

ARTICLE 9

BUSINESS ENTERPRISE PREFERENCE SYSTEM

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ARTICLE 9

BUSINESS ENTERPRISE PREFERENCE SYSTEM

SEC. 2-9.01 DEFINITIONS. The following words and phrases shall be construed as defined in this section unless it is apparent from their context that a different meaning is intended.

- a. 'Local' shall mean a business firm with fixed offices or locally taxable distribution points within the boundaries of the City of Hayward which holds a current and valid City of Hayward business license with a Hayward business street address.
- b. 'Minority Business Enterprise (MBE)' shall mean an independent and continuing business for profit, which performs a commercially useful function, in which 51% or greater ownership interest is held by minority persons.
- c. 'Minority persons' shall mean a person or persons who are black (Negro), Hispanic (including Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish origin or culture regardless of race), Asian (including Pacific Islanders), and American Indian (including Alaskan natives).
- d. 'Supplies contract' is any contract, purchase order, or agreement for provision of materials, equipment, or supplies to or for the City of Hayward which is entered into with or on behalf of the City of Hayward.
- e. 'Women's Business Enterprise (WBE)' shall mean an independent and continuing business for profit, which performs a commercially useful function, in which 51% or greater ownership interest is held by women.

SEC. 2-9.02 PREFERENCES. Subject to the limitations contained in this article, in the evaluation of bids or proposals for the award of all supplies contracts meeting or exceeding the threshold dollar amounts set forth in Hayward Municipal Code section 2-7.04, there shall, upon written application noted on the space provided on City bid or proposal documents, be extended a 5 percent preference for a local business, a 10 percent price preference for a local minority business enterprise (MBE) or local women's business enterprise (WBE), or a 5 percent price preference for a minority business enterprise (MBE) or women's business enterprise (WBE) having a fixed office within Alameda County and who certifies that it has actively participated or has attempted to be active in the business community within the jurisdiction of the City of Hayward.

SEC. 2-9.03 PREFERENCE CEILINGS. Notwithstanding Section 2-9.02, bids or proposals for supplies contracts qualifying for one of those preferences shall be subject to the following dollar amount maximums on preferences given for each contract:

| <u>Size of Transaction</u> | <u>MBE/WBE</u> | | <u>Total Possible Price Preference</u> |
|---------------------------------|------------------------|----------------------|--|
| | <u>Or Local Vendor</u> | <u>Local MBE/WBE</u> | |
| Below \$200,000 | \$ 5,000 | \$10,000 | \$10,000 |
| Between \$200,000 and \$400,000 | \$ 7,500 | \$15,000 | \$15,000 |
| Between \$400,000 and \$750,000 | \$ 8,750 | \$17,500 | \$17,500 |
| Over \$750,000 | \$10,000 | \$20,000 | \$20,000 |

SEC. 2-9.04 IMPLEMENTING RULES AND REGULATIONS AND DELEGATION OF RESPONSIBILITY. The City Manager shall promulgate all rules, regulations, and forms necessary to implement the provisions of this article.

The City Manager may, at his or her discretion, delegate responsibility and authority for administering the provisions of this article to such officers or employees of the City as necessary for proper administration of this program.

SEC. 2-9.05 EXEMPTIONS. The following contracts are exempt from the provisions of this article:

- a. Contracts to the extent to which application of the provisions would be prohibited by state or federal law or regulation or would result in what the City Council finds to be an unacceptable loss of government revenue or funding;
- b. Contracts funded in total or part from donations and gifts to the City of Hayward to the extent the provisions would conflict with any special conditions attached to the gifts or donations, provided the gift and the special conditions have been approved and accepted by the City Council by resolution;
- c. Contracts resulting from exigent emergency requisitions where any delay in completion or performance of the contract would jeopardize the public health, safety, or welfare of the citizens of Hayward, or where in the judgment of the City Manager the operational effectiveness of a significant City function would be seriously threatened if the contract were not entered into expeditiously; and
- d. Contracts with any single or sole source supplier of any goods, services, or construction activity.

SEC. 2-9.06 ENFORCEMENT AND PENALTIES. If the City Manager or his or her designee determines that a contractor or bidder for a contract has made an intentional misstatement to obtain a price preference under this article, or has failed to comply with any rules or regulations adopted pursuant to this article, or contract provisions pertaining to the Business Enterprise Preference System, the contractor or bidder shall be subject to any remedy available to the City at law or equity including but not limited to both of the following:

- a. A finding of intentional misstatement or non-compliance shall be regarded by the City Council as a basis for determining whether or not the bidder or contractor is a responsible bidder for the present and for future contracts. Any disqualification imposed as a result of this determination shall last for a period of one year.

- b. An intentional misstatement made to obtain a price preference under this article shall subject the receiver of any such price preference to a civil penalty of treble the dollar price preference received or \$1,000, whichever is greater.

SEC. 2-9.07 PERIODIC REVIEW. This article shall be reviewed by the City Council to determine whether termination or any revision is appropriate by December 31, 1996. The same or any revised program shall be periodically reviewed at least every three years thereafter.

SEC. 2-9.08 ESTABLISHMENT OF OVERALL MBE AND WBE GOALS. The City of Hayward will establish an overall goal for the use of WBEs and MBEs in commodities acquisition. This goal will be updated annually during the first quarter of the fiscal year by City Council resolution.