



## Legislation Text

File #: 13-0200, Version: 1

Receive a presentation on Solano County's local vendor preference policies

Published Notice Required? Yes ☐ No ☒  
Public Hearing Required? Yes ☐ No ☒

### **DEPARTMENTAL RECOMMENDATION:**

The Departments of Resource Management and General Services recommend that the Board of Supervisors hear a presentation from staff regarding the County's local vendor preference policies.

### **SUMMARY:**

The County's 2004 Purchasing Policy and Contracting Manual provided a tie-breaking provision which directed contract awards to local business if the two lowest bids were equal. In 2009, the Board wanted greater autonomy to award contracts to local business, and thus enacted the Local Vendor Preference Policy (LVP) Ordinance, which amended Chapter 22 (Purchasing Agent) of the County Code. This Ordinance establishes a number of local vendor preference policies that provide local businesses greater opportunity for contract award by the County. Since June 2009, a local bidder can now match the lowest responsible bid and be awarded the contract if the local bidder's bid was within 5% of the lowest responsible non-local bid.

There was recent interest by the Board to review the County's local vendor preference policies. This item is for the Board's discussion, and staff has no recommendation for changes at this time.

### **FINANCIAL IMPACT:**

This item is for discussion only. There is no impact to the General Fund.

### **DISCUSSION:**

In order to support local businesses in Solano County, the Board of Supervisors adopted a Local Vendor Preference Policy (Ordinance 2009-1698) in May 2009. The LVP Ordinance provides local vendors greater potential to be awarded the lowest bid, if the local bidder is within 5% of the winning bid under the following provisions in the County Code:

#### **Sec. 22-44 Local business preference**

(b) Where competitive bidding is utilized pursuant to section 22-23, and the lowest responsible bidder is not a local business, the purchasing agent shall provide the lowest responsible local business bidder, should one exist and its bid is within five percent (5%) of the lowest responsible bidder, with notice and an opportunity to reduce its bid to match that of the lowest responsible bidder. Notice shall be by telephone and either facsimile or electronic mail. The local business shall have five (5) business days after the date of such notice to match the lowest bid in writing. Should the local business so match, it shall be deemed the lowest responsible bidder for purposes of sections 22-23 and 22-25 and receive the award.

(c) Should the lowest responsible local business bidder decline to match as set forth in subsection (b), the

purchasing agent shall provide the next lowest responsible local business bidder, should one exist and its bid is within five percent (5%) of the lowest responsible bidder, with the same notice and opportunity to match the bid of the lowest responsible bidder as in subsection (b). This process shall continue as necessary, until an award is made under section 22-25 either to a responsible local business bidder within five percent (55) of the lowest responsible bidder, or the lowest responsible bidder itself.

(d) In instances where a local business and a non-local business submit equivalent lowest responsible bids, the purchasing agent shall give preference to the local business.

In addition, the County Purchasing and Contracting Policy mandates that regardless of the purchase amount, where feasible, all departments are required to advertise locally to solicit bids from local businesses. Since the inception of LVP, General Services Purchasing has solicited 134 formal bids for commodities/services (over \$25,000 contract value). Thirty-two of the bids have been awarded to local businesses for a total of \$3,169,887 as shown in the table in Attachment A. The second table on Attachment A represents purchase order expenditures made by the County for various services and supplies that were issued by General Services from July 1, 2011 through January 2013.

To further advance outreach and support local business participation, the General Services Department has partnered with the Solano Small Business Development Center (SBDC) since 2007 to provide bi-annual full-day workshops for the local business community. The purpose of the workshops is to provide information on how to do business with the County. The workshops also provide practical advice from the County's purchasing staff on best strategies to use in order to compete for County business for commodities and services. The next workshop through the SBDC is scheduled for Spring 2013.

Numerous provisions in State and Federal law prevent the use of local preference in public works contract awards. The Federal Highway Administration (FHWA) issued a Memorandum which clarified that Federal-aid contracts (including invitations for bids or request-for-proposal documents) cannot contain local preference provisions. The only allowance for award preference in federal law is for disadvantaged business enterprises; Apalachian residents (not in California); and, Indian-owned business enterprises. State law allows limited preference provisions, but only for certified small businesses, and certified minority-, women-, and disabled veteran-owned business enterprises. Respecting these provisions, Section 22-44 (h) of the County's LVP Ordinance states, "This section is expressly made inapplicable to public works or other projects to the extent the application would be prohibited by state and federal law."

Department of Resource Management (DRM) contracting is largely for public works contracts for roads and bridges, and these projects are primarily or solely funded with state and/or federal fund sources. All of DRM's engineering and environmental consultant contracting in the last five years has been federally funded, and thus DRM has been limited in its options for local preference awards. A local transportation funding source (such as an impact fee or tax) could give the County greater discretion over local preference awards for projects primarily funded by these sources, since projects would have less reliance on federal funding. All other purchasing by DRM in excess of \$5,000, for project/services not funded by federal/state funding, are administered through the General Services Department under the local preferences provisions noted above.

The Solano Transportation Authority (STA) enacted a local vendor preference policy in 2010. The STA's projects are comparable to DRM's, in that most of their projects are funded with state and/or federal funds with similar constraints in utilizing local preferences. The STA enacted a policy very similar to the County's with the 5% award provision and tie-breaking to local businesses, in cases where local preferences can be utilized.

### **Local Outreach for Construction Projects**

In addition to the LVP, the County also supports efforts to encourage participation by local contractors and suppliers in County construction projects. Although construction projects are exempt from the County's LVP

due to prohibitions in the California Public Contract Code, the County has supported local purchasing opportunities for construction in the following ways:

- Local Construction Opportunities-Job Order Contracting (JOC) Forum in June 2012.
- Reduction of insurance/bonding limits for JOC contractors to enable more local companies to be bonded.
- Project Labor Agreements on larger projects requiring General Contractors to use local hiring halls and local subcontractors/suppliers.
- Local vendor database of firms including professional consultants, contractors, subcontractors, and suppliers that is used for notification of project opportunities.
- JOC requirement to document local outreach to County-based businesses and provide individual project reports on methods of solicitation and participation of local businesses.
- Broad-based competitive solicitations for professional services.
- Utilize local plan rooms and newspapers to announce project opportunities.
- Direct purchase order with local vendors when competitive bidding is not required.

The departments will continue to support local outreach and contracting opportunities for local businesses within the guidelines of the County's purchasing policies and federal/state legal requirements.

#### **ALTERNATIVES:**

The Board may choose not to hear a presentation from staff regarding the County's local vendor preference policies. This is not recommended because this information is important should any future changes be desired by the Board.

#### **OTHER AGENCY INVOLVEMENT:**

The Solano Transportation Authority was consulted regarding its local preference policy. The County Administrator's Office and County Counsel have reviewed this item.

#### **CAO RECOMMENDATION:**

**APPROVE DEPARTMENTAL RECOMMENDATION**