



City of Arts & Innovation

Economic Development, Placemaking and Branding/Marketing Committee

TO: ECONOMIC DEVELOPMENT, PLACEMAKING AND BRANDING/MARKETING COMMITTEE MEMBERS **DATE: NOVEMBER 19, 2020**

FROM: CITY MANAGER'S OFFICE **WARDS: ALL**

SUBJECT: OVERVIEW OF LOCAL PREFERENCE AND DISADVANTAGED BUSINESS ENTERPRISE PROCUREMENT POLICIES

ISSUES:

Receive and file this overview of the City of Riverside's local preference and disadvantaged business enterprise procurement policies and provide input for potential new policy implementation.

RECOMMENDATIONS:

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

1. Receive and file this overview of the City of Riverside's local preference procurement and disadvantaged business enterprise policies; and
2. Provide input for potential new policy research and implementation.

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.

DISCUSSION:

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” finds that the additional cost borne by the City in support of local businesses though a five percent local preference will 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

struck down for violating lowest bidder requirements. The criterion considered in lowest bidder awards is the amount of the bid.

The City of Riverside will have to 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 necessarily have to be paid out of the City's General Fund.

The best way to maximize the opportunities for local persons and businesses to fully and fairly participate in City project contracts and subcontractors 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 project 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 newspaper, trade association publication, trade journal, or other media;
- Provide written notice of its interest in retaining those business enterprises, including Local Business, 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 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.

CITY OF RIVERSIDE DISADVANTAGED BUSINESS ENTERPRISE POLICIES:

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.

On April 21, 2009, Resolution No. 21815 was approved by City Council adopting the race-conscious Disadvantaged Business Enterprise Program while also authorizing 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 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 project that were on the City of Riverside Airport 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.

OTHER AGENCY PREFERENCE PROCUREMENT AND DBE POLICIES:

Agency	Program
Riverside County	• Veteran-qualified businesses, small businesses and local businesses receive 5% procurement preference. The 5% cannot exceed a cost of \$25,000 for the lowest bid • Purchasing department must maintain an inventory of small, local, veteran-owned, minority-owned and/or women-owned business organizations. • Purchasing department must participate in business opportunity related meetings, conferences, seminars, etc. with these business organizations. • 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.
San Bernardino County	• 5% local vendor preference policy to encourage local vendors to provide goods and services needed for the county operations. Vendors must: - o Have a principal place of business within the county - o Be established and open for at least 6 months - o Demonstrate ongoing business activity - o Have a minimum of 25% of full-time and management employees working from within the county

City of Corona	• DBE program in accordance with regulations of the U.S. Department of Transportation, 49 Code of Federal Regulation Part 26. ○ Assures equal opportunity in the award and performance of any contract to all persons without regard to race, color, national origin, or sex. ○ Intent of DBE program is to eliminate discriminatory practices, ensure discrimination is not occurring, increase participation of DBE's in all contracting activities, and meet DBE participation goals
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. • Encourages the utilization and participation of Disabled Veterans Business Enterprises in city procurements and to align preference with the State requirements. This policy applies to agreements, contracts, acquisitions 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 city funds or funds administered by the city.
City of San Bernardino	• 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 and materials. • A local business is defined as a vendor for which the point of sale of the goods or materials shall be within the city limits. • 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 are exempt from this provision.
City of Los Angeles	• Certification of Disadvantaged Business Enterprises, Airport Concessions Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises, and Small Local Business Enterprises to promote opportunities for disadvantaged, minority, women, and small, local business owners who want to participate in city contracting projects. • Provides a 10% preference for businesses certified as a small local business applied to contracts of \$100,000 or less. • Transitional job opportunity program to recognize transitional employers who provide job opportunities for the hardest-to-employee or long-term unemployed persons as a way for them to re-enter the mainstream workforce. They are granted a preference to contracts that do not exceed \$100,000.

REQUEST FOR PROPOSALS FOR DEVELOPERS FOR CITY SURPLUS LAND:

Currently, the City does not include requirements pertaining to local preference and disadvantaged business enterprises within requests for proposals/qualifications for developers for City surplus lands. Building upon local preference procurement policies for goods, construction contracts, and consultant services, the City may be able to consider related provisions within requests for proposals/qualifications for developers for City surplus lands in

order to: 1) recruit and employ skilled craft workers with a primary residence located within a certain radius of the City of Riverside; and, 2) support the local economy by sourcing development project-related goods/materials/supplies from businesses within a certain radius of the City of Riverside. Including such performance expectations from developers responding to requests for proposals/qualifications for City surplus lands would strengthen the local economy. The City can explore this idea, if the Committee is interested, and see if it is feasible, or how to accomplish, given the restrictions in place due to AB 1486.

OTHER BEST PRACTICES:

Policy change is a good start towards increasing contract awards to local or minority owned businesses, but outreach programs also need to be implemented to begin redirecting the City's purchasing power. The attached article titled "Procurement Can Be a Powerful Tool for Local Economies but Takes more than Policy Change to Work" from the Institute For Local Self-Reliance website provides New York City, Cleveland, and Phoenix as examples for promoting and strengthening Minority and Women-Owned Business Enterprises, as well as Local Small Business Enterprises, in part, through outreach programs.

The City of Riverside may need to review and revise existing programs or implement new programs to support existing procurement policies or the development of new policies. It is important to consider what needs to be included or excluded from the procurement policies and programs in order to incorporate each of the Cross-Cutting Threads of the City's new Strategic Plan. The Cost-Cutting Threads include:

- **Community Trust** – Riverside is transparent and makes decisions based on sound policy, inclusive community engagement, involvement of City Boards & Commissions, and timely and reliable information. Activities and actions by the City serve the public interest, benefit the City's diverse populations, and result in greater public good.
- **Equity** – Riverside is supportive of the City's racial, ethnic, religious, sexual orientation, identity 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 in the benefits of community progress.
- **Fiscal Responsibility** – Riverside is a prudent steward of public funds and ensures responsible management of the City's financial resources while providing quality public services to all.
- **Innovation** – Riverside is inventive and timely in meeting the community's changing needs and prepares for the future through collaborative partnerships and adaptive processes.
- **Sustainability and Resiliency** – Riverside is committed to meeting the needs of the present without compromising the needs of the future and ensuring the City's capacity to persevere, adapt and grow during good and difficult times alike.

The League of California Cities suggests that cities consider the following when implementing a procurement preference program:

- No contact between the vendor and elected officials during the procurement process

- outside of public meetings;
- City must demonstrate that the preference is rationally related to a legitimate governmental purpose, such as encouraging local industry;
- City must have a substantial reason for the program and the program must be narrowly tailored to address underlying reasons;
- Mandatory local business participation requirements may violate charter requirements to award to the lowest bidder;
- Local participation with a good faith effort is recommended when using city funds;
- Local participation programs can rarely be used when federal or state funds are involved in project funding and therefore the City must indicate program does not apply if it violates federal or state law or grant so as not to jeopardize funding for the project;
- Local residence requirements cannot impair California Constitutional right to resettle and find a job;
- Local hire requirements cannot restrain freedom of association or require unfair trade practices, or the city should attempt to obtain union cooperation before bidding a project with a local participation program or use only with negotiated contracts; and
- Cannot provide bonus or incentives if there is specific charter language prohibiting such use of funds.

When implementing a program that requires bidders to undertake good faith efforts to meet a goal for local firm/resident participation on a city project, such as the City of Riverside's Community Benefit Program for design-build projects, the following steps are suggested by the League of California Cities:

- Determine the scope and nature of the local participation program;
- Establish a goal for local participation, but do not require bidders to meet the goal;
- Require all bidders, including local firms, to undertake outreach to all qualified subcontractors, suppliers and workers including, but not limited to, local firms and individuals;
- Gather statistics from federal, state and local entities regarding labor statistics, sales tax revenues, etc. to support the need for the program;
- Adopt a resolution, ordinance or similar legislative action on the public benefit, specifically addressing the fact that there will be no gift of public funds if an incentive/bonus payment is part of the program;
- Consider methods of measuring results; and
- Consider incorporating a sunset date and reporting requirements for projects and review to determine whether programs increased use of locals.

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.

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Certified as to
availability of funds: Edward Enriquez, Chief Financial Officer / City Treasurer

Approved by: Rafael Guzman, Assistant City Manager
Approved as to form: Kristi J. Smith, Chief Assistant City Attorney

Attachments:

1. Purchasing Policy
2. Community Benefit Program Template
3. Resolution No. 21815
4. DEB Program Plan Updated March 2019
5. County of Riverside Policy
6. Article
7. League of California Cities
8. Presentation