

## ARTICLE 10

### DISADVANTAGED AND WOMEN'S BUSINESS PROGRAM FOR CITY AWARDED PUBLIC WORKS PROJECTS

Section	Subject Matter
2-10.01	POLICY
2-10.02	DEFINITIONS
2-10.03	ESTABLISHMENT OF OVERALL DBE AND WBE GOALS
2-10.04	CONTRACT PROCEDURE
2-10.05	SELECTION CRITERIA FOR CONTRACTS WITH DBE AND WBE GOALS
2-10.06	DBE AND WBE LISTING
2-10.07	ENFORCEMENT AND PENALTIES
2-10.08	PERIODIC REVIEW
2-10.09	EXEMPTIONS
2-10.10	IMPLEMENTING RULES AND REGULATIONS AND DELEGATION OF RESPONSIBILITY

## ARTICLE 10

### DISADVANTAGED AND WOMEN'S BUSINESS PROGRAM FOR CITY AWARDED PUBLIC WORKS PROJECTS

SEC. 2-10.01 POLICY. It is the policy of the City of Hayward to maximize utilization of disadvantaged business enterprises (DBE) and women's business enterprises (WBE) in all public works construction projects awarded by the City where the City Engineer's estimates that the cost of the contract will exceed \$100,000.

SEC. 2-10.02 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. 'Public Works construction project' for the purpose of coverage under Hayward Municipal Code section 2-10.01 is a written contract for the construction or improvement of any work consisting of public buildings, works, drains, sewers, utilities, parks, playgrounds, streets, and off-street parking lots, or for their repair or maintenance.
- b. 'Disadvantaged business enterprise (DBE)' means a small business concern: (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; (3) either is CalTrans certified as a DBE or is henceforth defined and certified by CalTrans as a DBE; and (4) is located within the City of Hayward or certifies that it has actively participated or has attempted to be active in the business community within the jurisdiction of the City of Hayward.

Notwithstanding the above, when the City Engineer considers it necessary or appropriate for achieving the purposes of this article, alternative or additional certified DBE resource lists may be included in the specifications for specific public works projects, and businesses on such lists would satisfy element (3) hereof for that project.

- c. 'Small business concern' means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- d. 'Socially and economically disadvantaged individuals' means those individuals who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. The City may determine, on a case-by-case basis, that individuals who are not a member of one of the preceding groups are socially and economically disadvantaged.
- e. 'Women's business enterprise (WBE)' means a small business concern: (1) which is at least 51 percent owned by women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by women; (2) whose management and daily business operations are controlled by women who own it; and (3) is either

CalTrans certified as a WBE or is henceforth defined and certified by CalTrans as a WBE.

Notwithstanding the above, when the City Engineer considers it necessary or appropriate for achieving the purposes of this article, alternative or additional certified WBE resource lists may be included in the specifications for specific public works projects, and businesses on such lists would satisfy element (3) hereof for that project.

SEC. 2-10.03 ESTABLISHMENT OF OVERALL DBE AND WBE GOALS. The City of Hayward will establish an overall goal for the use of WBEs and DBEs. This goal will be updated annually during the first quarter of the fiscal year by City Council resolution.

SEC. 2-10.04 CONTRACT PROCEDURE. This article shall be implemented through the utilization of a contract special provision which requires bidders to submit the names of subcontractors and suppliers, a description of the work each is to perform or material to be furnished, the dollar value of each subcontract, and whether the subcontractor or supplier is a DBE, WBE, or not. This information will also be submitted for the prime contractors. The special provision shall be established by resolution of the City Council.

SEC. 2-10.05 SELECTION CRITERIA FOR CONTRACTS WITH DBE AND WBE GOALS. Every contract containing DBE and WBE goals shall be evaluated by the City to ascertain bidding contractors' efforts to attain the DBE and WBE goals. A report on this evaluation and the WBE and DBE goals the contractor will meet will be included in the recommendation to City Council concerning award of the contract.

Competitors that fail to meet the DBE and WBE goals and fail to demonstrate sufficient reasonable efforts in the opinion of the City Council shall not be considered responsible bidders and shall not be eligible to be awarded the contract.

SEC. 2-10.06 DBE AND WBE LISTING. The City of Hayward will maintain a listing of DBE and WBE firms certified by CalTrans to be disadvantaged and women's businesses. This listing shall be made available to prospective contractors at no charge.

Where project specifications authorize alternative or additional certified DBE or WBE resource lists, such lists shall be made available to prospective contractors at no charge.

SEC. 2-10.07 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, or has failed to comply with any rules or regulations adopted pursuant to this article, or contract provisions pertaining to this article, the contractor or bidder shall be subject to any remedy available to the City at law or equity. Additionally, 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 as to the present and future contracts. Any disqualification imposed as a result of this determination shall last for a period of one year.

SEC. 2-10.08 EXPIRATION. 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. 2-10.09 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 regulations, 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 significantly threatened if the contract were not entered into expeditiously;
- d. Contracts with any single or sole source supplier of any goods, services, or construction activity; and
- e. Any federally assisted contracts.

SEC. 2-10.10 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.