

COUNTY OF SAN DIEGO, CALIFORNIA BOARD OF SUPERVISORS POLICY

Subject	Policy Number	Page
Small- Local Business Policy (SBP)(SLBP)	B-53	1 of 9

Purpose

To establish a policy to ~~facilitate successful participation of Small Businesses~~ advance successful participation of small-local businesses, including veteran-owned businesses and non-profit organizations, in County procurements, with a goal of achieving 25% Small- Local Business participation.

Background

The Board of Supervisors is committed to promoting successful small-local business participation in County contracting. To ~~effectuate~~ advance ~~that its commitment to uplifting local businesses in our community,~~ the Board has provided for small-local business set asides and disabled veteran business opportunities in Board Policy A-87, Competitive Procurement and for a 15% small-local business preference for bids and proposals in section 405 of the Administrative Code.

The Board, with this policy, ~~reaffirms~~ furthers its commitment to ~~successful~~ uplifting businesses in our community by promoting small business participation in County contracting and implements portions of section 405 of the Administrative Code.

Definitions

~~A Small Business (SB) or Small Business Enterprise (SBE) is a business certified by the State of California as a SB, Micro Business, Small Business for the Purpose of Public Works, or other current small/micro business certification.~~

1. Small Business: A for-profit business or non-profit organization that meets at least one of the following qualifications:
 - a) Certified by the State of California as a Small Business, Micro Business, Small Business for the Purpose of Public Works, or other small business type; or
 - b) Meets the definition of a Small Business or Small Business for the Purpose of Public Works, as applicable to the procurement, as defined by the State of California under the Procurement Division of the Department of General Services; or
 - c) Qualifies as a Veteran-Owned Business (VOB) or Disabled Veterans Business (DVB) in accordance with Board Policy B-39a Veteran Owned Business (VOB) and Disabled Veterans Business (DVB) Program; or
 - d) Certified as a small business by a public agency whose certification is reciprocally recognized by the County of San Diego Office of Economic Development and Government Affairs (EDGA); or

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject	Policy Number	Page
Small- <u>Local</u> Business Policy (SBP)(SLBP)	B-53	2 of 9

- e) Registered as a non-profit organization by the State of California and aligned with the eligibility criteria for a Small Business or Small Business for the Purpose of Public Works, as applicable to the procurement, defined by the State of California under the Procurement Division of the Department of General Services.

2. Local Business: A for-profit business or non-profit organization that:

- a) Maintains its international or domestic headquarters within the geographic boundaries of San Diego County; or
- b) Maintains a location within the geographic boundaries of San Diego County from which it performs work that is normal for the firm's business and functions; or
- c) Is a partnership, joint venture, or other legal entity where at least one of its members meets the qualifications under a) or b) above, and that member i) will perform a Commercially Useful Function, ii) is an equity member of the entity, and iii) is not a subcontractor.

3. Disadvantaged Business Enterprise (DBE): means a for-profit business or nonprofit organization:

- a) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged as defined in 49 CFR Part 26 or by members of the LGBTQIA+ community; and
- b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged or LGBTQIA+ community individuals who own it.

4. Social Equity Enterprise (SEE): A for-profit business or non-profit organization that meets one or more of the following criteria:

- a) Has its principal place of business or is headquartered in an area of San Diego County designated as qualifying for New Market Tax Credits (NMTC) investments on the Community Development Financial Institutions (CDFI) Fund Map; or
- b) Enhances San Diego County by having primarily provided services to Low-Moderate Income (LMI) populations or justice-involved communities in the previous 12 months; or

COUNTY OF SAN DIEGO, CALIFORNIA BOARD OF SUPERVISORS POLICY

Subject	Policy Number	Page
Small- <u>Local</u> Business Policy (SBP)(SLBP)	B-53	3 of 9

- c) Enhances San Diego County by having primarily provided services to advance environmental justice and/or climate justice in the previous 12 months; or
- d) Provides pro bono services in San Diego County:
 - i. Donates a minimum of 1% of products or services to LMI populations; or
 - ii. Donates a minimum of 1% of gross annual revenue to philanthropy; or,
- e) Is at least 51% owned by, and whose management and daily operations is controlled by, persons qualifying as LMI and/or that are justice-involved.

- 5. Small-Local Business: An organization that qualifies as both a Small Business or SEE and a Local Business.
- 6. Commercially Useful Function: Shall have the meaning set forth in Military and Veterans Code section 999 or successor statute, except that all references to “disabled veteran business enterprise” in that section shall include Small-Local Business as defined in this Policy and DVB as defined in Board Policy B-39a Veteran Owned Business (VOB) and Disabled Veterans Business (DVB) Program.
- 7. Service Procurement: The acquisition of services, Professional Services, or public works, using a process of Formal Bidding, Competitive Negotiated Procurement, Reverse Auction, or Qualifications Based Selection pursuant to Board Policy A-87 Competitive Procurement.
- 8. Department Director: The head of the department, agency, group, or other administrative organizational unit of the County that seeks to contract for goods and/or services.

Policy

This policy shall apply to ~~all County contracts and procurements, except contracts for public works, or~~ where precluded by funding source requirements or State or federal law or regulations. It is the policy of the Board of Supervisors to promote small, local, and veteran-owned business participation in County contracts by:

- 1. Implementing the Small-Local Business preference program set forth in section 405 of the Administrative Code.
- 2. Establishing a three-percent (3%) Small-Local Business subcontractor participation requirement in applicable Service Procurements.

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject	Policy Number	Page
Small- <u>Local</u> Business Policy (SBP)(SLBP)	B-53	4 of 9

3. Requiring that Department Directors, in coordination with the Director of Purchasing and Contracting, consider supportive actions in County procurements to reduce barriers to Small-Local Business participation.
1. ~~Exempting from competition, pursuant to Board Policy A-87 (Competitive Procurement), procurements from SBs of goods and services~~
2. ~~Separating large contractual requirements into smaller segments when in the County's best interest and where doing so would maximize SB participation.~~
3. ~~Authorizing progress payments to SBs as well as make payments to SBs within 15 days of receipt of approved invoices and receiving reports as determined by the Auditor and Controller where:~~
 - a. ~~the SB demonstrates in writing that early payments and progress payment are necessary for it to successfully complete its obligations under the agreement; and~~
 - b. ~~the SB is otherwise in good standing in performance of its duties under the contract.~~

Responsibilities

- 1) ~~The Director of the Department of Purchasing and Contracting, with the required assistance of other affected departments, shall be responsible facilitating successful participations as set forth in the policy. The Director of the Department of Purchasing and Contracting may establish guidelines or procedures to ensure successful implementation of the policy.~~ shall facilitate the implementation of this policy in all applicable County solicitations, develop and issue any necessary guidelines or procedures, and publish data demonstrating progress toward achieving the County's goal of 25% Small-Local Business participation. Department directors shall operationalize this policy through adherence to all guidelines and procedures established by the Director of Purchasing and Contracting and identification and reduction of barriers to Small-Local Business participation within their respective procurements and contracting activities.
- 2) The Director of the Department of Economic Development and Government Affairs (EDGA) shall be responsible for developing reciprocal recognition of small and veteran business certifications.

Procedure

1. Small-Local Business Preference

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject	Policy Number	Page
Small- Local Business Policy (SBP)(SLBP)	B-53	5 of 9

- A. In accordance with section 405 of the Administrative Code, the County shall give a preference to any Small-Local Business in the evaluation of a bid or proposal by subtracting fifteen percent (15%) from its proposed price (not to exceed a maximum value of \$150,000), except as may be precluded in whole or in part by State or federal law or regulation, or where participating in a cooperative procurement.
- 1) For formal bids, award shall be made to the responsible bidder submitting a responsive bid with the lowest preference-adjusted price.
- a. Tie bids shall be handled according to standard procedures, except that in the event of a tie bid between one or more Small-Local Businesses and one or more non-Small-Local Businesses, award shall be made to a Small-Local Business.
- 2) For competitive negotiated procurements, contract award shall be made to the proposer providing the best value to the County after consideration of the preference-adjusted price.
- 3) Contracts awarded to Small-Local Businesses shall be awarded at the unadjusted price.
- 4) The Small-Local Business Preference shall also be given to SEE.
2. Small-Local Business Subcontractor Participation Requirements
- A. Small-Local Business Subcontractor Participation Requirements are established for the following Service Procurements:
- 1) Services or Professional Services estimated to exceed \$1 million in annual value: The prime contractor shall meet or exceed three-percent (3%) Small-Local Business subcontractor participation or demonstrate a good faith effort to do so.
- 2) Public Works projects estimated to exceed \$1 million in value: The prime contractor shall meet or exceed three-percent (3%) Small-Local Business subcontractor participation.
- B. Prime contractors are not required to meet the Small-Local Business Subcontractor Participation Requirements of a procurement, when:

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject	Policy Number	Page
Small- <u>Local</u> Business Policy (SBP)(SLBP)	B-53	6 of 9

- 1) The prime contractor is a Small-Local Business; or
 - 2) The prime contractor is a non-profit organization; or
 - 3) The prime contractor does not intend to subcontract any portion of the primary services.
- C. Small-Local Business Subcontractor Participation Requirements shall not apply to procurements where federal or State subcontractor participation requirements apply, or where prohibited by funding source requirement or State or federal law or regulation.
- D. Implementing Small-Local Business Subcontractor Participation Requirements
- 1) Applicable Small-Local Business Subcontractor Participation Requirements shall be included in solicitations for Service Procurements.
 - 2) Each prime contractor shall submit a plan documenting how it will meet its Small-Local Business Participation Requirements (“Small-Local Business Subcontractor Utilization Plan”).
 - 3) Small-Local Business subcontractor participation shall be calculated by taking the aggregate value of all Small-Local Business subcontractors proposed by the prime contractor as a percentage of the total value of the bid, proposal, or contract.
 - 4) Indefinite delivery/indefinite quantity contracts: Small-Local Subcontractor Participation Requirements shall be applied at the time of task order issuance based on the value of the individual task order.
 - 5) Only contractors that will perform a Commercially Useful Function shall be used in the calculation of Small-Local Business subcontractor participation.
 - 6) A prime contractor relying on its demonstration of a good faith effort to meet its Small-Local Business Subcontractor Participation Requirements must:
 - a. Document that there is insufficient marketplace capacity to meet the Small-Local Business Subcontractor Participation Requirements or that the nature of the work is not suitable for subcontracting; and
 - b. Subcontract with Small-Local Businesses to the maximum extent practical.

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject	Policy Number	Page
Small- <u>Local</u> Business Policy (SBP)(SLBP)	B-53	7 of 9

- 7) Failure to meet, or provide sufficient evidence of meeting, a Small-Local Business Subcontractor Participation Requirement is grounds for disqualification from contract award.
- 8) Department Directors shall review Small-Local Business Subcontractor Utilization Plans to verify the prime contractor's compliance with the Small-Local Business Subcontractor Participation Requirements, prior to recommending a contract for award.
- 9) Department Directors shall monitor post-award compliance with Small-Local Business Subcontractor Utilization Plans.
- 10) The Director of Purchasing and Contracting shall have full authority and discretion to implement Small-Local Business Participation Requirements to the maximum extent practicable where relevant authority or the specific circumstances of the procurement limits the implementation of some or all of its provisions.

3. Reducing barriers to Small-Local Business Participation

A. Department Directors shall, in coordination with the Director of Purchasing and Contracting, implement appropriate uplifting actions to support Small-Local Business participation in County procurements, which may include:

- 1) Authorizing progress payments and the prompt reimbursement of start-up costs as applicable and appropriate.
- 2) Authorizing expedited payments within 15 days of receipt of approved invoices and receiving reports, as determined by the Auditor and Controller, where:
 - a) early payments are necessary for the Small-Local Business to successfully complete its obligations under the agreement; and
 - b) the Small-Local Business is otherwise in good standing in performance of its duties under the contract.

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject	Policy Number	Page
Small- <u>Local</u> Business Policy (SBP)(SLBP)	B-53	8 of 9

- 3) Separating large contractual requirements into smaller segments where beneficial to Small-Local Business participation and aligned with program outcomes and objectives.
- 4) Removing overly burdensome or unduly restrictive requirements that unnecessarily inhibit Small-Local Business participation.
- 5) For construction projects in underserved communities, incentivizing prime contractors to engage community-based and economically disadvantaged businesses and individuals.
- 6) Allowing businesses to self-identify as DBEs, women-owned, and LGBTQIA+-owned businesses.
- 7) Reporting annually on procurement participation by DBEs, Small-Local Businesses, and SEEs.

Responsible Departments

1. Department of Purchasing and Contracting
2. ~~Auditor and Controller~~ Economic Development and Government Affairs
3. Auditor and Controller

Sunset Date

This policy will be reviewed for continuance by 12-31-202732.

References

Board Action
 8-3-82 (47)
 5-1-84 (114)
 11-6-84 (22)
 8-11-87 (18)
 12-12-89 (49)
 6-5-90 (43)
 11-6-90 (41)
 12-8-98 (53)
 3-12-2002 (10)
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**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY****Subject****Policy
Number****Page**Small-Local Business Policy (~~SBP~~)(SLBP)

B-53

9 of 9

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