

## ORDINANCE NO. \_\_\_\_\_ C.M.S.

**AN ORDINANCE AMENDING OAKLAND'S PURCHASING ORDINANCE, OAKLAND MUNICIPAL CODE, TITLE 2, CHAPTER 2.04, TO MODIFY OAKLAND'S CONTRACTING PROCEDURES TO CODIFY THE CITY OF OAKLAND'S EXISTING DESIGN-BUILD AND CONSTRUCTION MANAGER-AT-RISK METHODS OF PROJECT DELIVERY, AND TO CODIFY CONTRACT PROCESSES FOR PROFESSIONAL SERVICES, CONSTRUCTION AND PROCUREMENT FOR THE CITY OF OAKLAND**

**WHEREAS**, Under the California Constitution, charter cities like the City of Oakland may, as an alternative to being entirely subject to the general law of the state, elect to operate pursuant to a charter that authorizes the enactment of ordinances and regulations superseding the general law of the state with respect to municipal affairs; and

**WHEREAS**, The City of Oakland, as a charter city, has developed its own procurement and contracting rules and practices, including alternative project delivery methods such as Design-Build, and Construction Manager-At-Risk; and

**WHEREAS**, Senate Bill 974 ("SB 974") which relates to public contracts and the applicability of the California Public Contract Code to charter cities, was passed by the California Legislature, signed by the Governor on October 12, 2001, and filed with the Secretary of State on October 13, 2001; and

**WHEREAS**, SB 974 provides that the California Public Contract Code is the basis of contracts between most public entities and their contractors and subcontractors. The bill further states, with regard to charter cities, *that the California Public Contract Code (the "PCC") applies in the absence of an express exemption or a city charter provision or ordinance that conflicts with that code* [emphasis added]; and

**WHEREAS**, With respect to such legislation, the City of Oakland wishes by adopting this ordinance to: (a) provide an express exemption to the PCC, and (b) amend Oakland's Purchasing Ordinance, Oakland Municipal Code, Title 2, Chapter 2.04 in order to codify by ordinance, as required by SB 974, the City's existing contracting policies, processes and procedures for professional services, construction and procurement for the City of Oakland, and alternative methods for project delivery and successful project completion such as Design-Build and Construction Manager-At-Risk;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council of the City of Oakland declares that the City of Oakland is exempt from the California Public Contracts Code with respect to the City's procurement, contracting, and project delivery processes and procedures.

**Section 2.** Section 2.04.010, "Definitions", is modified to add and delete provisions as follows:

"Apprentice" is defined as that term is defined in Oakland Municipal Code, Title \_\_\_\_\_, Chapter \_\_\_\_\_, Section \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) is defined as that term is defined in Oakland Municipal Code, Title \_\_\_\_\_, Chapter \_\_\_\_\_, Section \_\_\_\_\_.

"Local Business Enterprise and Small Local Business Enterprise" means a business firm with fixed offices or distribution points located within City of Oakland boundaries and as otherwise defined under Oakland's LBE/SLBE construction, procurement and professional services contracting programs, as set forth under Oakland Municipal Code Title \_\_\_\_\_, Chapter \_\_\_\_\_, and listed in the permits and license tax paid file with an Oakland business street address.

~~"Minority supplier" means a minority, group, contractor, business enterprise, or vendor that is an individual or group of individuals representative of a minority group class and who own or control fifty (50) percent or more of the investment capital of an established business enterprise. In case of a publicly owned business, ownership must be fifty one (51) percent of the stock. A "minority group class" shall be as defined by the City of Oakland affirmative action program.~~

"Local Hire" is defined as that term is defined in Oakland Municipal Code, Title \_\_\_\_\_, Chapter \_\_\_\_\_, Section \_\_\_\_\_.

"Prevailing Wages" is defined as that term is defined in Oakland Municipal Code, Title \_\_\_\_\_, Chapter \_\_\_\_\_, Section \_\_\_\_\_.

"Professional Services" means services which are of an advisory nature that provide a recommended course of action or personal expertise that will result in a transmittal of information to the City, either verbal or written, related to City administration and management or program management, innovation, \_\_\_\_\_ and \_\_\_\_\_, which must be performed by appropriately licensed consultants, architectural, or engineering personnel, or which are so technical or complex in nature that such services must be performed by persons possessing unique or special training, education or skills. Notwithstanding the above, this definition shall not include contracts for services between the City and another public entity.

"Small Local Business Enterprise" is defined as that term is defined in Oakland Municipal Code, Title \_\_\_\_\_, Chapter \_\_\_\_\_, Section \_\_\_\_\_.

**Section 3.** Section 2.04, "Scope of the Purchasing Ordinance" is added:

All provisions of this ordinance shall apply to **City of Oakland** contracts for public works projects, public works construction projects, procurements and purchases (as defined in Section 2.04.010, Definitions), and to services, including , but not limited to, contracts for services that are professional, technical or scientific in nature as well as contracts for any other services. \_

**Section 4.** Section 2.04.020, "Authority of the City Manager", is modified as follows:

Apprentice Hiring & Local Hire. The City Manager is authorized in evaluation of all sealed, faxed and telephoned bids for public works projects to require contractors to comply with Oakland's Apprentice Hire and Local Hire programs, as set forth under Oakland Municipal Code Title \_\_\_\_\_, Chapter \_\_\_\_\_.

Living Wage. The City Manger is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for services to require contractors or consultants to comply with Oakland's Living Wage Ordinance as set forth under Oakland Municipal Code Title 2, Chapter 2.28.

Prevailing Wage. The City Manger is authorized in evaluation of all sealed, faxed and telephoned bids and/or proposals for public works projects to require bidders/contractors to pay prevailing wages as required under Oakland Municipal Code, Title \_\_\_\_\_, Chapter \_\_\_\_\_, Section \_\_\_\_\_.

Oakland Specifications for Public Works Construction ("Greenbook"). The City Manger is authorized in evaluation of all sealed, faxed and telephoned bids and/or proposals for public works construction to require bidders/contractors to comply with and perform construction in accord with Oakland Specifications for Public Works Construction ("Greenbook"), as set forth under Ordinance No. \_\_\_\_\_, CMS, adopted \_\_\_\_\_. Notwithstanding, the above, nothing herein is intended to limit authority of the City Council to modify the specifications for public works construction by legislative action on a case-by-case basis.

Local Business Contracting Programs~~Vendor Preferences~~. The City Manager is authorized in the evaluation of all sealed, faxed and telephoned bids, for public works projects and for the purchase of supplies, and in evaluation of proposals for professional services contracts, -to require contractors to comply with, and to extend the benefits of, extend—Oakland's LBE/SLBE construction, procurement and professional services contracting programs, as set forth under Oakland Municipal

~~Code Title \_\_\_\_\_, Chapter \_\_\_\_\_, a five percent preference for a local business and an additional five percent preference for a local minority supplier in award of all purchase orders.~~

**Section 5.** The following provision is added:

Section 2.04. \_\_\_\_\_, Design-Build Project Delivery Method.

The City of Oakland may use the alternative fast-track project delivery method commonly known as "design-build" with or without formal bidding when the circumstances surrounding the project substantiate that it is in the "best interests of the City" to waive formal bidding pursuant to the Oakland Municipal Code, Title 2, Chapter 2.04, Section 2.04.050I (5). The City Manager, or his designee, will prepare and publish an Administrative Instruction, which will contain guidelines for the use of such alternative project delivery methods. These guidelines will provide the criteria and administrative procedures for the use of such alternative project delivery methods such as design-build.

**Section 6.** The following provision is added:

Section 2.04. \_\_\_\_\_, Construction Manager-At-Risk Project Delivery Method.

The City of Oakland may use the alternative project delivery method commonly known as "Construction Manager-At-Risk" with or without formal bidding when the circumstances surrounding the project substantiate that it is in the "best interests of the City" to waive formal bidding pursuant to the Oakland Municipal Code, Title 2, Chapter 2.04, Section 2.04.050I (5). The City Manager, or his designee, will prepare and publish an Administrative Instruction, which will contain guidelines for the use of such alternative project delivery methods. These guidelines will provide the criteria and administrative procedures for the use of alternative project delivery methods such as Construction Manager-At-Risk.

**Section 7.** Effective Date. This ordinance shall become effective immediately upon adoption by the City Council.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_.

**PASSED BY THE FOLLOWING VOTE:**

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

6202

## NOTICE AND DIGEST

**ORDINANCE AMENDING OAKLAND'S PURCHASING  
ORDINANCE, OAKLAND MUNICIPAL CODE, TITLE 2,  
CHAPTER 2.04, TO MODIFY OAKLAND'S CONTRACTING  
PROCEDURES TO CODIFY THE CITY OF OAKLAND'S  
EXISTING DESIGN-BUILD AND CONSTRUCTION MANAGER  
-AT-RISK METHODS OF PROJECT DELIVERY, AND TO  
CODIFY CONTRACT PROCESSES FOR PROFESSIONAL  
SERVICES, CONSTRUCTION AND PROCUREMENT FOR THE  
CITY OF OAKLAND**

Recently enacted Senate Bill 974, which will become effective January 1, 2002, will require charter cities like Oakland to follow the California Public Contracts Code (the "PCC"), unless such cities have an express exemption or a city charter provision or ordinance that conflicts with the PCC.

This Ordinance provides the City of Oakland with an express exemption by declaring that the City of Oakland is exempt from the PCC. The ordinance also codifies some of the City's existing contracting and procurement rules and procedures which may conflict with the PCC but which have not previously been adopted by ordinance, as required by SB 974. Specifically, this ordinance will amend Oakland's Purchasing Ordinance, Oakland Municipal Code, Title 2, Chapter 2.04 in order to codify the City's:

- (i) contracting procedures,
- (ii) contract processes for professional services, construction and procurement for the City of Oakland, and
- (iii) alternative methods for project delivery and successful project completion such as Design-Build and Construction Manager-At-Risk.

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ORA/COUNCIL

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