

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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LONG BEACH, CALIF.      ORDINANCE NO. HD- 2004  
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AN ORDINANCE OF THE BOARD OF HARBOR  
COMMISSIONERS OF THE CITY OF LONG BEACH  
ADOPTING AN AMENDMENT TO ORDINANCE NO.  
HD-1923 (AS PREVIOUSLY AMENDED BY ORDINANCE  
NO. HD-1949) REGARDING A SMALL AND VERY SMALL  
BUSINESS ENTERPRISE PROGRAM FOR PUBLIC  
WORKS CONSTRUCTION, PROFESSIONAL SERVICES  
CONTRACTS, AND CERTAIN PROCUREMENT  
ACTIVITIES, AND MAKING A DETERMINATION RELATED  
THERE TO

The Board of Harbor Commissioners of the City of Long Beach ("Board")  
ordains as follows:

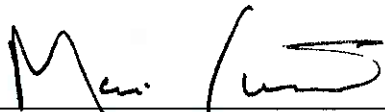
Section 1. Exhibit "A" to Ordinance HD-1923, the Port of Long Beach's  
Small and Very Small Business Enterprise Program (the "Program"), as previously  
amended by Ordinance No. HD-1949, is amended and restated in its entirety.

Sec. 2. The Board hereby adopts the amended and restated Exhibit "A" to  
Ordinance No. HD-1923, as previously amended by Ordinance No. HD-1949, as set forth  
in the attached Exhibit "A" which is incorporated by this reference.

Sec. 3. The Board hereby finds and determines that the amended and  
restated Exhibit "A" to the Program is statutorily exempt from the provisions of the  
California Environment Quality Act.

Sec. 4. This ordinance shall be signed by the President or Vice President  
of the Board and attested to by the Secretary. The Secretary shall certify to the passage  
of this ordinance by the Board, shall cause the same to be posted in three (3)  
conspicuous places in the City of Long Beach, and shall cause a certified copy of this

1 ordinance to be filed forthwith with the City Clerk of the City of Long Beach. This  
2 ordinance shall take effect on the 31st day after its final passage.

3  
4   
5 \_\_\_\_\_  
6 President

7 ATTEST:

8   
9 \_\_\_\_\_  
10 Secretary

11 I hereby certify that the foregoing ordinance was adopted by the Board of  
12 Harbor Commissioners of the City of Long Beach at its meeting of January 7, 2008  
13 by the following vote:

14 Ayes: Commissioners: Hankla, Topsy-Elvord, Walter, Cordero

15 Noes: Commissioners: \_\_\_\_\_

16 Absent Commissioners: Sramek

17 Not Voting: Commissioners: \_\_\_\_\_

18  
19   
20 \_\_\_\_\_  
21 Secretary

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## **EXHIBIT A**

The Port of Long Beach Small Business Enterprises (SBE) and Very Small Business Enterprises (VSBE) Program (the "Program")

### **1.0 Applicability**

The Program shall apply to all applicable Port-wide construction contracts, professional services contracts, and procurement activities funded with Port revenues and/or federal funds, except those subject to 49 CFR 26, "Disadvantaged Business Enterprises (DBE) Program."

### **2.0 Policy**

- 2.1 The Port shall promote utilization of Small Business Enterprises (SBEs) and Very Small Business Enterprises (VSBEs) on construction contracts, professional services contracts, and purchase requisitions.
- 2.2 The goal of the Program is to provide the Port with more competition, lower costs, and better community participation by reducing barriers to small business participation in the Port's contracting and procurement process.
- 2.3 The Program shall be administered in a streamlined and cost effective manner by the Port's SBE Administrator, operating under the appropriate bureau managing director, division director, and section manager.
- 2.4 For the Finance & Support Services and Trade Relations & Port Operations bureaus, VSBE participation will not be tracked separately from SBE participation, due to the large number of small contracts (less than \$100,000) and the administrative costs of tracking SBEs and VSBEs separately.

### **3.0 Program Structure**

The Program was established by an ordinance adopted on October 11, 2004 by the Board of Harbor Commissioners, and became effective on November 11, 2004.

### **4.0 Program Applicability to Non-SBE Firms, SBE Firms and VSBE Firms**

- 4.1 Non-SBE prime contractors/consultants shall meet the combined SBE/VSBE participation goal, or document and submit an acceptable Good Faith Effort, for their bid or proposal to be deemed responsive.
- 4.2 SBE prime contractors/consultants, certified through the Port's online SBE/VSBE database and verified by the Port, are deemed to have met the SBE component of the combined SBE/VSBE participation goal, but shall meet the VSBE component of the goal, or document and submit an acceptable Good Faith Effort, for their bid or proposal to be deemed responsive.
- 4.3 Port-certified SBE prime contractors/consultants who also qualify as a Very Small Business Enterprise (VSBE) based upon the SBE Administrator's review of qualifying information are deemed to have met both components of the combined SBE/VSBE participation goal.

- 4.4 The Port encourages all prime contractors/consultants to utilize small business subcontractors and subconsultants, whether at a first tier or lower tier sub level, as well as vendors and suppliers. Lower tier subs and vendors/suppliers must provide services/materials directly related to the project or they will not qualify to meet the goal.

## **5.0 SBE and VSBE Eligibility**

- 5.1 SBE eligibility is determined utilizing federal U.S. Small Business Administration (SBA) size standards, based on North American Industrial Classification System (NAICS) codes. The current table of size standards can be accessed on the SBA website at [www.sba.gov/ca/la](http://www.sba.gov/ca/la). Examples of maximum gross annual revenue averaged over the past three years to qualify as an SBE: general contractor \$31.0 million; specialty trade contractor \$13.0 million; engineering services \$4.5 million.
- 5.2 VSBE eligibility is determined utilizing maximum allowable annual gross revenues consistent with those of the State of California's Department of General Services' "micro-business" designation.

## **6.0 Annual SBE/VSBE Goal, Individual Contract Goals, Division Goals**

- 6.1 Annual bureau-wide SBE/VSBE goals shall be recommended by the Managing Director of each bureau, and shall be approved by the Board.
- 6.2 SBE and VSBE participation goals for each contract will be established so that the total participation for all contracts awarded in a fiscal year would meet the Port's annual overall SBE/VSBE goals. The Program Manager for each contract will determine individual contract participation goals after consultation with the SBE Administrator. Goals may vary with the number of qualified SBE/VSBE firms available to provide the required services. If the dollar value of the work elements of a contract that can be performed by SBEs and/or VSBEs is high, the contract will have a higher SBE and/or VSBE participation goal than one where only a small portion of the work could be competitively performed by SBEs or VSBEs.
- 6.3 The following is a method for determining SBE/VSBE contract goals. Starting with a detailed cost estimate for each contract, the contract Program Manager will identify the types and amounts of work to be performed in the contract using universal codes established by the North American Industrial Classification System (NAICS). The SBE Administrator will research government and Port databases and locate potential small businesses for each work discipline. The goals are then established based on two factors: 1) the number of SBEs/VSBEs available to perform a work discipline; and 2) the amount of work in the contract scope that the discipline represents.
- 6.4 For Port contracts that do not have an assigned contract-specific SBE/VSBE goal, additional targeted outreach to SBEs/VSBEs will be conducted, and every effort will be made to award the work to a small business.
- 6.5 Certain categories of work are exempted from the Program requirements for compelling reasons after consultation with the SBE Administrator and approval by appropriate division director.

## **7.0 Definitions of “Subcontractor” and “Vendor/Supplier”**

- 7.1 A “Subcontractor” is defined as an individual, firm, or entity having a direct contract with the prime contractor or with any other subcontractor to perform a portion of the subject contract. A subcontractor must have a valid State of California Contractor’s License to the extent required by law.
- 7.2 A “Vendor/Supplier” is defined as an individual, firm or entity providing materials or supplies directly to the subject contract. For a prime contractor to receive participation credit for utilizing an SBE/VSBE vendor or supplier under the Port’s SBE/VSBE Program, the materials/supplies must be directly applicable to the subject contract or Port facility.

## **8.0 Port’s SBE/VSBE Database: Vendor Registration and SBE Certification**

- 8.1 All firms (large and small) wishing to do business with the Port are strongly encouraged to register with the Port’s online database. Vendor registration is relatively simple and quick. A link to vendor registration is provided from the SBE/VSBE Program page of the Port’s website.
- 8.2 All SBE/VSBE firms listed on a Port contract (prime contractor/consultant, subcontractors/subconsultants, vendors and suppliers) are required to register with, and obtain SBE certification from, the Port’s online vendor database, in order to receive credit toward the established SBE/VSBE goal for that contract.
- 8.3 For the prime contractor/consultant to receive credit for a small business as part of the prime’s commitment to meeting the established SBE/VSBE goal for a contract, the SBE must be certified by the due date of the prime’s SBE/VSBE Commitment Plan (POLB Form SBE-2C or SBE-2P).
- 8.4 To apply for VSBE status, the small business must check the “VSBE” box in its online SBE certification application. Separate VSBE certifications will not be issued. The Port will determine VSBE eligibility at the time of review of the prime contractor’s/consultant’s SBE/VSBE Commitment Plan.
- 8.5 Prior to contract award, SBE and VSBE status shall be verified and may be audited by the Port.

## **9.0 Bidders’ Commitment to Meeting the Established SBE/VSBE Participation Goals**

- 9.1 The three lowest responsive construction contract bidders shall submit a completed POLB Form SBE-2C: SBE/VSBE Commitment Plan for Construction Contracts, indicating the dollar value and percentage of SBE/VSBE contract participation, no later than 4:00 p.m. one business day following bid opening.
- 9.2 If any of the three lowest responsive construction contract bidders does not meet the SBE/VSBE participation goal, that bidder(s) shall submit its Good Faith Effort documentation no later than 4:00 p.m. on the third business day following bid opening. A bidder that does not meet the SBE/VSBE participation goals and does not submit its GFE documentation is declared non-responsive and may forfeit its bidder’s bond.

- 9.3 If all three lowest bidders are declared non-responsive, the fourth-lowest bidder shall submit its SBE/VSBE Commitment Plan (POLB Form SBE-2C) within 48 hours of written request by the Port. The bidder's Commitment Plan will be evaluated by the SBE Administrator. If the bidder does not meet the combined SBE/VSBE participation goal established for that contract, the bidder shall submit its Good Faith Effort documentation within 48 hours of request by the Port.
- 9.4 Bidders that do not meet the SBE or VSBE participation goal shall be deemed non-responsive unless they demonstrate that they have made an acceptable Good Faith Effort to meet the SBE/VSBE participation goals.
- 9.5 Within three business days of being informed by the Port that a firm is non-responsive because it has failed to meet the SBE/VSBE participation goal and has not documented an acceptable Good Faith Effort (GFE), the bidder may request administrative reconsideration. The bidder shall make this request in writing to appropriate Managing Director who will serve as the SBE Reconsideration Official. The SBE Reconsideration Official will not be involved in the initial evaluation of the bidder's GFE. Contractors shall forfeit their right for reconsideration if they fail to act within three business days.
- 9.6 The reconsideration process provides an opportunity for the affected bidder to meet with the SBE Reconsideration Official to discuss the basis of the Port's determination of non-responsiveness. The SBE Reconsideration Official will send the affected bidder a written decision on reconsideration, via certified mail, explaining the basis for finding that the bidder did or did not meet the participation goal or demonstrate an acceptable Good Faith Effort. Any appeal of the SBE Reconsideration Official's decision must be made to the Board of Harbor Commissioners in writing, and must be submitted within three business days after receiving the SBE Reconsideration Official's decision.

#### **10.0 Proposers' Compliance with SBE/VSBE Participation Goals**

- 10.1 All proposers shall submit, with their proposal or Statement of Qualifications, a completed POLB Form SBE-2P: SBE/VSBE Commitment Plan for Professional Services Contracts, indicating the estimated dollar value and percentage of SBE/VSBE contract participation. This will demonstrate the proposer's ability or intent to meet the SBE/VSBE participation goals.
- 10.2 If, during the evaluation process, the Port finds that the proposer was unable to show ability or intent to meet the SBE/VSBE goals assigned to the project, the proposer will be required to submit a Good Faith Effort in order to continue in the selection process.
- 10.3 Consultants shall indicate proposed SBE/VSBE participation levels prior to receiving authorization for a work task.
- 10.4 After negotiations have been completed and the Consultant contract is executed, achieving the SBE/VSBE goal is a contractual commitment and can only be altered with written approval of the appropriate Port division director, for unusual instances such as a change in scope of services.

## **11.0 Bidder and Proposer Compliance with Good Faith Effort Evaluation Criteria**

A bidder/proposer whose bid or proposal fails to meet the SBE or VSBE participation goal shall be found responsive if an acceptable Good Faith Effort is demonstrated. The following criteria shall be used in evaluating a bidder's/proposer's GFE:

- 11.1 **Attend Pre-Bid/Pre-Proposal Meeting:** The bidder/proposer submitted written evidence that he/she attended the pre-bid conference or pre-proposal meeting.
- 11.2 **Subdivide the Work:** The bidder/proposer prepared and followed a plan to subdivide the work into disciplines or work elements that could be economically performed by small businesses. It is the bidder's/proposer's responsibility to demonstrate that sufficient work was made available to SBEs and VSBEs to meet contract requirements.
- 11.3 **Advertise:** The bidder/proposer submitted written evidence of commercial advertising for small business subcontractors/subconsultants at least 14 calendar days prior to the bid/proposal due date. A copy of the advertisement showing the advertisement date(s), name of publication, type of work and amount of work that is being solicited, must be provided.
- 11.4 **Use Public Databases:** The bidder/proposer submitted written evidence of using the Port's SBE/VSBE database, small business, minority business, and women-owned business associations, and chambers of commerce to help solicit subcontractors.
- 11.5 **Provide Relevant Information to Small Businesses:** The bidder/proposer submitted written evidence that he/she has provided interested small businesses with information about the requirements of the contract, and how to obtain plans and specifications, at least 14 calendar days prior to the bid/proposal due date.
- 11.6 **Directly Solicit Small Businesses:** The bidder/proposer submitted written evidence of directly soliciting for small business subcontractors/subconsultants. A copy of the written notices sent directly to SBEs and VSBEs must be provided. A direct solicitation should include the type of work, amount of work, and a brief specific description of the work being solicited.
- 11.7 **Conduct Follow-Up:** The bidder/proposer submitted written evidence of specific activities used to follow up initial solicitations in preparing the bid/proposal.
- 11.8 **Offer Assistance:** The bidder/proposer demonstrated that he/she has offered to assist small businesses in obtaining bonding, insurance or equipment.
- 11.9 **Negotiate:** The bidder/proposer submitted written evidence that he/she has negotiated in good faith with interested small businesses. Documentation must include company name, contact person, method of contact, and specific items that were negotiated (scope of work, materials, equipment, insurance, bonding, personnel, timing of project, etc.)
- 11.10 **Document bid and negotiation results:** For any negotiations which were unsuccessful and/or bids/proposals received but not accepted, the bidder/ proposer submitted the unsuccessful bidder's/proposer's company name, telephone number, contact person, price bid (if applicable), and the reason for rejecting the bid or

proposal. If price is the reason for rejecting the bid/proposal, list the price bid by both the SBE/VSBE and the low bidder for that element of work.

Each of the 10 criteria will be assigned 10 points. The bidder/proposer must achieve a score of 70 out of a possible 100 points in order for the SBE Administrator to determine that the bidder/proposer has made an acceptable Good Faith Effort (GFE).

For detailed GFE submittal instructions and specific examples, log on to [www.polb.com/projects/sbe\\_program/forms.asp](http://www.polb.com/projects/sbe_program/forms.asp) and click on "Good Faith Effort Evaluation Criteria and Submittal Instructions."

## **12.0 Utilization/Substitution of SBEs/VSBEs on Construction Contracts**

- 12.1 During the term of the contract, the prime Contractor shall be required to utilize all Subcontractors (as defined in Section 7.0 of this document) listed on its SBE/VSBE Commitment Plan (POLB Form SBE-2C), in the amount and percentage specified on the form. Any SBE/VSBE subcontractor substitution will require prior written approval by the appropriate Port division director, and must meet all State laws and statutes.
- 12.2 All Subcontractors listed on POLB Form SBE-2C, whose defined work is greater than ½ of one percent of the prime contract value, must be listed on the bidder's list of Subcontractors submitted with the bid documents. If an SBE/VSBE Subcontractor is added after submittal of the bidder's list of Subcontractors, the bidder shall follow Subcontractor listing/substitution procedures pursuant to Public Contract Code 4107 et. al.
- 12.3 If a prime Contractor substitutes an SBE/VSBE vendor/supplier, the Contractor shall provide proof, to the satisfaction of the appropriate Port division director, that a good faith effort was made to replace that vendor's/supplier's participation percentage with another SBE/VSBE firm, to meet the combined SBE/VSBE participation percentage specified on the Contractor's SBE/VSBE Commitment Plan (POLB Form SBE-2C). At project close-out, if the prime Contractor fails to meet the combined SBE/VSBE participation percentage specified on its SBE/VSBE Commitment Plan, or fails to provide proof that it made a good faith effort to do so, the Contractor may be considered to be in material breach of contract (refer to Section 16.0).

## **13.0 Utilization/Substitution of SBEs/VSBEs on Professional Services Contracts**

- 13.1 During the term of the contract, the prime Consultant shall be required to utilize all subconsultants listed on its SBE/VSBE Commitment Plan (POLB Form SBE-2P), unless the Port approves a change in scope of work that would eliminate or reduce the utilization of an SBE or VSBE subconsultant. Any SBE/VSBE subconsultant substitutions require prior written approval by the appropriate Port division director.
- 13.2 If a prime Consultant substitutes an SBE/VSBE vendor/supplier, the Consultant shall provide proof, to the satisfaction of the appropriate Port division director, that a good faith effort was made to replace that vendor's/supplier's participation percentage with another SBE/VSBE firm, to meet the combined SBE/VSBE participation percentage specified on the Consultant's SBE/VSBE Commitment Plan.



## **14.0 Contract Amendments**

If the Port approves a change order or contract amendment, the SBE/VSBE participation goals may, at the sole discretion of the appropriate Port division director, apply to the change order or contract amendment. If the additional work can be performed by SBEs or VSBEs that are already part of the Contractor's/Consultant's team, the SBE and VSBE participation goals shall apply to the entire contract, including the amendment.

## **15.0 Contract Monitoring**

- 15.1 The prime Contractor/Consultant shall report the dollar value of payments to small businesses on a monthly basis and at project close-out. This data will be verified. Construction contractors shall submit a completed POLB Form SBE-3C (SBE/ VSBE Monthly Utilization Report for Construction Contracts), and consultants shall submit a completed POLB Form SBE-3P (SBE/VSBE Monthly Utilization Report for Professional Services Contracts).
- 15.2 If a firm's SBE or VSBE status changes prior to contract award, the firm will not receive SBE/VSBE status for that Port contract.
- 15.3 If an SBE or VSBE firm listed on a prime Contractor's/Consultant's SBE/VSBE Commitment Plan (POLB Form SBE-2C or SBE-2P) loses its SBE or VSBE status prior to contract award, the Contractor/Consultant shall replace the affected SBE/ VSBE dollar amount/percentage and shall submit for approval, a revised POLB Form SBE-2C or SBE-2P, in order to proceed with contract award.
- 15.4 If a firm's SBE or VSBE status changes during the term of a contract, work performed on that contract after the firm loses its certification will continue to be credited toward meeting the SBE or VSBE participation goal. However, the firm will not be able to receive SBE/VSBE status on subsequent Port projects unless the firm is subsequently re-certified as an SBE or VSBE.
- 15.5 Substitution of any SBE or VSBE subcontractor/subconsultant listed on a prime Contractor's/Consultant's SBE/VSBE Commitment Plan must be approved by the appropriate Port division director.
- 15.6 {For Construction Contracts only} Nothing herein shall be construed to supersede or limit the requirements for contractor substitutions provided in Section 4100 et seq. of the California Public Contract Code.
- 15.7 The Construction Manager, Program Manager, SBE Administrator, or their designee may conduct site visits and subcontractor/subconsultant/vendor/supplier interviews and telephone calls to verify proper and full utilization of SBEs and VSBEs to meet contract requirements. Prime contractors/consultants and SBEs/ VSBEs shall fully cooperate with such monitoring.

## **16.0 Contract Compliance**

- 16.1 The Prime Contractor/Consultant may be considered in material breach of contract for any one or more of the following violations:
  - 16.1.1 failure to submit, in a timely manner, an SBE/VSBE Monthly Utilization Report (POLB Form SBE-3C or SBE-3P);

- 16.1.2 failure to correct discrepancies found on POLB Form SBE-3C or SBE-3P;
  - 16.1.3 falsifying or misrepresenting any information provided to the Port, including information provided on the Port's online SBE/VSBE database;
  - 16.1.4 substituting an SBE/VSBE subcontractor/subconsultant without prior written Port approval; and/or
  - 16.1.5 failure to meet the committed SBE/VSBE participation percentage as listed on the prime's POLB Form SBE-2C or SBE-2P.
- 16.2 In addition to any other remedy the Port may have under the Contract or by operation of law, the Port, in its sole discretion, may impose any or all of the following provisions against a Contractor/Consultant determined to be in breach of contract:
- 16.2.1 Assess the cost of the Port's audit of the books and records of the Contractor/Consultant, subcontractors/subconsultants, and all other firms claiming SBE or VSBE status, where such audit is necessary because the Contractor has failed to timely submit a required SBE or VSBE program report;
  - 16.2.2 Withhold payment up to 10 percent of a monthly progress payment until the Contractor/Consultant is brought into compliance.
- 16.3 Within three business days of written notification of the intent to enforce any of the measures described above, the Contractor/Consultant may submit in writing, a request for an administrative hearing conducted by the Port's SBE Reconsideration Official. The decision of the Reconsideration Official may be appealed to the Board of Harbor Commissioners in a similar manner to the process for evaluation of the Good Faith Effort of the Contractor/Consultant (Section 9.0).

## **17.0 Small Business Facilitation**

- 17.1 To the extent practicable, the Port will endeavor to disassemble larger construction and procurement projects into contract packages of \$15 million or less. This amount is estimated to be the current bonding limit of heavy construction SBEs.
- 17.2 The Port will conduct pre-bid meetings for individual construction projects between advertisements and bid openings. These will provide opportunities to raise questions about the SBE/VSBE Program, plans and specifications, and will also provide an opportunity for primes, subcontractors, vendors and suppliers to meet.
- 17.3 The Port will conduct training forums for SBEs and VSBEs interested in providing contracting and/or consulting services to the Port.
- 17.4 The Port will conduct periodic Good Faith Effort/small business outreach training for prime contractors/consultants interested in working with the Port.
- 17.5 The Port will cooperate with other agencies in providing SBE/VSBE contractor and consultant training.
- 17.6 The Port will provide referral information to SBE/VSBE contractors and consultants on available loan, insurance, and bonding programs that could assist small businesses.

- 17.7 The Port will coordinate outreach activities with the appropriate divisions of the City of Long Beach.
- 17.8 The Port will participate in business and vendor fairs directed at local and small businesses.

**18.0 Periodic Review**

- 18.1 Port staff will seek periodic comments from Port contractors, consultants, and small businesses on the effectiveness of the SBE/VSBE Program.
- 18.2 At the beginning of each fiscal year, Port staff shall report to the Board of Harbor Commissioners on the effectiveness and progress of the Program. The report shall include data on contracts issued in the preceding twelve months and payments to all SBE and VSBE contractors, consultants, vendors and suppliers. To the extent possible, the cost effectiveness of the Program, including Port staff costs, will also be measured.