



*City of Arts & Innovation*

# Economic Development, Placemaking and Branding/Marketing Committee

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**TO: ECONOMIC DEVELOPMENT, PLACEMAKING AND BRANDING/MARKETING COMMITTEE MEMBERS**      **DATE: NOVEMBER 2, 2023**

**FROM: FINANCE DEPARTMENT**      **WARDS: ALL**

**SUBJECT: OVERVIEW OF LOCAL PREFERENCE AND DISADVANTAGED BUSINESS ENTERPRISE PROCUREMENT POLICY EXPANSION**

**ISSUES:**

Receive input from stakeholders and the public on Local Preference and Disadvantaged Business Enterprise procurement policy expansion.

**RECOMMENDATIONS:**

That the Economic Development, Placemaking and Branding/Marketing Committee:

1. Discuss and provide input for local preference and disadvantaged business enterprise procurement policy expansion; and
2. Direct staff to incorporate stakeholder and public feedback, as well as discuss determinations for policy and legislative revisions.

**BACKGROUND:**

On July 9, 1991, the City Council adopted Resolution 17788 which allowed staff to consider a 1% local preference when evaluating bids for the purchase of goods. The 1% represented the sales tax the City would receive associated with a purchase.

On March 11, 2003, the City Council adopted Resolution 20363 amending portions of purchasing resolution 17788 including, but not limited to, increasing the local preference from 1% to 5% on the purchase of goods.

On April 17, 2012, the City Council approved a Community Benefit Program template for use in RFPs specifically for Design-Build contracts.

On November 19, 2020, the City Manager's Office presented the Local Preference and Disadvantaged Business Enterprise Procurement Policies and potential new policy implementation overview to the Economic Development, Placemaking, and Branding/Marketing Committee (Committee). Following discussion and without formal motion, the Committee unanimously (1) received and ordered filed an overview of the local preference procurement and disadvantaged business enterprise policies; and (2) requested staff prepare an organizational plan that incorporates stakeholders and topics and information on the request for proposals of vacant City-owned surplus land to the Committee at a future meeting.

On January 21, 2021, the Finance Department presented to the Committee an Organizational Plan for Local Preference Procurement and Disadvantaged Business Enterprise (DBE) Policies incorporating stakeholders' topics and information on request for proposals of vacant City-owned surplus land. Following discussion, the Committee unanimously and without formal motion received and ordered filed the organizational plan.

On March 18, 2021, the Finance Department presented research findings for local preference policy expansion to the Committee with updates on ten related tasks and objectives. The Purchasing Division formulated data requirements to meet four goals to review Vendor Data, Contract Award Date, Vendor Opinions on Local Preference Programs and Stakeholder Involvement. Following discussion and without formal motion, the Committee received and ordered filed the report.

## **DISCUSSION:**

For reference during the workshop, the City of Riverside's current Procurement Local Preference Policy is provided below, along with the details of the Purchasing Division's research findings.

### **Current Local Preference Policy**

**Purchasing Resolution 23914, Section 604. Preference Policy:** Purchasing Manager is authorized to give preferences for Goods, Services or Construction as chartered cities are required to give by applicable State or Federal Law, or such preferences as are permitted by such law and specifically provided for from time to time by City Council resolution or ordinance.

**Purchasing Resolution 23914, Section 605. Local Preference:** In the Procurement of Goods, preference shall be given to those vendors who have a local presence in the City of Riverside, provided that price, quality, terms, delivery and service reputation are determined to be equal by the Manager under the criteria set forth in Section 508(b), which states that a Contract for Goods may be awarded to a local Responsive Bidder who is not the Lowest Responsive Bidder but who has certified that it is a local vendor pursuant to Section 604 hereof and who is subject to taxation under the City's "Uniform Local Sales and Use Tax Ordinance" (Chapter 3.08 of the City Municipal Code) if the Bid difference amount between the local Responsive Bidder and the Lowest Responsive Bidder does not exceed five percent (5%) of the Lowest Responsive Bid.

Local bidder is currently defined as and must certify to the following at the time of Bid submission:

- Bidder has fixed facilities with employees located within the City limits;
- Bidder has a business street address within the City limits (PO Box or residential address shall not suffice to establish a local presence);
- All sales tax returns for the Goods purchased must be reported to the State through a business within the geographic boundaries of the City and the City will receive one percent (1%) or such percentage of sales tax of Goods purchased as is allocable to the City from time to time under then existing state law; and
- Bidder has a current City business license.

### **CITY OF RIVERSIDE LOCAL PREFERENCE PROCUREMENT POLICIES:**

A local preference occurs when a local firm is favored in a procurement over non-local firms for reasons unrelated to the procurement itself, typically to support the local economy.

#### **PROCUREMENT OF GOODS:**

On July 9, 1991, the City Council adopted Resolution 17788 which allowed staff to consider a 1% local preference when evaluating bids for the purchase of goods. The 1% represents the sales tax the City would receive associated with a purchase.

The City Council directed staff to consider whether the 1% local preference should be increased. Staff determined that the well-known economic theory “economic multipliers” may support a greater local preference and therefore contracted with an expert on economic multipliers in the region – local economist Dr. John Husing, of Economics & Politics, Inc. Dr. Husing, who has an in-depth understanding of the local economy and the economic multiplier theory, was asked to address the subject of local bidding preference and to determine whether a 5% local preference made economic sense to the City of Riverside.

Dr. Husing’s report entitled “Demographic, Economic, Quality of Life Data Concerning the City” found that the additional cost borne by the City in support of local businesses though a five percent local preference would be more than offset by the “expansion of local multipliers.”

On March 11, 2003, the City Council adopted Resolution 20363 amending portions of purchasing resolution 17788 including, but not limited to, increasing the local preference from 1% to 5% on the purchase of goods.

#### **PROCUREMENT OF CONSTRUCTION CONTRACTS:**

##### **“Design-Bid-Build”**

In 2011, the Public Works Department and the City Attorney’s Office were asked to consider local preference options in the evaluation of construction bids for the Riverside Regional Water Quality Control Plant Phase I Expansion. Staff referred to Section 1109 of the Riverside City Charter which establishes the City’s authority in awarding public works contracts. Generally, “every project for the construction and/or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds, ... when the total expenditures exceed \$50,000,

shall be let by the City Council ... by contract to the lowest responsible bidder” (traditional “design-bid-build”); however, “projects for the construction and/or improvement of any public utility operated by the City or for the purchase of supplies or equipment for any such utility may be exempted from the requirements of this section, provided the City Council so determines by at least five affirmative votes.” In such cases, the City could utilize a “design-build” delivery method under Charter Section 1114 and Chapter 1.07 of the Riverside Municipal Code.

Legally, there is a crucial difference between the two options. Riverside’s traditional “design-bid-build” contracts must be awarded to the lowest responsive bidder; there are no exceptions. Efforts to favor local businesses, such as a simple percentage bidding preference, have been legally struck down for violating lowest bidder requirements. The criterion considered in lowest bidder awards is the amount of the bid.

The City of Riverside must comply with the following legal principles in order to lawfully consider local preference provisions in public works bidding:

1. The City cannot mandate local residency quotas. Goals and incentives, short of fixed quotas, are permissible.
2. Residency requirements affecting union participation can violate the First Amendment and the National Labor Relations Act.
3. Simple percentage-based preferences, even as low as 5%, would violate Section 1109 of the City Charter, which requires award to the lowest bidder, unless the City Council, by at least five (5) affirmative votes, adopts a resolution exempting the Project from competitive bidding, based upon factual findings to support the preference. Such findings would be challenging to make based on established case law.
4. Any additional costs or expenses to a bidder could not be charged to the enterprise fund and paid out of rates. Local preference expenditures would have to be paid out of the City’s General Fund.

The best way to maximize the opportunities for local persons and businesses to participate in City project contracts and subcontractors fully and fairly is through extensive outreach efforts to inform local, qualified persons and businesses of those opportunities to participate.

### **“Design-Build”**

City of Riverside Charter Section 1114 states “notwithstanding any provisions to the contrary in the California Public Contracts Code, in Charter Section 1109, or any other law or regulation of the City of Riverside, the use of design-build procurement by competitive negotiation is authorized. The City Council shall establish by ordinance regulations for the award, use and evaluation of such design-build contracts, in which the design and construction of public works projects are procured from a single entity.”

Riverside’s design-build ordinance allows award on the basis of the “best value to the City.” While a simple percentage bidding preference would violate the ordinance, the City may lawfully enhance local participation through outreach and awareness and consider that in the award. Riverside Municipal Code Chapter 1.07 – Design-Build Procurement provides definitions and guidelines for the award, use and evaluation of Design-Build Contracts as required by Measure KK enacted by the voters on November 2, 2004, and codified in Section 1114 of the Riverside City Charter.

On April 17, 2012, the City Council approved a Community Benefit Program template for use in RFPs specifically for Design-Build contracts. For this program, the term “local” is generally defined as within a 50-mile radius of the City’s boundaries. A smaller radius could be considered on a project-by-project basis if it does not reduce the available pool of qualified participants. Proposals must address: (1) local labor outreach; (2) local business outreach; and (3) a return-to-work program. Proposers must actively recruit and employ skilled craft workers with a primary residence located within a 50-mile radius (or other approved radius) of the Project site. At least 50% of the proposed labor must be local; if not, the Proposer must continue to make verified efforts to meet that goal.

All Proposers must undertake outreach to all qualified Local Businesses. To demonstrate good-faith efforts at engaging Local Business, Proposers must:

- Attend a Community Benefit Program information meeting;
- Identify and select supplies, specific work items, and services which can be locally provided;
- Advertise for bids from interested businesses in one or more daily or weekly newspapers, trade association publication, trade journals, or other media;
- Provide written notice of its interest in retaining those business enterprises, including Local Businesses, which express an interest in participation;
- Document efforts to follow up initial solicitations of interest by contacting the Local Businesses;
- Provide interested Local Businesses with information about the plans, specifications and requirements;
- Request assistance from organizations that provide assistance in the recruitment and placement of Local Businesses, such as the Greater Riverside Chambers of Commerce;
- Negotiate in good faith with interested Local Businesses and not unjustifiably reject as unsatisfactory their bids or proposals;
- Submit a list of all interested Local Businesses for each item of work for which bids were solicited, including dollar amounts of potential work for Local Businesses, and shall provide the reasons any Local Businesses were not selected; and
- Document efforts to advise and assist interested Local Businesses in obtaining bonds, lines of credit, and insurance requirements by the City or Proposer.

Proposers are also instructed to provide detailed information about local job training, apprenticeships, the Helmets to Hardhats program (<https://helmetstohardhats.org>) or other veteran employment opportunity programs.

Failure to comply in good faith with the Community Benefit Program would be considered a material breach of the contract and, in addition to other remedies, the City may impose damages for noncompliance.

**Procurement of Consultant Services:**

Currently the procurement of consultant services does not include a local preference benefit.

**Survey Results**

The Committee recommended that City staff extend and analyze a Local Vendor Preference Survey, while also discovering how other Agency policies compare with the City’s current policies. The expectation was that this information will assist in the expansion and/or to further define the City of Riverside’s Procurement Policy and to possibly develop a City-Owned Surplus Land Local Preference Policy, while also determining and providing a list of potential stakeholder involvement.

The City of Riverside received 678 responses to the Survey issued on February 11, 2021 through February 28, 2021. The following data is based solely on the survey responses.

The first portion of the survey was aimed at obtaining Vendor Data to determine what business industry types, locations, and percentages of the business community benefit from the current local preference policy and to analyze data to determine the possible outcomes if the revisions were made based on adding the various industry types that are currently excluded and/or including County and State preferences.

Each respondent was asked to select ALL categories that apply to their business. Below are the responses.

<b>Business Category Type</b>	<b>Respondent Percentage</b>
Sells Goods and Materials	38%
Professional Services	56%
Public Works Construction	26%
Land Development	3%
Technology	16%
Facility Services/Repairs	17%

Of the total business responses, 169 were within the City of Riverside and 324 were within Riverside County. Of the businesses that submitted a response, 65 or 38% benefit from the City’s current local preference policy because they sell Goods and are located within the City. The following table helps illustrate the effects that a policy expansion could have on businesses contracting with the City, presented as the percentage of total businesses within the designated area that would benefit from a policy expansion.

<b>Business Category Type</b>	<b>Current Percentage Benefitting from Local Preference (City Only)</b>	<b>Percentage if Local Preference is applied to Category for Businesses within the City</b>	<b>Percentage if Local Preference is applied to Category and expanded to Businesses within the County of Riverside</b>
Sells Goods and Materials	38%	38%	38%
Professional Services	0%	57%	55%
Public Works Construction	0%	N/A	N/A
Land Development	0%	3%	3%
Technology	0%	13%	12%
Facility Services/Repairs	0%	16%	19%

The second portion of the survey was designed to gain a sampling of Contract Award Data. This information set provides the statistics of how many contracts have been awarded to vendors under the current policy compared to vendors outside of the local business community. The goal was to determine the percentage of contracts that could be awarded if various industry types were added, and the policy was expanded to County and State preferences.

Businesses were asked:

<b>Approximately how many Contract Awards has your firm received from the City of Riverside in the past 3 years?</b>	<b>Responses</b>	<b>% of Responses</b>
0 - 5	619	91%
5 – 10	30	4%
10 – 15	10	2%
15 – 20	10	2%
Greater than 20	9	1%

Of the contracts reported through the survey, 24% were awarded to businesses within the City and 48% were awarded to businesses within the County of Riverside. For comparative purposes, the City awarded 160 contracts resulting from the procurement solicitation process for Fiscal Year 2020/2021. Of these contracts, 48 were awarded to local businesses within the City of Riverside.

Below is a sample of the contract award variances when adding local preference to the Professional Services, Land Development, and Technology and Facility Services/Repair categories and by expanding to the County level. Implementing the modifications have the possibility to increase contract awards to local businesses by 58%.

<b>Business Category Type</b>	<b>City Count</b>	<b>City %</b>	<b>County Count</b>	<b>County %</b>
Goods	65	10%	98	14%
Services	124	18%	178	26%

The next survey section was used to obtain Vendor Opinions on Local Preference Programs. This information was sought to determine whether change is warranted, how the business community views this type of program, and to analyze how the City’s current policy affects the bid process.

The majority of businesses (84%) within City and County respondents stated that Local Vendor Preference doesn’t and wouldn’t deter them from bidding.

To allow for the most unbiased opinion, businesses were asked to reflect on Local Vendor Preference Benefits as if they were considered a local business and if they weren’t considered a local business. The following results indicate that the business community has a divided view on the subject of Local Vendor Preference (LVP). The numbers reflect the historical opposing arguments of vendor preferences and how it limits fair and open competition. Although the survey responses reflect a positive view towards the economic benefits when local preferences are applied, the results also demonstrate the opinion that local vendors increase their costs when LVP is considered.

Questions	If you were considered a Local Vendor		If you were considered a Non-Local Vendor	
	Yes	No	Yes	No
LVP Benefits the local economy?	85%	15%		
LVP Benefits the local vendor?	93%	7%		
LVP promotes fair and impartial treatment of all vendors?	58%	42%	50%	50%
LVP promotes fair and open competition?	59%	41%	52%	48%
LVP prepares local vendors to be competitive outside of area and in open market?			43%	57%
LVP may promote local vendors to increase prices?			53%	47%

The following table reports the respondents’ view on what they consider a local business and how it should be defined.

Business Type	Yes	No	In Favor %	Is the Popular Consensus in Line with Current Policy?
Principle Place of Business	520	158	77%	Yes
Residential Address – Zoned for Conducting Business	141	537	21%	Yes
Commercial Address	300	378	44%	Yes
Permanent Location	247	431	36%	No
Chain Franchise – Owned by Local Investor	83	595	12%	Not specified in policy
Storefront – Headquarters Elsewhere	130	548	19%	Not specified in policy

Lastly, the survey requested information pertaining to Stakeholder Involvement. The purpose was to determine how many vendors are interested in attending workshops to revamp/influence the City’s LVP program. Stakeholder responses were received from businesses located in and outside Riverside’s city limits and from those currently benefitting and not benefitting from the existing program.

Out of the 678 survey responses, 302 businesses expressed interest in participating in a Local Vendor Preference Workshop. The workshop was put on hold when the Committee shifted focus on the Sale of Vacant Surplus Land and will be held upon further instruction from the Committee. Of these, 177 are not benefitting from our current local preference program because they aren’t within the City of Riverside and/or their business model extends past the “Goods” category.



## **Policy Elements to be Determined – Local Vendor Preference**

### **How should “local” be defined?**

The definition of “local” will need to be determined for each possible expansion of the policy. The current definition incorporates the following elements: physical location within the City; City business license; and the City benefiting from sales tax. The sales tax element would be specific to the purchase of Goods.

The previous tables reporting survey responses and the additional Agency Research Findings defining the meaning of “Local” for Procurement Policies could be useful when defining local preference for expansion of the City policies.

The City of Santa Ana provides a local preference for Small Businesses within the City and the County, which are as follows:

- City Preference – Headquarters or branch office is within the City and possesses an active Business License and Certificate of Occupancy. In line with the City of Riverside policies.
- County Preference – Headquarters or branch within the County and possesses a Business License to perform work in the City. This is not offered in the City of Riverside policies.

The City of San Diego provides a local preference for City and County businesses when the “Principal Place of Business” (physical location) is within the boundaries and the firm earns no less than half of its overall customers or sales dollars at the location. There must also be a “Significant Employee Presence”, meaning that no less than a quarter of the firms’ total number of employees must live in the City or County.

- The “Physical Place of Business” is in line with the City of Riverside policies.
- The “Significant Employee Presence” isn’t included in the City of Riverside’s Purchasing policies. It is mildly addressed for Design Build Projects through the “Community Benefits Program”.

The City of Phoenix defines “Local” as the principal place of business within the City or surrounding Counties.

### **What types of contracts should be eligible for Local Preference?**

The City’s current policy limits the local preference to the procurement of Goods only. The Purchasing Resolution distinguishes services into two categories: Services and Professional Services. Examples of Services are advertising, cleaning, gardening, insurance, janitorial, leasing of printing, security, landscaping, and facilities maintenance. (Purchasing Reso., § 100(kk)). Professional Services are advisory, consulting, architectural, information technology, engineering, financial, legal, surveying research or developmental and any other services which involve the exercise of professional discretion and independent judgment. (Purchasing Reso., § 100(bb)).

A comparison of contracts eligible for Local Preference per City is as follows:

Agency	Local Preference Type			
	Materials/Goods	Public Works	Professional Services	Non-Professional Services
Riverside	X	-	-	-
Santa Ana	X	-	X	X
Phoenix	X	-	X	X
Long Beach	-	-	-	X
County of Riverside	-	-	X	X
Oakland	-	-	X	-

If local preference is applied to Professional Services that include architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management then considerations of state law requirements should be noted. Government Code section 4526 requires these types of professional services to be procured based on demonstrated competence and qualifications at fair and reasonable prices. Proposers would still need to demonstrate competence and qualifications.

Should the local preference have a dollar amount limitation?

The table and details below provide a basic comparison of what other agencies have implemented pertaining to dollar amount limitations. This information can be used to guide the City of Riverside’s benchmarks.

Agency	Local Preference Dollar Amount Limitation						
	\$5,000	\$25,000	\$50,000	\$100,000	\$250,000	\$500,000	\$1M or Above
Riverside			Over				
Santa Ana	Between						
San Diego					Between		PW Goal Over
Phoenix			Up To				
Long Beach				Up To			
County of Riverside		Under					
Oakland			Over				

Current City policy allows the local preference to be applied only when Formal Procurement is undertaken, which is used for contracts over \$50,000 (Purchasing Reso., §§ 508, 407.)

## **CITY OF RIVERSIDE DISADVANTAGED BUSINESS ENTERPRISE PROCUREMENT PROGRAM POLICY:**

### **Policy Elements to be Determined – Disadvantage Business Enterprise Preference**

#### **How should “DBE” be defined as a preference?**

Disadvantage Business Enterprise’s (DBE) are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and control management and daily business operations.

Many of the programs administered by California cities are implemented in accordance with regulations of the U.S Department of Transportation, 49 Code of Federal Regulation Part 26 as a condition of receiving Federal financial assistance from the Department of Transportation.

#### **What types of contracts should be eligible for a “DBE” Preference, and should there be a dollar amount limitation?**

On April 21, 2009, Resolution No. 21815 was approved by the City Council adopting the Disadvantaged Business Enterprise Program with a Race Conscious component in accordance with the State of California Department of Transportation Disadvantaged Business Enterprise Program Plan based on the U.S. Department of Transportation 49 FR, Part 26 requirements. The City Council also authorized the City Manager or his designee to execute the program and subsequent amendments as required. In order for the City of Riverside to receive Federal Aviation Administration (FAA) and Federal Transit Administration (FTA) grants of over \$250,000 issued by Caltrans, it was imperative that the DBE Program Plan be updated and implemented.

Beginning in April 2018, the Airport, Parks and Recreation, and Public Works Departments combined efforts to update the program within the compliance requirements of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26. The program revisions consisted of the following:

- Inclusion of a Table of Contents and program Introduction.
- The program plan update expanded the Objective/Policy Statement to include:
  - o Monitoring contracts with DBE participation.
  - o Reporting DBE accomplishments semi-annually to FAA, FTA, and California Department of Transportation.
  - o Implementing the DBE Program plan in accordance with applicable law.
- Added program CFR 49 Part 26 Sections - 11(b), 33, 35, 37, 39, 45, 47, 53(j) and 109.
- Provided an Organization Chart exhibit.
- Revised administrative requirements and implementation measures to ensure procedures can be easily followed.

The updated DBE Program Plan was approved by the City Manager on October 1, 2018.

In January 2019, the FAA Western Region modified several of the Airport Capital Improvement projects that were in the City of Riverside Airport’s 5-year plan. This action required the Airport

to change their program goals. As a result, the Airport and the Purchasing Division revised Annex A of the approved DBE Program Plan to comply with FAA requirements.

This most recent DBE Program revision was approved by the City Manager on March 21, 2019.

**Examples of Other Agency Preference Procurement Policies and DBE Programs:**

**RIVERSIDE COUNTY:**

The County of Riverside (County) promotes local and small business participation and helps improve opportunities in all procurement activities with the County. The County also encourages greater economic opportunities for veteran-qualified, minority-owned, and women-owned businesses to compete for contracts of all types entered into by entities governed directly or ex-officio by the Riverside County Board of Supervisors.

Generally, veteran-qualified businesses, small businesses, and local businesses receive a 5% procurement preference. In the event of multiple bidders on a single bid qualifying within the same preference designation, match opportunities are given based on lowest to highest costs within said preference designation. A maximum cap of \$25,000 for the preference designations applies. The 5% preference cannot exceed a cost of more than \$25,000 for the lowest bid.

Additionally, the County's Purchasing Department is required, to the best of its ability, and dependent upon technology capabilities and resources, to develop a systematic method for identifying and maintaining an inventory of small, local, veteran-owned, veteran-qualified, minority-owned, and/or woman-owned business organizations and participate in business opportunity related meetings, conferences, seminars, etc.

These policies apply to all agreements, contracts, leases, and procurements for materials, services, or consultants paid for, in whole or in part, out of County funds or funds administered by the County. All bid documents include a statement that the County may, where applicable, apply the preference programs in determining the award of a contract or purchase. The preference programs do not apply to the extent that they conflict with any applicable state or federal law regulation, or funding source requirements.

**SAN BERNARDINO COUNTY:**

San Bernardino County has established a local vendor preference policy to encourage local vendors to provide goods and services needed for the County operations. This local buying fuels the local economy and contributes to the strength of the community. This policy includes a 5% local preference for vendors whose principal place of business is within the boundaries of the County. To qualify for this policy, local vendors must meet the following criteria:

- Business is established and open for a minimum 6 months.
- Can demonstrate ongoing business activity.
- Minimum 25% of the full-time regular and management employees are working from locations inside San Bernardino County

**CITY OF SAN BERNARDINO:**

The City of San Bernardino's local business preference extends a bidding advantage to a local business in the form of a 1% preference in the evaluation of bids or proposals from the procurement of goods or materials.

The following contracts are exempt from the provisions of the local vendor ordinance: Public Works contracts under the Public Contracting Code; Grant Funded contracts or purchases; Emergency procurements; Sole source contracts; and Purchases made under a cooperative purchasing agreement.

A Local Business is defined as a vendor, contractor, or consultant for which the point of sale of the goods or materials shall be within the City of San Bernardino.

#### **CITY OF CORONA:**

The City of Corona Transit Service has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulation Part 26. The City of Corona Transit Service received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Corona signed an assurance that it will comply with 49 Code of Federal Regulation Part 26.

The City of Corona assures equal opportunity in the award and performance of any contract to all persons without regard to race, color, national origin, or sex. The intent of the DBE Program is to eliminate discriminatory practices, ensure discrimination is not occurring, increase participation of DBE's in all contracting activities to the maximum extent feasible, and meet the overall annual DBE participation goal in compliance with 49 Code of Federal Regulation Part 26. Adhering to this policy will ensure a level playing field and foster equal opportunity to receive and participate in DOT-assisted contracts. It is also the City of Corona's Policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 Code of Federal Regulation Part 26 eligibility standards are permitted to participate as DBE's;
5. To help remove barriers to the participation of DBE's in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
7. Facilitate the implementation of the DBE Program using race-neutral measures to the maximum extent feasible.

#### **CITY OF MORENO VALLEY:**

The City of Moreno Valley has both a Local Vendor Preference Policy and a Disabled Veteran Preference Policy.

A local vendor is a firm, individual, partnership, association, corporation or other legal entity that regularly maintains a place of business and transacts business in, or maintains an inventory of materials, supplies or equipment for sales in, and is licensed in, or pays business taxes to the City of Moreno Valley. A 5% preference is given to local small business vendors for the purchase of nonprofessional services, supplies, materials and equipment, quality and price being equal per the Moreno Valley Municipal Code Section 3.12.

It is also the policy and practice of the City of Moreno Valley to encourage the utilization and participation of Disabled Veterans Business Enterprises in city procurements and to align preference with the State requirements. This policy shall apply to agreements, contracts, acquisition leases, and purchase orders for materials, services, professional services, professional consultants or trainers from firms or individuals engaged in “for profit” business activities paid for in whole or in part out of County funds or funds administered by the City but shall not be utilized where restricted by law or funding source requirements.

**CITY OF LOS ANGELES:**

The City of Los Angeles offers certification of Disadvantaged Business Enterprises, Airport Concessions Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises, and Small Local Business Enterprises. The main purpose of this certification program is to promote opportunities for disadvantaged, minority, women, and small, local business owners who want to participate in City contracting projects.

The small local business program provides businesses certified as a small local business with a 10% preference applied to bid contracts of \$100,000 or less.

The transitional job opportunity program was implemented to recognize organizations as transitional employers. These organizations provide job opportunities for the hardest-to-employ or long-term unemployed persons as a way for them to re-enter the mainstream workforce. A certified transitional employer is granted a preference to contracts that do not exceed \$100,000.

**STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES – PROCUREMENT DIVISION:**

The DGS offers certification for Small Business and/or Disabled Veteran Enterprises. The Office of Small Business and DVBE Services (OSDS) administers the new Small Business for the purpose of Public Works (SB-PW) certification. The new certification type was created by Senate Bill 605 (Chapter 673, Statute of 2017), passed in October 2017. This certification type is solely for the purpose of Public Works contracts and/or projects. SB-PW expands the opportunities for small businesses to compete in the public works arena. For the purpose of this certification, public works is defined as in Public Contract Code 1101: An agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

In order for a firm to be eligible for the new SB-PW certification, the applicant firm including manufacturers must meet the following requirements:

1. Be independently owned and operated;
2. Not dominant in field of operation;
3. Principal office located in California;
4. Owners, Officers, Members/Managers, Partners must be domiciled in California;
5. Average \$37 million or less in gross annual receipts over the last three tax years (including affiliates);
6. A business with 200 or fewer employees (including affiliates)

### *Small Business (SB) Certification Eligibility Requirements and Benefits*

In order for a small business to be eligible for certification, the small business must meet the following requirements:

1. Be independently owned and operated;
2. Not dominant in field of operation;
3. Principal office located in California;
4. Owners (officers, if a corporation) domiciled in California; and,
5. Including affiliates, be either,
  - a. A business with 100 or fewer employees; an average annual gross receipt of \$16 million or less, over the last three tax years;
  - b. A manufacturer with 100 or fewer employees; or,
  - c. A micro business – a small business will automatically be designated as a micro business, if gross annual receipts are \$5,000,000 or less; or the small business is a manufacturer with 25 or fewer employees.

Upon meeting the Small Business Certification eligibility requirements, certified small business (SBs) and micro businesses (MBs) are entitled to the following benefits:

1. A 5 percent bid preference on applicable State solicitations;
2. As a certified small business/micro business, you are eligible for the State's Small Business Participation Program. This program sets a goal for the use of small businesses in at least 25 percent of the State's overall annual contract dollars;
3. Under the Prompt Payment Act, the State must pay a certified SB/MB higher interest penalties for late payment of an undisputed invoice. Prompt payment penalties for construction firms are addressed separately under Public Contract Code, Section 10261.5);
4. State agencies may use a streamlined process, known as the SB/DVBE Option, by contracting directly with a California certified small business/micro business for goods, services, information technology and Public Works projects. The solicitation must be valued at more than \$5,000 and the State agency must obtain price quotes from at least two California certified small business/micro business;
  - Effective February 4, 2020, the maximum thresholds are:
  - Goods, Services, or Information Technology - \$249,999.99
  - Public Works - \$388,000.00 (Effective 2/4/20: BL 04-20)

### *Disabled Veteran Business Enterprise (DVBE) Certification Eligibility Requirements and Benefits*

For DVBE certification purposes, a "disabled veteran" is:

1. A veteran of the U.S. military, naval, or air service;
2. The veteran must have a service-connected disability of at least 10 percent or more; and

3. The veteran must reside in California.

To be certified as a DVBE, the firm must meet the following requirements:

1. The business must be at least 51 percent owned by one or more disabled veterans;
2. Effective 1/1/2004, per Public Contract Code – DVBE limited liability companies must be wholly owned by one or more disabled veterans.
3. The daily business operations must be managed and controlled by one or more disabled veterans.

The disabled veteran who manages and controls the business is not required to be an owner of the applicant business; and

- Home office must be located in the U.S. (the home office cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign based business).
- All existing and all new DVBE applicants must submit to the Office of Small Business and DVBE Services (OSDS) complete copies of the DVBE's federal income tax returns for the previous three years. DVBEs who have been in business for less than three years shall submit the federal tax returns for each year they've been in business.
- A DVBE applicant that is not a sole proprietorship and rents equipment to the state must provide the federal income tax returns for each of their disabled veteran owners or your firm will be deemed to be an equipment broker.
- DVBE limited liability companies must be wholly owned by one or more disabled veterans.

Upon meeting eligibility requirements, certified DVBEs are entitled to the following:

1. State-certified DVBEs are eligible for the state's DVBE Participation Program. The program sets the goal to use DVBEs in at least 3 percent of the state's overall annual contract dollars.
2. State agencies may use a streamlined process known as the "SB/DVBE Option" by contracting directly with a California certified DVBE business for goods, services, information technology and public works projects. The solicitation must be valued at more than \$5,000, and the State agency must obtain price quotes from at least two California certified DVBE businesses. For more information, see Government Code Sections 14838.5 and 14838.7.
  - Effective January 26, 2022, the maximum thresholds are:
    - Good, Services or Information Technology - \$249,999.99
    - Public Works - \$388,000.00 (Effective 1/26/22: BL 20-02)

## OTHER CONSIDERATIONS

State law and City Charter requirements provide some limitations to note. Since Charter section 1109 requires all public works construction contracts to be let to the "lowest responsible bidder," the local preference could not be applied to a construction contract, unless section 1109 were amended to provide for the local preference. Additionally, enterprise funds (water, electric,



refuse, sewer) utilizing ratepayer funds subject to Prop. 218 limitations of “cost of service” should not be eligible for a local preference.

### **STRATEGIC PLAN ALIGNMENT:**

This item contributes to the Envision Riverside 2025 City Council Strategic Priority 3 – Economic Opportunity and, specifically, Goal 3.4: Collaborate with key partners to implement policies and programs that promote local business growth and ensure equitable opportunities for all.

This item also aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – Connecting local and disadvantaged businesses with increased procurement and contracting opportunities is in the public’s best interest, benefits the City’s diverse populations, and results in the greater public good.
2. **Equity** – Connecting local and disadvantaged businesses with increased opportunities during the solicitation and contracting processes is supportive of the City’s racial, ethnic, religious, sexual orientation, identity, geographic, and other attributes of diversity and is committed to advancing the fairness of treatment, recognition of rights, and equitable distribution of services to ensure every member of the community has equal access to share the benefits of community progress.
3. **Fiscal Responsibility** – This item supports local and disadvantaged businesses through procurement, and allows for the opportunity to ensure that costs for services are aligned with the City budget and are cost effective.
4. **Innovation** – Connecting local, disadvantaged businesses and stakeholders with the opportunity to expand policies and procedures creating collaborative partnerships and adaptive processes.
5. **Sustainability & Resiliency** – This item supports future growth for local and disadvantaged businesses in the community.

### **FISCAL IMPACT:**

There is no fiscal impact associated with the recommendations associated with this report. If new programs are recommended and implemented, the fiscal impact, if any, will be defined during City Council approval for those programs.

Prepared by: Jennifer McCoy, Purchasing Manager  
Certified as to  
availability of funds: Kristie Thomas, Assistant Chief Financial Officer/Finance Director  
Approved by: Edward Enriquez, Assistant City Manager/Chief Financial Officer  
Approved as to form: Phaedra Norton, City Attorney