

**Modifications to standard contract provision, document 00810**

The following are revisions to the **attached Port of Oakland Standard Contract Provisions**, Document 00810, Port of Oakland Non-Discrimination and Small Local Business Utilization Policy [dated November 17, 2009]:

1. Pages 00810-5, 00810-12 and 00810-20:

Revise ALL references to "California Code of Regulations, Title 2, Chapter 4 Subchapter 8" to read as follows:

California Code of Regulations, Title 2, Chapter 3, Subchapter 8

1a. Pages 00810-06

Revise the description of the Very Small Business Enterprise (VSBE) size standard to read as follows:

**"Very Small Business Enterprise (VSBE)"** shall mean a business in the LIA with a specified amount of average gross revenue or less over the past three (3) years. For any business to qualify as a "very small business," it must have a three-year average annual gross revenue not to exceed \$3,500,000.

2. Page 00810-12:

Revise Regulation 1.3.2.1. to read as follows:

1.3.2.1. For Small Business Enterprise (SBE) certification: State small business standards set forth in California Code of Regulations, Title 2, Chapter 3, Subchapter 8, equaling an average annual gross receipts of fourteen million dollars (\$14,000,000) over the past three (3) consecutive years.

2a. Pages 00810-12 and 00810-21:

Revise Regulations to read as follows:

1.3.2.2. For Very Small Business Enterprise (VSBE) certification: an average annual gross receipts not to exceed \$3,500,000 (three million, five hundred thousand dollars) over the past three (3) consecutive years.

6.2.2. Provide documentation, including tax returns, of status as a very small business with three (3) year average annual gross income not to exceed \$3,500,000.

3. Page 00810-28:

In the "list of Publications for Advertising to Small and Local Business Enterprise":

- REVISE the street address for the Oakland Tribune to read as follows:  
401 13<sup>th</sup> Street  
Oakland, Ca 94612

4. Page 00810-34:

Page 00810-34 is deleted in its entirety.

**DOCUMENT 00810**

**PORT OF OAKLAND  
NON-DISCRIMINATION  
AND  
SMALL LOCAL BUSINESS UTILIZATION POLICY**

**OCTOBER 6, 1997**

Original July 31, 1997 Revised 4/7/04 Revised 2/18/05 Revised 6/6/06 Revised 7/25/07 Revised 11/17/09
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## NON-DISCRIMINATION POLICY

### I.

#### Statement of Purposes

It is the policy of the Port of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in Port public works contracts and its contracts for the provision of goods and services. It is further Port policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. All contractors shall fully comply with the most recent version of the Port of Oakland Equal Opportunity Policy (as may be amended), and shall not discriminate against or grant preferential treatment to any contractor on the basis of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status or sexual orientation, in the performance of Port contracts. Any contractor who so discriminates or gives preferences shall be deemed not to be a responsible bidder in accordance with Port Ordinance No. 1606.

The Port of Oakland has discovered that local businesses have been significantly underutilized in Port contracting. Accordingly, the Port on March 4, 1997, adopted a policy to promote maximum participation of local businesses in Port contracts. One element of this policy is to create a small local business program which will provide support to small local businesses, including minority and women owned small local businesses, to enable them to more effectively compete for participation in Port contracts. To achieve this goal the Port will use preferences to local and small local businesses in the award of Port contracts in order to encourage businesses to locate and remain in the Oakland area, to promote economy and efficiency, to provide and enhance employment opportunities for persons living in the Oakland area, and to contribute generally to the economic environment in the Oakland area. The Port will create a small business pool and a very small business pool where there are a sufficient number of small local businesses to compete for a specific Port contract. The Port will devise contracts, prepare project packages, and encourage bids which allow for small local businesses successfully to subcontract to perform portions of the work. The Port will provide other small local business support programs, which may include technical assistance programs, bonding programs, prompt payment programs, and advisory or training programs. The Executive Director will be responsible for implementation of this policy and will issue regulations and standards for the small local business utilization programs adopted by the Port. The Executive Director will be authorized to adjust and modify the regulations and may suspend preferences on programs when in consultation with the Chief Engineer it is determined to be in the best interests of the Port to do so.

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## II. Definitions

Unless otherwise specified, the following definitions shall apply to all portions of the non-discrimination policy, including Programs set forth in Part III and the Regulations set forth in Part IV.

**“Bidder”** shall mean the Prime Contractor submitting a bid directly to the Port.

**“Board”** shall mean the Port of Oakland Board of Port Commissioners.

**“Commercially Useful Function,”** for the purpose of determining a Local Business Area Business Enterprise or Local Impact Area Business Enterprise, shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Port or the Prime as required by solicitation, request for quotes, bids or proposals. Businesses acting as a passive conduit rather than contributing a value added or actual portion of the work will not be considered as performing a “commercially useful function.”

**“Construction Related Consultant”** shall mean and intend the person, firm or corporation contracting to perform architectural, engineering, environmental, construction/program management or other construction related professional services under the contract.

**“Contract Compliance Officer”** shall mean the Director, or his or her delegates, of the Social Responsibility Division for the Port of Oakland.

**“Contractor”** shall mean and intend the person, firm or corporation contracting to perform the work to be done under the contract. The term “contractor” or subcontractor shall include truckers and trucking brokers.

**“Department”** shall mean an operating department of the Port of Oakland.

**“Design-Builder”** shall mean any firm entering a contract with the Port in which the scope of work includes both the furnishing of design services for which professional registration is required under the California Business & Professions Code and construction contracting services for which a contractor’s license is required under the California Business & Professions Code .

**“Executive Director”** shall mean the Executive Director for the Port of Oakland.

**“Engineering Division”** shall mean the Engineering Division of the Port of Oakland.

**“Joint Venture”** shall mean an association of two or more businesses acting as a construction contractor or consulting service in order to perform or provide for services on a contract, in which each joint venture partner combines property, capital, efforts, skills, and knowledge, and shares proportionally in the risks, responsibilities, rewards and duties under the contract.

**“LBA or LIA Business Enterprise (LBABE or LIABE)”** shall mean an economically independent and continuing business performing a commercially useful function, which is located within the Local Business Area or Local Impact Area, respectively, as shown by the items listed in the regulations.

“**Local**” shall mean either the Local Business Area (LBA) or the Local Impact Area (LIA) as appropriate.

“**Local Business Area (LBA)**” shall mean all of Alameda County and Contra Costa County.

“**Local Impact Area (LIA)**” shall mean the area most impacted by Port projects. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro.

“**Minority, Minorities or Minority Person**” shall mean members of one of the following ethnic groups: Asians (defined as Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian Indian/South Asian and Southeast Asian or other Asian culture or origin, regardless of race), African-American (not of Hispanic origin), Hispanic (defined as Mexican, Puerto Rican, Cuban, Central or South American or other Hispanic culture or origin, regardless of race) and American Indian or Alaskan Native.

“**Ombudsman**” shall mean the officer appointed by the Executive Director for the Office of the Ombudsman, or assigned officer of that office for the Port of Oakland, delegated with the duties of assisting small local businesses in various Port and contracting requirements as specified in section L.12 *et. seq.* of the Regulations.

“**Person or Persons**” shall mean an individual or individuals, partnerships, corporations, associations, organizations, legal representatives, or any group of persons.

“**Policy**” unless otherwise stated, shall mean the Port of Oakland Non-Discrimination and Small Local Business Utilization Policy, and Regulations if applicable.

“**Port**” shall mean the Port of Oakland.

“**Prime Contractor (Prime)**” shall mean a contractor who contracts directly with the Port.

“**Regulations**” unless otherwise stated, shall mean the regulations adopted herein as part IV regarding the Port’s Non-Discrimination and Small Local Business Utilization Policy.

“**Small Business Enterprise (SBE)**” shall mean a business in the LIA with a specified amount of average gross annual revenue or less over the past three (3) years. For any business to qualify as a “small business,” it must have an average annual gross revenue within the State small businesses standards. (California Code of Regulations, Title 2, Chapter 4, Subchapter 8).

“**Social Responsibility Division (SRD)**” shall mean the Social Responsibility Division for the Port of Oakland.

“**Subcontractor**” shall mean a contractor who contracts with a prime contractor or higher tier of subcontractor.

“**Technically Excellent,**” for the purposes of selecting a consulting team or business, shall mean the cost, quantity, quality and type of consulting services offered sufficiently meet the Port’s needs, including professional, technical and financial needs, with regard to a particular project.

“**Very Small Business Enterprise (VSBE)**” shall mean a business in the LIA with a specified amount of average gross annual revenue or less over the past three (3) years. For any business to qualify as a “very small business,” it must have a three-year average annual gross revenue not to exceed \$2,000,000.

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**III.**  
**Programs**

**A. Non-Discrimination in Construction Subcontracting.**

The Port strictly prohibits all unlawful discrimination and preferential treatment in subcontracting.

**B. Preference Points in Award of Construction Contracts.**

Unless prohibited by state or federal law or regulation, the Port shall extend a preference based on local and small local business utilization in all bids and contracts in determining the lowest responsible bidder. Points shall be awarded as incentives to contractors located in the local business area (LBA) and local impact area (LIA) and to those contractors that have small business enterprise (SBE) and very small business enterprise (VSBE) certification status in accordance with the guidelines set forth in the administrative regulations.

Points shall be translated to a percentage, and Total Base Bid Prices within 10% or \$1,000,000 (one million dollars), whichever is less, of the Total Base Bid Price of the apparent low bidder shall be reduced by such percentage for purposes of evaluation to determine the lowest responsible bidder. Points shall be allocated pursuant to administrative regulations pertaining to this Program and may be adjusted, modified or suspended by the Executive Director.

**C. Non-Discrimination in Consulting Contracts.**

The Port strictly prohibits all unlawful discrimination and preferential treatment in subconsulting.

The Port will insure that LIABEs, LBABEs, VSBEs and SBEs have significant opportunities to submit proposals. The process shall be as open, fair and consistent as possible and will be implemented pursuant to the administrative regulations pertaining to this Program.

**D. Selection of Consultants and Preference Points.**

The Port, through its Selection Committee, will evaluate competing consultant proposals based on a one hundred (100) point scale. Up to eighty-five (85) of the points will be allocated based on an evaluation of technical excellence of the consultant; up to fifteen (15) points will be allocated pursuant to administrative regulations pertaining to this Program and may be adjusted, modified or suspended by the Executive Director.

**E. Selection of Design-Builders.**

The Port, through its Engineering Division in consultation with the Social Responsibility Division, will review each project identified as design-build in order to determine in its sole

discretion whether the project will be subject to the guidelines set forth in this Policy or subject to the guidelines set forth in the Non-Discrimination and Small Local Business Utilization Policy for Alternative Project Delivery Approaches ("APDA") (Res. No. 02199).

Generally, if the Engineering Division determines that the project and specifications are sufficiently defined so as to allow bidders to identify their subcontractors, suppliers, or subconsultants at the time of bid submission, then it will be inclined to apply this Policy. Generally, if the Engineering Division determines that the project and specifications are not sufficiently defined so as to allow the bidders to identify their subcontractors, suppliers, or subconsultants, at the time of bid submission, then it will be inclined to apply the APDA. In making its determination as to which policy to apply, the Engineering Division will be guided by the objective of maximizing the opportunities for small and local businesses to participate in the project.

**Sealed Low Bid awards.** For those contracts in which the Design-Builder is selected according to the lowest responsive and responsible bid, preference points will be awarded in the manner described in Part III, Section D, and will be implemented in accordance with the guidelines set forth in the administrative regulations.

**Competitive Negotiation or Best Value awards.** For those contracts in which the Design-Builder is selected through a process of competitive negotiation or Best Value, the Port will award preference points in accordance with the guidelines set forth in the administrative regulations.

#### **F. Small Business Program.**

The Port recognizes the difficulties small businesses may encounter when competing against larger more established businesses for construction and consultant contracts. The Port has implemented a Small Business Program to assist in the utilization of small local businesses.

The Port, through its Engineering Division in consultation with the Social Responsibility Division, will annually review its Capital Improvement Program in order to determine whether any projects exist that can successfully be completed by small local business contractors or consultants. Selection of projects for the program will be based primarily on the cost and the availability of a minimum number of small local businesses capable of performing the contract. Projects so identified will be presented to the Board of Port Commissioners for approval for placement in the Small Business Program. Bids or proposals for any project selected will be limited to certified small local businesses.

The Small Business Program includes only small businesses located within the LIA. To qualify for inclusion in the Small Business Program, an applicant must be a Small Business Enterprise (SBE) as defined in Part II and be certified as such. If so certified, the business will be placed in a pool with other small local businesses.

In order to insure the effectiveness and integrity of the Small Business Program, and in accordance with the Port's non-discrimination policy, the Small Business Program will be neutral as to race, ethnicity, national origin, age, sex, religion, and sexual orientation, actual or perceived. Any business seeking inclusion in the pool of small businesses will be able to apply. Additionally, the Port will monitor the Small Business Program by a system of penalties for violations of the policy or regulations, including exclusion from any future bidding on or participation in Port projects.

### **G. Very Small Business Program.**

The Port recognizes the unique difficulties facing very small businesses when competing in the marketplace and even in the Small Business Program. The Port will implement a Very Small Business Program to assist in the utilization of very small local businesses.

The Port, through its Engineering Division in consultation with the Social Responsibility Division, will annually review its Capital Improvement Program in order to determine whether any projects exist that can successfully be completed by very small local business contractors or consultants. Selection of projects for the program will be based primarily on the cost and the availability of a minimum number of very small local businesses capable of performing the contract. Projects so identified will be presented to the Board of Port Commissioners for approval for placement in the Very Small Business Program. Bids or proposals for any project selected will be limited to certified very small local businesses.

The Very Small Business Program will include only small businesses located within the LIA. To qualify for inclusion in the Very Small Business Program, an applicant must be a Very Small Business Enterprise (VSBE) as defined in Part II and be certified as such. If so certified, the business will be placed in a pool with other very small local businesses.

In order to insure the effectiveness and integrity of the Very Small Business Program, and in accordance with the Port's non-discrimination policy, the Very Small Business Program will be neutral as to race, ethnicity, national origin, age, sex, religion, and sexual orientation, actual or perceived. Any business seeking inclusion in the pool of very small businesses will be able to apply. Additionally, the Port will monitor the Very Small Business Program by a system of penalties for violations of the policy or regulations, including exclusion from any future bidding on or participation in Port projects.

### **H. Building Permits and Leases.**

The Port shall require, as a prerequisite to granting a building permit or lease, that the grantee or lessee comply with the Port's Non-Discrimination and Small Local Business Utilization Policy. A business may demonstrate its compliance according to the standards set forth in the Port's Policy and administrative regulations.

### **I. Purchasing Program.**

The Port, through its Purchasing Department, will seek to utilize vendors from Oakland, including small local businesses, in furtherance of efficiency and Port policy to the extent permissible by law, when such vendors are available and the price of goods or services sought is reasonable. When no vendors from Oakland are available, the Purchasing Department will seek to contract with businesses from outside Oakland in this order of preference: the LIA, the LBA, the Bay Area, California and nationwide.

### **J. Consultant Contracts Below the Bid Limit.**

In choosing consultants for small projects, for which costs are below the bid limit, Port staff and divisions shall comply with all applicable terms of this policy in their awards of small consulting contracts using the selection process outlined in section D above; and in accordance with the administrative regulations pertaining to this Program.

**K. Non-Discrimination in Contracts Below the Bid Limit.**

Contracts which are below the bid limit and not subject to competitive bidding are required to be issued according to the same non-discrimination and non-preferential treatment policy as set forth in Part I hereinabove. Port Division Directors and their Staff are expected to select and utilize contractors and consultants according to this policy.

Staff will maintain records on contracts awarded under this section and report the results to the Social Responsibility Division (SRD) on December 31 and on June 30 of each year. SRD shall report its Port-wide summaries annually to the Board.

**L. Federal, State or Other Grants and Funding Sources.**

To the extent it is a condition of a federal, state or other funding source that the Port comply with that source's policies and programs concerning Disadvantaged Business Enterprise (DBE), Minority-owned Business Enterprise (MBE), Women-owned Business Enterprise (WBE) and small local business utilization, the Port will make its policies consistent with said source's regulations to the extent permissible by law.

**M. Technical Assistance Program.**

The Port will co-sponsor and encourage development of programs for training in business skills for owners and operators of small local businesses.

**N. Bonding Program for Small Local Businesses.**

The Port will implement a Surety Bond and Financing Program to assist contractors in obtaining bonding and financing to meet the Port's small local business utilization goals.

**O. Ombudsman**

The Port will designate a person to act as Ombudsman to assist small local businesses seeking Port contracts with problems in the contracting process, such as interpretation of plans and specifications, requests for proposal, bonding and insurance requirements, preparation and submission of bid, and other Port processes and procedures relative to the process of contracting.

**P. Prompt Payment Program**

The Port will implement a Prompt Payment Program to insure timely payment to contractors and consultants upon receipt of properly documented invoices or other contract billings. As part of this program, the Port will require that subcontractors, subconsultants, and suppliers in turn receive timely payments from the contractor or consultant after the Port has made payment.

**Q. Executive Director**

The Executive Director, with the advice and assistance of the Port Attorney, shall implement this policy and is authorized to adopt rules of practice and procedure and issue regulations reasonably necessary to carry out the provisions of this Policy and effectuate its purposes.

### **R. Penalties**

The Port shall monitor all contractors' and consultants' compliance with this Policy through a system of penalties. The Executive Director shall have the authority to impose sanctions on individuals and businesses upon a finding of a willful, knowing or bad faith, non-compliance or submission of information known or suspected to be false or misleading.

Penalties shall include banning from future bidding on Port projects, cancellation of executed contracts and ineligibility for all programs under this Policy.

### **S. Severability**

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

## **IV.** **Regulations**

The following Regulations are issued to implement the Port's Non-Discrimination and Small Local Business Utilization Policy. All terms not otherwise specifically defined have the same meaning as set forth in the Part II Definitions.

### **A. Preference Points in Award of Construction, Consultant Contracts and Design Builders.**

1.1. Persons and entities claiming local business status under this article who are not yet certified as an LIABE, LBABE, SBE or VSBE shall apply to the Social Responsibility Division for this certification at least seven (7) business days prior to the bid or proposal due date. The Social Responsibility Division will provide forms for application, determine whether the completed application and documentation presented establishes eligibility for certification, and issue a letter of certification as a Local Business Area Business Enterprise (LBABE), Local Impact Area Business Enterprise (LIABE), Small Business Enterprise (SBE) or a Very Small Business Enterprise (VSBE) or joint venture with any of the above. The Port shall require the following:

1.1.1. The business must be located at a fixed commercial or residential address, which constitutes a business location where administrative, clerical, professional, or other productive work is continuously performed relative to its commercial contracts. A temporary or moveable office, a project work station, a post office box, or a telephone answering and/or forwarding service are not acceptable; and

1.1.2. The business must have located within the LBA or LIA at least one (1) year prior to the certification application date; and

1.1.3. The business must provide evidence of performing prior contracts while based within the LBA or LIA; and

1.1.4. The business must be economically independent and perform commercially useful functions. A business acting as a passive conduit rather than contributing a value added or actual portion of the work performed does not qualify for certification; and

1.1.5. The business must be currently licensed, where applicable, in the type of work in which it is seeking a contract with the Port of Oakland at least one year prior to the certification application date; and

1.1.6. The business must be *bona fide* with real and continuing business ownership interests which are not created merely for the purpose of meeting the objectives of the Port's Non-Discrimination and Small Local Business Utilization Policy.

1.2. Any business claiming local business or local impact area business status shall provide the following documentation to establish business location and time in business at the location:

1.2.1. Valid current business license or tax certificate issued by the city or county where it is located and doing business.. All applicants are required to submit this documentation; and

1.2.2. Previous business license or tax certificate certified for authenticity by the city clerk or county clerk of the jurisdiction which issued it, and dated at least twelve (12) months prior to its certification application, for purposes or establishing length of time of doing business at the location; and

1.2.3. Copy of current lease; if month-to-month then a letter from the leasing agent and a copy of the last check paid; if home office then copy of Federal Form 8829 or property tax statements; and

1.2.4. Past or current contracts with governmental agencies or private entities for work performed at or from the location; and

1.2.5. Professional or trade licenses or applicable certificates or permits required by law for doing business and issued by a federal or state governmental agency within the past ten (10) years.

1.3. Any business claiming small or very small local business status shall provide the following documentation to establish business location and time in business at the location:

1.3.1. Certification by the Social Responsibility Division as a LIABE pursuant to regulations Sections 1.1 and 1.2.

1.3.2. The business also must provide evidence of annual gross receipts not to exceed the following size standards:

1.3.2.1. For Small Business Enterprise (SBE) certification: State small business standards set forth in California Code of Regulations, Title 2, Chapter 4, Subchapter 8.

1.3.2.2. For Very Small Business Enterprise (VSBE) certification: an average annual gross receipts not to exceed \$2,000,000 (two million dollars) over the past three (3) consecutive years.

1.3.3. Documentation to provide evidence of gross receipts includes tax returns or other acceptable documentation.

1.4. Preference Points for Public Works Construction Contracts: In order to receive preference points, all certifications must be complete at time of bid as the process is described in § 1.1, 1.2 and 1.3 above. Bidders seeking SBE and VSBE preference points must be certified according to the process described in § 1.1, 1.2 and 1.3 above.

1.4.1. Bidders may be awarded up to a maximum of four (4) preference points depending on the proportionate share of work, calculated based on the contract amount, to be done by LBABE and LIABE certified prime contractor(s) and subcontractors.

- a. If all the contract work is to be performed by LIABE prime contractor(s) and subcontractors, the bidder will be awarded four (4) points; or
- b. If all the contract work is to be performed by LBABE prime contractor(s) and subcontractors, the bidder will be awarded two (2) points; or
- c. If the contract work is to be divided among prime contractor(s) and subcontractors with offices located within the LIA, LBA and outside the LBA, the bidder will be awarded the proportionate shares of the 4 LIA and 2 LBA points depending on the percentage of total work being done by the prime contractors and subcontractors in each area.

1.4.2. Bidders may also be awarded up to a maximum of two (2) preference points depending on the proportionate share of prime contract work to be done by LBABE and LIABE certified prime contractor(s).

- a. If all the prime contract work is to be performed by LIABE prime contractor(s), the bidder will be awarded two (2) points; or
- b. If all the prime contract work is to be performed by LBABE prime contractor(s), the bidder will be awarded 1 point; or
- c. If the prime contract work is to be divided among prime contractor(s) with offices located within the LIA, LBA, and outside the LBA, as in the case of a joint venture or other form of strategic alliance, the bidders will be awarded proportionate shares of the 2 LIA and 1 LBA points depending on the percentage of prime work being done by prime contractors in each area.

1.4.3. Bidders may also be awarded up to a maximum of four (4) preference points depending on the proportionate share of work, to be done by SBE and VSBE certified prime contractor(s) and subcontractors.

- a. A proportionate share of four (4) points will be awarded based on the percentage of total work to be performed by VSBE prime contractor(s) and subcontractors; or
- b. A proportionate share of two (2) points will be awarded based on the percentage of total work to be performed by SBE prime contractor(s) and subcontractors.

1.5. Construction bidders may accumulate points under these rules up to a maximum of ten (10) points. For each point validated under these rules, the Total Base Bid Price that is within 10% or \$1,000,000 (one million dollars), whichever is less, of the apparent low bidder's Total Base Bid Price, will be reduced by an equivalent percentage for purposes of evaluation for determination of the lowest responsible bidder. If the bid is accepted on this basis, the actual bid before reduction under these rules will be the bid awarded the contract. Consultants proposing contracts may accumulate up to fifteen (15) points to be considered pursuant to Regulation 2.3.

1.6. The proportion of the contract amount attributable to materials or supplies bought by the bidder for use and or installation by a listed subcontractor shall accumulate points based on that subcontractor's preference point's eligibility.

1.6.1. The bidder shall list any contract amount(s) of materials or supplies bought by the bidder for use and or installation by a listed subcontractor. The amount(s) of each subcontractor's materials or supplies shall be listed separately on an attached sheet (form 00430) to be submitted with the bid.

1.7. Preference Points for Bids based on Percentage of Direct Labor Costs: For bids submitted on basis of bidder's direct labor costs, preference points described above will only be credited for participation by bidders that satisfy the requirements for local (LIABE and/or LBABE) and small (SBE and/or VSBE) business participation. Preference points will not be credited (nor bids modified) for participation by LIABE, LBABE, SBE or VSBE subcontractors or truckers.

1.7.1. Preference Points for Bids For Annual On-Call/Emergency Spill Response and Hazardous Materials Handling Services: For bids submitted to perform annual on-call emergency spill response services, including hazardous materials handling services, preference points described above will only be credited based on a comparison of bidders proposed local (LIABE and/or LBABE) and small (SBE and/or VSBE) participation levels that meet or exceed the minimum local and small participation threshold established by the Executive Director. The minimum local and small participation threshold established by the Executive Director shall be based upon actual utilization figures from prior contracts involving the same or similar scopes of work and services over the prior three year contractual periods. The minimum local and small participation threshold shall be set forth in Document 00200, Instructions to Bidders. Up to 6 points shall be credited for the level of LBABE and/or LIABE utilization that a bidder is willing to certify to use. Up to 4 points will be credited for the level of SBE and/or VSBE utilization that a bidder is willing to certify to use. Points shall be calculated based on the highest level of local and small business utilization that is proposed from among all bids, as follows: The level of the bidder's local and small participation divided by the highest level of local and small business participation proposed by any bidder, the quotient of which will be multiplied by the maximum ten points. LBABE firms' participation will be credited at 50% of the proposed contract value towards the local participation threshold. LIABE firms' participation will be credited at 100% of the proposed contract value towards the local participation threshold. SBE firms' participation will be credited at 100% of the proposed contract value towards the small participation threshold. VSBE firms' participation will be credited at 200% of the proposed contract value towards the small participation threshold. The successful bidder will be required to achieve their stated level of local and small participation proposed and certified on in Document 00857, entitled "Bidder's Certification of Local Participation"

1.8. Preference Points for Consultant Contracts: In order to receive preference points, all certifications must be complete by proposal due date as the process is described in § 1.1, 1.2 and 1.3 above. Proposers seeking SBE and VSBE preference points must be certified according to the process described in § 1.1, 1.2 and 1.3 above.

1.8.1. Proposers may be awarded up to a maximum of five (5) preference points depending on the proportionate share of work, calculated based on the contract amount, to be done by LBABE and LIABE certified prime consultant(s) and subconsultants.

- a. If all the contract work is to be performed at the prime consultant's and subconsultants' respective offices within the LIA, the proposer will be awarded 5 points; or
- b. If all the contract work is to be performed at the prime consultant's and subconsultants' respective offices within the LBA, the proposer will be awarded 2.5 points; or
- c. If the contract work is to be divided among prime consultants and subconsultants with offices located within the LIA, LBA and outside the LBA, the proposers will be awarded proportionate shares of the 5 LIA and 2.5 LBA points depending on the percentage of total work being done by the prime consultants and subconsultants in each area

1.8.2. Proposers may also be awarded up to a maximum of three (3) preference points depending on the proportionate share of prime contract work to be done by LBABE and LIABE certified prime consultant(s).

- a. If all the prime contract work is to be performed at the prime consultant's office within the LIA, the proposer will be awarded 3 points; or
- b. If all the prime contract work is to be performed at the prime consultant's office within the LBA, the proposer will be awarded 1.5 points; or
- c. If the prime contract work is to be divided among the LIA, LBA, and outside the LBA, as in the case of a joint venture or other form of strategic alliance, the proposers will be awarded proportionate shares of the 3 LIA and 1.5 LBA points depending on the percentage of prime work being done by firms located in each area.

1.8.3. Proposers may also be awarded up to a maximum of four (4) preference points depending on the proportionate share of work to be done by SBE and VSBE certified consultant(s) and subconsultants.

- a. A proportionate share of four (4) points will be awarded based on the percentage of total work to be performed by VSBE prime consultant(s) and subconsultants; or
- b. A proportionate share of two (2) points will be awarded based on the percentage of total work to be performed by SBE prime consultant(s) and subconsultants.

1.8.4. Proposers may also be awarded up to a maximum of three (3) preference points for demonstrating their commitment to the Port's community values and programs. Examples of this commitment may include proposers which do the following:

- a. Mentor small or very small local firms;

- b. Commit to hiring local interns, and students;
- c. Participate in trade fairs or job fairs targeted to LIA businesses and job seekers;
- d. Participate in other activities which are dedicated to the economic development of LIA businesses, citizens and students.

1.9. Preference Points for Design-Builders. In order to receive preference points, all certifications must be complete by the proposal due date as the process is described in § 1.1, 1.2 and 1.3 above. Bidders seeking SBE and VSBE preference points must be certified according to the process described in § 1.1, 1.2 and 1.3 above.

1.9.1. Proposers may be awarded up to a maximum of five (5) preference points depending on the proportionate share of work, calculated based on the contract amount, to be done by LBABE and LIABE certified firms (professional services and construction).

- a. If all the contract work is to be performed by firms located within the LIA, the proposer will be awarded 5 points (professional services and construction); or
- b. If all the contract work is to be performed by firms located within the LBA, the proposer will be awarded 2.5 points (professional services and construction); or
- c. If the contract work is to be divided among firms with offices within the LIA, LBA, and outside the LBA, the proposer will be awarded proportionate shares of the 5 LIA and 2.5 LBA points depending on the percentage of total work being done by firms in each area (professional services and construction).

1.9.2. Proposers may also be awarded up to a maximum of three (3) preference points depending on the proportionate share of prime contract work to be done by LBABE and LIABE certified prime contractor(s) (professional services and construction).

- a. If all the prime contract work is to be performed by LIABE prime(s), the proposer will be awarded 3 points (professional services and construction); or
- b. If all the prime contract work is to be performed by LBABE prime(s), the proposer will be awarded 1.5 points (professional services and construction); or
- c. If the prime contract work is to be divided among LIABE, LBABE, and/or firms located outside the LBA, as in the case of a joint venture or other form of strategic alliance, the proposers will be awarded proportionate shares of the 3 LIA and 1.5 LBA points depending on the percentage of prime contract work being done in each area (professional services and construction).

1.9.3. Proposers may also be awarded up to a maximum of four (4) preference points depending on the proportionate share of work to be done by SBE and VSBE certified firms (professional services and construction).

- a. A proportionate share of four (4) points will be awarded based on the percentage of total work to be performed by VSBE firms (professional services and construction); or
- b. A proportionate share of two (2) points will be awarded based on the percentage of total work to be performed by SBE firms (professional services and construction).

1.9.4. Proposers may also be awarded up to a maximum of three (3) preference points based on the proportionate share of work to be done by firms (professional services and construction) for demonstrating their commitment to the Port's community values and programs. Examples of this commitment may include proposers which do the following:

- a. Mentor small or very small local firms;
- b. Commit to hiring local interns, student, or participating in local pre-apprentice and apprentice job training programs;
- c. Participate in trade fairs or job fairs targeted to LIA businesses and job seekers;
- d. Participate in other activities, which are dedicated to the economic development of LIA businesses, citizens and students.

1.10. Preference Points for Design-Builder(s) Bid based on Competitive Negotiation or Best Value: For bids awarded through a process of competitive negotiation or Best Value, the Port, through its Selection Committee, will evaluate the design-builder(s) proposal based on technical excellence and price of the proposing firm and through the allocation of preference points in the manner described in § 1.9 above.

**1.11.** For professional service consultants who will receive LIA, LBA, SBE or VSBE preference points, the work must be performed at the qualifying office.

1.12. The Contract Compliance Officer shall make determinations under this article with the advice of the Port Attorney, who is the final arbiter of interpretation of these rules. The decision of the Contract Compliance Officer as advised by the Port Attorney shall be final.

## **B. Selection of Consultants and Preference Points.**

2.1. The Department seeking a consultant for a contract above the bid limit will consult with the Social Responsibility Division to first identify SBE firms, to which requests for proposals may be sent. If an insufficient number of SBE firms are identified, LIA and then LBA firms will be identified for consideration. If insufficient LBA firms are identified, consideration will extend in geographic progression to the Bay Area, northern California, California, and nationwide.

2.2. Proposers on consultant contracts and members of their teams may apply for certification as LIA, LBA, SBE and VSBE firms pursuant to Regulations 1.1, 1.2 and 1.3 and may receive the preference points allotted under Regulation 1.8 up to a maximum of fifteen (15) points.

2.3. The Port will establish a selection committee to evaluate consultant proposals and make a recommendation to the Executive Director. Factors of evaluation shall be established by the Contract Compliance Department and the Port Division seeking proposals.

2.3.1. Members of the Selection Committee are (1) the Executive Director or designee, (2) the Director of Social Responsibility or designee, (3) the Division Director requiring the services or designee, (4) the Project Manager designee, and at the discretion of the Executive Director, (5) a public member. The public member shall be appointed by the Executive Director and shall not be a Port employee.

2.3.2. The Committee will evaluate competing consultant proposals on a one hundred (100) point scale. Up to Eighty-five (85) of the points will be allocated on the basis of evaluation of technical excellence of the consultant; up to remaining fifteen (15) points will be allocated as preference points awarded pursuant to Regulation 1.8.

### **C. Selection of Design Builders**

3.1. The Port, through its Selection Committee, will evaluate competing design-builder proposals based on a one hundred (100) point scale. Up to eighty-five (85) of the points will be allocated based on an evaluation of technical excellence and price of the proposing firm; up to fifteen (15) points will be awarded pursuant to Regulations 1.9.

### **D. Post-Award NDSLBU Compliance Documentation**

#### 4.1 Certification of Subcontractor and Supplier Award for Public Works Contracts

4.1.1 For any annual contract awarded, prior to commencement of each instance of work, Bidder will be required to submit the names of all subcontractors and their respective item of work on a supplemental report form (Document 00430S), Port of Oakland Supplemental Subcontractor and Supplier List Form for Annual Contract, for those subcontractors who will perform any portion of work, including labor, rendering of services, or specially fabricating and installing a portion of the work or improvement according to detailed drawings contained in the plans and specification, in excess of one-half of one percent (0.5%) of the estimated cost of the work to be performed. Bidders must also submit the names of all trucking brokers on said document, regardless of whether the broker's portion of the work will or will not exceed one-half of one percent (0.5%) of the estimated cost of the work to be performed.

4.1.2 For any contract awarded, the successful bidder (prime) shall provide, pursuant to the invoice schedule, information included but not limited to a listing of any contract amount(s) due under said invoice to each tier subcontractor, material supplier (optional to the extent contractor desires to be credited with LIABE, LBABE, SBE or VSBE

supplier participation), and each JV partner or associate whose subcontract exceeds one-half of one percent (0.5%) of the estimated cost of the work, and amounts previously billed and paid (in any) to said subcontractors, material suppliers (optional), and JV partners under all prior invoices paid by the Port (Contractor's Payment Record for Public Works Projects). This information shall be inputted into the Port of Oakland's Web Accessed Monitoring System (WAMS).

#### 4.2 Compliance Documentation for Professional Services Contracts

4.2.1. For any contract awarded, the successful proposer (prime) shall provide, pursuant to the invoice schedule, information included but not limited to a listing of any contract amount(s) due under said invoice to each tier subconsultant, and each JV partner or associate, and amounts previously billed and paid (in any) to said subconsultants, and JV partners under all prior invoices paid by the Port (Consultant's Payment Record for Professional Services Contracts). This information shall be inputted into WAMS.

#### 4.3 Compliance Documentation for Design-Build Projects

4.3.1 For any design-build contract awarded, the successful proposer (prime) shall provide, pursuant to the invoice schedule, the information requested in Regulations 4.2.

### **E. Small Business Program.**

5.1. Regulations for Port Staff in Selecting Small Business Projects: The Engineering Division, in collaboration with the Social Responsibility Division shall select certain projects reserved only for Small Businesses. The Port, in determining whether to select a project for the reserved program shall consider the following:

5.1.1. On-going review of the Port's Capital Improvement Program;

5.1.2. After each such review, determine whether any projects exist that can be successfully completed by small local businesses;

5.1.3. Determine the costs of each project considered for placement in the reserved program. If economically and practically feasible, the project shall be reserved for the Small Business Program;

5.1.4. Before soliciting bids or proposals for such projects, the Small Business project(s) shall be submitted for Board approval;

5.1.5. The Port shall determine the availability of a minimum number of Small Businesses Enterprises (SBEs) able to perform the work. The Port requires a minimum of three (3) SBEs willing and able to bid or propose, for the project to remain in the Small Business Program.

5.1.6. The Social Responsibility Division shall maintain a current list of SBEs that qualify and wish to participate in the Small Business Program. The list shall identify each firm and its respective LIA and only firms on the list may submit bids;

5.2. Requirements for Inclusion in the Small Business Program: Any contracting or consulting firm desiring to be included in the Port's Small Business Program may apply for certification as an SBE. All applicants must satisfy the following:

5.2.1. Submit a completed application to the Social Responsibility Division. Applications are available from the Social Responsibility Division; and

5.2.2. Provide documentation, including tax returns, of status as a small business with average annual gross receipts not to exceed the State small business standards set forth in California Code of Regulations, Title 2, Chapter 4, Subchapter 8, over the past three (3) consecutive years. The pertinent size information from such State standards currently in effect is attached hereto in Exhibit B; and

5.2.3. Certification by the Social Responsibility Division as a LIABE pursuant to Regulation 1.1 and 1.2.

5.3. Bidding on Small Business Projects.

5.3.1. The Port shall notify businesses on the list established under Regulation 5.16 of projects selected for the Small Business Program.

5.3.2. Bidding shall be restricted to only those businesses listed as an SBE. The lowest bidder among the SBEs shall be considered the "lowest responsible bidder;"

5.3.3. If only one (1) SBE bids and its bid is within the budget for the project, it will be awarded the contract;

5.3.4. If no SBE is able to perform the work, the project will be bid as a general public works project or, if under the Port's bid limit, will be subject to the Port's program regarding projects below the bid limit as set forth in sections I.9 *et. seq.*.

5.4. Violations.

Any violations of the Small Business Program shall be subject to penalties set forth in section P.16 *et. seq.*

## **F. Very Small Business Program**

6.1. Regulations for Port Staff in Selecting Very Small Business Projects.

The Engineering Division, in collaboration with the Social Responsibility Division shall select certain projects reserved only for Very Small Businesses. The Port, in determining whether to select a project for the reserved program shall consider the following:

6.1.1. On-going review of the Port's Capital Improvement Program;

6.1.2. After each such review, determine whether any projects exist that can be successfully completed by very small local businesses;

6.1.3. Determine the costs of each project considered for placement in the reserved market. If economically and practically feasible, the project shall be reserved for the Very Small Business program;

6.1.4. Before soliciting bids or proposals for such projects, the Very Small Business project(s) shall be submitted for Board approval;

6.1.5. The Port shall determine the availability of a minimum number of Very Small Local Businesses Enterprises (VSBES) able to perform the work. The Port requires a minimum of three (3) VSBES willing and able to bid or propose, for the project to remain in the Very Small Business Program;

6.1.6. The Social Responsibility Division shall maintain a current list of VSBES that qualify and wish to participate in the Very Small Business Program. The list shall identify each firm and its respective LIA and only firms on the list may submit bids;

6.2. Requirements for Inclusion in the Very Small Business Program.

Any contracting or consulting firm desiring to be included in the Port's Very Small Business Program may apply for certification as a VSBE. All applicants must satisfy the following:

6.2.1. Submit a completed application to the Social Responsibility Division. Applications are available from the Social Responsibility Division; and

6.2.2. Provide documentation, including tax returns, of status as a very small business with three (3) year average annual gross income not to exceed \$2,000,000;

6.2.3. Certification by the Social Responsibility Division as a LIABE pursuant to Regulation 1.1 and 1.2.

6.3. Bidding on Very Small Business Projects.

6.3.1. The Port shall notify businesses on the list established under Regulation 6.16 of projects selected for the Very Small Business Program;

6.3.2. Bidding shall be restricted to only those businesses listed as a VSBE. The lowest bidder among the VSBES shall be considered the "lowest responsible bidder;"

6.3.3. If only one (1) VSBE bids and its bid is within the budget for the project, it will be awarded the contract;

6.3.4. If no VSBE is able to perform the work, the project will be bid as a general public works project, or if under the Port's bid limit, will be subject to the Port's program regarding projects below the bid limit as set forth in sections 1.9 *et. seq.*.

6.4. Violations.

Any violations of the Very Small Business Program shall be subject to penalties set forth in section P.16 *et. seq.*

### **G. Building Permits and Leases**

7.1. In addition to any other requirements for obtaining a building permit or lease, all applicants must also comply with the Port's Non-Discrimination and Small/Local Business Policy.

### **H. Purchasing Program**

8.1. The Purchasing Manager shall follow the non-discrimination policy as set forth herein in issuing purchase order contracts for goods and services.

8.2. The Purchasing Manager shall first seek to utilize vendors which are very small local businesses located in Oakland to the extent such vendors are available and the price of the goods and services sought is reasonable and competitive in the marketplace. If such vendors in Oakland are not available, the Purchasing Manager shall seek to utilize vendors which are small local businesses located in Oakland. If such vendors in Oakland are not available, such vendors will be sought next in the LIA and then as necessary in the LBA, the Bay Area, California, or nationwide.

8.3. The Purchasing Manager shall maintain records of purchase contracts issued to small and very small local businesses, located in Oakland, the LIA, and the LBA, and report the results annually to the Social Responsibility Division. This information will be included in the Social Responsibility Division's annual report to the Board.

### **I. Consultant Contracts Below the Bid Limit**

9.1. Port Division Directors and Managers (Staff) will follow the policy and procedures set forth in Regulations 2.1 to 2.3 hereinabove, except use of the Selection Committee set forth in subsection 2.31.

9.2. Staff shall consider use of different consultants when equally capable consultants are available, rather than using the same consultant on numerous occasions.

9.3. Staff shall maintain records on consultant contacts awarded to LBABEs, LIABEs, SBEs and VSBEs and report the results to the Social Responsibility Division on December 31 and on June 30 of each year.

### **J. Federal, State or Other Grants and Funding Sources**

10.1. From time to time, the Port may accept funding from the federal or state governments and from other sources for construction or other projects.

10.2. As each source may vary in its MBE, WBE and small local business utilization policies and programs, if applicable, the Port shall make its policies as to the subject project consistent with the funding sources policies to the extent permissible by law.

## **K. Technical Assistance Program**

11.1. The Port will cosponsor and encourage development of business skills courses so that small local businesses will be able to develop the sophistication needed to compete in the construction and consulting fields.

11.2. Availability of such development courses provided or cosponsored by the Port shall be limited to the following:

11.2.1. Certified small local businesses as defined in part II and pursuant to Regulations 5.22; and 5.23 and 6.22 and 6.23; and

11.2.2. Businesses certified by the Social Responsibility Division as a LIABE, SBE or VSBE pursuant to Regulation 1.1, 1.2 and 1.3.

11.2.3. Depending on the location of the courses, attendance may be limited as required by law or sponsoring entity.

11.3. The Port shall notify small local businesses of upcoming courses or events sponsored or cosponsored by the Port. Notification may consist of, but is not limited to, the following:

11.3.1. Advertisement in one or more daily or weekly newspapers, trade association publications, or trade oriented publications, trade journals, or other media;

11.3.2. Advertisement in a Port publication.

11.4. Due to practical constraints, the Port is not required to notify persons or businesses on an individual basis.

11.5. Registration for courses, if any, shall be conducted according to the procedures of each sponsoring entity.

## **L. Bonding Program for Small Local Businesses**

12.1. The Port will hire a consultant to implement a Surety Bond & Financing Services Program that encompasses the following services at no charge:

12.1.1. Bid, performance and payment bond guarantees to surety companies up to 40% of bond or \$750,000, whichever is less; and

12.1.2. Loan guarantees to banks up to 50% of loan or \$750,000, whichever is less; and

12.1.3. Payment of funds control fees up to 1% of the bond amount; and

12.1.4. Individual counseling and group workshops on bonding, financing and business management.

12.2. Upon request and receipt of all required documents, the Port shall:

12.2.1. Review the cost of compliance with contract bonding requirements; and

12.2.2. Determine whether the business is required to pay a higher bond premium than is generally charged in the industry due to its status as a small business.

12.3. Upon a finding that the business is required to pay a higher bond premium than is generally charged in the industry due to its status as a small business, the Port may:

12.3.1. Reduce the business' bid by the cost of bonding for the sole purpose of determining the lowest responsible bidder. If the bid is accepted on this basis, the actual bid before deducting the cost of bonding under these rules will be the bid awarded the contract.

### **M. Ombudsman**

13.1. The Executive Director may assign, at his or her sole discretion, an Ombudsman to aid small local businesses in obtaining Port contracts.

13.2. The Ombudsman shall:

13.2.1. Assist in the interpretation of plans and specifications/requests for proposals;

13.2.2. Provide information on resources for obtaining bonding and insurance;

13.2.3. Explain the process for the preparation and submission of bids and proposals;

13.2.4. Assist in the interpretation of and compliance with this Policy and the Regulations;

13.2.5. Assist in other Port processes and procedures as are in furtherance of this Policy.

### **N. Prompt Payment Program**

14.1. Payments on all construction and consulting contracts will be mailed to the contractor within ten (10) business days of receipt of properly documented invoices which have been reviewed and approved for payment.

14.1.1. Inadequate or defective invoices or billings will be returned to the contractor with reasons for the deficiency within five (5) business days of receipt.

14.1.2. Invoices or billings which cannot be paid for cause under the contract or by legal process such as stop notice, lien or levy shall be returned to the contractor with reasons therefore within five (5) business days of receipt.

14.2. To the extent it may do so under the law, the Port will require contractors and consultants to issue payments to subcontractors, and subconsultants within (5) business days of receipt of payment from the Port.

14.2.1. Payments will be made by an immediately negotiable instrument which the maker reasonably believes will be unconditionally paid when presented to the institution on which it is drawn.

14.2.2. This provision will not require payment where the contractor or consultant has a contractual or legal cause to withhold payment and notifies the subcontractor or subconsultant of the reasons therefore within five (5) business days of receipt of payment from the Port.

14.2.3. If the contractor or consultant fails to pay subcontractors or subconsultants as required in Regulation 14.2 herein, the Port shall withhold, upon notice by the subcontractor or subconsultant and subsequent verification, the amount due and invoiced by the subcontractor or subconsultant. The Port shall notify the contractor or consultant to make the overdue payments. When payment is made and receipts therefore are received, the Port shall release the amounts withheld.

14.3. Upon written request from the contractor, the Port may make twice-monthly payments on contracts under \$1,000,000 in contract price. The first payment will be based on a joint estimate by the Port and contractor, which estimate includes and identifies work performed by subcontractors. The second payment will be based on the actual work invoiced and accepted for the month, less payment already made and other amounts withheld pursuant to the contract. The contractor will follow the same procedure for payments to subcontractors and suppliers as a condition for the Port's acceptance of its request for twice-monthly payments.

## **O. Executive Director**

15.1. In addition to the powers authorized throughout this policy and these regulations, the Executive Director, with the advice and assistance of the Port Attorney shall have the authority to do the following:

15.1.1. Implement this policy and these Regulations;

15.1.2. Adopt, modify or rescind these Regulations and any other rules of practice and procedure hereunder;

15.1.3. Review, adjust or suspend any provision under this policy and these Regulations including provision for preferences from time to time, as is deemed reasonably necessary and in the best interests of the Port;

15.1.4. Waive, with cause, any provision under this policy and these Regulations;  
and

15.1.5. Revise, modify and adjust the forms attached as Exhibits hereto.

**P. Penalties for Willful, Knowing or Bad Faith Noncompliance of Port Policy and Regulations**

16.1. The Social Responsibility Division or any Port Division or Department in charge of a project shall report to the Executive Director of any suspicions that a business has violated the Port's Policy or Regulations.

16.2. The Executive Director, or his or her assigns, shall review such reports and determine whether there is cause to investigate.

16.3. If an investigation is implemented, the Executive Director, or his or her assigns, shall:

16.3.1. Provide notice and opportunity to be heard;

16.3.2. Review any documents submitted to the Port regarding the questioned business;

16.3.3. If necessary, request the cooperation of the business under investigation in obtaining further information;

16.3.4. Determine whether the violation has been a willful, knowing or bad faith noncompliance with the Port's Policy or Regulations. The decisions of the Executive Director shall be final.

16.3.5. If a business refuses to cooperate with the Port's investigation, the Port will presume the business is ineligible for any programs under this Policy pursuant to Regulation 16.4 *infra* and consider any current and future bids non-responsive until the matter is resolved.

16.4. Sanctions for a willful, knowing or bad faith noncompliance, including submission of information known or suspected to be false shall include, but are not limited to:

16.4.1. Banning of the business from bidding, working or providing goods and services on all Port contracts for a period up to ten years; and

16.4.2. Ineligibility, if applicable, as an SBE, VSBE, LBABE and LIABE, for the purposes of all programs, including subcontracting and joint ventures, under this Policy for a period up to ten years; and

16.4.3. Referral of the matter to Port Attorney for investigation and determination as to complaint to the District Attorney for criminal prosecution.

16.4.4. Any other penalty available at law or in equity.

16.5. Any violations found after awarding a contract will be considered a material breach and:

16.5.1. The Port may, at its option, consider the contract null and void; and

16.5.2. Recover any and all damages;

16.5.3. Immediately implement penalties under section 16.4 *et. seq.*

16.6. To the extent permissible by federal, state and local law and regulation, the Port may create, maintain and make available a list of businesses found to be in violation of its Policy or Regulations.

16.7. The sanctioned business shall have a one (1) time only right to seek review by the Executive Director after the passage of one-half the time of the original bar from Port contracts applied pursuant to Regulation 16.4 hereinabove. The decision of the Executive Director whether to modify or rescind the original bar shall be final.

16.8. If the Executive Director finds that a Port Department is in noncompliance, the Executive Director shall issue a letter stating the Executive Director's findings to the Board.

16.9. If the Executive Director has reason to believe that any Port staff has knowingly made, filed, or caused to be filed with the Port any materially false or misleading statement or report made under this Policy, the Executive Director shall report that information to the proper department head and/or the Board for appropriate action.

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TABLE OF EXHIBITS

- A. Publications for Advertising to Local and Small Business Enterprises
- B. East Bay Interagency Alliance Common Application for Local Certification - Port of Oakland a Partner Agency
- C. Contractor's Payment Record for Annual On-Call Projects

**Publications for Advertising to Small and  
Local Business Enterprises**

El Mundo  
405 14<sup>th</sup> Street, Suite 400  
Oakland, CA 94612  
510.287.8200

The Oakland Post  
405 14<sup>th</sup> Street, Suite 400  
Oakland, CA 94612  
510.287.8200

MECA  
(Minority Entrepreneurs Corporate Alliance)  
1924 Franklin Street, Suite 315  
Oakland, CA 94612  
510.272.0736

The Oakland Tribune  
7677 Oakport Street, #950  
Oakland, CA 94621  
510.208.6300

Sing Tao  
5000 Marina Boulevard, #328  
Brisbane, CA 94005  
650.808.8819

Port of Oakland website  
<http://www.portofoakland.com/business/bidnotic.asp>

The East Bay Interagency Alliance (EBIA) partner agencies have established a collaborative Common Application for Certification designed to streamline the certification process for local businesses working in Alameda County. The agencies involved are the Port of Oakland, the City of Oakland, Alameda County and the Alameda County Transit Improvement Authority (ACTIA). The Common Application is a sharing of information between agencies and NOT a reciprocal certification.

The Application is accepted by all the agencies but separate supplements are necessary for certification with each agency. For the purposes of this book, only the Common Application and the Port's Supplemental are included. If a firm is interested in certification by with the other agencies, additional information is available on the Port's website.

# East Bay Interagency Alliance (EBIA)

## COMMON APPLICATION for LOCAL CERTIFICATION

Alameda County – Alameda County Transportation Improvement Authority – City of Oakland – Port of Oakland

Check Certifying Agency:

Submittal Date: \_\_\_\_\_

- Alameda County – No supplemental required
- Alameda County Transportation Improvement Authority – Complete Supplemental **B**
- City of Oakland – Complete Supplemental **C**
- Port of Oakland – Complete Supplemental **D**
- All the above

**The Common Application is a sharing of information between agencies and NOT a reciprocal certification.**

### 1) Contact Information

Legal Name of Entity		Contact Person (Name & Title)		
Street Address of Entity (No P.O. Box)				
City		State	Zip Code	County
Telephone ( )	Fax # ( )	Cell# ( )		
Email Address		Web Site		

### 2) Company Profile

Primary Service undertaken/offered:		Specialty Service undertaken/offered:	
Date Entity was established (mm/dd/yr)	Does the entity have one or more additional offices outside the city of Oakland, CA? <input type="checkbox"/> Y <input type="checkbox"/> N If yes, list other location(s)	Date Oakland office was established (mm/dd/yr)	
Method of Acquisition <input type="checkbox"/> New <input type="checkbox"/> Merger or consolidation		<input type="checkbox"/> Purchased existing <input type="checkbox"/> Inherited	<input type="checkbox"/> Secured concession <input type="checkbox"/> Other (explain)
Federal ID Number:			
Has this entity operated under a different name during the past five years? <input type="checkbox"/>			
Type of Firm <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Joint Venture <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Publicly traded entity <input type="checkbox"/> Non-Profit or Church <input type="checkbox"/> Other _____		Ethnicity Group of owners(s) that own greater than 50% of the business. (for tracking purposes only) <input type="checkbox"/> African American <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific /Hawaiian <input type="checkbox"/> Multi ethnic ownership <input type="checkbox"/> Asian Indian <input type="checkbox"/> Multi ethnic minority ownership <input type="checkbox"/> Caucasian <input type="checkbox"/> ownership <input type="checkbox"/> Filipino <input type="checkbox"/> Other _____	
		Gender (for tracking purposes only) <input type="checkbox"/> Male <input type="checkbox"/> Female	
Gross Receipts for the last three recent fiscal years:		Year Ended _____	Total Receipts \$ _____
Please attach copies of appropriate tax returns: (e.g. Form 990, Form 1040, Form 1120, etc)		Year Ended _____	Total Receipts \$ _____
		Year Ended _____	Total Receipts \$ _____

**2) Company Profile:** (Continue)

Number of Employees at the local office Permanent Full time ____  Permanent Part time ____	Temporary Full Time ____ Temporary Part Time ____	Seasonal Full Time ____ Seasonal Part Time ____
TOTAL Number of Employees at all locations. Permanent Full time ____ Permanent Part time ____	Temporary Full Time ____ Temporary Part Time ____	Seasonal Full Time ____ Seasonal Part Time ____

**3) Certifications:**

Name of Issuing Authority	Type	Number	Expiration Date
City / County Business Tax Certificate			
Internal Revenue Service (required) – If your firm is a Non-Profit, submit the Letter of Determination of Not For Profit Status.			
State of CA /CUCP Certification for DBE/ACDBE firm			
State of CA /SBA Certification for Small firm			
Other Certification			
Other Certification			
Other Certification			

**4) Professional Licenses, Permits and/or Certificates** (e.g. contractor, architect, engineer, etc. – list all that apply - attach copies. List on a separate page if additional space is needed)

Name of Issuing Authority	Type	Number	Expiration Date
State of CA Contractor’s License Board – Contractor’s License:			
State of CA Professional Service License or Permit:			
State of CA Service Provider License or Permit:			
Other:			
Other:			

**5) NAICS Codes:** Please review the NAICS<sup>1</sup> listing of work codes and indicate below your areas of expertise ranked in order of importance (begin with primary and specialty areas as indicated in the Company Profile section) NAICS Codes can be found at: <http://www.naics.com/search.htm> & <http://www.census.gov/epcd/naics02/>. Add separate sheet for additional NAICS codes if needed.

NAICS Code	Description of Work

**6) Additional Information:**

Are you a Trucking Firm?  Yes  No      Are you a Truck Broker?  Yes  No      Both?  Yes  No  
A supplier?  Yes  No

7) When submitting this application to any of the checked Certification Taskforce members, I consent to the sharing of information contained herein and declare under penalty of perjury that all statements made in this Application are true and correct :  Yes  No

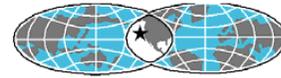
Signature \_\_\_\_\_ Date: \_\_\_\_\_

<sup>1</sup> North American Industry Classification System – [www.naics.com](http://www.naics.com)  
Page 2 of 2

# D

Supplemental

## PORT OF OAKLAND



### Supplemental Questionnaire for Local Certification

Please check one of the following certification types. For a description of each please refer to the Port's Non Discrimination Small Local Business Utilization Policy available on the Port's website.

- Local Impact Area (LIA)                       Small Business Enterprise
- Local Business Area (LBA)                       Very Small Business Enterprise

Is certification related to an upcoming Port project?     Yes     No

If yes, please provide project name and bid date: \_\_\_\_\_

**APPLICATION MUST BE RECEIVED SEVEN (7) BUSINESS DAYS PRIOR TO BID DUE DATE**

**D1) Submit the following required documents:**

- 1 Completed and signed EBLA Common Application for Local Certification
- 2 A current and prior year City or County Business Tax License, certificate or permit from where the business is located. Document must show address of local business.
- 3 Copy of current lease/rental agreement for the business address (**must cover the past 12 months**)
- 4 Contractor/Professional Service/Service Provider license, certificate or permit
- 5 If this is a non-profit organization, submit a copy of the IRS Letter of Determination

If you are also applying for the Port's Small or Very Small certification status:

**Your firm must be located in the city of Alameda, Emeryville, Oakland or San Leandro to qualify.**

**Please submit the following in addition to the above documents:**

- 6 Signed Federal Tax Returns – submit the most recent three years
  - i. Sole Proprietor – Form 1040 w/Schedule C
  - ii. Partnership – Form 1065 for all owners
  - iii. Corporation – Form 1120
  - iv. Limited Liability Partnership – Form 1065 for all owners
  - v. Limited Liability Corporation – Form 1120
  - vi. Non-Profits – Form 990

If the firm is a Trucker and/or Trucking Broker, submit all of the above items (**EXCEPT BUSINESS TAX LICENSE**) AND complete the Truck/Truck Broker Section below and submit the additional trucking documents.

**D2) To be completed by Trucking Firms**

Please check all that apply:  <input type="checkbox"/> Trucking Broker (Prime Trucker) <input type="checkbox"/> Sub-Hauler <input type="checkbox"/> Puller Only <input type="checkbox"/> Owner-Operator  <input type="checkbox"/> Other _____ (Note: brokers must own/lease a complete operating unit)
<b>SUBMIT COPIES OF THE FOLLOWING:</b>  1. Current DMV Motor Carrier Permit 2. Current DOT-FHWA Random Drug & Alcohol Testing Certificate 3. Most recent CHP 343 Safety Report or CHP 342 Admin report or CHP 407-F Level I Inspection Form 4. Proof of current liability insurance 5. Current vehicle registrations (include up to 10 and list all below)
Number of staff ( <b>including owners</b> ) licensed to drive trucks for public works: _____
Are you enrolled in the Driver Pull Notice Program? <input type="checkbox"/> Yes <input type="checkbox"/> No
Is your firm ( <b>not sub-haulers</b> ) licensed to haul hazardous waste materials <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please list the class(s) of waste your firm is licensed to haul: _____
What type of materials do you haul for public works contractors? _____

Port of Oakland, Social Responsibility Department, Certification Unit, 530 Water Street, Oakland, CA 94607  
510 627-1419, fax 510 451-1656, www.portofoakland.com

# D

## Supplemental

## PORT OF OAKLAND



### D2) To be completed by Trucking Firms (Continued)

Please list each type of equipment used in hauling on public works projects:  
(use additional paper if necessary)

Equipment <i>(e.g. 10 wheeler, 2-axle tractor, 3-axle tractor, semi end dump, semi bottom dump, double bottom, transfer, high-sider, flat bed, etc.)</i>	Vehicle registration license plate number	Active or Inactive?
1.		
2.		
3.		
4.		
5.		

## DECLARATION OF CERTIFICATION

*The undersigned declares under penalty of perjury that the statements made in the EBIA Common Application for Local Certification and the Port of Oakland Supplement D Section(s) are **true and correct** and include all material information necessary to identify, describe and explain the operations and locations of this firm as well as the ownership thereof. I understand that the Port relies on the statements and representations contained in this Certification Application and Supplement Questionnaire. I further understand that **any** false statements or material misrepresentations will be grounds for termination of any contract which may be awarded, grounds for further penalties including debarment from participation in future Port contracts, grounds for De-Certification and grounds for possible prosecution under Federal or State laws concerning false or fraudulent representations.*

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**CONTRACTOR'S PAYMENT RECORD**  
**FOR PUBLIC WORKS PROJECTS**  
**Contract Payment No.: \_\_\_\_\_**

Please check appropriate Boxes

Type of Public Works Contract

- Regular
- Annual./On-Call

- Technical Service Order (TSO)
- Work Authorization (WA)

TSO Number: \_\_\_\_\_

WA Number: \_\_\_\_\_

Project: \_\_\_\_\_

Port Project No.: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Port's Contract Administrator: \_\_\_\_\_

Phone: \_\_\_\_\_

Original Contract Authorization Amount: \_\_\_\_\_

Fax: \_\_\_\_\_

Change Orders to Date: \_\_\_\_\_

Total Contract Authorization: \_\_\_\_\_

**NOTE:**

For access into WAMS:  
 Contact: Elation Systems  
 510-764-1870  
[support@elationsystems.com](mailto:support@elationsystems.com)

Amount of Current Invoice: \_\_\_\_\_

Total Invoiced to Date: \_\_\_\_\_

Total Paid to Date: \_\_\_\_\_

Please list amounts billed from and paid to **each** tier (include subcontractors). For prime or JV partners or associates, list separately and include only the share due each of these firms. If annual/on-call project, please specify for each individual TSO/WA.

Each Firm's Invoiced Date	Contractor or other service provider, including prime, JV partners or subcontractors	Total contract amt., for each firm, incl. change orders	Current invoice amt. for each firm	Total paid to each firm to date

Under penalty of perjury the undersigned agrees that the foregoing information is true and correct.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

END OF DOCUMENT