



Economic Development Committee

City of Arts & Innovation

**TO: ECONOMIC DEVELOPMENT
COMMITTEE MEMBERS**

DATE: MARCH 21, 2024

FROM: FINANCE DEPARTMENT

WARDS: ALL

SUBJECT: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REFORM

ISSUES:

Receive and provide input for Disadvantaged Business Enterprise Program policy reform.

RECOMMENDATIONS:

That the Economic Development Committee:

1. Discuss and provide input for Disadvantaged Business Enterprise Program policy reform; and
2. Direct staff to incorporate discussion decisions, as well as discuss determinations for policy and legislative revisions.

BACKGROUND:

On April 21, 2009, Resolution No. 21815 was approved by the City Council adopting the Disadvantaged Business Enterprise Program with a Race Conscious component in accordance with the State of California Department of Transportation Disadvantaged Business Enterprise Program Plan based on the U.S. Department of Transportation 49 FR, Part 26 requirements. The City Council also authorized the City Manager or his designee to execute the program and subsequent amendments as required. In order for the City of Riverside to receive Federal Aviation Administration (FAA) and Federal Transit Administration (FTA) grants of over \$250,000 issued by Caltrans, it was imperative that the DBE Program Plan be updated and implemented.

Beginning in April 2018, the Airport, Parks and Recreation and Public Works Departments combined efforts to update the program within the compliance requirements of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26. The program revisions consisted of the following:

- Inclusion of a Table of Contents and program Introduction.

- The program plan update expanded the Objective/Policy Statement to include:
 - Monitoring contracts with DBE participation.
 - Reporting DBE accomplishments semi-annually to FAA, FTA and California Department of Transportation.
 - Implementing the DBE Program plan in accordance with applicable law.
- Added program CFR 49 Part 26 Sections - 11(b), 33, 35, 37, 39, 45, 47, 53(j) and 109.
- Provided an Organization Chart exhibit.
- Revised administrative requirements and implementation measures to ensure procedures can be easily followed.

The updated DBE Program Plan was approved by the City Manager on October 1, 2018.

In January 2019, the FAA Western Region modified several of the Airport Capital Improvement projects that were in the City of Riverside Airport's 5-year plan. This action required the Airport to change their program goals. As a result, the Airport and the Purchasing Division revised Annex A of the approved DBE Program Plan to comply with FAA requirements.

This most recent DBE Program revision was approved by the City Manager on March 21, 2019.

On November 19, 2020, the City Manager's Office presented the Local Preference and Disadvantaged Business Enterprise Procurement Policies and potential new policy implementation overview to the Economic Development, Placemaking, and Branding/Marketing Committee (Committee). Following discussion and without formal motion, the Committee unanimously (1) received and ordered filed an overview of the local preference procurement and disadvantaged business enterprise policies; and (2) requested staff prepare an organizational plan that incorporates stakeholders and topics and information on the request for proposals of vacant City-owned surplus land to the Committee at a future meeting.

On January 21, 2021, the Finance Department presented to the Committee an Organizational Plan for Local Preference Procurement and Disadvantaged Business Enterprise (DBE) Policies incorporating stakeholders' topics and information on request for proposals of vacant City-owned surplus land. Following discussion, the Committee unanimously and without formal motion received and ordered filed the organizational plan.

DISCUSSION:

Historical Context and Current Program Information

The City of Riverside, reflective of its diverse demographic and with a significant portion born outside the United States, recognizes the critical need to foster an inclusive economic environment. The existing Disadvantaged Business Enterprise (DBE) Program, while established primarily to comply with Federal funding requirements, has served as a foundational step towards promoting equitable economic opportunities. However, the program's scope and impact have been limited, necessitating a comprehensive reform to enhance inclusivity and economic mobility within the city's procurement practices.

The State of California and neighboring municipalities have implemented various DBE policies and programs, demonstrating a wide array of approaches to support disadvantaged, minority,

women, and veteran-owned businesses. These programs typically include procurement preferences, certification processes, and efforts to eliminate discriminatory practices. The City of Riverside's current engagement, including the Small & Micro Business Resiliency Grant Program, underscores its commitment to supporting small businesses, particularly those in underserved communities. However, the need for a more structured and expansive approach is evident to effectively harness the potential of DBEs and other marginalized business groups.

Research and Possible Reform Options

Extensive research into best practices nationwide reveals a consensus on the importance of creating a dedicated Vendor Diversity and Management Function. This entity would centralize efforts to streamline vendor onboarding, manage databases, monitor performance, and promote inclusivity through policy implementation and community outreach. Such a function aligns with the "Equity Action Plan" of the U.S. Small Business Administration and NIGP's Global Best Practices for Supplier Diversity, aiming to eliminate barriers for under-utilized businesses.

Furthermore, expanding vendor engagement and community outreach, specifically through hosting informational sessions and implementing mentor-protege programs, is crucial. These efforts, coupled with the enhancement of Local Vendor Preference (LVP) and DBE policies, aim to create a more equitable and accessible procurement ecosystem.

Identification and Removal of Barriers to DBEs

A pivotal aspect of the reform is identifying and dismantling the systemic and procedural barriers that hinder DBE participation in city contracts. This includes simplifying the certification process, reducing excessive bonding and insurance requirements, and potentially unbundling contracts to create more accessible opportunities for small firms. The City's exploration of unbundling contracts requires thorough analysis to ensure cost-effectiveness while expanding opportunities for small businesses.

Engagement and Outreach

The City's initiative to hold at least two sessions annually on how to do business with Riverside is a commendable step towards engaging the local business community. However, there's a need to further expand these efforts, integrating them into a broader strategy of procurement excellence restructuring. This includes leveraging existing programs like the Small & Micro Business Resiliency Grant Program and exploring new avenues for supporting DBEs through financial and non-financial assistance.

Policy Elements to be Determined – Disadvantage Business Enterprise Preference

How should "DBE" be defined as a preference?

Disadvantage Business Enterprise's (DBE) are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and control management and daily business operations.

Many of the programs administered by California cities are implemented in accordance with regulations of the U.S Department of Transportation, 49 Code of Federal Regulation Part 26 as a condition of receiving Federal financial assistance from the Department of Transportation.

What types of contracts should be eligible for a “DBE” Preference, and should there be a dollar amount limitation?

Examples of Other Agency Preference Procurement Policies and DBE Programs:

Riverside County:

The County of Riverside (County) promotes local and small business participation and helps improve opportunities in all procurement activities with the County. The County also encourages greater economic opportunities for veteran-qualified, minority-owned, and women-owned businesses to compete for contracts of all types entered into by entities governed directly or ex-officio by the Riverside County Board of Supervisors.

Generally, veteran-qualified businesses, small businesses, and local businesses receive a 5% procurement preference. In the event of multiple bidders on a single bid qualifying within the same preference designation, match opportunities are given based on lowest to highest costs within said preference designation. A maximum cap of \$25,000 for the preference designations applies. The 5% preference cannot exceed a cost of more than \$25,000 for the lowest bid.

Additionally, the County's Purchasing Department is required, to the best of its ability, and dependent upon technology capabilities and resources, to develop a systematic method for identifying and maintaining an inventory of small, local, veteran-owned, veteran-qualified, minority-owned, and/or woman-owned business organizations and participate in business opportunity related meetings, conferences, seminars, etc.

These policies apply to all agreements, contracts, leases, and procurements for materials, services, or consultants paid for, in whole or in part, out of County funds or funds administered by the County. All bid documents include a statement that the County may, where applicable, apply the preference programs in determining the award of a contract or purchase. The preference programs do not apply to the extent that they conflict with any applicable state or federal law regulation, or funding source requirements.

City of Corona:

The City of Corona Transit Service has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulation Part 26. The City of Corona Transit Service received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Corona signed an assurance that it will comply with 49 Code of Federal Regulation Part 26.

The City of Corona assures equal opportunity in the award and performance of any contract to all persons without regard to race, color, national origin, or sex. The intent of the DBE Program is to eliminate discriminatory practices, ensure discrimination is not occurring, increase participation of DBE's in all contracting activities to the maximum extent feasible, and meet the overall annual DBE participation goal in compliance with 49 Code of Federal Regulation Part 26. Adhering to this policy will ensure a level playing field and foster equal opportunity to receive and participate in DOT-assisted contracts. It is also the City of Corona's Policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;

4. To ensure that only firms that fully meet 49 Code of Federal Regulation Part 26 eligibility standards are permitted to participate as DBE's;
5. To help remove barriers to the participation of DBE's in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
7. Facilitate the implementation of the DBE Program using race-neutral measures to the maximum extent feasible.

City of Moreno Valley:

The City of Moreno Valley has both a Local Vendor Preference Policy and a Disabled Veteran Preference Policy.

A local vendor is a firm, individual, partnership, association, corporation or other legal entity that regularly maintains a place of business and transacts business in, or maintains an inventory of materials, supplies or equipment for sales in, and is licensed to, or pays business taxes to the City of Moreno Valley. A 5% preference is given to local small business vendors for the purchase of nonprofessional services, supplies, materials and equipment, quality and price being equal per the Moreno Valley Municipal Code Section 3.12.

It is also the policy and practice of the City of Moreno Valley to encourage the utilization and participation of Disabled Veterans Business Enterprises in city procurements and to align preference with the State requirements. This policy shall apply to agreements, contracts, acquisition leases, and purchase orders for materials, services, professional services, professional consultants or trainers from firms or individuals engaged in "for profit" business activities paid for in whole or in part out of County funds or funds administered by the City but shall not be utilized where restricted by law or funding source requirements.

City of Los Angeles:

The City of Los Angeles offers certification of Disadvantaged Business Enterprises, Airport Concessions Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises, and Small Local Business Enterprises. The main purpose of this certification program is to promote opportunities for disadvantaged, minority, women, and small, local business owners who want to participate in City contracting projects.

The small local business program provides businesses certified as a small local business with a 10% preference applied to bid contracts of \$100,000 or less.

The transitional job opportunity program was implemented to recognize organizations as transitional employers. These organizations provide job opportunities for the hardest-to-employ or long-term unemployed persons as a way for them to re-enter the mainstream workforce. A certified transitional employer is granted a preference to contracts that do not exceed \$100,000.

State of California Department of General Services – Procurement Division:

The DGS offers certification for Small Business and/or Disabled Veteran Enterprises. The Office of Small Business and DVBE Services (OSDS) administers the new Small Business for the purpose of Public Works (SB-PW) certification. The new certification type was created by Senate Bill 605 (Chapter 673, Statute of 2017), passed in October 2017. This certification type is solely for the purpose of Public Works contracts and/or projects. SB-PW expands the opportunities for small businesses to compete in the public works arena. For the purpose of this certification, public works is defined as in Public Contract Code 1101: An agreement for

the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

In order for a firm to be eligible for the new SB-PW certification, the applicant firm including manufacturers must meet the following requirements:

1. Be independently owned and operated;
2. Not dominant in field of operation;
3. Principal office located in California;
4. Owners, Officers, Members/Managers, Partners must be domiciled in California;
5. Average \$37 million or less in gross annual receipts over the last three tax years (including affiliates);
6. A business with 200 or fewer employees (including affiliates)

Small Business (SB) Certification Eligibility Requirements and Benefits

In order for a small business to be eligible for certification, the small business must meet the following requirements:

1. Be independently owned and operated;
2. Not dominant in field of operation;
3. Principal office located in California;
4. Owners (officers, if a corporation) domiciled in California; and,
5. Including affiliates, be either,
 - a. A business with 100 or fewer employees; an average annual gross receipt of \$16 million or less, over the last three tax years;
 - b. A manufacturer with 100 or fewer employees; or,
 - c. A micro business – a small business will automatically be designated as a micro business, if gross annual receipts are \$5,000,000 or less; or the small business is a manufacturer with 25 or fewer employees.

Upon meeting the Small Business Certification eligibility requirements, certified small business (SBs) and micro businesses (MBs) are entitled to the following benefits:

1. A 5 percent bid preference on applicable State solicitations;
2. As a certified small business/micro business, you are eligible for the State's Small Business Participation Program. This program sets a goal for the use of small businesses in at least 25 percent of the State's overall annual contract dollars;
3. Under the Prompt Payment Act, the State must pay a certified SB/MB higher interest penalties for late payment of an undisputed invoice. Prompt payment penalties for construction firms are addressed separately under Public Contract Code, Section 10261.5);
4. State agencies may use a streamlined process, known as the SB/DVBE Option, by contracting directly with a California certified small business/micro business for goods, services, information technology and Public Works projects. The solicitation must be valued at more than \$5,000 and the State agency must obtain price quotes from at least two California certified small business/micro business;
 - Effective February 4, 2020, the maximum thresholds are:
 - Goods, Services, or Information Technology - \$249,999.99
 - Public Works - \$388,000.00 (Effective 2/4/20: BL 04-20)

Disabled Veteran Business Enterprise (DVBE) Certification Eligibility Requirements and Benefits

For DVBE certification purposes, a "disabled veteran" is:

1. A veteran of the U.S. military, naval, or air service;
2. The veteran must have a service-connected disability of at least 10 percent or more; and
3. The veteran must reside in California.

To be certified as a DVBE, the firm must meet the following requirements:

1. The business must be at least 51 percent owned by one or more disabled veterans;
2. Effective 1/1/2004, per Public Contract Code – DVBE limited liability companies must be wholly owned by one or more disabled veterans.
3. The daily business operations must be managed and controlled by one or more disabled veterans.

The disabled veteran who manages and controls the business is not required to be an owner of the applicant business; and

- Home office must be located in the U.S. (the home office cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign based business).
- All existing and all new DVBE applicants must submit to the Office of Small Business and DVBE Services (OSDS) complete copies of the DVBE's federal income tax returns for the previous three years. DVBEs who have been in business for less than three years shall submit the federal tax returns for each year they've been in business.
- A DVBE applicant that is not a sole proprietorship and rents equipment to the state must provide the federal income tax returns for each of their disabled veteran owners or your firm will be deemed to be an equipment broker.
- DVBE limited liability companies must be wholly owned by one or more disabled veterans.

Upon meeting eligibility requirements, certified DVBEs are entitled to the following:

1. State-certified DVBEs are eligible for the state's DVBE Participation Program. The program sets the goal to use DVBEs in at least 3 percent of the state's overall annual contract dollars.
 2. State agencies may use a streamlined process known as the "SB/DVBE Option" by contracting directly with a California certified DVBE business for goods, services, information technology and public works projects. The solicitation must be valued at more than \$5,000, and the State agency must obtain price quotes from at least two California certified DVBE businesses. For more information, see Government Code Sections 14838.5 and 14838.7.
- Effective January 26, 2022, the maximum thresholds are:
 - Good, Services or Information Technology - \$249,999.99
 - Public Works - \$388,000.00 (Effective 1/26/22: BL 20-02)

OTHER CONSIDERATIONS

State law and City Charter requirements provide some limitations to note. Since Charter section 1109 requires all public works construction contracts to be let to the "lowest responsible bidder," the local preference could not be applied to a construction contract, unless section 1109 were amended to provide for the local preference. Additionally, enterprise funds (water, electric,

refuse, sewer) utilizing ratepayer funds subject to Prop. 218 limitations of “cost of service” should not be eligible for a local preference.

Proposed Reforms

1. **Create a Vendor Diversity and Management Function:** Establish a centralized unit within the Purchasing Division to oversee vendor diversity and management, focusing on streamlining processes, enhancing inclusivity, and expanding engagement with diverse vendors.
2. **Streamline DBE Onboarding and Certification:** Simplify the DBE certification process and reduce onerous requirements that disproportionately impact small and disadvantaged businesses.
3. **Expand Community Outreach and Engagement:** Increase the frequency and scope of informational sessions and workshops aimed at educating vendors about procurement opportunities and support services.
4. **Implement Mentor-Protégé Programs:** Foster partnerships between established firms and emerging DBEs to facilitate knowledge transfer, capacity building, and access to new opportunities.
5. **Revamp the DBE Program:** Broaden the scope of the DBE Program beyond Federal funding requirements to include all city procurement activities, promoting a more inclusive approach to vendor selection and contract awarding.

Conclusion

The City of Riverside stands at a pivotal juncture in its journey towards procurement excellence. By embracing comprehensive reform of the DBE Program and restructuring its procurement practices, Riverside can significantly advance economic mobility for historically marginalized groups and deliver high-quality services for all community members. The proposed reforms, grounded in research and best practices, offer a strategic roadmap to achieving a more equitable, efficient, and transparent procurement process.

STRATEGIC PLAN ALIGNMENT:

This item contributes to the Envision Riverside 2025 City Council Strategic Priority 3 – Economic Opportunity and, specifically, Goal 3.4: Collaborate with key partners to implement policies and programs that promote local business growth and ensure equitable opportunities for all.

This item also aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – Connecting local and disadvantaged businesses with increased procurement and contracting opportunities is in the public best interest, benefits the City’s diverse populations and results in the greater public good.
2. **Equity** – Connecting local and disadvantaged businesses with increased opportunities during the solicitation and contracting processes is supportive of the City’s racial, ethnic, religious, sexual orientation, identity, geographic, and other attributes of diversity and is committed to advancing the fairness of treatment, recognition of rights, and equitable distribution of services to ensure every member of the community has equal access to share the benefits of community progress.

3. **Fiscal Responsibility** – This item supports local and disadvantaged businesses through procurement, allowing for an opportunity to ensure that costs for services are aligned with the City budget and are cost effective.
4. **Innovation** – Connecting local, disadvantaged businesses and stakeholders with the opportunity to expand policies and procedures creating collaborative partnerships and adaptive processes.
5. **Sustainability & Resiliency** – This item supports future growth for local and disadvantaged businesses in the community.

FISCAL IMPACT:

There is no fiscal impact associated with the recommendations in this report. If new programs are recommended and implemented, the fiscal impact, if any, will be defined during City Council approval for those programs.

Prepared by: Jennifer McCoy, Purchasing Manager
Approved by: Kristie Thomas, Finance Director/Assistant Chief Financial Officer
Certified as to
availability of funds: Kristie Thomas, Finance Director/Assistant Chief Financial Officer
Approved by: Edward Enriquez, Assistant City Manager/Chief Financial Officer
Approved as to form: Phaedra Norton, City Attorney

Attachment:

1. DBE Program Plan
2. Presentation