

EQUAL BENEFITS ORDINANCE STATUTORY WAIVERS

Departments requesting a waiver from the Equal Benefits Ordinance (EBO) under Section 10. 8.2.1(i)(1) must submit the request on the Awarding Authority Request for Waiver Form (Form OCC/EBO-4). Upon receipt of the request for waiver, the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) will issue a determination. The following provides a brief summary of the waivers that currently exist under the EBO. Departments should always refer to the provisions of the Ordinance itself for details.

1. **10.8.2.1(i)(1)(a)** Sole Willing Contractor Only one prospective contractor is willing to enter into a contract with the City for use of the City property on the terms and conditions established in the City contract.
2. **10.8.2.1(i)(1)(b)** Sole Source The contract (1) is for needed goods, services, construction services, or interest in or right to use real property that (2) is available from only one prospective contractor, and (3) the prospective contractor is otherwise qualified and acceptable to the City.
3. **10.8.2.1(i)(1)(c)** Emergency The contract (1) is necessary to respond to an emergency that (2) endangers the public health or safety and (3) no entity that is capable of responding to the emergency is immediately available.
4. **10.8.2.1(i)(1)(d)** Specialized Litigation The contract (1) involves specialized litigation requirements such that (2) it would be in the best interest of the City to waive the requirements of the EBO. The City Attorney must certify in writing that the above conditions exist.
5. **10.8.2.1(i)(1)(e)** Public Entity The contract (1) is with a public entity, (2) for goods, services, construction services, or interest in or right to use real property and (3) is either (a) not available from another source, or (b) necessary to serve a substantial public interest.
6. **10.8.2.1(i)(1)(f)** Grant Funding The contract (1) involves a grant from a public agency, and (2) the requirements of the EBO would violate or be inconsistent with the terms, conditions, or instructions of the public agency providing the grant, and (3) the awarding authority has made a good faith attempt to change the terms or conditions of the grant so that the EBO can be applied.
7. **10.8.2.1(i)(1)(g)** Essential Services The contract (1) is for goods, a service, or a project that (2) is essential to the City or City residents, and (3) there are no qualified responsive bidders or prospective contractors who could be certified as being in compliance.
8. **10.8.2.1(i)(1)(h)** Bulk purchasing arrangements The contract (1) involves bulk purchasing arrangements (2) through City, federal, state, or regional entities, that (3) reduces the City's purchasing costs and (4) would be in the best interest of the City.

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The following types of Contracts are not subject to the Equal Benefits Ordinance and do not require OCC approval for waivers from the Ordinance.

- 9. 10.8.2.1(i)(2)(a)** Investment of City monies The contract involves the investment of trust monies, bond proceeds or agreements relating to the management of these funds, indentures, security enhancement agreements (including but not limited to, liquidity agreements, letters of credit, bond insurance) for City tax-exempt and taxable financings, deposits of City's surplus funds in financial institutions, the investment of City monies in competitively bid investment agreements, the investment of City monies in securities permitted under the California State Government Code and/or the City's investment policy, investment agreements, repurchase agreements, City monies invested in U.S. government securities or pre-existing investment agreements.
- 10. 10.8.2.1(i)(2)(b)** Certain Financial Transactions Involving City Money The contract involves City monies that the Treasure or the City Administrative Officer finds that either (a) no person or financial entity doing business in the City that is in compliance with the Ordinance is capable of performing the desired transactions; or (b) the City will incur a financial loss or forego a financial benefit which in the opinion of the Treasurer or City Administrative Officer would violate his or her fiduciary duties.
- 11. 10.8.2.1(i)(3)** Gifts to the City The contract is for a gift to the City.