

**Article 2: Administrative Code**

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

*(“Bidding and Award Requirements for Minor Public Works Contracts” added 9-3-2002 by O-19095 N.S.)*

*(Retitled to “Small and Local Business Program for Public Works Contracts” on 2-4-2010 by O-19922 N.S.)*

**§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*, which includes: (1) small and local business bid preferences and mandatory subcontractor participation requirements for *major public works*, and (2) a sheltered competition program for *minor public works*. 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*.

*(“Purpose” added 9-3-2002 by O-19095 N.S.)*

*(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

**§22.3602 Applicability**

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

*(“Applicability added 9-3-2002 by O-19095 N.S.)*

*(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

**§22.3603 Definitions**

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

*Emerging Business Enterprise* or *EBE* 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 *EBEs* on an annual basis, and adjust as necessary to reflect changes in the marketplace.

*Emerging Local Business Enterprise* or *ELBE* means a *Local Business Enterprise* that is also an *Emerging Business Enterprise*.

*Joint Venture* means an association of two or more persons or businesses that, pursuant to a written agreement, carry out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge or property.

*Local Business Enterprise* or *LBE* means a business that has both a *principle place of business* and *significant employee presence* in the County of San Diego, and that has been in operation for twelve (12) consecutive months.

*Principle Place of Business* means a location where a business maintains a physical office and through which it obtains no less than fifty percent of its gross annual receipts.

*Protégé* shall mean a business that has been approved and is an active participant in the City of San Diego's Mentor-Protégé Program, has signed the required program participation agreement and has been assigned a mentor.

*Significant Employee Presence* means no less than twenty-five percent of a business's total number of employees.

*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, shall be deemed to be an *SBE*.

*Small Local Business Enterprise* or *SLBE* means a *Local Business Enterprise* that is also a *Small Business Enterprise*.

(“Definitions” added 9-3-2002 by O-19095 N.S.)  
(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

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

- (a) The value of a *public works contract* shall be determined by the City Manager's estimate of the costs of construction. For *Design-Build contracts*, as defined by Division 33 of this Article, the costs of design shall be included in the City Manager's estimate.

- (b) The City Manager shall estimate a proposed *public works contract's* value prior to commencing contractor selection so that proper procedures may be used to advertise, bid, and award the contract.
- (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 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, the City Manager must reject the bids and commence procedures for *major public works*.

(“*Determination of Value of a Public Works Contract*” added 9-3-2002 by O-19095 N.S.)  
(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

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

(“*Establishment of Minor Public Works Contract Availability Lists*” added 9-3-2002 by O-19095 N.S.)  
(Retitled to “*Establishment of SLBE and ELBE Lists*” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

**§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*.

*(“Eligibility for Minor Public Works Contract Availability Lists” added 9-3-2002 by O-19095 N.S.)*

*(Retitled to “Eligibility for SLBE and ELBE Lists“ and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

**§22.3607 Removal and Reinstatement**

- (a) The City Manager shall remove an *SLBE* or *ELBE* from the applicable eligibility list:
  - (1) two years after approval of the *SLBE*'s or *ELBE*'s application; or
  - (2) immediately, in the event the business has used its status as an *SLBE* or *ELBE* to assist another business in obtaining benefits of this Division to which the other business would not otherwise be entitled, or for any other fraudulent purpose.
- (b) A business that has been removed from an eligibility list under Section 22.3607(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.

*(“Application Process for Placement on Availability List” added 9-3-2002 by O-19095 N.S.)*

*(Renumbered from former Section 22.3608, retitled to “ Removal and Reinstatement” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010. Former Section 22.3607 repealed.)*

**§22.3608 Appeals**

A business that has been denied *SLBE* or *ELBE* eligibility, or removed from an eligibility list under Section 22.3607(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.  
*(“Removal from Availability Lists” added 9-3-2002 by O-19095 N.S.)*  
*(“Appeals” added 2-4-2010 by O-19922 N.S.; effective 7-1-2010. Former Section 22.3608 renumbered to Section 22.3607.)*

**§22.3609 Solicitation of Bids for and Award of Major Public Works Contracts Valued at \$1,000,000 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 or more. 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. *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*.  
*(“Reinstatement Following Removal from List; Re-application Required” added 9-3-2002 by O-19095 N.S.)*  
*(“Solicitation of Bids for and Award of Major Public Works Contracts Valued at \$1,000,000 and Over” added 2-4-2010 by O-19922 N.S.; effective 7-1-2010. Former Section 22.3609 repealed.)*

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

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 but less than \$1,000,000:

- (a) Permit a bid discount of:
  - (1) 5 percent for *SLBE* or *ELBE* prime contractors; or

- (2) the amount of *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 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) Include a mandatory subcontractor participation requirement for *SLBEs* 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. *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*.

*(“Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$50,000 - \$250,000” added 9-3-2002 by O-19095 N.S.)*

*(“Solicitation of Bids for and Award of Major Public Works Contracts Valued at More Than \$500,000 but Less Than \$1,000,000” added 2-4-2010 by O-19922 N.S.; effective 7-1-2010. Former Section 22.3610 renumbered to Section 22.3611.)*

**§22.3611 Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than \$250,000 but Less Than or Equal to \$500,000**

- (a) *Minor public works contracts* valued at 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) 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 but less than \$1,000,000 as set forth in Section 22.3610.
- (c) Nothing in this section shall limit the City Manager’s right to reject all bids in the event that all bids received exceed the City’s projected costs for a particular *public works contract*.

*(“Solicitation of Bids for and Award of Minor Public Works Contracts Valued at under \$50,000” added 9-3-2002 by O-19095 N.S.)*

*(Renumbered from former Section 22.3610, retitled to “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than \$250,000 but Less Than or Equal to \$500,000” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

**§22.3612 Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$250,000 and Under**

- (a) *Minor public works contracts valued at \$250,000 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*. 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 but less than \$1,000,000 as set forth in Section 22.3610.
- (c) For a public works project that was not previously identified and appropriated through the Annual Capital Improvements Program budget, the *minor public works contract* shall be solicited and awarded by the following methods:
  - (1) For *minor public works contracts* equal to or less than \$100,000, the City Manager shall request written price quotations from at least three businesses on the *SLBE* or *ELBE* eligibility lists. The City Manager may request additional written price quotations from any contractors with the requisite license(s) for the contract if less than three businesses on the lists have the requisite license(s) for the contract.
  - (2) For *minor public works contracts* greater than \$100,000 but equal to or less than \$250,000, the City Manager shall request written price quotations from at least five businesses on the *SLBE* or *ELBE* eligibility lists. The City Manager may request additional written price quotations from any contractors with the requisite license(s) for the contract if there are less than five businesses on the lists that have the requisite license(s) for the *contract*.
  - (3) The City Manager shall award the contract to the contractor with the written price quotation offering the best value to the City, considering factors such as price, unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs, experience and qualification of the contractor, when the contractor can start and complete the project, and any additional factors the City Manager deems relevant.

- (d) Nothing in this section shall limit the City Manager’s right to reject all bids pursuant to Section 22.3015.

*(“Names on Lists to be Rotated to Ensure Fairness” added 9-3-2002 by O-19095 N.S.)  
(Renumbered from former Section 22.3611, retitled to “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$250,000 and Under” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010. Former Section 22.3612 repealed.)  
(Amended 5-22-2018 by O-20932 N.S.; effective 6-21-2018.)*

**§22.3613 Plans and Specifications to be Provided Free of Charge to SLBEs or ELBEs**

Plans and specifications for *minor public works contracts* will be provided free of cost to *SLBEs* and *ELBEs*.

*(“Plans and Specifications to be Provided Free of Charge to Small or Emerging Businesses” added 9-3-2002 by O-19095 N.S.)  
(Retitled to “Plans and Specifications to be Provided Free of Charge to SLBEs or ELBEs” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

**§22.3614 Emergency Contracts**

- (a) Based on the City Manager’s written determination that an *emergency* exists requiring immediate action, the City Manager may execute a *minor public works contract* valued at \$25,000 to \$75,000 so long as the City Manager has received written quotes for the proposed work from at least two businesses on either the *SLBE* or *ELBE* eligibility lists.
- (b) Based on the City Manager’s written determination that an *emergency* exists requiring immediate action, the City Manager may execute a *minor public works contract* valued at less than \$25,000 so long as the City Manager has received written quotes for the proposed work from at least one business on either the *SLBE* or *ELBE* eligibility lists.

*(“Emergency Contracts” added 9-3-2002 by O-19095 N.S.)  
(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*



**§22.3615 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, any future amendments increasing the value of that *contract* do not render the bidding, award or administration process invalid.

*(“Effect of Amendments to Minor Public Works Contracts” added 9-3-2002 by O-19095 N.S.)*

*(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

**§22.3616 Reduction in Subcontracts**

All prime contractors shall notify and obtain prior written approval of the City Manager for any reduction in subcontract scope, termination, or substitution of an *SLBE* or *ELBE* subcontractor.

*(“City Manager to Adopt Regulations” added 9-3-2002 by O-19095 N.S.)*

*(“Reduction in Subcontracts” added 2-4-2010 by O-19922 N.S.; effective 7-1-2010.*

*Former Section 22.3616 renumbered to Section 22.3621.)*

**§22.3617 Waivers**

The intent of this Division is to maximize the opportunity for *SLBE* and *ELBE* prime and subcontractor participation in *City public works contracts*. 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.

*(Added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

**§22.3618 Bonding and Insurance**

The City Manager may, on a project-by-project basis, adjust bonding and insurance requirements on *public works contracts* to enhance opportunities for *SLBEs* and *ELBEs* to the extent permitted by law. The City Manager shall consult with the Risk Management Department before making any such adjustment on a particular *public works contract* to ensure that the City is adequately protected against liability.

*(Added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

**§22.3619 Technical Assistance**

The City Manager may establish technical assistance programs to assist *SLBEs* and *ELBEs* in applying for business-type certifications, becoming eligible for *minor public works contracts*, securing necessary bonding and insurance, and generally complying with the City's advertising, bidding, and award process.  
(Added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

**§22.3620 Packaging of Public Works Contracts**

The City Manager shall meet with relevant City departments on an annual basis to review the percentage of *public works contracts* that qualify as *minor public works contracts*. The City Manager shall make recommendations as necessary regarding the packaging of *public works contracts* to maximize the intent of this Division, where appropriate and to the extent permitted by law.  
(Added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

**§22.3621 City Manager to Adopt Regulations**

The City Manager shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Division.  
(Added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)  
(Renumbered from former Section 22.3616, "and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

**§22.3622 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*. 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*.  
(Added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)