

ANTONIO R. VILLARAIGOSA
MAYOR

EXECUTIVE DIRECTIVE NO. 14

Issue date: January 12, 2011

SUBJECT: Business Inclusion Program

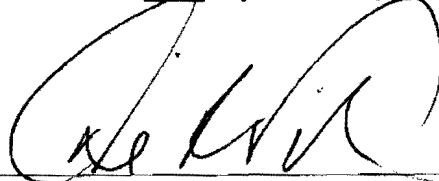
As the City of Los Angeles faces the worst economic crisis since the Great Depression, one of my top priorities is job creation. Many economists agree that more jobs are created by small businesses than large ones. The City can and should help small businesses by leveraging its procurement authority, although the City's discretion in doing so is not without limit. I have already asked Council to expand this authority through ordinance. There are, however, some changes to the City's contracting process that may be made without new legislation. These changes are the subject of this Directive.

I am creating a Business Inclusion Program to help ensure that all businesses – including job-creating small businesses – have an equal opportunity to do business with the City. The Program is based on increasing efficiency and transparency through expanded use of internet technology. City departments will use the internet to advertise contracting opportunities and verify that all interested firms, large, small, minority, women, and veteran, are made aware of them. This will ensure that these businesses have an equal chance at learning about opportunities to work for the City, and enable the City to assess with less difficulty the success of the Business Inclusion Program. In addition to my affirming the policy of the City of Los Angeles to provide Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), and all Other Business Enterprises (OBEs) an equal opportunity to compete for and participate in city contracts, I will also be setting goals for small and disabled veteran business procurement on a departmental basis, and monitoring the success of individual departments at meeting them. I expect that implementation of this Directive will result not only in the creation of more jobs in small businesses, but also greater competition for City contracts, greater diversity in contractor participation, and thus more value to the City.

I have directed the Bureau of Contract Administration, in cooperation with the City's Information Technology Agency and my staff, to develop the guidelines for the Business Inclusion Program. The Program is attached as an appendix to this Directive. I am

directing that all non-proprietary City departments comply with it. In addition, I am requesting that, although they are not subject to this Directive, the board of commissioners for each of the proprietary departments (Airport, Harbor, and Water and Power) adopt policies consistent with it.

Executed this 12 day of January, 2011

A handwritten signature in black ink, appearing to read 'Antonio R. Villaraigosa', written over a horizontal line.

ANTONIO R. VILLARAIGOSA
Mayor

Supersedes Executive Directive 2001-26 (Riordan Series), dated February 8, 2001.

Appendix

Business Inclusion Program

Executive Summary

The Business Inclusion Program leverages the power of the internet and an existing internet-accessible City resource – the Los Angeles Business Assistance Virtual Network (“BAVN”) – to connect City contracting opportunities to more businesses. Stated generally, the Program requires that BAVN be used as the exclusive way to: (1) advertise contracting opportunities subject to competitive bidding requirements, and (2) document efforts by prime contractors to reach out to and evaluate potential subcontractors.

The Program also aims to widen participation in City contracts by taking steps directed specifically at small and disabled veteran businesses. Currently, a business firm that registers on BAVN may identify itself under categories such as certified minority business enterprise, and certified women business enterprise. Under the new Program, each firm will also be given the opportunity to identify itself among three additional categories of businesses: (1) a certified Small Business Enterprise (“SBE”); (2) an especially small SBE, known as a certified Emerging Business Enterprise (“EBE”); and (3) a certified Disabled Veteran-Business Enterprise (“DVBE”). For many contracting opportunities, City Departments are already required to direct prime contractors to reach out to minority, women, and other business enterprises. Now outreach must also be directed toward SBEs, EBEs, and DVBEs.

In addition, the Mayor will annually set departmental goals for small and disabled veteran business procurement and anticipated minority and women business participation levels. To encourage experimentation and innovation, each department will be given discretion in selecting the tools to reach these goals. For example, a department may wish to impose mandatory subcontracting minimums in individual contracts. Use of such race- and gender- neutral tools should lead to increased competition for city contracts, from not only small and disabled veteran businesses, but also minority and women business enterprises.

Advertising contracts and monitoring contractor outreach will be easier for the Departments to accomplish, thanks to BAVN. Through a quarterly reporting system the Mayor will in turn monitor the progress of departments in implementing the requirements of the Program and reaching the annual goals for small and disabled veteran business procurement. General Managers of the departments will be held accountable for seeing that these goals are met.

The Business Inclusion Program applies to every Department. “Department” refers to the following: every Board or Commission of the City of Los Angeles, and every employee or officer of the City of Los Angeles, including the Purchasing Agent of the City of Los Angeles, who makes or enters into any contract or agreement for the provision of any

goods or services of any kind or nature whatsoever for or on behalf of the City of Los Angeles. Although they are not subject to the Program, the board of commissioners for each of the Proprietary Departments (Airport, Harbor, and Water and Power) should be requested to adopt policies consistent with it.

The specific requirements of the Program are set out below.

Mandatory Use of the Los Angeles Business Assistance Virtual Network (“BAVN”) for Advertising Competitively Bid Contracts (“Advertised Contracts”)

Competition for City contracts is enhanced when all contracting opportunities are posted in one place easily accessible on the internet. Some Departments already post contracting opportunities on the Los Angeles Business Assistance Virtual Network (“BAVN”). Contracting opportunities posted there are viewable by the public. Further, businesses that register on BAVN are automatically notified by email of City contracting opportunities that fit their business profile. BAVN should be the one-stop shop for all city contracting opportunities that must be advertised.

Accordingly, every Department will utilize BAVN as the exclusive means for posting all opportunities for bid, requests for proposals (“RFPs”), and requests for qualifications (“RFQs”) that are subject to advertising requirements (collectively, “Advertised Contracts”).

Departments will implement this immediately. Each Department shall modify its existing contracting program to the extent such programs are inconsistent with this. The Bureau of Contract Administration and ITA will offer training on BAVN to all Departments that are not already familiar with it.

Mandatory Use of BAVN for Documenting Efforts by Prime Contractors to Reach Out To and Evaluate Potential Subcontractors

Competition for City contracts also is enhanced when opportunities for subcontracting are widely disseminated and potential subcontractors are fairly evaluated.

The Office of the Mayor has long directed, through mandates to Departments advertising certain City contracting opportunities, that prospective City contractors document efforts to reach out to three categories of potential subcontractors. These categories are: Minority Business Enterprises (“MBEs”), Women Business Enterprises (“WBEs”), and Other Business Enterprises (“OBEs”). This requirement has come to be known as “Good Faith Effort,” or “GFE.” The directive setting out the process by which compliance with GFE is verified and scored was last updated by Executive Directive No. 2001-26 (“ED 2001-26”), in 2001.

Outreach under ED 2001-26 is fairly limited in scope, aimed at only three categories of firms. It is in the City’s interest to broaden subcontractor outreach to include a variety of small and disabled veteran businesses, including Small Business Enterprises (“SBEs”),

Emerging Business Enterprises (“EBEs”), which are a subset of SBEs, and Disabled Veteran Business Enterprises (“DVBES”).

Outreach should also be simplified. Under ED 2001-26, verifying and scoring compliance has proven to be burdensome on Departments, a burden that weighs all the heavier in these difficult budgetary times for the City. This burden can be eased by revamping the existing GFE process into a more efficient process of “Business Inclusion Outreach.” Prime Contractors will be required to perform and document outreach using BAVN. This will lighten the burden on contractors by making outreach more efficient. It will also make it easier for the City to verify that the required outreach has been performed.

BAVN is well suited to facilitate and verify outreach. It already allows any business to register (a “BAVN-Registered Business” or “Registered Business”), indicate whether it is interested in subcontracting opportunities (a “Registered Subcontractor”), and identify itself as a certified MBE or WBE. Further, BAVN enables any Registered Business responding directly to the City regarding City contracting opportunities (a “Registered Prime”) to invite Registered Subcontractors to participate with it. These invitations are sent electronically by BAVN. Registered Subcontractors may also submit their bids and proposals in response to these invitations through BAVN. For each response rejected, a Registered Prime may indicate on BAVN the reasons. All of this activity is recorded by BAVN and may be readily accessed by the City.

To expand outreach, the Bureau of Contract Administration and ITA will enhance BAVN to allow businesses to register as certified SBEs, EBEs, and DVBES, as defined by the Bureau of Contract Administration.

To make outreach simpler, Business Inclusion Outreach will be verified as follows: When evaluating the responsiveness of any bid or proposal responding to an Advertised Contract with subcontracting requirements or opportunities (a “Prime Bid/Proposal”), each Department shall apply the seven (7) criteria set out below (collectively, the “Business Inclusion Outreach Criteria” or “BIO Criteria”):

1. The party submitting the Prime Bid/Proposal (the “Prime Contractor”) is registered on BAVN.
2. The Prime Contractor attended a pre-solicitation or pre-bid meeting scheduled by the Department to inform all bidders or proposers of the requirements for the project for which the contract will be awarded. The Department may waive this requirement if the Prime Contractor certifies it is informed as to those project requirements and has participated in a City-sponsored or City-approved matchmaking event in the prior 12 months.
3. The Prime Contractor has identified the minimum number, as determined by the Department, of specific items of work that will be performed by

subcontractors. This will ensure an opportunity for subcontractor participation among MBEs, WBEs, SBEs, EBEs, DVBEs, and OBEs.

4. The Prime Contractor has notified the minimum number, as determined by the Department, of MBEs, WBEs, SBEs, EBEs, DVBEs, and OBEs of subcontracting opportunities utilizing BAVN.
5. All notifications must be provided utilizing BAVN, and made not less than 15 calendar days prior to the date the Prime Bid/Proposal is required to be submitted. In all instances, the Prime Contractor must document that invitations for subcontracting bids were sent to available MBEs, WBEs, SBEs, EBEs, DVBEs, and OBEs for each item of work to be performed. Each solicitation notification shall include information about the availability of plans, specifications, and requirements for the selected subcontracting work. Each notification shall also include an offer of assistance in obtaining bonds, lines of credit, and insurance required by the Department or Prime Contractor.
6. The Prime Contractor has responded to every unsolicited offer sent by a Registered Subcontractor using BAVN.
7. The Prime Contractor has evaluated in good faith bids or proposals submitted by interested MBEs, WBEs, SBEs, EBEs, DVBEs, and OBEs. Bidders and proposers must not unjustifiably reject as unsatisfactory a bid or proposal offered by a Registered Subcontractor, as determined by the Department. The Prime Contractor must submit a list of all subcontractors for each item of work, including dollar amounts of potential work for MBEs, WBEs, SBEs, EBEs, DVBEs, and OBEs, and a copy of any and all bids or proposals received. This list must include an explanation of the evaluation that led to the bid or proposal being rejected and the explanation must have been communicated to the subcontractor using BAVN.

The Mayor's Office of Economic and Business Policy may waive the Business Inclusion Outreach Criteria requirement if the Prime Contractor is a certified SBE, EBE, or DVBE.

Exempt from the Business Inclusion Outreach Criteria is any Prime Bid/Proposal for which use of BAVN would be barred by federal law, including any contract or grant condition imposed by the federal government.

The Business Inclusion Outreach Criteria are to be applied on a pass/fail basis. That is, a Prime Bid/Proposal must fully satisfy each of the Criteria to be deemed responsive. Failure to satisfy fully any one of the BIO Criteria will result in the Prime Bid/Proposal being deemed non-responsive. No partial credit is to be awarded.

Implementation of this Program should lead to greater participation in City contracts by small, minority, and women business enterprises. Departments may, on individual contracts, anticipate certain levels of participation by these types of firms. In no case,

however, shall a Department deny award of a contract to a Prime Contractor who satisfies the BIO Criteria solely because the Prime Contractor failed to meet the anticipated levels of participation of MBEs and WBEs.

BAVN is meant to be a tool for use by Departmental staff, not a substitute for staff review. Further, nothing in the Business Inclusion Program is intended to restrict the discretion of the Department to reject all bids or proposals in accordance with provisions of the City Charter and Administrative Code.

Establishment of a Program for Small and Disabled Veteran Business Procurement

Competition for City contracts is enhanced when all segments of the business community have a real opportunity to participate. Steps will be taken to increase the participation by small and disabled veteran businesses. Use of additional race- and gender- neutral tools should lead to increased competition for City contracts from a wide variety of businesses—not only small and disabled veteran businesses, but also minority and women business enterprises.

Goals for small and disabled veteran business participation in City contracting should be established and, as part of a continuous review process, periodically revised to ensure that they are both realistic and aggressive. Information about what is working to meet those goals and what is failing must be shared across City departments.

The Bureau of Contract Administration (“BCA”) has already been involved in setting goals and sharing information. To strengthen these efforts on an ongoing basis, it is recommended that the Mayor establish a Small and Disabled Veteran Business Procurement Advisory Committee (“Advisory Committee”). The Advisory Committee will be co-chaired by the heads of the Mayor’s Office of Economic and Business Policy and the BCA, or their designees. Other members will include the Purchasing Agent or his or her designee, and others to be designated by the Mayor. It is recommended that that the Mayor invite the Manager of Procurement at the Los Angeles World Airports, the Director of Supply Chain Services at the Los Angeles Department of Water and Power, and the Director of Contracts and Purchasing at the Port of Los Angeles to join the Advisory Committee, after their respective board of commissioners adopts rules and procedures consistent with the Business Inclusion Program.

On an annual basis beginning February 1, 2011:

1. the Bureau of Contract Administration will recommend to the Mayor the criteria for certifying businesses as Small Business Enterprises (“SBEs”), Emerging Business Enterprises (“EBEs”), and Disabled Veteran Business Enterprises (“DVBEs”) as appropriate; and
2. the Advisory Committee will recommend to the Mayor annual goals for SBE, EBE, and DVBE participation in City contracts for each Department

("Procurement Goals") and anticipated MBE and WBE participation levels.

On a quarterly basis beginning July 1, 2011, the Advisory Committee will report to the Mayor on progress toward achieving the Procurement Goals and what tools are working toward achieving them.

Departmental Action, Monitoring, and Accountability

Competition for City contracts is also enhanced when programs instituted to that end are monitored and those responsible for implementing them are held accountable and take action. Each Department and the Advisory Committee will play an important role.

Each Department will report to the Advisory Committee on a quarterly basis. The report should indicate whether the Department has complied with the requirements of the Business Inclusion Program. This should address the Department's use of BAVN for Advertised Contracts and for documenting efforts by prime contractors to reach out to and evaluate potential subcontractors. It should also state whether the Department's Procurement Goals have been met, and describe the steps that have been taken toward reaching them. This report should further state the Department's progress in achieving anticipated levels of participation for women and minority owned businesses including the number and dollar value of contracts awarded or completed. These quarterly reports should be made readily available to the public.

This Program aims to expand opportunities for qualified and responsible contractors. The City's existing Contractor Performance Evaluation Ordinance already requires Departments to contribute to databases on contractor performance. Full compliance with this Ordinance by each Department will help all Departments identify and avoid contractors that have served the City poorly, as well as help keep track of the amount of contracting dollars actually received by the various categories of contractor businesses identified in the Business Inclusion Program.

The steps taken to reach the Procurement Goals will be chosen by each Department. Merely by extending contracting opportunities to all businesses, it is expected that more of these contracting opportunities will be secured by small and disabled veteran businesses. Experimentation and innovation are encouraged. Accordingly, beyond the steps already described in this Business Inclusion Program, no detailed directions should be issued. In reaching its assigned goal, every Department will enjoy flexibility and discretion to choose the tools best suited to it.

Commensurate with the importance of increasing competition for City contracts through this Program, the Mayor's assessment of the performance of each Department's General Manager should be partially based on compliance with the Business Inclusion Program and success at meeting the Procurement Goals.