



BOARD OF SUPERVISORS

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COUNTY OF LOS ANGELES DEPARTMENT OF CONSUMER AND BUSINESS AFFAIRS

"To Enrich Lives Through Effective and Caring Service"



Rafael Carbajal
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October 15, 2020

To: Supervisor Kathryn Barger, Chair
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Janice Hahn

From: Rafael Carbajal
Acting Director

DIVERSITY AND INCLUSION IN PUBLIC FINANCE, ESTABLISHING A COUNTY OF LOS ANGELES LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND QUESTIONING (LGBTQQ) BUSINESSES PROGRAM (ITEM 27, AGENDA OF AUGUST 13, 2019)

On August 13, 2019, your Board adopted a motion co-authored by Supervisors Kuehl and Solis that directed the Department of Consumer and Business Affairs (DCBA) and the Internal Services Department (ISD) to clarify that Board Policy 5.130 "Contracting With Community Business Enterprise Firms," is inclusive of firms owned by Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQQ) individuals and to ensure that the County's formal contractor outreach programs are inclusive of LGBTQQ populations.

This is a final report with our recommendations to establish a County of Los Angeles LGBTQQ Business Program and will cover the following:

- Social and economic disadvantages of our LGBTQQ community;
- Summary of Existing LGBTQQ Certifications;
- Legal constraints of establishing an LGBTQQ program;
- Potential impact of CA Proposition 16;
- Recommended framework; and
- Next Steps.

LGBTQQ - A SOCIALLY ECONOMICALLY DISADVANTAGED COMMUNITY

According to the American Psychological Association, research has shown that individuals who identify as LGBTQQ and same-sex/gender couples are more vulnerable to conditions of poverty as compared to heterosexual individuals and couples, and experience higher levels of employment and workplace discrimination. Furthermore, a lack of acceptance and fear of persecution, which may include rejection from their family or caregivers, can lead many LGBTQQ youth to leave their homes and live in transitional housing or on the streets.¹

For years, major corporations and local and state governments have had supplier diversity programs² focused on boosting contracting opportunities to those groups that have been historically socioeconomically disadvantaged including small businesses, disabled veteran-owned businesses, minority- and women-owned businesses. In some places, governments set a goal that a certain portion of publicly funded projects be awarded to those businesses. Unfortunately, LGBTQQ-owned businesses have not always been included in those programs. The County should take efforts to ensure that LGBTQQ-owned businesses have equitable and inclusive opportunities to participate in countywide procurement and contracting.

SUMMARY OF EXISTING LGBTQQ BUSINESS CERTIFICATIONS

Research identified that more than 160 major corporations including Wells Fargo, PG&E, US Bank, Facebook, Genentech, and New York Life have recently recognized LGBTQQ-owned businesses as part of their supplier diversity programs. In the last few years, a growing number of government agencies in California and across the nation have started tracking LGBTQQ-owned business utilization while others have included LGBTQQ-owned businesses in their supplier diversity programs. Cities such as Long Beach (California), Nashville (Tennessee), and Jersey City (New Jersey) have changed their supplier programs to include LGBTQQ-owned businesses. In addition, City of Chicago and Cook County (both in Illinois) are in early discussions about changing their procurement policies to allow LGBTQQ-owned businesses in their supplier diversity

¹ <https://www.apa.org/pi/ses/resources/publications/factsheet-lgbt.pdf>

² A Supplier Diversity program encourages the use of minority-owned, women-owned, veteran-owned, LGBT-owned, service-disabled veteran-owned, historically underutilized business, and Small Business Administration (SBA)-defined small business concerns as suppliers

programs. However, the above agencies have not set participation goals for LGBTQ-owned businesses.

California's Public Utilities Commission (CPUC), which regulates utility companies in the state, requires these companies to hire LGBTQ-owned businesses but does not mandate a participation goal. The CPUC plans to monitor spend until January 2021 and, after sufficient analysis has been conducted, will recommend a meaningful LGBTQ-owned business participation goal, if any.

The federal government has participation goals for the number of contracts awarded to companies owned by women, minorities, veterans, service-disabled veterans and economically disadvantaged businesses, but currently does not have participation goals for LGBTQ-owned businesses.

LEGALITY OF ESTABLISHING A COUNTY LGBTQ BUSINESS PROGRAM

Bid Preference

California Proposition 209³ does not specifically list sexual orientation as a prohibitive category. However, creating an LGBTQ preference program, similar to our Local Small Business Enterprise (LSBE) program, may be a challenge. Currently, certified LSBEs receive a 15 percent bid preference when competing for eligible County contracting opportunities. Giving a similar bid preference or other types of incentives to LGBTQ-owned businesses will likely be challenged in court.

LGBTQQ Business Designation

DCBA administers the County's Community Business Enterprise (CBE) program, first established in 1991 through County Board Policy 5.030. DCBA currently certifies the following types of businesses for inclusion in the CBE program:

- Minority Business Enterprise (MBE);
- Women Business Enterprise (WBE);
- Disadvantaged Business Enterprise (DBE); and
- Disabled Veteran Business Enterprise (DVBE).

³ Proposition 209 amended the California Constitution to prohibit public institutions from discriminating on the basis of race, sex, or ethnicity.

Many County departments, public agencies, private-sector primes and subcontractors use the CBE listing to meet their MBE, WBE, DBE, and/or DVBE participation or subcontracting goals.

In order for a business to qualify as an MBE under the CBE program, a business would have to be independent, for-profit, and owned by citizens or lawful permanent residents of the United States who are: Black/African, Hispanic/Latino, Asian/Pacific Islander, Subcontinent Asian, or Native American. The business must be at least 51 percent owned and controlled by one or more of the above referenced minorities. Similarly, in order for a business to qualify as a WBE, the business must be independent, for profit, and at least 51 percent owned and controlled by women who are U.S. citizens or permanent residents.

To qualify as a DVBE under the CBE program, a business must be at least 51 percent owned and controlled by a disabled veteran(s) in addition to having a services-connected disability⁴ of at least 10 percent.

Although the County does not certify DBEs directly, the CBE program recognizes these businesses for program participation purposes. To qualify for the CBE program as a DBE, a business must be a for-profit small business as defined by the Small Business Administration and certified by the State of California Department of Transportation's (DOT) California Unified Certification Program as a DBE. The DOT will confirm that the business is at least 51 percent owned and managed by socially and economically disadvantaged individuals.⁵

In an effort to streamline the certification process for our business community, DCBA will accept proof of MBE, WBE, DBE, and DVBE certification from other jurisdictions who have a proven vetting process.

Creating an LGBTQQ-owned business designation under the umbrella of the CBE program is feasible, would not be legally challenged since no bid preference or other similar type of incentive will be given, and would increase contracting and subcontracting opportunities to a historically disadvantaged population.

⁴ Service-connected disability is confirmed by either the U.S. Department of Veteran Affairs or the U.S. Department of Defense.

⁵ African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women. are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis.

PROPOSITION 16

More recently on June 24, 2020, the State Assembly approved California Assembly Constitutional Amendment No. 5 (ACA 5) initially introduced by Assembly Members Weber, Gipson, and Santiago on January 18, 2019⁶. This amendment will now appear as Proposition 16 on the November 3, 2020, general election ballot. The ballot will need to be approved by voters before officially repealing Proposition 209's provisions.

Repealing Prop 209 will allow the County greater flexibility to expand contracting opportunities such as preferences and incentives to our minority, woman, and other identified groups.

LGBTQQ CERTIFICATION

One challenge LGBTQQ supplier diversity programs face is figuring out who will certify eligible businesses. Research found that the above referenced jurisdictions that have established an LGBTQQ program, aside from the CPUC, accept the National Gay & Lesbian Chamber of Commerce's (NGLCC) Lesbian, Gay, Bisexual, and/or Transgender-owned Business Enterprises (LGBTBE) certification. The CPUC's LGBTQQ certification is vetted by a third party, the Supplier Clearinghouse.

Eligibility Requirements

Businesses wishing to certify as an LGBTBE through the NGLCC must:

1. Be independent from any non-LGBT business enterprise;
2. Have its principal place of business (headquarters) in the United States;
3. Have been formed as a legal entity in the United States; and
4. Be at least 51% owned and controlled by an LGBT person or persons who are either U.S. citizens or lawful permanent residents.

Businesses wishing to certify as LGBTQQ with the CPUC must be at least 51 percent owned and controlled by a lesbian, gay, bisexual, or transgender person or persons. However, certification is limited to United States citizens or legal permanent residents.

⁶ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200ACA5

Certification Process NGLCC and CPUC

Businesses interested in certifying as LGBTBE with the NGLCC must submit an application which is reviewed by NGLCC's Supplier Diversity Initiative staff. Once the application is deemed complete, staff will conduct a site visit and submit their recommendation to the NGLCC's National Certification Committee who then reviews the findings and recommendation for a final decision. Businesses interested in certifying as LGBTQQ with CPUC must submit an application with the Supplier Clearinghouse along with a signed and notarized affidavit.

Certification Fees

The NGLCC application fee costs \$400 to become certified as an LGBTQQ-owned business. If the applicant is a member of an NGLCC chamber affiliate, of which there are numerous across the nation, this fee is waived. The CPUC's LGBTQQ application process is free.

RECOMMENDATION

DCBA recommends that an LGBTQQ program, if approved by your Board, be established under the umbrella of the CBE program without a bid preference or similar types of incentives. DCBA can streamline the certification process by accepting the NGLCC and CPUC LGBTQQ certifications as qualifiers for our CBE program.

Should Prop 16 be approved in November 2020, DCBA can further explore incentives to LGBTQQ-owned businesses.

Next Steps

Should your Board approve our recommendation, the following steps will need to be taken:

- A. Direct County Counsel to review applicable legislation to determine the legality of creating an LGBTQQ-owned business program;
- B. Direct the ISD and DCBA to amend relevant County contract language, Board Policies, and County Code to be inclusive of LGBTQQ-owned businesses;

- C. Direct DCBA to develop an application process for businesses interested in certifying as a County LGBTQQ-owned business and create an outreach and education campaign to inform constituents of the LGBTQQ-owned business certification program;
- D. Direct the Chief Executive Officer to authorize a one-time amount of \$25,000 to enhance DCBA's existing online certification platform to add an LGBTQQ-owned business application module; and
- E. Authorize the Acting Director of DCBA, or designee, to enter into an agreement with a consultant(s) as needed.

Should you have any questions or need additional information, please contact me or Azusena Favela, Deputy Director, at 213-974-0133, and afavela@dcbalacounty.gov, or Christian Olmos, Chief, Office of Small Business, at (213) 626-9407 and colmos@dcbalacounty.gov.

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