

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

LOCAL BUSINESS ENTERPRISE PROGRAM

2011 & 2012 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 *2007 Study to Determine the Effectiveness of the City's Emerging Business Enterprise Program*. According to the study, approximately 74% of the total contracting dollars during the study period were awarded to non Milwaukee County businesses from January 1, 2005 to December 31, 2005.

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. It should be noted that as a result of state legislation passed in June 2011, the LBE program is no longer enforceable for public works contracts.

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.

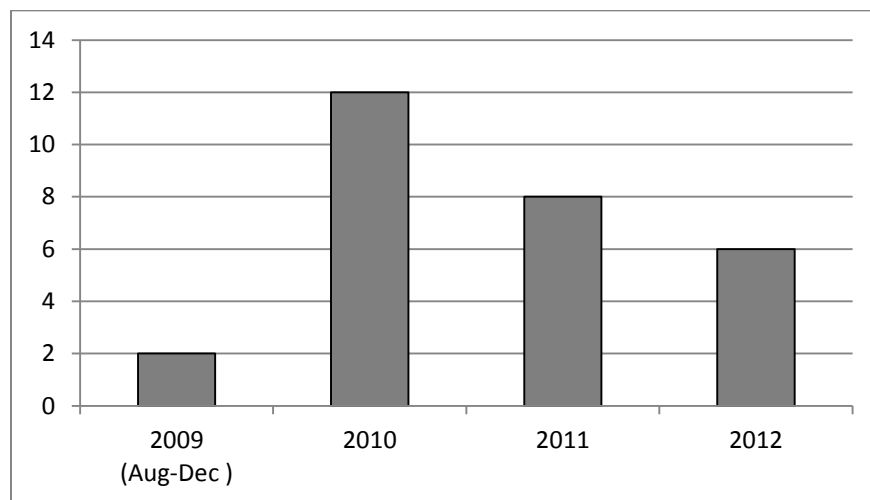
- Has owned or leased real property and has been doing business within the geographical boundaries of the City of Milwaukee for at least one year.
- Is not delinquent in the payment of any local taxes, charges or fees, or has entered into an agreement to pay any delinquency and is abiding by the terms 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. Additionally, 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.

LBE Contracting Activity

In 2011, a total of 8 contracts were awarded to a local business based on the LBE incentive. In 2012, that number decreased to just 6 contracts. This represents a nearly 30% decrease each year since 2010, which was the first full year of implementation of the program (see Chart 1).

Chart 1: Number of Contracts Awarded to LBE Bidders



A breakdown of LBE contract awards by department for 2011 and 2012 is identified in Table 1 below:

Table 1: LBE Contract Awards by Department

	DNS	DOA	DPW	MPL	Total
2011	1	-	6	1	8
2012	1	4	-	1	6

In 2011, six (6) or 75% of the LBE contracts were awarded by the Department of Public Works (DPW). The remaining two (2) or 25% of LBE contracts were awarded by the Department of Neighborhood Services (DNS) and the Milwaukee Public Library (MPL).

In 2012, the number of LBE contracts awarded by the Department of Public Works (DPW) dropped to zero (0). This decline is due to changes in state law, which rendered the LBE program unenforceable for public works projects. The Department of Administration awarded four (4) or 67% of the LBE contracts in 2012. The remaining two (2) or 33% of LBE contracts were awarded by DNS and MPL.

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 vehicle repair services and equipment-related contracts administered by the DOA and demolition contracts administered by the DNS.

Because the LBE program allows contracts to be awarded to a bidder that does not have the lowest bid price, there is a cost associated to the program. To calculate the cost, the lowest complying non-LBE bid amount (the “non-awardee”) is subtracted from the LBE bid amount (the “awardee”). The approximate cost of the LBE bid incentive citywide was \$63,000 in 2011 and \$1,600 in 2012. Adding this to the \$73,000 cost in 2009 and 2010, the total cost of the LBE incentive citywide since its implementation is approximately \$137,600. Hence, the average annual cost of the program is approximately \$42,000.

Tables 2 and 3 on the next page show the types of contracts that have been awarded based on the LBE incentive and the cost difference between the lowest complying LBE bidder and the lowest complying non-LBE bidder.

Table 2: 2011 LBE Incentive Contract Awards

Date of Award	Dept.	Contract # and Description	LBE Bidder	LBE Bid Amount	Lowest Non-LBE Bidder	Lowest Non-LBE Bid Amount	\$ Difference
1/6/2011	DPW	C523110001 - Roof Replacement	MM Schranz	\$253,863.00	Langer Roofing & Steel Metal <i>West Allis, WI</i>	\$247,933.00	\$5,930.00
1/13/2011	DPW	C523110002 - Sanitary Sewer Main	M.J. Construction	\$392,918.10	Rawson Contractors <i>Sussex, WI</i>	\$378,479.00	\$14,439.10
1/25/2011	MPL	C-10-010 Construction	Arteaga*	\$1,537,000.00	Miron Construction, Inc. <i>Milwaukee, WI</i>	\$1,516,900.00	\$20,100.00
3/16/2011	DPW	C523110017 - Construction Alley Pavement	LaLonde Contractors	\$292,092.50	Platt Construction <i>Franklin, WI</i>	\$283,973.40	\$8,119.10
3/29/2011	DNS	DNS-2011-13/demo/1parcel	Tyler Company	\$11,075.00	Cream City Wrecking <i>Menomonee Falls, WI</i>	\$10,879.00	\$196.00
4/14/2011	DPW	C523110036 Concrete Pavement	Milwaukee General	\$298,484.44	Rawson Contractors <i>Sussex, WI</i>	\$291,447.65	\$7,036.79
4/15/2011	DPW	C523110040 Concrete Pavement	Stark Asphalt	\$205,125.95	D.C. Burbach, Inc. <i>Waukesha, WI</i>	\$202,406.80	\$2,719.15
6/20/2011	DPW	C523110060 Construct Alley Pavement	M.J. Construction	\$604,604.40	D.C. Burbach, Inc. <i>Waukesha, WI</i>	\$600,000.00	\$4,604.40
Grand Total							\$63,144.54

Table 3: 2012 LBE Incentive Contract Awards

Date of Award	Dept.	Contract # and Description	LBE Bidder	LBE Bid Amount	Lowest Non-LBE Bidder	Lowest Non-LBE Bid Amount	\$ Difference
2/15/2012	MPL	Mayline C-Files	C&H Distributors	\$4,222.84	Demco, Inc. <i>Madison, WI</i>	\$4,206.00	\$16.84
2/16/2012	PSS	Bid 2558 VC Delco Parts	Auto Parts & Service, Inc.	\$329.54	Factory Motor Parts <i>Waukesha, WI</i>	\$320.98	\$8.56
2/24/2012	DNS	DNS-2012-02/demo 2 parcels	Sonag Company	\$21,561.00	Cream City Wrecking <i>Menomonee Falls, WI</i>	\$20,821.00	\$740.00
3/30/2012	PSS	Bid 2501 VSC for Chevrolet Repair Services	Braeger Chevrolet	\$746.00	Boucher Chevrolet <i>Waukesha, WI</i>	\$725.00	\$21.00
7/2/2012	PSS	Bid 2604 Pipe, Aluminum	Price and Sons*	\$20,232.00	Pan American Pipe and Allow, Inc. <i>El Paso, TX</i>	\$19,380.00	\$852.00
7/24/2012	PSS	Bid 2574 Pipe, Aluminum	Price and Sons*	\$27.57	American Sign Factory <i>Milwaukee, WI</i>	\$26.79	\$0.78
Grand Total							\$1,639.18

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

LBE Bid Award Appeals

In accordance with Milwaukee Code of Ordinances, Chapter 310-19, 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 city purchasing director. The purchasing appeals board shall be composed of the mayor, the commissioner of public works, the chair of the common council committee on finance and personnel, the director of administration, the city comptroller, the president of the common council; and two city employees, one each appointed by the mayor and the common council president. No LBE bid award appeals were received in 2011 and 2012.

Public Works Contracts

When the state budget passed in June 2011, it included language regarding the bidding process for public works contracts, stating that “except when necessary to secure federal aid, a political subdivision may not use a bidding method that gives preference based on the geographic location of the bidder or that uses criteria other than the lowest responsible bidder in awarding a contract”.

This legislation made the LBE program unenforceable for all public works contracts such as sewer repairs or paving projects.

As shown in Table 4 below, the elimination of the LBE incentive on public works contracts has greatly impacted the LBE program. In 2009 and 2010, DPW bids made up \$3.7 million or approximately 94% of LBE bid awards. In 2011, DPW only had six (6) LBE awards during the first two quarters while the LBE program was still enforceable. These contracts made up \$2 million or approximately 57% of the 2011 LBE awards. In 2012, DPW did not have any LBE awards.

Table 4: LBE Awards by Department

Dept	2009	2010	2011	2012	Total
DNS	\$0.00	\$25,680.00	\$11,075.00	\$21,561.00	\$58,316.00
DPW	\$1,427,068.70	\$2,343,214.88	\$2,047,088.39	\$0.00	\$5,817,371.97
MPL	\$0.00	\$0.00	\$1,537,000.00	\$4,222.84	\$1,541,222.84
PSS	\$0.00	\$226,080.42	\$0.00	\$251,093.20	\$477,173.62

Conclusion

2011 and 2012 saw a decline in the opportunities available for the utilization of the LBE program due to the elimination of the LBE incentive on public works contracts. In 2010, the first full year of program implementation, approximately 6.0% of all bids were awarded to LBE bidders. Based on the most recent year (2012) of contracting activity, that number has decreased to 1.0%. Again, the primary reason for this decrease can be attributed to the elimination of the LBE incentive on public works contracts as a result of changes to state statutes. Given this decrease, policymakers might consider increasing the bid incentive to 10% in an effort to increase

contracting opportunities for local firms without incurring a significant increase to the cost of the LBE program. If a 10% bid incentive were in place in 2012, the total cost of the program would have been \$3,200 instead of \$1,600.

It is also important to point out that the LBE program continues to benefit small businesses certified with the Office of Small Business Development. Several Small Business Enterprise (SBE) firms, including Arteaga Construction and Price & Sons, Inc., have been awarded prime contracts as a result of the LBE bid incentive. Hence, the LBE contracting program has also provided several city certified SBE firms with a greater opportunity to build capacity and serve as prime contractors on city contracts.

In addition, it appears that the LBE program continues to be of interest to local firms. On an average annual basis, over 70 LBE Affidavits are submitted by local firms that are seeking to take advantage of the 5% bid preference. Of those 70 submissions, roughly 12% of the awards have been based on the LBE incentive. From an annual perspective, the average cost of the program has been approximately \$42,000. This amount represents less than half of a percent of the total dollar value of bid awards by the DOA alone. This indicates that the overall fiscal impact of the program has been fairly modest since its implementation.

In closing, it appears that the program maintains relevance for local firms without *significant* fiscal impacts. It continues to be one small tool that is available to give local firms a competitive advantage along with the Buy Milwaukee/County/American (BMCA) 12% bid incentive that went into effect in February 2013. It is important to point out that bidders cannot take advantage of both bid incentives in an effort to contain costs. The impacts of both bid incentives should be evaluated in an effort to ensure that resources are made available to contribute to the economic growth of local firms with consideration to fiscal impacts. The initial report on the BMCA 12% bid incentive will take place in the first quarter of 2014 and a comparative analysis will take place at that time. In the meantime, policymakers should consider the adoption of a monetary cap on the cost of the program in an effort to provide city departments with a predictable way to manage bid incentive costs that are designed to provide increased business opportunities for local firms.