

**City of Milwaukee
Department of Administration
Business Operations Division - Procurement Services**

LOCAL BUSINESS ENTERPRISE PROGRAM

2010 ANNUAL REPORT

Background

Milwaukee Code of Ordinances, Chapter 365 the Local Business Enterprise (LBE) Contracting Program was adopted in August 2009 to remedy *low* local business participation in the award of various city contracts as a result of detailed findings set forth in the *2005 Study to Determine the Effectiveness of the City's Emerging Business Enterprise Program*. According to the study, approximately 65% of the total contracting dollars during the study period were awarded to non Milwaukee County businesses from 2005 to 2008.

This statistic led to the development of the LBE Contracting Program which is designed to remedy low local business participation in the award of city contracts and to address the following:

- Provide an incentive to encourage local businesses that are likely to create more jobs for the city, and yield tax benefits that would be an advantage to the city and its economic development; and
- Benefit all city residents by alleviating the impact of unemployment and diminish the harm suffered by the city and city residents without a substantial increase in cost to the city.

LBE Program Administration

The LBE contracting program is administered by the City Purchasing Director of the Department of Administration (DOA) who is required to develop appropriate rules and procedures for city departments to ensure compliance. In addition, the City Purchasing Director is responsible for the coordination, monitoring and enforcement of the implementation of the program's goals in accordance with appropriate rules and procedures.

Requirements of City Departments

City contracting departments are required, unless contrary to federal state or local law or regulation, to apply an award standard in all bids so that a local business has an advantage in being awarded a contract, provided that its bid does not exceed the lowest bid by 5% or \$25,000. As it relates to Request for Proposals (RFPs), an additional number of points, equal to 5% of the maximum number of points used for evaluation, must be added to increase the total score attained by a local firm.

Local Business Enterprise (LBE) Qualifications

In order to qualify as a LBE, a business must meet the following criteria:

- Own or lease real property within the geographical boundaries of the City of Milwaukee.
- Has owned or leased real property and has been doing business within the geographical boundaries of the City of Milwaukee for at least one year.
- Is not delinquent in the payment of any local taxes, charges or fees, or has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement.
- Will perform at least 10% of the monetary value of the work required under the awarded contract.

A business that seeks to qualify as a LBE must submit a *LBE Affidavit of Compliance* form to the contracting department verifying that the business meets the aforementioned criteria in order to qualify for the LBE incentive. In addition, it is important to point out that the LBE program is not a certification program. In order to qualify as a LBE, a business must submit the notarized affidavit with each individual bid or proposal in order to take advantage of the LBE bid award incentive.

Departmental LBE Contracting Activity: August 2009 – December 2010

Since the LBE contracting program was implemented in August 2009, a total of fourteen (14) contracts have been awarded to a local business through the 4th quarter of 2010 based on the LBE bid incentive. Nine (9) or approximately 71% of these contracts were awarded by the Department of Public Works (DPW) and the remaining 29% or five (5) contracts were awarded by the Department of Administration (DOA) and the Department of Neighborhood Services (DNS). The total number of LBE incentive contract awards by department through the 4th quarter of 2010 is identified in Table 1 below:

Table 1: Departmental LBE Incentive Contract Awards: 4th Quarter 2009 through 4th Quarter 2010

4th Quarter 2009	1st Quarter 2010	2nd Quarter 2010	3rd Quarter 2010	4th Quarter 2010	Total
DPW (2)	DOA (1) DPW (2)	DPW (2)	DOA (2) DPW (1)	DNS (2) DPW (2)	(14)
2	3	2	3	4	

Contract Type and LBE Incentive Cost

The types of contracts that have been impacted by the LBE contract incentive award range from sanitary sewer and paving construction related contracts administered by the DPW to cable street lighting and electrical contracts administered by the DOA and demolition contracts administered by the DNS. The “cost” of the LBE bid incentive citywide since its implementation is approximately \$73K. In addition, approximately, \$65K or 88% of that amount is based on LBE contract awards by the DPW. Tables 2-6 illustrate the types of contracts that have been awarded based on the LBE incentive per quarter and the cost difference between the lowest complying bidder and the lowest non-LBE bidder.

Table 2: LBE Activity – 4th Quarter 2009

Dept.	LBE Awardee				Lowest Non-LBE Bidder		\$ Difference
	LBE	Award Date	Contract # and Description	LBE Bid Amount	Non-LBE	Lowest Non-LBE Bid Amount	
DPW	M.J. Construction	12/14/2009	C523090143 Sanitary Sewer	\$234,996.50	Underground Pipeline Construction <i>New Berlin, WI</i>	\$231,645.00	\$3,351.50
DPW	M.J. Construction	12/14/2009	C523090144 Sanitary Sewer	\$1,192,072.20	American Sewer Services, Inc. <i>Rubicon, WI</i>	\$1,169,798.60	\$22,273.60
DPW Total							\$25,625.10
2009 - 4th Quarter: Grand Total							\$25,625.10

Table 3: LBE Activity – 1st Quarter 2010

Dept.	LBE Awardee				Lowest Non-LBE Bidder		\$ Difference
	LBE	Award Date	Contract # and Description	LBE Bid Amount	Non-LBE	Lowest Non-LBE Bid Amount	
DPW	M.J. Construction	1/19/2010	C523100001 Sewer Main	\$547,633.00	American Sewer Services, Inc. <i>Rubicon, WI</i>	\$538,222.00	\$9,411.00
DPW	M.J. Construction	2/12/2010	C641100008 Water Main	\$354,931.20	American Sewer Services, Inc. <i>Rubicon, WI</i>	\$349,175.00	\$5,756.20
DPW Total							\$15,167.20
DOA	Neher Electric Supply, Inc.	3/26/2010	PO 133462 Duct, PVC, Non-metallic	\$31,500.96	Resco <i>Middleton, WI</i>	\$30,504.00	\$996.96
PSS Total							\$996.96
2010 - 1st Quarter: Grand Total							\$16,164.16

Table 4: LBE Activity – 2nd Quarter 2010

Dept.	LBE Awardee				Lowest Non-LBE Bidder		\$ Difference
	LBE	Award Date	Contract # and Description	LBE Bid Amount	Non-LBE	Lowest Non-LBE Bid Amount	
DPW	Stark Asphalt	4/14/2010	C523100034 Paving Work	\$506,820.23	D.C. Burbach, Inc. <i>Waukesha, WI</i>	\$497,143.07	\$9,677.16
DPW	M.J. Construction	6/14/2010	C641100065 Water Main Relays	\$602,865.60	American Sewer Services, Inc. <i>Rubicon, WI</i>	\$600,880.50	\$1,985.10
DPW Total							\$11,662.26
2010 - 2nd Quarter: Grand Total							\$11,662.26

Table 5: LBE Activity – 3rd Quarter 2010

Dept.	LBE Awardee				Lowest Non-LBE Bidder		\$ Difference
	LBE	Award Date	Contract # and Description	LBE Bid Amount	Non-LBE	Lowest Non-LBE Bid Amount	
DPW	M.J. Construction	8/6/2010	C523100086 Sewer Main Relay	\$155,369.00	United Sewer and Water <i>Menomonee Falls, WI</i>	\$150,012.00	\$5,357.00
DPW Total							\$5,357.00
DOA	Price and Sons*	8/6/2010	Bid 2391 Cable, Street Ltg. Line 3	\$67,200.00	Graybar Electric <i>Milwaukee, WI</i>	\$63,924.00	\$3,276.00
DOA	Price and Sons*	9/17/2010	Bid 2392VC for Concrete Poles, Traffic Type	\$127,379.46	Traditional Concrete, Inc. <i>Menomonee Falls, WI</i>	\$123,630.00	\$3,749.46
PSS Total							\$7,025.46
2010 - 3rd Quarter: Grand Total							\$12,382.46

Table 6: LBE Activity – 4th Quarter 2010

Dept.	LBE Awardee				Lowest Non-LBE Bidder		\$ Difference
	LBE	Award Date	Contract # and Description	LBE Bid Amount	Non-LBE	Lowest Non-LBE Bid Amount	
DNS	Tyler Company, Inc.	12/9/2010	DNS-2010-39 Demolition	\$13,430.00	Pitzka Wrecking <i>Waukesha, WI</i>	\$12,860.00	\$570.00
DNS	Sonag* Company	12/14/2010	DNS-2010-40 Demolition	\$12,250.00	Cream City Wrecking <i>Menomonee Falls, WI</i>	\$12,128.00	\$122.00
DNS Total							\$692.00
DPW	MJ Construction	10/13/2010	C523100116 Sewer Main Relay	\$115,420.85	American Sewer Services, Inc. <i>Rubicon, WI</i>	\$110,333.30	\$5,087.55
DPW	Illingworth - Kilgust Mechanical	11/16/2010	C641100123 Water Supply Line	\$60,175.00	Grunau Company <i>Oak Creek, WI</i>	\$58,460.00	\$1,715.00
DPW Total							\$6,802.55
2010 - 4th Quarter: Grand Total							\$7,494.55

***Note:** These LBE firms are also certified with the City's Emerging Business Enterprise (EBE) Program.

LBE Bid Award Appeals

In accordance with City Charter Ordinance 7-14-2b, any bidder who objects to the determination based on the consideration of a LBE bid award may appeal the recommendation by filing a written appeal with the public works commissioner. The commissioner shall schedule a hearing before the public works contract appeals committee which is comprised of the chair of the economic development committee or his or her designee, a member of the economic development committee selected by the chair and the director of administration or his or her designee to be held within 5 days of receipt of the appeal.

During the 1st full year of the program, DPW received a total of six (6) bid appeals from various bidders contesting a LBE award. The appeals were filed from several bidders that cited one or more of the following issues as the basis for their appeal(s):

- The LBE *bid awardee* did not own property within the City of Milwaukee.
- LBE award is in violation of Wis. Admin. Code SS NR 162.09(2).
- LBE preference is in violation of Wis. SS 281.58(8) (e).
- A monopoly situation has been created and has resulted in unfair profits to one firm.
- Since the project is funded with federal dollars, Federal Regulations, 40 CFR 31.36(c) (2) prohibits the use of local geographical preferences.

Appendix 1: *Summary of LBE Bid Award Appeals August 2009 thru December 2010* summarizes the bidding information regarding these appeals in detail. Although all of the appeals were denied, important lessons were learned through some of the appeal hearings which could assist with shaping a LBE contracting program that is more effective and efficient.

Conclusion

Although less than 20% of total bids awarded between August 2009 and December 2010 were based on the LBE incentive, a substantial number of local firms have attempted to qualify for the LBE bid incentive. Approximately 64% of the bids that were submitted included an LBE affidavit which may indicate that local firms are eager to participate in the program. To that end, this demonstrates that this may be an important contracting tool for local firms that play a key role in contributing to the growth of the local economy. In addition, it is also important to point out that several Emerging Business Enterprise (EBE) firms have been awarded prime contracts as a result of the LBE bid incentive. Hence, the LBE contracting program has also provided the city's EBE firms with a greater opportunity to build capacity and serve as prime contractors on city contracts.

Simultaneously, while the LBE contracting program can be viewed as a successful tool in assisting local and EBE firms, there is opportunity to make the program fiscally leaner and more efficient. Based on one year of solid data and experience, the following is recommended:

- The number of LBE incentive awards should be capped to three (3) times per year not to exceed \$30,000 per individual firm to ensure that there is more than one beneficiary of the LBE contracting program.
- The 10% performance cap should be raised to 60% to ensure that the local firm is performing the majority of the work and not subcontracting the work out to non-local firms.
- The program should be structured in such a way that small businesses are the primary beneficiaries of the program, as opposed to larger prime contractors that are more likely to obtain contracts with or without the LBE incentive.

Adopting the recommendations cited above should play a key role in addressing the following:

1. Reduce the number of repetitive LBE incentive based contract awards.
2. Reduce the overall fiscal impact of the program.
3. Create an additional tool for small businesses to grow and build capacity so that they can play a greater role in contributing to the local economy.