



**THE PORT  
OF LOS ANGELES**  
Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: JUNE 22, 2011**

**FROM: CONTRACTS AND PURCHASING DIVISION**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - MAYORAL EXECUTIVE DIRECTIVE NO.14  
- BUSINESS INCLUSION PROGRAM**

**SUMMARY:**

On January 12, 2011, the Mayor signed Executive Directive No. 14, entitled the Business Inclusion Program (BIP). The BIP was designed so that all businesses get an equal opportunity to compete for City business. While the BIP reaffirms the City's commitment to provide Minority-owned Business Enterprises and Women-owned Business Enterprises with an equal opportunity to compete for City contracts, this new program expands the City's efforts to increase contract opportunities for Disabled Veteran-owned Business Enterprises and Small Business Enterprises (SBE). The Executive Directive requests that the Board of Commissioners of each Proprietary Department adopt policies that are consistent with the BIP. As the only City Department with an existing SBE Program, the Harbor Department is already meeting the goals and objectives of the BIP through the Harbor Department's SBE Program. The Departments of Water and Power and Los Angeles World Airports are currently considering various SBE programs, including the Harbor Department's SBE Program.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Reaffirm the Harbor Department's commitment to the Small Business Enterprise Program and outreach activities;
2. Acknowledge that the Harbor Department's Small Business Enterprise Program and its policies and objectives are consistent with the Business Inclusion Program;
3. Instruct staff to consider the feasibility of expanding the Small Business Enterprise Program to procurement contracts and to report to the Board in 120 days with recommendations;
4. Instruct staff to monitor, track, and report Disabled Veteran Business Enterprise participation on Harbor Department projects; and
5. Adopt Resolution No. \_\_\_\_\_.

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**DISCUSSION:**

Background – On January 12, 2011, the Mayor signed Executive Directive No. 14 entitled the Business Inclusion Program (BIP) (Transmittal 1). The Executive Directive is not applicable to Proprietary Departments; however, the Executive Directive requests that the Board of Commissioners of each Proprietary Department adopt policies that are consistent with the BIP.

The BIP was designed so that all businesses get an equal opportunity to compete for City business. Prior to the BIP, the City's outreach efforts and contracting goals focused primarily on Minority-owned Business Enterprises (MBE) and Women-owned Business Enterprises (WBE). While the BIP reaffirms the City's commitment to provide MBE/WBEs with an equal opportunity to compete for City contracts, this new program expands the City's efforts to increase contract opportunities for Disabled Veteran-owned Business Enterprises (DVBE) and Small Business Enterprises (SBE).

The BIP contains the following four specific requirements: (1) Mandatory use of the Los Angeles Business Assistance Virtual Network (LABAVN) for advertising competitively bid contracts; (2) Mandatory use of LABAVN for documenting efforts by Prime contractors to outreach to potential subcontractors; (3) Establishment of SBE and DVBE Programs; and (4) Departmental monitoring and accountability. The Executive Directive states that with the exception of these requirements, no detailed directions will be issued to comply with the BIP. The Mayor has provided Departments with the "flexibility and discretion to choose the tools best suited to each respective Department to attain the goals of the BIP".

The Executive Directive states that the BIP should be implemented immediately; however, due to required LABAVN system upgrades and lack of program guidelines, implementation of the BIP will likely be delayed several months. It should be noted that in Fiscal Year 2010/11, the Harbor Department transferred \$97,000 to the Information Technology Agency to provide funding for the LABAVN upgrades.

Business Inclusion Program - The following is a summary of the four specific requirements of the BIP, a synopsis of the Harbor Department's compliance with the requirements, and staff recommendations:

1. Mandatory Use of the LABAVN for Advertising Competitively Bid Contracts

The Executive Directive states that all Departments will utilize the LABAVN as the exclusive means for posting all opportunities that are subject to advertising requirements, including, but not limited to, Requests for Bids, Requests for Proposals, and Requests for Qualifications.

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- Assessment: All Harbor Department contract opportunities that are subject to advertising requirements are posted on the LABAVN. When feasible, the Harbor Department will also utilize the LABAVN to post contract opportunities that are not subject to advertising requirements.
- Impact: None.
- Recommendation: No action required inasmuch the Harbor Department is already in compliance with this requirement.

2. Mandatory Use of the LABAVN for Documenting Efforts by Prime Contractors to Reach Out To and Evaluate Potential Subcontractors

The Business Inclusion Outreach (BIO) component, formerly known as the Good Faith Effort (GFE), requires Prime contractors to utilize the LABAVN to perform and document their outreach efforts, and to negotiate in good faith with SBEs, Emerging Business Enterprises (EBE), and DVBEs. Any respondent failing to conduct the BIO will be disqualified from the contract opportunity.

- Assessment: The Harbor Department's SBE Program is successful in that contractors are required to subcontract a percentage of work to SBEs. The proposed program only encourages SBE participation through the use of the BIO. Prime contractors are required to demonstrate their outreach efforts, but are not required to subcontract a certain percentage of work to SBEs. Shortly after the inception of the Harbor Department's SBE Program, the Board eliminated the GFE inasmuch as it undermined the original intent of the program. Contractors were simply conducting outreach and negotiating with SBEs, but were not utilizing SBE contractors to perform work on contracts. As a result, the Harbor Department eliminated the GFE and transitioned to mandatory contract specific SBE participation requirements.
- Impact: Transitioning to a BIO/GFE SBE Program could reduce the level of SBE participation.
- Recommendation: At this point, staff is not considering transitioning from our current SBE participation requirements to the BIO/GFE since the SBE Program has been so successful. Eliminating specific SBE requirements and adopting the BIO/GFE is viewed as a backwards step, resulting in less SBE participation. Staff will revisit implementation of this module after twelve (12) months of valid data results from other City Departments that exceed the results of the SBE/WBE/MBE participation realized by the Harbor Department. The Mayor's Office is supportive of the Harbor Department's mandatory contract specific SBE participation requirements.

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3. Establishment of a Program for Small and Disabled Veteran Business Enterprise Program

In addition to current MBE/WBE contract goals, the Executive Directive requires that SBE, Emerging Business Enterprise (EBE), and DVBE goals be established for all City contracting opportunities, including procurement. While the Executive Directive does not define an SBE or EBE, the Bureau of Contract Administration indicates that the definitions of those business enterprises and goals will initially be set at the following levels:

- SBE = gross revenue of \$7 million or less - 25% goal
  - EBE = gross revenue of \$3.5 million or less - 8% goal
  - DVBE = 3% goal
- Assessment: The Harbor Department defines an SBE as an independently owned and operated business that is not dominant in its field, and is no larger than the designated U.S. Small Business Administration's (SBA) small business size standard for its industry. Small business size standards are numerical definitions of what constitutes a small business. Size standards have been established for types of economic activity, or industry, as defined under the North American Industry Classification System (NAICS). Size standards are defined based on either average number of employees during the past 12 months or average annual revenues within the past three years. Depending on the particular industry, size standards vary from 100-1000 employees or from \$.75 million-\$33.5 million.

Staff believes that the proposed \$7 million SBE threshold would negatively impact SBE participation in the Harbor Department's Capital Improvement Program. The SBA size standard for heavy and civil engineering contractors is \$33.5 million, and the threshold for specialty trade contractors is \$14 million. Relatively few contractors in the construction industry and related industries that would be qualified to complete large capital improvement projects gross under \$7 million annually. As a result, it would be difficult to enforce SBE participation at the proposed threshold for capital projects. In addition, the proposed threshold would eliminate any vendors or suppliers who are manufacturers or wholesalers since their size standards are determined by number of employees, not gross sales.

The Harbor Department's definition of a Very Small Business Enterprise (VSBE) is based on the State of California's Micro-business definition. The Harbor Department defines a VSBE as a (1) small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) small business manufacturer with 25 or fewer employees. The proposed definition of an EBE is a business that has average annual gross receipts of \$3,500,000 or

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less within the previous three years. While the proposed \$3.5 million size standard of an EBE is consistent with the VSBE size standard, the proposed EBE threshold would eliminate any vendors or suppliers who are manufacturers or wholesalers since their size standards are determined by number of employees.

The City does not have a DVBE Program and has not been tracking DVBE performance on City contracts. Although the pool of DVBE contractors is unknown, it is expected that the pool of DVBEs will be limited due to the small size of DVBEs compared to the general population. The Harbor Department does not currently set goals for M/WBE or DVBE participation on City contracts inasmuch as target goals are associated with GFE programs and participation cannot be required; however, the Harbor Department tracks M/WBE participation on contracts. In accordance with the Executive Directive, staff will monitor, track, and report DVBE participation on all contracts.

- Impact: Capital improvement projects at the Proprietary Departments are significantly larger than those projects undertaken by other City Departments. For Fiscal Year 2010/11, the City's Capital Improvement Expenditure Program was approximately \$186.1 million; whereas, the Capital Improvement Programs at the Harbor Department, Los Angeles World Airports and the Department of Water and Power were approximately \$235.6 million, \$1.1 billion, and \$1.6 billion, respectively. It would be difficult to enforce SBE participation at the proposed \$7 million threshold or locate qualified contractors to complete capital projects at the Proprietary Departments. As a result, staff from the Proprietary Departments met with the Mayor's Office to discuss concerns regarding the proposed SBE threshold. Recognizing that the lower threshold would negatively impact capital improvement projects at the Proprietary Departments, the Mayor's Office indicated that the Proprietary Departments could use the SBA size standards. The Mayor's Office requested that the Proprietary Departments track and report on participation of firms at the proposed \$7 million threshold. With concurrence from the Mayor's Office, staff is not recommending that the Harbor Department make any changes to the SBE thresholds at this time.
- Recommendation: Through the Harbor Department's SBE Program, including the recently adopted VSBE component, the Harbor Department is already in compliance with the requirement for establishing an SBE Program. Currently, the Harbor Department's SBE Program is not applicable to procurement contracts. In accordance with the Executive Directive, staff will explore the feasibility of expanding the SBE Program to procurement contracts. An analysis of the SBE program expansion will be transmitted to the Board in 120 days.

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4. Departmental Monitoring and Accountability

The Executive Directive requires that each Department submit quarterly participation reports. The reports should indicate whether the Department has complied with the requirements of the BIP and have met the targeted goals. These reports will be readily available and accessible by the public through [www.losangelesworks.org](http://www.losangelesworks.org).

- Assessment: The Harbor Department already tracks SBE, VSBE, M/WBE participation for construction contracts and personal service agreements. In accordance with the request from the Mayor's Office to report participation of firms at the \$7 million proposed threshold, staff will begin to track, monitor, and report SBE participation at the City proposed threshold and the Harbor Department's current threshold.
- Recommendation: No action required inasmuch as the Harbor Department is already in compliance with this requirement.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the consideration of policies consistent with Executive Directive No. 14 – Business Inclusion Program. As an administrative action, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

This Board action will have no direct employment effect.

**FINANCIAL IMPACT:**

In support of the Business Inclusion Program, as of 3/24/2011 the Harbor Department has expended approximately \$97,000 to purchase new servers for the City of Los Angeles' Information Technology Agency. It is expected that the Harbor Department's ongoing annual cost to support the Los Angeles Business Assistance Virtual Network system upgrades and technical staff is approximately \$30,000. Funding for Fiscal Year 2011/12 in the amount of \$30,000 has been included in the proposed budget, subject to Board approval.

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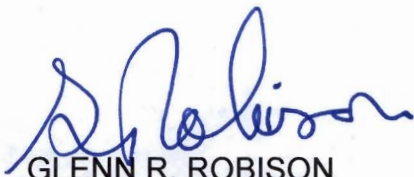
**CITY ATTORNEY:**

The City Attorney's office has reviewed this board report and has determined that there are no legal issues at this time.

**TRANSMITTAL:**

1. Executive Directive No. 14 – Business Inclusion Program

FIS Approval: GR (initials)  
CA Approval: TR (initials)

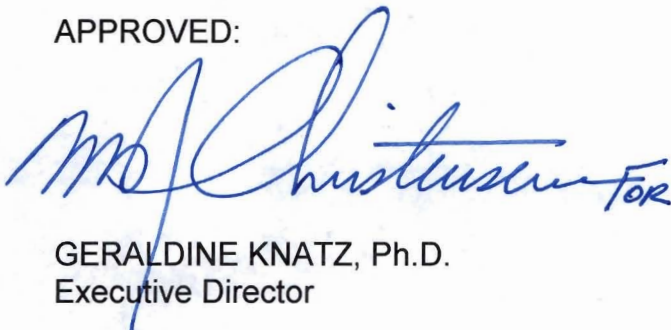


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