

## **Article 2: Administrative Code**

### **Division 36: Small and Local Business Program Administration**

*(“Bidding and Award Requirements for Minor Public Works Contracts” added 9-3-2002 by O-19095 N.S.)*

*(Retitled to “Small and Local Business Program for Public Works Contracts” on 2-4-2010 by O-19922 N.S.)*

*(Retitled to “Small and Local Business Program Administration” on 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)*

#### **§22.3601 Purpose**

The City Council wants to create programs intended to enhance diversity in City contracts, increase competition, and stimulate the local economy by providing opportunities to small and local businesses. In addition, the City has a compelling interest in ensuring that it is neither an active nor passive participant in marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community. This Division, therefore, establishes a small and local business program for *public works contracts, consultant contracts, contracts for goods, and contracts for services* which includes: (1) small and local business bid preferences and mandatory subcontractor participation requirements for *major public works, consultant contracts, contracts for goods and contracts for services* and (2) sheltered competition programs for *minor public works, consultant contracts, contracts for goods, and contracts for services*. This program is intended to provide a race and gender-neutral tool to expand opportunities for, and develop the capacity of, small and local firms so that all segments of the community may participate in City contracts.

*(“Purpose” added 9-3-2002 by O-19095 N.S.)*

*(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)*

#### **§22.3602 Applicability**

This Division applies to all *public works contracts, consultant contracts, contracts for goods, and contracts for services* except for *contracts* that are not “municipal affairs” under article II, section 5 of the California Constitution.

*(“Applicability” added 9-3-2002 by O-19095 N.S.)*

*(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)*

**§22.3603      Definitions**

Defined terms used in this Division appear in italics. For purposes of this Division:

*Bid discount*: the application of a percentage discount to the total amount of a bid submitted by a Bidder for a Contract solely for the purpose of bid comparisons when evaluating the lowest, responsive, and *responsible bid*.

*Emerging Business Enterprise* or *EBE* means a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing this Division. The City Manager shall review the threshold amount for *EBEs* on an annual basis, and adjust as necessary to reflect changes in the marketplace.

*Emerging Local Business Enterprise* or *ELBE* means a *Local Business Enterprise* that is also an *Emerging Business Enterprise*.

*Joint Venture* means an association of two or more persons or businesses that, pursuant to a written agreement, carry out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge or property.

*Local Business Enterprise* or *LBE* means a business that has both a *principle place of business* and *significant employee presence* in the County of San Diego, and that has been in operation for twelve (12) consecutive months.

*Principle Place of Business* means a location where a business maintains a physical office and through which it obtains no less than fifty percent of its gross annual receipts.

*Protégé* shall mean a business that has been approved and is an active participant in the City of San Diego's Mentor-*Protégé* Program, has signed the required program participation agreement and has been assigned a mentor.

*Significant Employee Presence* means no less than twenty-five percent of a business's total number of employees.

*Small Business Enterprise* or *SBE* means a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing this Division. The City Manager shall review the threshold amount for *SBEs* on an annual basis, and adjust as necessary to reflect changes in the marketplace. A business certified as a Disabled Veteran Business Enterprise by the State of California, and that has provided proof of such certification to the City Manager, may be deemed to be an *SBE*.

*Small Local Business Enterprise* or *SLBE* means a *Local Business Enterprise* that is also a *Small Business Enterprise*.

(“Definitions” added 9-3-2002 by O-19095 N.S.)

(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

(Amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)

## **§22.3604 Determination of Value of a Public Works Contract**

- (a) The value of a *public works contract* shall be determined by the City Manager’s estimate of the costs of construction. For *Design-Build contracts*, as defined by Division 33 of this Article, the costs of design shall be included in the City Manager’s estimate.
- (b) The City Manager shall estimate a proposed *public works contract*’s value prior to commencing contractor selection so that proper procedures may be used to advertise, bid, and award the contract.
- (c) If *minor public works contracts* advertising, bidding, and award procedures are used, the fact that one or more of the bids received exceeds \$1,000,000 does not render the procedures or award of a public works contract invalid. However, if *minor public works contracts* advertising, bidding, and award procedures are used, and all bids exceed \$1,050,000 the City Manager must reject the bids and commence procedures for *major public works*.

(“Determination of Value of a Public Works Contract” added 9-3-2002 by O-19095 N.S.)

(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

(Amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)

## **§22.3605 Establishment of SLBE and ELBE Lists**

- (a) The City Manager shall establish and maintain a list of eligible *SLBEs* and a list of eligible *ELBEs*, for the purposes of awarding *minor public works contracts, consultant contracts, contracts for goods, and contracts for services*.
- (b) The *SLBE* and *ELBE* eligibility lists will include information regarding the licenses held and disciplines of each business on the list, if applicable.
- (c) The City Manager shall establish *SLBEs* and *ELBEs* eligibility requirements and make them publicly available as required under Section 22.3626 of this Division.

*(“Establishment of Minor Public Works Contract Availability Lists” added 9-3-2002 by O-19095 N.S.)*

*(Retitled to “Establishment of SLBE and ELBE Lists” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)*

## **§22.3606 Removal and Reinstatement**

- (a) The City Manager shall remove an *SLBE* or *ELBE* from the applicable eligibility list:
  - (1) two years after approval of the *SLBE*’s or *ELBE*’s application; or
  - (2) immediately, in the event the business has used its status as an *SLBE* or *ELBE* to assist another business in obtaining benefits of this Division to which the other business would not otherwise be entitled, or for any other fraudulent purpose.
- (b) A business that has been removed from an eligibility list under Section 22.3606(a)(1) may be reinstated after establishing that the business qualifies as an *SLBE* or *ELBE* and successfully completes the City Manager’s application process for reinstatement.

*(“Application Process for Placement on Availability List” added 9-3-2002 by O-19095 N.S.)*

*(Renumbered from former Section 22.3608, retitled to “Removal and Reinstatement” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010. Former Section 22.3607 repealed.)*

*(Renumbered from former Section 22.3607 to Section 22.3606 and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3606, “Eligibility for SLBE and ELBE Lists” repealed.)*

**§22.3607 Appeals**

A business that has been denied *SLBE* or *ELBE* eligibility, or removed from an eligibility list under Section 22.3606(a)(2), may file an appeal within 15 days of the denial or removal. The City Manager shall establish procedures for the filing, granting and denial of appeals, which shall include the opportunity for a hearing.

*(“Removal from Availability Lists” added 9-3-2002 by O-19095 N.S.)*

*(“Appeals” added 2-4-2010 by O-19922 N.S.; effective 7-1-2010. Former Section 22.3608 renumbered to Section 22.3607.)*

*(Renumbered from former Section 22.3608 to Section 22.3607 and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3607, “Removal and Reinstatement” renumbered to Section 22.3606.)*

**§22.3608 Solicitation of Bids for and Award of Major Public Works Contracts Valued at \$1,500,000 and Over**

The City Manager shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for *SLBEs* and/or *ELBEs* for *major public works contracts* valued at \$1,500,000 or more. *Bidders* that do not reach the mandatory subcontractor participation requirement, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award. *SLBE* and *ELBE* prime contractors will be deemed to have met the subcontractor participation requirement, provided that the *SLBE* or *ELBE* prime contractor self performs at least 51 percent of the *public works contract*.

*(“Reinstatement Following Removal from List; Re-application Required” added 9-3-2002 by O-19095 N.S.)*

*(“Solicitation of Bids for and Award of Major Public Works Contracts Valued at \$1,000,000 and Over” added 2-4-2010 by O-19922 N.S.; effective 7-1-2010. Former Section 22.3609 repealed.)*

*(Renumbered from former Section 22.3609 to Section 22.3608, retitled from “Solicitation of Bids for and Award of Major Public Works Contracts Valued at \$1,000,000 and Over” to “Solicitation of Bids for and Award of Major Public Works Contracts Valued at \$1,500,000 and Over” and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3608 “Appeals” renumbered to Section 22.3607.)*

**§22.3609      Solicitation of Bids for and Award of Major Public Works Contracts Valued at More Than \$1,000,000 but Less Than \$1,500,000**

In addition, the City Manager shall, on a project-by-project basis, do one or both of the following for *major public works contracts* valued at more than \$1,000,000 but less than \$1,500,000:

- (a)      Permit a *bid discount* of:
  - (1)     5 percent for *SLBE* or *ELBE* prime contractors; or
  - (2)     up to a maximum of a 5 percent discount if the prime contract achieves the amount of the SLBE or ELBE subcontractor participation, or the amount of SLBE or ELBE participation in a City approved *joint venture*. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the lowest, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted *bidder* will be awarded the *public works contract*.
- (b)     Include a mandatory subcontractor participation requirement for *SLBEs* or *ELBEs*. Bids that do not reach the mandatory subcontractor participation requirement, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award. *SLBE* and *ELBE* prime contractors will be deemed to have met the subcontractor participation requirement, provided that the *SLBE* or *ELBE* prime contractor self-performs at least 51 percent of the *public works contract*.

(“*Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$50,000 - \$250,000*” added 9-3-2002 by O-19095 N.S.)

(“*Solicitation of Bids for and Award of Major Public Works Contracts Valued at More Than \$500,000 but Less Than \$1,000,000*” added 2-4-2010 by O-19922 N.S.; effective 7-1-2010. Former Section 22.3610 renumbered to Section 22.3611.)

(Renumbered from former Section 22.3610 to Section 22.3609, retitled from “*Solicitation of Bids for and Award of Major Public Works Contracts Valued at More Than \$500,000 but Less Than \$1,000,000*” to “*Solicitation of Bids for and Award of Major Public Works Contracts Valued at More Than \$1,000,000 but Less Than \$1,500,000*” and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.

Former Section 22.3609 “*Solicitation of Bids for and Award of Major Public Works Contracts Valued at \$1,000,000 and Over*” retitled and renumbered to Section 22.3608.)

**§22.3610      Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than \$500,000 but Less Than or Equal to \$1,000,000**

- (a) *Minor public works contracts* valued at more than \$500,000 but less than or equal to \$1,000,000 shall be awarded through a competitive bid process open only to businesses listed on the *SLBE* or *ELBE* eligibility lists.
- (b) The lowest responsible and reliable *SLBE* or *ELBE* bidder shall be awarded the *public works contract*. If there are no responsible bids, the City Manager shall follow the advertising, bidding, and award procedures for *major public works contracts* valued at more than \$1,000,000 but less than \$1,500,000 as set forth in Section 22.3608 and 22.3609.
- (c) Nothing in this section shall limit the City Manager's right to reject all bids in the event that all bids received exceed the City's projected costs for a particular *public works contract*.

*(“Solicitation of Bids for and Award of Minor Public Works Contracts Valued at under \$50,000” added 9-3-2002 by O-19095 N.S.)*

*(Renumbered from former Section 22.3610, retitled to “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than \$250,000 but Less Than or Equal to \$500,000” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Renumbered from former Section 22.3611 to Section 22.3610, retitled from “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than \$250,000 but Less Than or Equal to \$500,000” to “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than \$500,000 but Less Than or Equal to \$1,000,000” and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3610 “Solicitation of Bids for and Award of Major Public Works Contracts Valued at More Than \$500,000 but Less Than \$1,000,000” retitled and renumbered to Section 22.3609.)*

**§22.3611      Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$500,000 and Under**

- (a) *Minor public works contracts valued at \$500,000 or less shall be awarded through a competitive bid process open only to businesses listed on the ELBE eligibility list. If there are no businesses on the ELBE eligibility list that have the requisite licenses for the contract, the competitive bid process will also be open to SLBEs.*
- (b) For a public works project previously identified and appropriated through the Annual Capital Improvements Program budget, the City Manager shall award the *minor public works contract* to the lowest responsible and reliable *ELBE bidder*, or SLBE bidder, in the event the competitive process was opened to SLBEs. If there are no *bidders* or responsive bids, the City Manager may follow the advertising, bidding, and award procedures for *major public works contracts* valued at more than \$1,000,000 but less than \$1,500,000 as set forth in Section 22.3609.
- (c) For a public works project that was not previously identified and appropriated through the Annual Capital Improvements Program budget, the *minor public works contract* shall be solicited and awarded by the following methods:
  - (1) For *minor public works contracts* equal to or less than \$100,000, the City Manager shall request written price quotations from at least three businesses on the *SLBE* or *ELBE* eligibility lists. The City Manager may request additional written price quotations from any contractors with the requisite license(s) for the contract if less than three businesses on the lists have the requisite license(s) for the contract.
  - (2) For *minor public works contracts* greater than \$100,000 but equal to or less than \$250,000, the City Manager shall request written price quotations from at least five businesses on the *SLBE* or *ELBE* eligibility lists. The City Manager may request additional written price quotations from any contractors with the requisite license(s) for the contract if there are less than five businesses on the lists that have the requisite license(s) for the contract.
  - (3) The City Manager shall award the contract to the contractor with the written price quotation offering the best value to the City, considering factors such as price, unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs, experience and qualification of the contractor, when the contractor can start and complete the project, and any additional factors the City Manager deems relevant.

(d) Nothing in this section shall limit the City Manager's right to reject all bids pursuant to Section 22.3015.

*(“Names on Lists to be Rotated to Ensure Fairness” added 9-3-2002 by O-19095 N.S.)*

*(Renumbered from former Section 22.3611, retitled to “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$250,000 and Under” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010. Former Section 22.3612 repealed.)*

*(Amended 5-22-2018 by O-20932 N.S.; effective 6-21-2018.)*

*(Renumbered from former Section 22.3612 to Section 22.3611, retitled from “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$250,000 and Under” to “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$500,000 and Under” and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3611 “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at More Than \$250,000 but Less Than or Equal to \$500,000 retitled and renumbered to Section 22.3610.)*

## **§22.3612 Plans and Specifications to be Provided Free of Charge to SLBEs or ELBEs**

Plans and specifications for *minor public works contracts* will be provided free of cost to *SLBEs* and *ELBEs*.

*(“Plans and Specifications to be Provided Free of Charge to Small or Emerging Businesses” added 9-3-2002 by O-19095 N.S.)*

*(Retitled to “Plans and Specifications to be Provided Free of Charge to SLBEs or ELBEs” and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Renumbered from former Section 22.3613 to Section 22.3612 on 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3612 “Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$250,000 and Under” retitled, amended, and renumbered to Section 22.3611.)*

## **§22.3613      Emergency Contracts**

- (a) Based on the City Manager's written determination that an *emergency* exists requiring immediate action, the City Manager may execute a *minor public works contract* valued at \$25,000 to \$75,000 so long as the City Manager has received written quotes for the proposed work from at least two businesses on either the *SLBE* or *ELBE* eligibility lists.
- (b) Based on the City Manager's written determination that an *emergency* exists requiring immediate action, the City Manager may execute a *minor public works contract* valued at less than \$25,000 so long as the City Manager has received written quotes for the proposed work from at least one business on either the *SLBE* or *ELBE* eligibility lists.

*(“Emergency Contracts” added 9-3-2002 by O-19095 N.S.)*

*(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Renumbered from former Section 22.3614 to Section 22.3613 on 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3613 “Plans and Specification to be Provided Free of Charge to SLBEs or ELBEs” renumbered to Section 22.3612.)*

## **§22.3614      Effect of Amendments to Minor Public Works Contracts**

As long as the original value of a *minor public works contract* as determined at bid opening is less than or equal to \$1,000,000, any future amendments increasing the value of that *contract* do not render the bidding, award or administration process invalid.

*(“Effect of Amendments to Minor Public Works Contracts” added 9-3-2002 by O-19095 N.S.)*

*(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Renumbered from former Section 22.3615 to Section 22.3614 and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3614 “Emergency Contracts” renumbered to Section 22.3613.)*

**§22.3615 Reduction in Subcontracts**

All prime contractors shall notify and obtain prior written approval of the City Manager for any reduction in subcontract scope, termination, or substitution of an *SLBE* or *ELBE* subcontractor.

(“*City Manager to Adopt Regulations*” added 9-3-2002 by O-19095 N.S.)  
(“*Reduction in Subcontracts*” added 2-4-2010 by O-19922 N.S.; effective 7-1-2010.  
*Former Section 22.3616 renumbered to Section 22.3621.*)  
(Renumbered from former Section 22.3616 to Section 22.3615 on  
8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former  
Section 22.3615 “*Effects of Amendments to Minor Public Works Contracts*” renumbered to Section 22.3614.)

**§22.3616 Competitive Process for Consultant Contracts Requiring SLBE and ELBE Program Participation**

- (a) The City Manager shall, on a project-by-project basis, include a mandatory subcontractor participation requirement for *SLBEs* and/or *ELBEs* for *consultant contracts* valued at more than \$500,000. Proposals that do not reach the mandatory subcontractor participation requirement as defined by the City Manager, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award. *SLBE* and/or *ELBE* prime consultants will be deemed to have met the subcontractor participation requirement if the *SLBE* and/or *ELBE* prime contractor self-performs at least 51 percent of the *consultant contract*.
- (b) The value of a *consultant contract* for purposes of these requirements shall be determined by the City Manager’s estimate of the costs of professional services prior to commencing consultant selection so that proper procedures may be used to advertise, bid, and award the contract.
- (c) *Consultant contracts* valued at more than \$25,000 but less than or equal to \$250,000, shall be awarded through a competitive process open only to businesses listed on the *ELBE* eligibility list. If there are no businesses on the *ELBE* eligibility list that have the requisite experience for the contract, the competitive process will also be open to *SLBEs*. If there are one or less businesses on the *SLBE* and/or *ELBE* eligibility lists that have the requisite experience for the contract, the competitive process will also be open to all proposers.

- (d) *Consultant contracts* valued at more than \$250,000 but less than or equal to \$500,000 shall be awarded through a competitive process open only to businesses listed on the *SLBE* and/or *ELBE* eligibility lists. If there are one or less businesses on the *SLBE* and/or *ELBE* eligibility lists that have the requisite experience for the contract, the competitive process will also be open to all proposers subject to Section 22.3207 of Division 32 of this Article.
- (e) The fact that one or more of the proposals received exceeds the estimate set by the City Manager for required *SLBE* and/or *ELBE* participation does not render the procedures or award of a *consultant contract* invalid. However, if all proposals exceed the amount, the City Manager must reject the proposals and may re-determine the value of the *consultant contract*.

*(“Competitive Process for Consultant Contracts Requiring SLBE and ELBE Program Participation” added 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3616 “Reduction in Subcontracts” renumbered to Section 22.3615.)*

## **§22.3617**

### **Bid Preference for Consultant Contracts**

In the event mandatory subcontractor participation requirements for *SLBE* and/or *ELBE consultant contracts* cannot be applied, the City Manager shall, for all consultant contracts valued at over \$25,000:

- (a) Incorporate a voluntary subcontractor participation requirement of 20% and allow for preference points as detailed in Section 22.3617(b).
- (b) Apply a maximum of an additional 12% of the total possible evaluation points to the *bidder’s* final score for *SLBE* or *ELBE* participation as follows:
  - (1) If the *bidder* achieves 20% participation, apply 5% of the total possible evaluation points to the *bidder’s* score; or
  - (2) If the *bidder* achieves 25% participation, apply 10% of the total possible evaluation points to the *bidder’s* score; or
  - (3) If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder’s* score.

*(“Bid Preference for Consultant Contracts” added 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3617 “Waivers” amended and renumbered to Section 22.3622.)*

**§22.3618 Competitive Process for Goods and Services Contracts Requiring SLBE and ELBE Program Participation Valued More Than \$250,000 but Less Than or Equal to \$500,000**

- (a) Contracts for goods and *contracts for services* valued more than \$250,000, but less than or equal to \$500,000, shall be awarded through a competitive bid process open only to businesses listed on the *SLBE* or *ELBE* eligibility lists.
- (b) If there are no businesses on the *ELBE* or *SLBE* eligibility lists that have the requisite goods or experience required for the contract, or if there are no *responsible bidders*, the competitive process will also be open to all bidders, and the requirements of §22.3619 or §22.3620 shall apply.

*(“Competitive Process for Goods and Services Contracts Requiring SLBE and ELBE Program Participation Valued More Than \$250,000 but Less Than or Equal to \$500,000” added 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3618 “Bonding and Insurance” renumbered to Section 22.3623.)*

**§22.3619 Competitive Process for Goods and Services Contracts Requiring SLBE and ELBE Program Participation Valued More Than \$25,000 but Less Than or Equal to \$250,000**

- (a) Contracts for goods and *contracts for services* valued more than \$25,000, but less than or equal to \$250,000, shall be awarded through a competitive bid process open only to businesses listed on the *ELBE* eligibility list.
- (b) If there are no businesses on the *ELBE* eligibility list that have the requisite goods or experience required for the contract, or if there are no *responsible bidders*, the competitive bid process will also be open to *SLBEs*.

*(“Competitive Process for Goods and Services Contracts Requiring SLBE and ELBE Program Participation Valued More Than \$25,000 but Less Than or Equal to \$250,000” added 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3619 “Technical Assistance” amended and renumbered to Section 22.3624.)*

**§22.3620 Bid Discounts for Contracts for Goods and Contracts for Services**

For bids valued at greater than \$500,000, the City Manager shall:

- (a) Permit a *bid discount* of:
  - (1) Five (5) percent for *SLBE* or *ELBE* prime contractors; or
  - (2) Up to a maximum of (five) 5 percent of the amount of *SLBE* and/or *ELBE* subcontractor participation, or the amount of *SLBE* and/or *ELBE* participation in a City-approved *joint venture*. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the lowest, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted *bidder* will be awarded the *contract for goods* or *contract for services*.
- (b) Include a mandatory subcontractor participation requirement for *SLBEs* and/or *ELBEs*. Bids that do not reach the mandatory subcontractor participation requirement, or demonstrate good faith efforts to do so, will be deemed nonresponsive and ineligible for award.
- (c) Incorporate a voluntary subcontracting participating requirement if mandatory *SLBE* or *ELBE* participation cannot be applied.
  1. The City will apply a *bid discount* of 5 percent off the bid price for prime contractors achieving the voluntary goal of 20 percent for *SLBE* or *ELBE* subcontractor participation.
  2. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the low, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted *bidder* will be awarded the goods or services contract. The discount shall be taken off the total contract value, including contract option years.

(“*Bid Discounts for Contracts for Goods and Contracts for Services*” added 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3620 “*Packaging of Public Works Contracts*” renumbered to Section 22.3625.)

## **§22.3621 Bid Preference for Contracts for Goods and Contracts for Services**

For proposals, in the event mandatory *SLBE* or *ELBE* participation cannot be applied, the City will incorporate voluntary subcontracting participation requirements of 20 percent for *SLBEs* and *ELBEs* and allow for preference points. The City Manager shall:

- (a) Apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:
  - (1) If the *bidder* achieves 20 percent participation, apply 5 percent of the total possible evaluation points to the *bidder's* score; or
  - (2) If the *bidder* achieves 25 percent participation, apply 10 percent of the total possible evaluation points to the *bidder's* score; or
  - (3) If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.

(“*Bid Preference for Contracts for Goods and Contracts for Services*” added 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3621 “*City Manager to Adopt Regulations*” renumbered to Section 22.3626.)

## **§22.3622 Waivers**

The intent of this Division is to maximize the opportunity for *SLBE* and *ELBE* prime and subcontractor participation in City *public works contracts, consultant contracts, contracts for goods, and contracts for services*. However, the City Manager may grant written waivers of *SLBE* and *ELBE* bid preferences or subcontractor participation requirements on a project-by-project basis when in the best interests of the City. The City Manager shall establish procedures for granting and documenting waivers, and shall report quarterly to the City Council regarding such waivers.

(“*Waivers*” added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)  
(Renumbered from former Section 22.3617 to Section 22.3622 and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022. Former Section 22.3622 “*Audit and Reporting Requirements*” amended and renumbered to Section 22.3627.)

**§22.3623 Bonding and Insurance**

The City Manager may, on a project-by-project basis, adjust bonding and insurance requirements on *public works contracts* to enhance opportunities for *SLBEs* and *ELBEs* to the extent permitted by law. The City Manager shall consult with the Risk Management Department before making any such adjustment on a particular *public works contract* to ensure that the City is adequately protected against liability.

(“*Bonding and Insurance*” added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)  
(Renumbered from former Section 22.3618 to Section 22.3623 on 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)

**§22.3624 Technical Assistance**

The City Manager may establish technical assistance programs to assist *SLBEs* and *ELBEs* in applying for business-type certifications, becoming eligible for *minor public works contracts*, securing necessary bonding and insurance, and generally complying with the City’s advertising, bidding, and award process.

(“*Technical Assistance*” added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)  
(Renumbered from former Section 22.3619 to 22.3624 and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)

**§22.3625 Packaging of Public Works Contracts**

The City Manager shall meet with relevant City departments on an annual basis to review the percentage of *public works contracts* that qualify as *minor public works contracts*. The City Manager shall make recommendations as necessary regarding the packaging of *public works contracts* to maximize the intent of this Division, where appropriate and to the extent permitted by law.

(“*Packaging of Public Works Contracts*” added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)  
(Renumbered from former Section 22.3620 to Section 22.3625 on 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)

**§22.3626      City Manager to Adopt Regulations**

The City Manager shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Division.

*(“City Manager to Adopt Regulations” added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Renumbered from former Section 22.3616, “and amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Renumbered from former Section 22.3621 to Section 22.3626 on 8-10-2022 by O-21516 N.S.; effective 9-9-2022.*

**§22.3627      Audit and Reporting Requirements**

The City Auditor, or some other independent body or auditing firm, shall periodically conduct audits of the Small and Local Business Program for *public works contracts, consultant contracts, contracts for goods, and contracts for services*. The City Manager shall report annually to the City Council regarding the impact and costs of implementing the Small and Local Business Program for *public works contracts, consultant contracts, contracts for goods, and contracts for services*.

*(“Audit and Reporting Requirements” added 2-4-2010 by O-19922 N.S; effective 7-1-2010.)*

*(Renumbered from former Section 22.3622 to Section 22.3627 and amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)*