting as such on the Los Angeles Business Assistance Virtual Network (LABAVN) website. An affidavit form is available to be downloaded on the LABAVN website at <http://www.labavn.org>. Determination of qualification as a local business by any other entities, other than BCA/OCC, or by any other means other than submission of an affidavit on LABAVN shall not be accepted for purposes of participation in the LBPP. Affidavit forms are prioritized according to the date they are received. The local business must be listed on LABAVN as such prior to the bid due date in order to participate in the LBPP. In cases where the affidavit was submitted prior to the proposal deadline but has not been verified by BCA/OCC and the local business designation would result in a change of award recommendation, status as a local business will be based on the date it was submitted.

C. Definitions

1. "Awarding Authority" means any Board or Commission of the City, or any employee or officer of the City, except those of departments that control their own funds, authorized to award or enter into any Contract, as defined by Article 21, Section 1 of

the Los Angeles Administration Code, on behalf of the City. The Proprietary Departments and the Departments of Recreation and Parks, Library, Community Redevelopment Agency are strongly encouraged to adopt local preference programs consonant with the provisions of Article 21, Section 10.47, *et seq.*

2. "Contract" means a written agreement involving consideration in excess of \$150,000.00 for the purchase of goods, equipment or services, including construction, by or for the benefit of the City or its residents.
3. "Contractor" means the person, business or entity awarded the Contract by the Awarding Authority.
4. "Bid Price" means the dollar amount after the bidder's quoted price is adjusted for evaluation in accordance with applicable provisions. For procurement contracts this may include, but not be limited to Cash Discount or Combined Award Discount.
5. "Local Business" means a business entity that occupies work space within the County, is in compliance with all applicable City and County licensing and tax laws, and can demonstrate one of the following: (1) it is headquartered in the County and physically conducts and manages all of its operations from a location in the County; (2) that at least 50 of its full time employees perform work within the boundaries of the County at least 60 percent of their total regular hours worked on an annual basis; or (3) that at least half of the full-time employees (50%) of the business work within the boundaries of the County at minimum of 60 percent of their total, regular hours worked on an annual basis.
 - (a) A business entity with multiple locations within the County, can aggregate 50 of its full time employees working at least 60% of their regular hours from its different locations within the County to qualify as a Local Business.
 - (b) A business entity awarded a City contract under the LBPP, must carry out the services of the contract using employees whose exclusive, primary working location is in Los Angeles County.
 - (c) A joint venture must be a legally established entity and be certified as an LBE in order to participate in the LBPP. Individual LBE certification by one or more of the joint venture partners will not be considered sufficient to qualify for participation in the LBPP.
6. "Local Subcontractor" means a contractor that meets the same qualification as a local business.
7. "Provisionally Qualified Local Business" means a business entity that is yet to establish operations within the County, and does not immediately qualify as a local business under the Los Angeles Administrative Code. However, the business is provisionally qualified as a local business because it is undertaking imminent steps

to qualify as a local business as defined by Article 21, Section 10.47.3. No later than 60 days after the date on which the Contract with the City is awarded, but prior to execution of the contract, the Provisionally Qualified Local Business must become a qualified Local Business.

D. Local Business Preference Program Participation Recognition

The point of recognition is determined based on when a contract is awarded, but the City tends to release two (2) different types of RFQs. Contracts are awarded at different points in time depending on the type of RFQ. The type of RFQ issued will determine when the contract will be awarded. A description of the two most common types of RFQs is as follows:

1. RFQ to establish a Pre-Qualified list of bidders/proposers.
This type of RFQ will establish a list of Pre-Qualified entities. When the City has a specific contracting opportunity to offer that is covered by the scope of work described in the RFQ, the City may opt to allow only the Pre-Qualified entities to submit a bid/proposal. The contract award will be made upon evaluation of the bids/proposals received. Therefore, the LBPP preference will be applied at the time the bids/proposals are evaluated, not during the establishment of the Pre-Qualified list.
2. RFQ to establish "On-Call" or "As-Needed" contractors.
This type of RFQ will result in the highest ranked bidder(s)/proposer(s) receiving a contract for "On-Call" or "As-Needed" work. In order for the LBPP to apply to this RFQ, the City must have a reasonable belief that the cumulative value of the various work assignments over the duration of the contract will exceed \$150,000. Under this type of RFQ, the LBPP preference will be applied at the time the RFQ responses are evaluated. Additionally, the preference allowed by the Ordinance for the utilization of local sub-contractors will not be applied to the evaluation process for an "On-Call" or "As-Needed" contract because actual subcontractor utilization cannot be pledged until after the contract(s) have been executed and specific work assignments are made.

Respondents are advised to read through the RFQ in order to determine when the City will award the contract(s). Respondents should not rely on the use of the phases "Pre-Qualified", "On-Call", or "As-Needed" to determine the type of RFQ issued or when the contract will be awarded. In the event that the type of RFQ issued was not described above, BCA/OCC will work with the Office of the City Attorney to determine when the LBPP should be applied.

Except as noted above, LBPP participation recognition will be determined as follows:

1. Qualifying contractors who participate in the LBPP by qualifying as a local business will receive either an 8% of the total possible evaluation points added to their evaluation score or 8% preference credit to their proposal, depending on the type of RFQ, provided that their bid proposal is in excess of \$150,000.00 or in excess of \$1,000,000.00 if a Provisionally Qualified Local Business.
2. Qualifying contractors who participate in the LBPP but do not qualify as a local business, but however are qualified because they identify a qualified local subcontractor to perform the work under the contract will receive up to a 5% preference credit to their proposals. This does not apply to an RFQ that awards a contract for "On-Call" or "As-Needed" services.
 - a. The Awarding Authority shall provide a 1% preference, up to a maximum of 5%, to the proposal price for every 10% of the cost of the proposed work to be performed by the local subcontractor on a "low bid" awarded contract. For a service contract, the Awarding Authority shall provide a 1% preference, up to a maximum of 5%, of the total possible evaluation points added to their evaluation score for every 10% of the cost of the proposed work to be performed by the local subcontractor(s). This rule applies to a local subcontractor or local subcontractors; provided that the work performed is of a commercially useful purpose in execution of the contract and/or performed in the subcontractor's normal course of business. The work performed and all costs of each local subcontractor or subcontractors should be clearly specified in the proposal.
3. Preferences shall only be awarded to a Local Business or Local Subcontractor when the services provided under the contract are directly provided by its employees whose primary work location is in Los Angeles. Preferences shall only be awarded for equipment, goods or materials when the Local Business or Local Subcontractor acts as a supplier or dealer (not less than two thirds of the time), or designs, manufactures, or assembles the equipment, goods or materials (not less than two thirds of the time), at a business location in the City.
4. A Provisionally Qualified Local Business who participates in the LBPP by qualifying as a local business will receive an either an 8% of the total possible evaluation points added to their evaluation score or 8% preference credit to its proposals, depending on the type of RFQ issued, as long as the proposed contract between the business and the City involves consideration no less than \$1,000,000.00 and has duration of no less than three (3) years.
 - a. To participate in the program a proposed Provisionally Qualified Local Business must download and complete a Provisionally Qualified Local Business affidavit form at <http://bca.lacity.org>, which it shall attach and submit with its bid documents to the awarding Department.

5. Once a Business asserting to be a Provisionally Qualified Local Business is notified by the Awarding Department of its intent to award a contract, the Provisionally Qualified Local Business shall submit all of the following documentation: (1) an enforceable, contractual right to occupy commercial space within the County, which shall commence no later than 60 days after the date of the execution of the contract; (2) a business plan on its ability to become a Local business; (3) any other sufficient documentation required by the Awarding Authority.

All required supporting documentation / evidence demonstrating qualification as a Provisionally Qualified Local Business must be submitted to the Awarding department within 30 days of request.

- a. If an Awarding Department is satisfied with the documentation submitted by the Provisionally Qualified Local Business, and it determines that it shall award the contract to the business, then the Awarding Department, prior to the execution of the contract, shall send BCA a memo stating that the business was able to demonstrate that it qualified as a Provisionally Qualified Local Business. The memo shall also list the documents received by the Awarding Department, with copies attached, and recommend that BCA determine the business to be a Provisionally Qualified Local Business.
6. A Provisionally Qualified Local Business shall lose its status as such when it fails to fully comply as a local business within 60 days after the date on which the Contract with the City is awarded. The Awarding Department shall notify the Provisionally Qualified Local Business thirty (30) days after contract award that it must comply as a local business or the contract award will be rescinded.
7. Loss of status as a Provisionally Qualified Local Business is permanent; closure forbids a business from qualifying as a Provisionally Qualified Local Business in the future for purposes of bidding on City Contracts.
8. The maximum proposal preference for all qualifying local businesses, local subcontractor (s), and provisionally qualified local businesses shall not exceed 8% credit of the total evaluation points or \$1,000,000.00, depending on the type of RFQ, for any proposal.
9. A proposal preference does not reduce the contract amount.
10. In the event where a certified Local Business, bids on a City contract, and is determined by the Awarding Department after the bid deadline to not qualify as a Local Business, the business will be eligible for a Local Subcontractor Preference of up to 5 percent, if it has identified a qualifying Local Subcontractor (s) to perform work under the contract.

- a. The above exemption shall only apply where the non-compliance is an error or mistake. It shall not apply to a business that intentionally fraudulently claims to be a Local Business through misleading and false statements.
 - b. It is the responsibility of the business registered on LABAVN as a certified Local Business to inform BCA via email at bca.certifications@lacity.org that it no longer meets the certification criteria within 7 days of the change. Failure to do so shall be construed as a misleading and/or false statement.
11. Upon receipt of information believed by the Awarding Authority to be reliable and which indicates that the Local Business no longer qualifies as a Local Business for more than 60 days during the entire time of the Contract, the Awarding Authority shall withhold or recover funds from the Contractor in an amount that represents the value of 8% of the executed contract.
12. If for any reason the Local Subcontractor(s), providing the basis for a Local Subcontractor Preference, is unable to, or does not perform the work under the Contract; the Contractor shall, within 60 days, replace that Local Subcontractor with another Local Subcontractor. If the Contractor is unable to replace the Local subcontractor specified in the Contract with another Local Subcontractors within 60 days, the Awarding Authority shall be entitled to withhold or recover funds from the Contractor in an amount that represents the value of the work that was pledged to the Local Subcontractor(s), not to exceed 8% of the Contractor's executed contract.
13. In the event that investigations reveal that a business fraudulently represents itself as a Local Business for the purpose of gaining a preference under the LBPP, the business shall not be eligible for the Local Business status for up to five years from the date of disqualification. This will also apply to any business that has received a preference, but failed to maintain its Local Business qualification for a cumulative of 60 days during the entire time of the contract.

E. Complaints and Protests

1. All complaints and/or protests regarding qualifying local businesses, provisionally qualified local businesses, and local subcontractors claiming non-compliance by Awarding Authorities or its failure to maintain certification criteria, shall be made to the BCA/OCC either in writing or by email for further investigation. Complaints must be accompanied by documentation which substantiates complainant's allegations.
2. Failure of compliance with the LBPP by Awarding Authorities shall result in investigations by BCA, OCC in its role as the Designated Administrative Agency.

Submit complaints to:

By Mail

**Office of Contract Compliance
Bureau of Contract Administration
Department of Public works
1149 South Broadway, Suite 300
Los Angeles, CA 90015**

By Email

bca.biphelp@lacity.org