

ORDINANCE NUMBER O- 21516 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 10 2022

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 30 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 22.3003; AMENDING CHAPTER 2, ARTICLE 2, DIVISION 31 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 22.3107; AMENDING CHAPTER 2, ARTICLE 2, DIVISION 32 BY AMENDING SECTIONS 22.3202, 22.3203, AND 22.3207; AMENDING CHAPTER 2, ARTICLE 2, DIVISION 36 BY AMENDING SECTIONS 22.3601, 22.3602, 22.3603, 22.3604 AND 22.3605; BY REPEALING SECTION 22.3606; BY AMENDING AND RENUMBERING SECTION 22.3607 TO SECTION 22.3606, SECTION 22.3608 TO SECTION 22.3607, SECTION 22.3609 TO SECTION 22.3608, SECTION 22.3610 TO SECTION 22.3609, SECTION 22.3611 TO SECTION 22.3610, AND SECTION 22.3612 TO SECTION 22.3611; BY RENUMBERING SECTION 22.3613 TO SECTION 22.3612, SECTION 22.3614 TO SECTION 22.3613, AND SECTION 22.3616 TO SECTION 22.3615; BY ADDING NEW SECTIONS 22.3616, 22.3617, 22.3618, 22.3619, 22.3620, AND 22.3621; BY AMENDING AND RENUMBERING SECTION 22.3615 TO SECTION 22.3614, SECTION 22.3617 TO SECTION 22.3622, SECTION 22.3619 TO SECTION 22.3624, AND SECTION 22.3622 TO SECTION 22.3627; AND BY RENUMBERING SECTION 22.3618 TO SECTION 22.3623, SECTION 22.3620 TO SECTION 22.3625, AND SECTION 22.3621 TO SECTION 22.3626 RELATING TO SMALL AND LOCAL BUSINESS CONTRACTING.

WHEREAS, in April of 2021, Purchasing & Contracting staff presented to the City Council findings for the 2020 City of San Diego Disparity Study conducted by BBC Research and Consulting (BBC); and

WHEREAS, the purpose of the study was to identify gaps in the organization's contracting and included items for consideration to remedy those gaps; and

WHEREAS, City Council asked staff to recommend how the findings in the Disparity Study could be implemented; and

WHEREAS, in response to the Disparity Study, City staff proposed increasing thresholds for competitive bidding to match industry pricing; and

WHEREAS, in addition, City staff recommend expanding the use of mandatory Small Local Business Enterprises (*SLBE*) and Emerging Local Business Enterprises (*ELBE*) subcontracting goals, relating to public works construction contracts, and to goods, services, and consultant contracts and procurement; and NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article, 2, Division 30 of the San Diego Municipal Code is amended by amending section 22.3003 to read as follows:

**§22.3003 Definitions**

*Agency through Maintenance* [No change in text]

*Major public works contract* means a public works contract of more than \$1,000,000.

*Minor public works contract* means a public works contract of \$1,000,000 or less.

*Municipal decision through Valued* [No change in text.]

Section 2. That Chapter 2, Article, 2, Division 31 of the San Diego Municipal Code is amended by amending section 22.3107 to read as follows:

**§ 22.3107 Award of Public Works Contracts**

(a) *Major public works contracts* of \$1,500,000 or more shall be awarded through a competitive process according to the project delivery method:

(1) through (3) [No change in text.]

- (4) All other *major public works contracts* of \$1,500,000 or more shall be awarded to the lowest *responsible* and reliable *bidder*.
- (b) *Major public works contracts* of more than \$1,000,000 and less than \$1,500,000 shall be awarded through a competitive process pursuant to Section 22.3107(a), except that the City Manager may include a *bid discount* pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.
- (c) [No change in text.]

Section 3. That Chapter 2, Article, 2, Division 32 of the San Diego Municipal Code is amended by amending section 22.3202, 22.3203, 22.3207 to read as follows:

**§22.3202 Competitive Process for Consultant Contracts**

Except as otherwise provided in section 22.3208:

- (a) through (f) [No change in text.]
- (g) In the selection of consultants, the Purchasing Agent shall follow the requirements of Chapter 2, Article 2, Division 36 of this Code to maximize the participation of small and local businesses.

**§ 22.3203 Competitive Process for Contracts for Goods and Services**

Except as otherwise provided in section 22.3208, *contracts for goods* and *contracts for services* shall be awarded through a competitive process based on the estimated amount of City funds to be paid to the winning *bidder* under the contract.

- (a) through (c) [No change in text.]

- (d) For contracts greater than \$25,000, the Purchasing Agent shall follow the requirements of Chapter 2, Article 2, Division 36 of this Code to maximize the participation of small and local businesses.

**§22.3207 Award of Consultant Contracts**

- (a) The Purchasing Agent may award a *consultant contract* without City Council approval if:
  - (1) The *consultant contract* does not exceed \$500,000; and
  - (2) The total cumulative amount of contract awards to the consultant, including the current award, does not exceed \$500,000 in any given fiscal year.
- (b) through (d) [No change in text.]

Section 4. That Chapter 2, Article, 2, Division 36 of the San Diego Municipal Code is amended by amending, adding and re-numbering sections 22.3601-22.3627 to read as follows:

**Article 2: Administrative Code**

**Division 36: Small and Local Business Program Administration**

**§22.3601 Purpose**

The City Council wants to create programs intended to enhance diversity in City contracts, increase competition, and stimulate the local economy by providing opportunities to small and local businesses. In addition, the City has a compelling interest in ensuring that it is neither an active nor passive participant in marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community. This Division, therefore, establishes a small and local business program for *public works contracts, consultant contracts, contracts*

*for goods, and contracts for services* which includes: (1) small and local business bid preferences and mandatory subcontractor participation requirements for *major public works, consultant contracts, contracts for goods and contracts for services* and (2) sheltered competition programs for *minor public works, consultant contracts, contracts for goods, and contracts for services*. This program is intended to provide a race and gender-neutral tool to expand opportunities for, and develop the capacity of, small and local firms so that all segments of the community may participate in City contracts.

**§22.3602      *Applicability***

This Division applies to all *public works contracts, consultant contracts, contracts for goods, and contracts for services* except for *contracts* that are not “municipal affairs” under article II, section 5 of the California Constitution.

**§22.3603      *Definitions***

Defined terms used in this Division appear in italics. For purposes of this Division:

*Bid discount*: the application of a percentage discount to the total amount of a bid submitted by a Bidder for a Contract solely for the purpose of bid comparisons when evaluating the lowest, responsive, and *responsible bid*.

*Emerging Business Enterprise through Significant Employee Presence*

[No change in text.]

*Small Business Enterprise* or *SBE* means a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing this Division. The City Manager

shall review the threshold amount for *SBEs* on an annual basis, and adjust as necessary to reflect changes in the marketplace. A business certified as a Disabled Veteran Business Enterprise by the State of California, and that has provided proof of such certification to the City Manager, may be deemed to be an *SBE*.

*Small Local Business Enterprise* [No change in text.]

**§22.3604 Determination of Value of a Public Works Contract**

(a) through (b) [No change in text.]

(c) If *minor public works contracts* advertising, bidding, and award procedures are used, the fact that one or more of the bids received exceeds \$1,000,000 does not render the procedures or award of a public works contract invalid. However, if *minor public works contracts* advertising, bidding, and award procedures are used, and all bids exceed \$1,050,000 the City Manager must reject the bids and commence procedures for *major public works*.

**§22.3605 Establishment of SLBE and ELBE Lists**

(a) The City Manager shall establish and maintain a list of eligible *SLBEs* and a list of eligible *ELBEs*, for the purposes of awarding *minor public works contracts, consultant contracts, contracts for goods, and contracts for services*.

(b) The *SLBE* and *ELBE* eligibility lists will include information regarding the licenses held and disciplines of each business on the list, if applicable.

- (c) The City Manager shall establish *SLBEs* and *ELBEs* eligibility requirements and make them publicly available as required under Section 22.3626 of this Division

**§22.3606 Removal and Reinstatement**

- (a) [No change in text.]
- (b) A business that has been removed from an eligibility list under Section 22.3606(a)(1) may be reinstated after establishing that the business qualifies as an *SLBE* or *ELBE* and successfully completes the City Manager's application process for reinstatement.

**§22.3607 Appeals**

A business that has been denied *SLBE* or *ELBE* eligibility, or removed from an eligibility list under Section 22.3606(a)(2), may file an appeal within 15 days of the denial or removal. The City Manager shall establish procedures for the filing, granting and denial of appeals, which shall include the opportunity for a hearing.

**§22.3608 Solicitation of Bids for and Award of Major Public Works Contracts Valued at \$1,500,000 and Over**

The City Manager shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for *SLBEs* and/or *ELBEs* for *major public works contracts* valued at \$1,500,000 or more. *Bidders* that do not reach the mandatory subcontractor participation requirement, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award. *SLBE* and *ELBE* prime contractors will be deemed to have met the subcontractor

participation requirement, provided that the *SLBE* or *ELBE* prime contractor self performs at least 51 percent of the *public works contract*.

**§22.3609 Solicitation of Bids for and Award of Major Public Works Contracts Valued at More Than \$1,000,000 but Less Than \$1,500,000**

In addition, the City Manager shall, on a project-by-project basis, do one or both of the following for *major public works contracts* valued at more than \$1,000,000 but less than \$1,500,000:

(a) Permit a *bid discount* of:

(1) [No change in text.]

(2) Up to a maximum of a 5 percent discount if the prime contract achieves the amount of the *SLBE* or *ELBE* subcontractor participation, or the amount of *SLBE* or *ELBE* participation in a City approved *joint venture*. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the lowest, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted *bidder* will be awarded the *public works contract*.

(b) [No change in text.]



**§22.3610 Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than \$500,000 but Less Than or Equal to \$1,000,000**

- (a) *Minor public works contracts* valued at more than \$500,000 but less than or equal to \$1,000,000 shall be awarded through a competitive bid process open only to businesses listed on the *SLBE* or *ELBE* eligibility lists.
- (b) The lowest responsible and reliable *SLBE* or *ELBE* bidder shall be awarded the *public works contract*. If there are no responsible bids, the City Manager shall follow the advertising, bidding, and award procedures for *major public works contracts* valued at more than \$1,000,000 but less than \$1,500,000 as set forth in Section 22.3608 and 22.3609.
- (c) [No change in text.]

**§22.3611 Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$500,000 and Under**

- (a) *Minor public works contracts* valued at \$500,000 or less shall be awarded through a competitive bid process open only to businesses listed on the *ELBE* eligibility list. If there are no businesses on the *ELBE* eligibility list that have the requisite licenses for the *contract*, the competitive bid process will also be open to *SLBEs*.
- (b) For a public works project previously identified and appropriated through the Annual Capital Improvements Program budget, the City Manager shall award the *minor public works contract* to the lowest responsible and reliable *ELBE bidder*, or *SLBE bidder*, in the event the competitive process was opened to *SLBEs*. If there are no *bidders* or responsive bids,

the City Manager may follow the advertising, bidding, and award procedures for *major public works contracts* valued at more than \$1,000,000 but less than \$1,500,000 as set forth in Section 22.3609.

(c) through (d) [No change in text.]

**§22.3612 Plans and Specifications to be Provided Free of Charge to SLBEs or ELBEs**

[No change in text.]

**§22.3613 Emergency Contracts**

[No change in text.]

**§22.3614 Effect of Amendments to Minor Public Works Contracts**

As long as the original value of a *minor public works contract* as determined at bid opening is less than or equal to \$1,000,000, any future amendments increasing the value of that *contract* do not render the bidding, award or administration process invalid.

**§22.3615 Reduction in Subcontracts**

[No change in text.]

**§22.3616 Competitive Process for Consultant Contracts Requiring SLBE and ELBE Program Participation**

- (a) The City Manager shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for *SLBEs* and/or *ELBEs* for *consultant contracts* valued at more than \$500,000. Proposals that do not reach the mandatory subcontractor participation requirement as defined by the City Manager, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award. *SLBE* and/or

*ELBE* prime consultants will be deemed to have met the subcontractor participation requirement if the *SLBE* and/or *ELBE* prime contractor self-performs at least 51 percent of the *consultant contract*.

- (b) The value of a *consultant contract* for purposes of these requirements shall be determined by the City Manager's estimate of the costs of professional services prior to commencing consultant selection so that proper procedures may be used to advertise, bid, and award the contract.
- (c) *Consultant contracts* valued at more than \$25,000 but less than or equal to \$250,000, shall be awarded through a competitive process open only to businesses listed on the *ELBE* eligibility list. If there are no businesses on the *ELBE* eligibility list that have the requisite experience for the contract, the competitive process will also be open to *SLBEs*. If there are one or less businesses on the *SLBE* and/or *ELBE* eligibility lists that have the requisite experience for the contract, the competitive process will also be open to all proposers.
- (d) *Consultant contracts* valued at more than \$250,000 but less than or equal to \$500,000 shall be awarded through a competitive process open only to businesses listed on the *SLBE* and/or *ELBE* eligibility lists. If there are one or less businesses on the *SLBE* and/or *ELBE* eligibility lists that have the requisite experience for the contract, the competitive process will also be open to all proposers subject to Section 22.3207 of Division 32 of this Article.

- (e) The fact that one or more of the proposals received exceeds the estimate set by the City Manager for required *SLBE* and/or *ELBE* participation does not render the procedures or award of a *consultant contract* invalid. However, if all proposals exceed the amount, the City Manager must reject the proposals and may re-determine the value of the *consultant contract*.

**§22.3617 Bid Preference for Consultant Contracts**

In the event mandatory subcontractor participation requirements for *SLBE* and/or *ELBE consultant contracts* cannot be applied, the City Manager shall, for all consultant contracts valued at over \$25,000:

- (a) Incorporate a voluntary subcontractor participation requirement of 20% and allow for preference points as detailed in Section 22.3617(b).
- (b) Apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:
- (1) If the *bidder* achieves 20% participation, apply 5% of the total possible evaluation points to the *bidder's* score; or
  - (2) If the *bidder* achieves 25% participation, apply 10% of the total possible evaluation points to the *bidder's* score; or
  - (3) If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.

**§22.3618 Competitive Process for Goods and Services Contracts Requiring SLBE and ELBE Program Participation Valued More Than \$250,000 but Less Than or Equal to \$500,000**

- (a) Contracts for goods and *contracts for services* valued more than \$250,000, but less than or equal to \$500,000, shall be awarded through a competitive bid process open only to businesses listed on the *SLBE* or *ELBE* eligibility lists.
- (b) If there are no businesses on the *ELBE* or *SLBE* eligibility lists that have the requisite goods or experience required for the contract, or if there are no *responsible bidders*, the competitive process will also be open to all bidders, and the requirements of §22.3619 or §22.3620 shall apply.

**§22.3619 Competitive Process for Goods and Services Contracts Requiring SLBE and ELBE Program Participation Valued More Than \$25,000 but Less Than or Equal to \$250,000**

- (a) Contracts for goods and *contracts for services* valued more than \$25,000, but less than or equal to \$250,000, shall be awarded through a competitive bid process open only to businesses listed on the *ELBE* eligibility list.
- (b) If there are no businesses on the *ELBE* eligibility list that have the requisite goods or experience required for the contract, or if there are no *responsible bidders*, the competitive bid process will also be open to *SLBEs*.

**§22.3620 Bid Discounts for Contracts for Goods and Contracts for Services**

For bids valued at greater than \$500,000, the City Manager shall:

- (a) Permit a *bid discount* of:
- (1) Five (5) percent for *SLBE* or *ELBE* prime contractors; or
  - (2) Up to a maximum of (five) 5 percent of the amount of *SLBE* and/or *ELBE* subcontractor participation, or the amount of *SLBE* and/or *ELBE* participation in a City-approved *joint venture*. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the lowest, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted *bidder* will be awarded the *contract for goods* or *contract for services*.
- (b) Include a mandatory subcontractor participation requirement for *SLBEs* and/or *ELBEs*. Bids that do not reach the mandatory subcontractor participation requirement, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award.
- (c) Incorporate a voluntary subcontracting participating requirement if mandatory *SLBE* or *ELBE* participation cannot be applied.
1. The City will apply a *bid discount* of 5 percent off the bid price for prime contractors achieving the voluntary goal of 20 percent for *SLBE* or *ELBE* subcontractor participation.
  2. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the low, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted

*bidder* will be awarded the goods or services contract. The discount shall be taken off the total contract value, including contract option years.

**§22.3621 Bid Preference for Contracts for Goods and Contracts for Services**

For proposals, in the event mandatory *SLBE* or *ELBE* participation cannot be applied, the City will incorporate voluntary subcontracting participation requirements of 20 percent for *SLBEs* and *ELBEs* and allow for preference points. The City Manager shall:

(a) Apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:

- (1) If the *bidder* achieves 20 percent participation, apply 5 percent of the total possible evaluation points to the *bidder's* score; or
- (2) If the *bidder* achieves 25 percent participation, apply 10 percent of the total possible evaluation points to the *bidder's* score; or
- (3) If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.

**§22.3622 Waivers**

The intent of this Division is to maximize the opportunity for *SLBE* and *ELBE* prime and subcontractor participation in City *public works contracts, consultant contracts, contracts for goods, and contracts for services*. However, the City Manager may grant written waivers of *SLBE* and *ELBE* bid preferences or subcontractor participation requirements on a project-by-project basis when in the

best interests of the City. The City Manager shall establish procedures for granting and documenting waivers, and shall report quarterly to the City Council regarding such waivers.

**§22.3623 Bonding and Insurance**

[No change in text.]

**§22.3624 Technical Assistance**

The City Manager may establish technical assistance programs to assist *SLBEs* and *ELBEs* in applying for business-type certifications, becoming eligible for *major public works, minor public works contracts, consultant contracts, contracts for goods, and contracts for services*, securing necessary bonding and insurance, and generally complying with the City's advertising, bidding, and award process.

**§22.3625 Packaging of Public Works Contracts**

[No change in text.]

**§22.3626 City Manager to Adopt Regulations**

[No change in text.]

**§22.3627 Audit and Reporting Requirements**

The City Auditor, or some other independent body or auditing firm, shall periodically conduct audits of the Small and Local Business Program for *public works contracts, consultant contracts, contracts for goods, and contracts for services*. The City Manager shall report annually to the City Council regarding the impact and costs of implementing the Small and Local Business Program for



*public works contracts, consultant contracts, contracts for goods, and contracts for services.*

Section 5. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Eric Pooch  
Eric Pooch  
Deputy City Attorney

DCF:DF:hm  
April 1, 2022  
COR.COPY  
7/22/2022  
Or.Dept: P&C  
Doc. No.: 3031867\_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of AUG 02 2022.

ELIZABETH S. MALAND  
City Clerk

By Connie Patterson  
Deputy City Clerk

Approved: 8/10/22  
(date)

Todd Gloria  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~Struck Out~~**

**NEW LANGUAGE: Double Underline**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

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**§22.3003 Definitions**

*Agency through Maintenance* [No change in text]

*Major public works contract* means a public works contract of more than ~~\$500,000~~ \$1,000,000.

*Minor public works contract* means a public works contract of ~~\$500,000~~ \$1,000,000 or less.

*Municipal decision through Valued* [No change in text.]

**§ 22.3107 Award of Public Works Contracts**

(a) *Major public works contracts* of ~~\$1,000,000~~ \$1,500,000 or more shall be awarded through a competitive process according to the project delivery method:

(1) through (3) [No change in text.]

(4) All other *major public works contracts* of ~~\$1,000,000~~ \$1,500,000 or more shall be awarded to the lowest *responsible* and reliable bidder.

(b) *Major public works contracts* of more than ~~\$500,000~~ \$1,000,000 and less than ~~\$1,000,000~~ \$1,500,000 shall be awarded through a competitive process pursuant to Section 22.3107(a), except that the City Manager may include a ~~bid discount~~ bid discount pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.

(c) [No change in text.]

**§22.3202 Competitive Process for Consultant Contracts**

Except as otherwise provided in section 22.3208:

(a) through (f) [No change in text.]

(g) In the selection of consultants, the Purchasing Agent shall follow the requirements of Chapter 2, Article 2, Division 36 of this Code to maximize the participation of small and local businesses.

**§ 22.3203 Competitive Process for Contracts for Goods and Services**

Except as otherwise provided in section 22.3208, *contracts for goods* and *contracts for services* shall be awarded through a competitive process based on the estimated amount of City funds to be paid to the winning *bidder* under the contract.

(a) through (c) [No change in text.]

(d) For contracts greater than \$25,000, the Purchasing Agent shall follow the requirements of Chapter 2, Article 2, Division 36 of this Code to maximize the participation of small and local businesses.

**§22.3207 Award of Consultant Contracts**

(a) The Purchasing Agent may award a *consultant contract* without City Council approval if:

- (1) The *consultant contract* does not exceed ~~\$250,000~~ \$500,000; and
- (2) The total cumulative amount of contract awards to the consultant, including the current award, does not exceed ~~\$250,000~~ \$500,000 in any given fiscal year.

(b) through (d) [No change in text.]

**Article 2: Administrative Code**

**Division 36: Small and Local Business Program Administration  
~~for Public Works Contracts~~**

**§22.3601 Purpose**

The City Council wants to create programs intended to enhance diversity in City contracts, increase competition, and stimulate the local economy by providing opportunities to small and local businesses. In addition, the City has a compelling interest in ensuring that it is neither an active nor passive participant in marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community. This Division, therefore, establishes a small and local business program for *public works contracts, consultant contracts, contracts for goods, and contracts for services* which includes: (1) small and local business bid preferences and mandatory subcontractor participation requirements for *major public works, consultant contracts, contracts for goods and contracts for services* and (2) sheltered competition programs for *minor public works, consultant contracts, contracts for goods, and contracts for services*. This program is intended to provide a race and gender-neutral tool to expand opportunities for, and develop the capacity of, small and local firms so that all segments of the community may participate in City contracts.

**§22.3602 Applicability**

This Division applies to all *public works contracts, consultant contracts, contracts for goods, and contracts for services* except for *contracts* that are not “municipal affairs” under article II, section 5 of the California Constitution.

**§22.3603 Definitions**

Defined terms used in this Division appear in italics. For purposes of this Division:

*Bid discount: the application of a percentage discount to the total amount of a bid submitted by a Bidder for a Contract solely for the purpose of bid comparisons when evaluating the lowest, responsive, and responsible bid.*

*Emerging Business Enterprise through Significant Employee Presence*

[No change in text.]

*Small Business Enterprise or SBE* means a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing this Division. The City Manager shall review the threshold amount for *SBEs* on an annual basis, and adjust as necessary to reflect changes in the marketplace. A business certified as a Disabled Veteran Business Enterprise by the State of California, and that has provided proof of such certification to the City Manager, may shall be deemed to be an *SBE*.

*Small Local Business Enterprise* [No change in text.]

**§22.3604 Determination of Value of a Public Works Contract**

(a) through (b) [No change in text.]

(c) If *minor public works contracts* advertising, bidding, and award procedures are used, the fact that one or more of the bids received exceeds ~~\$500,000~~ \$1,000,000 does not render the procedures or award of a public works contract invalid. However, if *minor public works contracts* advertising, bidding, and award

procedures are used, and all bids exceed \$550,000, \$1,050,000 the City Manager must reject the bids and commence procedures for *major public works*.

**§22.3605 Establishment of SLBE and ELBE Lists**

- (a) The City Manager shall establish and maintain a list of eligible *SLBEs* and a list of eligible *ELBEs*, for the purposes of awarding *minor public works contracts, consultant contracts, contracts for goods, and contracts for services*.
- (b) The *SLBE* and *ELBE* eligibility lists will include information regarding the licenses held and disciplines of each business on the list, if applicable.
- (c) The City Manager shall establish *SLBEs* and *ELBEs* eligibility requirements and make them publicly available as required under Section 22.3626 of this Division

**~~§22.3606 Eligibility for SLBE and ELBE Lists~~**

- ~~(a) Except as provided in Section 22.3606(b), to be eligible to be placed on the appropriate eligibility list, an *SLBE* or *ELBE* shall:~~
  - ~~(1) be owned by construction professionals licensed by the California Contractors State Licensing Board;~~
  - ~~(2) be owned by construction professionals in good standing with the City of San Diego;~~
  - ~~(3) have a City of San Diego Business Tax Certificate authorizing it to do business in this City;~~
  - ~~(4) provide a signed statement of an authorized representative of the business affirming that it meets the eligibility requirements of an~~

~~SLBE or ELBE set forth in this Division and implementing regulations. The statement shall be signed under penalty of perjury under California law; and~~

~~(5) submit a completed application in accordance with procedures established by the City Manager. Protégés may submit their Mentor Protégé application and signed participation agreement in lieu of the application required by this section.~~

~~(b) A business certified as a Minority owned Business Enterprise, Woman-owned Business Enterprise, or Disadvantaged Business, by any department of the State of California or other public agency recognized by the City of San Diego as a certifying agency is not precluded from becoming eligible as an SLBE or ELBE. However, such certification does not eliminate the necessity for meeting the requirements for an SLBE or ELBE.~~

**§22.36076 Removal and Reinstatement**

- (a) [No change in text.]
- (b) A business that has been removed from an eligibility list under Section ~~22.3607(a)(1)~~ 22.3606(a)(1) may be reinstated after establishing that the business qualifies as an *SLBE* or *ELBE* and successfully completes the City Manager's application process for reinstatement.

**§22.36087 Appeals**

A business that has been denied *SLBE* or *ELBE* eligibility, or removed from an eligibility list under Section ~~22.3607(a)(2)~~ 22.3606(a)(2), may file an appeal



within 15 days of the denial or removal. The City Manager shall establish procedures for the filing, granting and denial of appeals, which shall include the opportunity for a hearing.

**§22.36098 Solicitation of Bids for and Award of Major Public Works Contracts Valued at ~~\$1,000,000~~ \$1,500,000 and Over**

The City Manager shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for *SLBEs* and/or *ELBEs* for *major public works contracts* valued at ~~\$1,000,000~~ \$1,500,000 or more. *Bidders* that do not reach the mandatory subcontractor participation requirement, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award. *SLBE* and *ELBE* prime contractors will be deemed to have met the subcontractor participation requirement, provided that the *SLBE* or *ELBE* prime contractor self performs at least 51 percent of the *public works contract*.

**§22.36109 Solicitation of Bids for and Award of Major Public Works Contracts Valued at More Than ~~\$500,000~~ \$1,000,000 but Less Than ~~\$1,000,000~~ \$1,500,000**

In addition, the City Manager shall, on a project-by-project basis, do one or both of the following for *major public works contracts* valued at more than ~~\$500,000~~ \$1,000,000 but less than ~~\$1,000,000~~ \$1,500,000:

- (a) Permit a ~~bid discount~~ bid discount of:
- (1) [No change in text.]
  - (2) up to a maximum of a 5 percent discount if the prime contract achieves the amount of the *SLBE* or *ELBE* subcontractor participation, or the amount of *SLBE* or *ELBE* participation in a City approved *joint venture*, ~~up to a maximum of 5 percent~~. The discount will not apply if an award to the discounted ~~bidder~~ bidder

would result in a total contract cost of \$50,000 in excess of the lowest, non-discounted bid. In the event of a tie bid between a discounted ~~bidder~~ bidder and non-discounted ~~bidder~~ bidder, the discounted ~~bidder~~ bidder will be awarded the *public works contract*.

(b) [No change in text.]

**§22.36110 Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than ~~\$250,000~~ \$500,000 but Less Than or Equal to ~~\$500,000~~ \$1,000,000**

(a) *Minor public works contracts* valued at more than ~~\$250,000~~ \$500,000 but less than or equal to ~~\$500,000~~ \$1,000,000 shall be awarded through a competitive bid process open only to businesses listed on the *SLBE* or *ELBE* eligibility lists.

(b) The lowest responsible and reliable *SLBE* or *ELBE* bidder shall be awarded the *public works contract*. If there are no responsible bids, the City Manager shall follow the advertising, bidding, and award procedures for *major public works contracts* valued at more than ~~\$500,000~~ \$1,000,000 but less than ~~\$1,000,000~~ \$1,500,000 as set forth in Section 22.3608 and ~~22.361009~~.

(c) [No change in text.]

**§22.36121 Solicitation of Bids for and Award of Minor Public Works Contracts Valued at ~~\$250,000~~ \$500,000 and Under**

(a) *Minor public works contracts* valued at ~~\$250,000~~ \$500,000 or less shall be awarded through a competitive bid process open only to businesses listed on the *ELBE* eligibility list. If there are no businesses on the *ELBE*

eligibility list that have the requisite licenses for the *contract*, the competitive bid process will also be open to *SLBEs*.

- (b) For a public works project previously identified and appropriated through the Annual Capital Improvements Program budget, the City Manager shall award the *minor public works contract* to the lowest responsible and reliable *ELBE bidder*, or *SLBE bidder*, in the event the competitive process was opened to *SLBEs*. If there are no *bidders* or responsive bids, the City Manager may follow the advertising, bidding, and award procedures for *major public works contracts* valued at more than \$500,000 \$1,000,000 but less than ~~\$1,000,000~~ \$1,500,000 as set forth in Section 22.361009.

(c) through (d) [No change in text.]

**§22.36132 Plans and Specifications to be Provided Free of Charge to SLBEs or ELBEs**

[No change in text.]

**§22.36143 Emergency Contracts**

[No change in text.]

**§22.36154 Effect of Amendments to Minor Public Works Contracts**

As long as the original value of a *minor public works contract* as determined at bid opening is less than or equal to \$500,000 \$1,000,000, any future amendments increasing the value of that *contract* do not render the bidding, award or administration process invalid.

**§22.36165 Reduction in Subcontracts**

[No change in text.]

§22.3616

Competitive Process for Consultant Contracts Requiring SLBE and ELBE Program Participation

- (a) The City Manager shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for SLBEs and/or ELBEs for consultant contracts valued at more than \$500,000. Proposals that do not reach the mandatory subcontractor participation requirement as defined by the City Manager, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award. SLBE and/or ELBE prime consultants will be deemed to have met the subcontractor participation requirement if the SLBE and/or ELBE prime contractor self-performs at least 51 percent of the consultant contract.
- (b) The value of a consultant contract for purposes of these requirements shall be determined by the City Manager's estimate of the costs of professional services prior to commencing consultant selection so that proper procedures may be used to advertise, bid, and award the contract.
- (c) Consultant contracts valued at more than \$25,000 but less than or equal to \$250,000, shall be awarded through a competitive process open only to businesses listed on the ELBE eligibility list. If there are no businesses on the ELBE eligibility list that have the requisite experience for the contract, the competitive process will also be open to SLBEs. If there are one or less businesses on the SLBE and/or ELBE eligibility lists that have the requisite experience for the contract, the competitive process will also be open to all proposers.

- (d) Consultant contracts valued at more than \$250,000 but less than or equal to \$500,000 shall be awarded through a competitive process open only to businesses listed on the SLBE and/or ELBE eligibility lists. If there are one or less businesses on the SLBE and/or ELBE eligibility lists that have the requisite experience for the contract, the competitive process will also be open to all proposers subject to Section 22.3207 of Division 32 of this Article.
- (e) The fact that one or more of the proposals received exceeds the estimate set by the City Manager for required SLBE and/or ELBE participation does not render the procedures or award of a consultant contract invalid. However, if all proposals exceed the amount, the City Manager must reject the proposals and may re-determine the value of the consultant contract.

**§22.3617 Bid Preference for Consultant Contracts**

In the event mandatory subcontractor participation requirements for SLBE and/or ELBE consultant contracts cannot be applied, the City Manager shall, for all consultant contracts valued at over \$25,000:

- (a) Incorporate a voluntary subcontractor participation requirement of 20% and allow for preference points as detailed in Section 22.3617(b).
- (b) Apply a maximum of an additional 12% of the total possible evaluation points to the bidder's final score for SLBE or ELBE participation as follows:

- (1) If the bidder achieves 20% participation, apply 5% of the total possible evaluation points to the bidder's score; or
- (2) If the bidder achieves 25% participation, apply 10% of the total possible evaluation points to the bidder's score; or
- (3) If the prime contractor is a SLBE or an ELBE, apply 12% of the total possible evaluation points to the bidder's score.

**§22.3618**

**Competitive Process for Goods and Services Contracts Requiring SLBE and ELBE Program Participation Valued More Than \$250,000 but Less Than or Equal to \$500,000**

- (a) Contracts for goods and contracts for services valued more than \$250,000, but less than or equal to \$500,000, shall be awarded through a competitive bid process open only to businesses listed on the SLBE or ELBE eligibility lists.
- (b) If there are no businesses on the ELBE or SLBE eligibility lists that have the requisite goods or experience required for the contract, or if there are no responsible bidders, the competitive process will also be open to all bidders, and the requirements of §22.3619 or §22.3620 shall apply.

**§22.3619**

**Competitive Process for Goods and Services Contracts Requiring SLBE and ELBE Program Participation Valued More Than \$25,000 but Less Than or Equal to \$250,000**

- (a) Contracts for goods and contracts for services valued more than \$25,000, but less than or equal to \$250,000, shall be awarded through a competitive bid process open only to businesses listed on the ELBE eligibility list.
- (b) If there are no businesses on the ELBE eligibility list that have the requisite goods or experience required for the contract, or if there are no

responsible bidders, the competitive bid process will also be open to  
SLBEs.

**§22.3620 Bid Discounts for Contracts for Goods and Contracts for Services**

For bids valued at greater than \$500,000, the City Manager shall:

- (a) Permit a bid discount of:
  - (1) 5 percent for SLBE or ELBE prime contractors; or
  - (2) Up to a maximum of 5 percent of the amount of SLBE and/or ELBE subcontractor participation, or the amount of SLBE and/or ELBE participation in a City-approved joint venture. The discount will not apply if an award to the discounted bidder would result in a total contract cost of \$50,000 in excess of the lowest, non-discounted bid. In the event of a tie bid between a discounted bidder and non-discounted bidder, the discounted bidder will be awarded the contract for goods or contract for services.
- (b) Include a mandatory subcontractor participation requirement for SLBEs and/or ELBEs. Bids that do not reach the mandatory subcontractor participation requirement, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award.
- (c) Incorporate a voluntary subcontracting participation requirement if the mandatory SLBE or ELBE participation cannot be applied.
  - (1) The City will apply a bid discount of 5 percent off the bid price for prime contractors achieving the voluntary goal of 20 percent for SLBE or ELBE subcontractor participation.

- (2) The discount will not apply if an award to the discounted bidder would result in a total contract cost of \$50,000 in excess of the low, non-discounted bid. In the event of a tie bid between a discounted bidder and non-discounted bidder, the discounted bidder will be awarded the goods or services contract. The discount shall be taken off the total contract value, including contract option years.

**§22.3621 Bid Preference for Contracts for Goods and Contracts for Services**

For proposals, in the event mandatory SLBE or ELBE participation cannot be applied, the City will incorporate voluntary subcontracting participation requirements of 20 percent for SLBEs and ELBEs and allow for preference points.

The City Manager shall:

- (a) Apply a maximum of an additional 12% of the total possible evaluation points to the bidder's final score for SLBE or ELBE participation as follows:
- (1) If the bidder achieves 20 percent participation, apply 5 percent of the total possible evaluation points to the bidder's score; or
  - (2) If the bidder achieves 25 percent participation, apply 10 percent of the total possible evaluation points to the bidder's score; or
  - (3) If the prime contractor is a SLBE or an ELBE, apply 12% of the total possible evaluation points to the bidder's score.



**§22.361722 Waivers**

The intent of this Division is to maximize the opportunity for *SLBE* and *ELBE* prime and subcontractor participation in *City public works contracts, consultant contracts, contracts for goods, and contracts for services.* However, the City Manager may grant written waivers of *SLBE* and *ELBE* bid preferences or subcontractor participation requirements on a project-by-project basis when in the best interests of the City. The City Manager shall establish procedures for granting and documenting waivers, and shall report quarterly to the City Council regarding such waivers.

**§22.361823 Bonding and Insurance**

[No change in text.]

**§22.361924 Technical Assistance**

The City Manager may establish technical assistance programs to assist *SLBEs* and *ELBEs* in applying for business-type certifications, becoming eligible for *major public works, minor public works contracts, consultant contracts, contracts for goods, and contracts for services,* securing necessary bonding and insurance, and generally complying with the City's advertising, bidding, and award process.

**§22.36205 Packaging of Public Works Contracts**

[No change in text.]

**§22.36216 City Manager to Adopt Regulations**

[No change in text.]

**§22.36227 Audit and Reporting Requirements**

The City Auditor, or some other independent body or auditing firm, shall periodically conduct audits of the Small and Local Business Program for *public works contracts, consultant contracts, contracts for goods, and contracts for services*. The City Manager shall report annually to the City Council regarding the impact and costs of implementing the Small and Local Business Program for *public works contracts, consultant contracts, contracts for goods, and contracts for services*.

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05/16/2022  
COR.COPY  
7/22/2022  
Or.Dept: P&C  
Doc. No.: 3031864\_2

Passed by the Council of The City of San Diego on AUG 02 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 10 2022.

AUTHENTICATED BY:

(Seal)

TODD GLORIA  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 19 2022, and on AUG 10 2022.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21516