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CONTRACT ADMINISTRATION**

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Honorable Members of the Ad Hoc on
Comprehensive Job Creation Plan Committee
c/o Holly L. Wolcott, City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

April 13, 2021

Honorable Members:

**BUREAU OF CONTRACT ADMINISTRATION – FY 19-20 LOCAL BUSINESS
ENTERPRISE- LOCAL BUSINESS PREFERENCE PROGRAM (LBE-LBPP) CITYWIDE
REPORT (CF 15-0850)**

On April 17, 2018, the Chief Legislative Analyst provided their Citywide Comprehensive Job Creation Plan Status Report. Within that report, long-term objective one (1) of the Jobs Plan Strategy (Goal) 1E. *Enhance and improve the Local Business Preference Policy Program to increase local business participation on contracts with the City* called for the Bureau of Contract Administration (BCA) to, in part, work with City departments to compile LBPP data and submit a report to Council for approval. Attached herein is that report.

Sincerely,

JOHN L. REAMER, JR., Director
Bureau of Contract Administration

JLR:HC:lg
20210413 LBE-LBPP Report Letter.doc

attachment



CITY OF LOS ANGELES

RULES AND PROCEDURES

IMPLEMENTING

THE LOCAL BUSINESS PREFERENCE PROGRAM



EFFECTIVE July 1, 2021

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**RULES AND PROCEDURES
IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM**

SCOPE OF BCA AUTHORITY	2
DEFINITIONS	2
PROCEDURE #1: CRITERIA FOR LOCAL BUSINESS ENTERPRISE(LBE)	6
PROCEDURE #2 CRITERIA FOR LOCAL SMALL BUSINESS (LSB)	7
PROCEDURE #3: CRITERIA FOR LOCAL TRANSITIONAL EMPLOYER (LTE)	10
PROCEDURE #4: APPLICATION/AFFIDAVIT PROCESS	11
PROCEDURE #5: RECERTIFICATION PROCESS	13
PROCEDURE #6: GROUNDS FOR DENIAL, CLOSURE, OR REMOVAL	14
PROCEDURE #7: APPEAL PROCESS	15

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

The Department of Public Works, Bureau of Contract Administration (BCA) Office of Contract Compliance (OCC) Certification, Outreach, Regulations & Enforcement Section (CORE) Centralized Certification Administration (CCA) promulgates these Rules and Procedures as the Designated Administrative Agency (DAA) pursuant to the Local Business Preference Program Ordinance (LBPP Ordinance). The BCA may amend or revise these Local Business Preference Program (LBPP) Rules and Procedures from time to time to assist with implementing, administering and enforcing the LBPP Ordinance.

SCOPE OF BCA AUTHORITY

Under Section 10.25.2 of the Los Angeles Administrative Code (LAAC), the BCA shall specify in its Rules and Procedures the criteria for the Local Business, Local Small Business, and the Local Transitional Employer. LAAC Section 10.25.8 further specifies that BCA shall promulgate the rules and procedures to implement, administer and enforce the provisions of this article

DEFINITIONS

For purposes of these Rules and Procedures, the definitions set forth in LAAC Section 10.25.1 are incorporated herein by reference. In addition, the following definitions shall apply in these Rules and Procedures:

“Affiliate” means the following:

- 1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.
- (2) Factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, should be considered in determining whether affiliation exists.
- (3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.
- (4) Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

(5) In determining whether affiliation exists, the totality of the circumstances should be considered, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(6) In determining the concern's size, the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit are all considered.

"Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and inter-affiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage or completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes. If a concern which has been in business more than 12 months changes its accounting period (fiscal year), its annual receipts will be determined from its most recently completed 12-month period in business. For corporations and partnerships, gross income is calculated by adding the cost of goods sold and total income.

If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts, to include the affiliates receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are to be included if such concern was an affiliate during a portion of the applicable accounting period.

"Coworking Space" means a neutral, non-exclusive, limited shared space defined in a membership-based service arrangement or agreement or subscription wherein a firm has no Tenancy interest, leasehold estate or other real property interest with respect to the accommodation (that is the commercial equivalent of an agreement for accommodation in a hotel or club) on an as-needed basis. The agreement gives the firm a right to share the use of the space and may include an exclusive mailing address and office services. An executive suite/exclusive desk/dedicated desk/secured suite/private office under a coworking space agreement falls under this definition.

"Headquarters" shall mean the business physically conducts and manages all of its operations from a location in the County of Los Angeles. Operations within the County include but not limited to the firm's documents (including, but not limited to: books of record, financial, human resources and tax documents) are kept.

"Tenancy" means the exclusive and legal right to occupy real property or space with unlimited access permanently or for a time which may terminate upon a certain event, for a specific term, for a series of periods until cancelled (such as month-to-month), or at will

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

(which may be terminated at any time). Some tenancy is for occupancy only as in a landlord-tenant situation, or a tenancy may also be based on ownership of title to the property.

“Transitional Employee” - means an individual whose primary place of residence is within the City of Los Angeles and who prior to commencing work on a Project has satisfied at least one of the following criteria:

- 1) is a Veteran or
- 2) has a documented history of involvement with the criminal justice system or
- 3) is an individual with addiction(s) or
- 4) is an at-risk youth or
- 5) is chronically homeless – anyone who is experiencing, has experienced in the past six months, or has a consistent history of living by **any** of the following four categories as defined by HUD: "Literally Homeless," "Imminent Risk of Homelessness," "Homeless under other Federal statutes," and "Fleeing/Attempting to Flee Domestic Violence

Or is an individual who has satisfied at least two of the following criteria:

- 1) has a household income less than 50% of the Los Angeles County's median annual household income or
- 2) receives public assistance or
- 3) is lacking a GED or high school diploma or
- 4) has been or continues to be a custodial single parent or
- 5) is chronically unemployed (continuously for at least the 6 months or intermittently for the last year) or
- 6) has been emancipated from the foster care system.

"Transitional Employer" means an organization, for profit or non-profit, that provides transitional jobs for the long-term unemployed, and that has been certified by the DAA as a local transitional employer under these Rules and Procedures.

"Virtual Office" means a non-exclusive service or physical space defined in an agreement/arrangement/membership/subscription that enables firms to work remotely and/or ~~may~~ have limited access and usage of a physical or non-centralized space on an as-needed basis. This may include a physical mailing address and other office services such as an executive suite/exclusive desk/dedicated desk/secured suite/private office under a virtual office agreement falls under this definition.

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

PROCEDURE #1: CRITERIA FOR LOCAL BUSINESS ENTERPRISE (LBE)

A Local Business Enterprise for purposes of these Rules and Procedures must satisfy all of the following criteria as certified by the DAA:

A. The for-profit business occupies Work Space within the Los Angeles County. The business must submit proof of occupancy to the City by supplying evidence of a lease, deed or other sufficient evidence demonstrating that the business is Headquartered within the County of Los Angeles. The following documents are proof of Tenancy:

- Signed copy of the LA County-based office/work space lease or rental agreement (both original and the most recent amendment, if applicable).
- If the work space is owned by the firm or the applicant, the firm must submit its most recent Annual Property Tax Bill or a grant deed completed and signed by the grantor, whose signature has been notarized, documenting ownership.
- If a firm aggregates employees from different locations to meet the number of full-time employees, evidence of lease or deed must be submitted for each location.
- Entity legal name, BAVN ID and work space address must match the BAVN profile, Local Business Certification Affidavit of Eligibility form, Local Small Business Application, Local Small Biennial Affidavit of Eligibility, and any other supporting documents.
- A month to month lease may be eligible, with 6 months proof of payment (cancelled checks, bank statements, credit card statements, etc.) if the applicant firm was originally in a long-term lease that was converted to a month to month. CORE/CCA reserves the right to request proof of continued eligibility at any time. New month to month lease agreements are not eligible.

An arrangement for the right to use office space on an “as needed” basis, where no work space in Los Angeles County is exclusively reserved for the firm at all times, does not qualify as a work space. Examples of disqualified addresses:

- Post office box or mailing services center.
- Home office if the owner(s) or officer(s) of the business maintains a permanent office outside of LA County. Exceptions may be made if the outside office is temporary.
- Virtual Office and CoWorking Space.

Reasonable exceptions to these requirements may be made on a case-by-case

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

basis if the business provides additional documents or information that satisfy the business workspace requirement.

B. The business must submit proof to the City demonstrating that the business is in compliance with all applicable laws relating to licensing and is not delinquent on any taxes. Required documents include but are not limited to the following:

- Copy of the City of Los Angeles Business Tax Registration Certificate (BTRC) or proof of exemption if the firm is exempted from BTRC; and/or
- Copy of the County of Los Angeles Business License (if applicable); and/or
- Any required License to operate the business.
- If the applicant is applying under C(1) or C(2), the BTRC must reflect the LA County address but the Secretary of State's Articles of Incorporation/Organization or Statement of Information may reflect their Headquarter address outside of LA County.

C. The business must submit proof to the City demonstrating one of the following:

(1) The business must demonstrate 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

(2) The business must demonstrate that at least half of its full-time employees work within the boundaries of the County a minimum of 60 percent of their total, regular hours worked on an annual basis.

Satisfactory Proof for C (1) and (2)

- List of fifty (50 in number) or half (50 percent) of the applicant firm's full-time employees on a spreadsheet with corresponding State of California Quarterly Wage and Withholding Report or Form DE9C (Quarterly Contribution Return and Report of Wages) listing page number where each employee's name appears and annotations of respective employees (i.e., highlighting respective employee names) on each DE9C for the most recent 4 quarters based on the following schedule (12 consecutive months prior to signing of your Affidavit). The employees listed must appear on all 4 of the most recent quarters of the DE9C.

Or;

(3) The business must demonstrate that it is Headquartered in the County.

- Documented proof of Corporate Headquarter address including but not limited to the lease or rental agreement, Business Tax Registration

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

Certificate from the City of Los Angeles, applicable U.S. Federal Income Tax Return, and State of California Articles of Incorporation/Organization.

- A firm that is Headquartered at a LA County residence must substantiate a majority of the owners/executives of the firm maintain or is performing work at an office that is located in the LA County.
- Copies of the firm's website indicating the work space address as headquarter and Articles of Incorporation showing entity address that matches the workspace address in County.
- Statement of fact detailing location in the County where the firm's management and/or officers physically work and manage the firm's operation, and hours they spend at each work space if there are more than one work space.
- When a subsidiary firm headquartered in the County has a parent company Headquartered outside of the County limits, the subsidiary must submit all but not limited to the following:
 - Subsidiary's in-County Headquarter address shown as its primary business address on Articles of Incorporation filing, Fictitious Business Name statement, and any other legal documents substantiating its Headquarters' location.
 - Statement of fact detailing how the subsidiary conducts and manages all of its business operation from the location in the County, separate from its parent company, and copies of Bylaws, Company Organization Chart, Meeting Minutes, Operating Agreement, and separate tax returns filed on the subsidiary and parent firms to support the relation and/or structure of the subsidiary and parent firms.

In the event of protest, additional documents such as, but not limited to, employee timesheets and/or internal payroll reports verifying work hours and firm's total number of full-time employees may be requested.

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

PROCEDURE #2: CRITERIA FOR LOCAL SMALL BUSINESS (LSB)

A business entity shall qualify as a “Local Small Business” if it:

A. Satisfies the criteria of Local Business Enterprises as defined in Procedure # 1. If the firm is a manufacturer, it must have less than 25 employees.

B. Is not (or together with an affiliate) dominant in its field of operations. Not dominant in its field of operation means when it does not exercise a controlling or major influence on a local Statewide basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreement, facilities, sales territory, and nature of business activity.

C. Is independently owned and operated, with its Headquarters located in the County of Los Angeles and holds a City business license issued by the Tax and Permit Division of The Office of Finance, if this firm is subject to the City Business Tax.

D. Has submitted an Application/Affidavit as an LSB and has been approved as such by the City. In order to be so approved, a business entity shall set forth, under penalty of perjury, such information as is requested by the City on either electronic or hardcopy forms supplied by the City, as part of the supplier registration process, before the last day for submission of the bid or proposal as to which the business entity seeks to qualify as a LSB. The forms containing the required information shall be submitted to the Department of Public Works, Bureau of Contract Administration CORE/CCA. Among the criteria, the City shall consider in determining whether a business entity so qualifies is whether the business entity, together with all affiliates, has annual gross receipts which are less than \$3 million for the previous fiscal year. The City may, in the alternative, request such information for the previous calendar year. In the absence of tax returns of a newly established firm, all owners may be required to submit additional documentation such as the most recently filed Federal Individual Tax Returns including all schedules and attachments.

**RULES AND PROCEDURES
IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM**

PROCEDURE #3: CRITERIA FOR LOCAL TRANSITIONAL EMPLOYER (LTE)

A business shall qualify as a Local Transitional Employer if:

A. It is incorporated in the State of California or its Headquarters is located in the County of Los Angeles.

B. It has requested classification as a transitional employer and has been approved as such by the City through the DAA. In order to be so approved, a business entity shall set forth, under penalty of perjury, such information as requested by the City on either electronic or hardcopy forms supplied by the City, and submit the necessary certification forms to the DAA before the last day for submission of the bid or proposal.

C. The criteria the City shall consider in determining whether a business entity so qualifies shall include, but not be limited to, the following:

(1) The business has been in operation for at least one year, providing transitional jobs and the related supportive services to program participants;

(2) A profile of the Transitional Employee program participants as defined;

(3) A description of the business entity's program components designed to help program participants transition towards unsubsidized competitive employment, including the supportive services offered to participants;

(4) The number of participants in the program in the last calendar year has either 10 full time employee or 10% of the company;

(5) Any other criteria as may be developed by the DAA in its administration of this Program.

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

PROCEDURE #4: APPLICATION/AFFIDAVIT PROCESS

The investigative techniques that may be employed in determining eligibility will be documentation review and independent research of publicly available data. The use of additional techniques to verify representations and documentation submitted by a firm may include requests for additional documents, site visits, and/or interviews of employees, principal owners and management officials. Interviews shall be conducted with individuals having knowledge of ownership, affiliation, firm structure, management or corporate officers, work space and headquarter location, employee data.

All applicants must declare under penalty of perjury that the firm meets all eligibility criteria in accordance with these Rules and Procedures and submit an Application/Affidavit certifying its status. Submission of an Application/Affidavit is not in itself conclusive evidence in determining eligibility, the DAA may request supporting documents.

A. Receive and Checking Application

1. To become certified, a firm must submit an Affidavit (LBE on BAVN and LSB and LTE Application via email or mail) prior to the proposal/bid deadline. The applicant must be in CORE/CCA's system or LABAVN prior to the proposal deadline in order to participate. In cases where the Application/Affidavit was submitted prior to the proposal/bid deadline but has not been verified by CORE/CCA, the status date will be the date of the submission.
2. The official submission date will be the date on which the completed and signed Application/Affidavit is received by the City. Any previously-submitted Application/Affidavit that is deemed insufficient will not be considered.
3. Application/Affidavit reviews are prioritized according to the date of submission. In cases of a rush (the Application/Affidavit was submitted prior to the proposal/bid deadline and the certification would result in a change of award recommendation), the Awarding Authority may request expedited processing of the bidder's Application/Affidavit. The Awarding Authority must submit a request to expedite to CORE/CCA via e-mail stating that the firm's certification will make a difference as to who gets the award and provide sufficient proof.
4. The Application/Affidavit shall be executed under oath by the owner or a duly authorized officer or a Corporate Officer of the applicant firm. Corporate Officers may include the President, Chief Executive Officer (CEO), Chief Operating Officer (COO), Vice President of Operations/Marketing/Production, General Manager, Chief Financial Officer (CFO) or Controller.
5. If the CORE/CCA has reasons to believe that the information contained on the

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

Application/Affidavit is inaccurate, incomplete, or outdated, the CORE/CCA may reject the firm's initial Affidavit. The applicant will have to resubmit a revised Application/Affidavit.

B. Request for Additional Documentation if Needed

1. Applications/Affidavits should be submitted with all required documentation. If not, CORE/CCA may request supporting documents to verify the firm's eligibility criteria found in the LBPP Ordinance and these Rules and Procedures. The review will include an audit of submitted information for verification and discrepancy. It may also include an on-site visit and interview with the applicant, and review of specific additional information in support of the Application/Affidavit as requested.
2. Any request for additional information will be in writing and the applicant has thirty (30) calendar days to provide the required documents. If the applicant fails to respond, the application will be denied or closed. An extension may be granted by the analyst at their sole discretion.

C. Following the City's receipt of a completed Application/Affidavit, additional requested required documents and subsequent review, the CORE/CCA shall issue a written decision to verify (approve) or deny certification to the applicant firm representative.

All contact information (including the approved address) on the application/affidavit will be published on the BCA website. Certification will only be posted and appear as "Verified" on LABAVN when all information matches with the approved Application/Affidavit.

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

PROCEDURE #5: RECERTIFICATION PROCESS

A. LBE/LTE - Certification as an LBE/LTE shall be valid for five (5) years. To remain certified as an LBE/LTE during the five (5) year term, the LBE/LTE must continue to meet the City's eligibility criteria and CORE/CCA may re-evaluate the certification eligibility any time. On the fifth (5th) anniversary of the LBE/LTE certification, the applicant firm must upload the Re-Certification Affidavit of Eligibility, affirming it continues to comply with the certification eligibility requirements and there have been no changes affecting its ability to meet the eligibility criteria.

1. Failure to complete and upload the Re-Certification Affidavit of Eligibility on the LABAVN will result in continued expiration of the LBE/LTE certification.
2. Re-Certification Affidavit forms uploaded will be reviewed by the CORE/CCA to ensure eligibility. Upon review of the Re-Certification Affidavit of Eligibility submitted, CORE/CCA may request supporting documents to ensure the firm's continued eligibility.
3. Re-Certification will remain pending until all requested supporting documents are received and it is determined by the CORE/CCA that the firm continues to meet all eligibility standards.

B. LSB - Certification as an LSB shall be valid for two (2) years. To remain certified as LSB during the two (2) year term, the LSB must continue to meet the City's LSB criteria and CORE/CCA may re-evaluate the certification eligibility at any time. The firm must submit the LSB Biennial Affidavit of Eligibility within a month before its expiration for review of continued eligibility. Failure to submit the Affidavit will result in expiration of the LSB certification. CORE/CCA reserves the right to request additional documentation, as proof of continued eligibility. The LSB status of Firms approved for recertification can be found on the LSB Directory and LABAVN (if applicable). A recertification letter will not be issued.

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

PROCEDURE #6: GROUND FOR DENIAL, CLOSURE OR REMOVAL

The City requires all firms seeking certification to cooperate fully with requests from the BCA for information relevant to the certification process, continued certification and/or investigation. The following are considered grounds for Denial, Closure (expired) or Removal (previously certified but no longer eligible) of Certification. New applicants will not be given rights to an administrative hearing.

1. Failure or refusal to provide requested document or information is not only grounds for Denial of Certification, new applicants will also not be given rights to an administrative hearing.
2. Providing false, erroneous or misleading statements or documents to support the Application/Affidavit for certification.
3. If the business no longer meets the eligibility criteria.
4. Any changes which may impact a firm's eligibility such as work space location, Headquarter location, number of employees working within the boundaries of LA County, ownership, affiliation, gross receipts and other eligibility criteria must be communicated in writing to CORE/CCA within seven (7) calendar days of such change. It is the responsibility of the applicant to inform CORE/CCA via email at bca.certifications@lacity.org. Failure to communicate such changes as required herein shall constitute grounds for Denial, Closure or Removal of Certification.

RULES AND PROCEDURES IMPLEMENTING THE LOCAL BUSINESS PREFERENCE PROGRAM

PROCEDURE #7: APPEAL PROCESS

An applicant may appeal the denial and removal decision within five (5) business days from the date of the denial and removal letter/email. The appeal must be addressed to the Assistant Director of BCA. Appeals shall be in writing on the firm's letterhead and signed by an executive and clearly state the basis for the appeal with sufficient facts and supporting documentation. Grounds of appeal not stated in the written appeal or supporting documentation will not be considered. Similarly, any appeals submitted after five (5) business days from the date of the denial and removal will not be considered.

Once the Assistant Director is in receipt of an applicant's appeal, the Assistant Director shall review the appeal and make a determination as to whether the factors cited in the denial letter have been sufficiently refuted. The Assistant Director's decision shall be final and will be communicated to the applicant within 30 days of the receipt of the applicant's appeal to the Denial notification. CORE/CCA may extend its appeal response to 45 days should the Assistant Director requires additional time to consider the appeal. Applicants will be notified of the new deadline.