

REPORT

REPORT: Policy Enhancement to the Port of Oakland Non-Discrimination and Small Local Business Utilization Policy. (SRD)

MEETING DATE: 5/28/2015

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SUMMARY

This Agenda Report provides an analysis of the Port of Oakland's Non-Discrimination and Small Local Business Utilization Policy (NDSLBU) outcomes over a five year period (2010-2014), how the policy compares to other similar local and national best practices and uses this analysis to recommend a "pilot project" that the Port could implement to further enhance its small, local business utilization. This Agenda Report requests that the Board of Port Commissioners (the Board) provide direction and prioritization of the elements and focus areas of the proposed NDSLBU Pilot Project.

Background/Historical Overview of NDSLBU Policy

The Port of Oakland approved the first version of its Non-Discrimination and Small Local Business Utilization Policy on March 4, 1997. The basis for this new policy was to ensure non-discrimination for women and minority owned business, while supporting the creation and growth of businesses in the Port's market area. The timing also coincided with the passage of the State of California's passage of Proposition 209, which made minority and women-owned business goal based programs illegal in contracting.

An initial version of the policy, applicable to public works dated October 6, 1997, included a requirement that if a construction bidder did not obtain minority and women owned business participation within a specified range, then that bidder was required to submit documentation of good faith efforts to obtain the participation as proof of non-discrimination. It also included a maximum of 10 preference points for construction bid evaluations based on local and small local business utilization that acted as a discount to the bid. Lastly, the policy included other programs to support the implementation of the policy such as an ombudsman to resolve disputes and a general prompt payment program.

Over time, the NDSLBU Policy was modified to remove the minority and woman owned business participation ranges. Changes were also made to include a consultant program with a maximum of 15 out of 100 points allotted for proposers utilizing small and local businesses during proposal evaluation scoring, and a separate Design-build policy (Alternative Project Delivery Approach) was created to allow for more flexibility in encouraging small and local business utilization. Additionally, a separate Design-build policy (Alternative Project Delivery Approach) was created to allow for more flexibility in encouraging small and local business utilization. The APDA policy was approved by the Board on June 18, 2002.

The CURRENT NDSLBU Policy (last modified and Board approved June 6, 2006) provides that:

Preference points shall be granted when Port certified firms located in the area most impacted by Port projects are utilized. The Local Impact Area (LIA) consists of the cities of Alameda, Emeryville, Oakland and San Leandro, and the Local Business Area (LBA) includes all of Alameda County and Contra Costa County.

- Out of 100 points scoring system, the Port grants preferences of up to 10 percentage points for public works, and 15 percentage points for professional services contracts.
- To receive preference points for public works and professional services, local small businesses must be certified with the Port's SRD division by the bid or proposal due

On February 26, 2015, the Board approved and adopted a revised edition of the Port of Oakland Standard Contract Provisions manual which included the General Conditions, the Non-Discrimination and Small/Local Business Policy, the Maritime and Aviation Project Labor Agreement (MAPLA), the Owner-Controlled Insurance Program Manual, the Construction Safety Standards Manual, and other documents that are common to all public works contracts.

SRD's Efforts to Enhance the Program to Achieve Maximum Small, Local Business Utilization

The Social Responsibility Division overall goal has been to identify necessary changes to the Non-Discrimination and Small Local Business Utilization Policy (NDSLBU) to achieve the following goals:

- validate strong effects on existing business relationships and suggest revisions that align with the Port's current needs;
- increase the number of small and local firms familiar with Port work;
- streamline and clarify the policy by distinguishing contract language, Port procurement procedures, and supporting initiatives;
- gather comprehensive data on minority and women participation in Port procurement, as a

- nondiscrimination best practice; and
- devise an approach that is enhanced by feedback from key stakeholders (contractors, suppliers, vendors, community, etc.) and the current business climate while also balancing these positions with the Port's financial prudence.

Recommended Policy Enhancements

The Social Responsibility Division hired consultants Rosales Business Partners, LLC and Julian Gross Consulting, LLC, to analyze the NDSLBU Policy and its efficacy, and make recommendations on how to accomplish the following goals:

- maintenance of strong participation levels in Port public works contracts for local businesses, especially small local businesses;
- maintenance of strong participation levels in Port professional services contracts for local businesses, especially small local businesses;
- increasing local and small business participation in all of the Port's goods and general services contracts through the application of the bid preference methodology;
- increasing the number of new local firms that can participate on Port contracts;
- ensuring that Port contracts assist small local businesses in building capacity to receive contract awards;
- maintaining flexibility in policy implementation over time; and
- ensuring that Port contract administration processes facilitate participation by local businesses, especially small local businesses.

In this report, there is 1) an analysis of the outcomes achieved by the NDSLBU policy on public works and professional services contracts over the last 5 years (2010-2014) 2) information on best practices implemented by other jurisdictions that could be consider to enhance the NDSLBU policy and 3) initiatives that the Port could implement as a pilot project intended to further increase the organization's local and small business utilization. Staff is requesting guidance on the components of the recommended pilot program and its focus areas to ensure the project meets organizational objectives.

The consultant's report with findings are attached for your review.