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Staff Report for an Ordinance Amending Section 1-6-225 of Article 2 of Chapter 1-6 of the San Leandro Municipal Code Relating to Purchasing By Competitive Bid

**SUMMARY AND RECOMMENDATIONS**

Staff recommends that the City Council review and consider the proposed Ordinance which would amend the Municipal Code to expand preferences given to local businesses in City purchasing and contracts. Should the Council choose, a motion can be made to pass the ordinance to print.

**BACKGROUND**

Earlier this year, the City Council authorized a consulting services agreement with the San Leandro Chamber of Commerce. One component of the scope of services for that agreement is the development of a "Local Business Preference Policy" that would update the City's public contracting and purchasing ordinance to provide more opportunities for San Leandro based businesses to be awarded City contracts.

To complete this work, the Chamber formed a "Local Inclusion Policy Working Group" to provide feedback to City staff and policy recommendations. The Working Group is chaired by former City Councilmember Surlene Grant and includes current City Councilmember Diana Souza along with representatives from local businesses, nonprofits, business coalitions, regional chambers of commerce, organized labor, and others. City staff and the City Attorney have also provided ongoing feedback to the Working Group. The group has met several times over the past three months and has reached general agreement about an ordinance for City Council consideration.

The Chamber of Commerce contract also requires the Chamber to provide the City with "findings based on research of comparable programs in other communities." That information will be forwarded to the City Council once it is received by staff.

## **Current Policy**

Both the existing City ordinance and standard procedures place an emphasis on purchasing from local San Leandro businesses whenever possible. A recent staff analysis found that, out of 386 currently open purchase orders, 89 were issued to companies in San Leandro and an additional 82 were issued to companies elsewhere in Alameda County.

Currently, the San Leandro Municipal Code (Title 1, Chapter 6, Article 2, Section 225) reads as follows:

In comparing bids for purchases of equipment, materials or supplies requiring an expenditure not in excess of Twenty-Five Thousand Dollars (\$25,000.00), and solely for the purpose of calculating the lowest bid, the following procedure shall be employed: A sum equal to five percent (5%) of the total bid, or of the base bid and each alternate, shall be deducted from the amount of the total bid, or the base bid and each alternate, respectively, of the bid of a supplier whose principal place of business is located within the City of San Leandro. If, after performing the above calculation, there is a tie for the lowest bid, the supplier whose principal place of business is located within the City of San Leandro shall be deemed the lowest bid for the purposes of Section 1-6-220, subject to the qualifications concerning responsibility contained therein.

The current ordinance is limited to contracts of no more than \$25,000. Although the ordinance effectively encourages purchasing from local businesses, it does not directly impact larger contracts, including capital improvement projects, major consulting agreements, and large-scale equipment purchases.

## **Analysis and Policy Proposal**

Unlike the current City ordinance which is limited to contracts under \$25,000, the proposed ordinance applies to a much broader range of City contracts:

- (1) Construction and Public Works Contracts valued at or above one hundred thousand dollars (\$100,000.00);
- (2) Professional and Non-Professional Service Contracts valued at or above twenty-five thousand dollars (\$25,000.00);
- (3) Contracts for the procurement of goods, materials, equipment, furnishings or supplies valued at or above five thousand dollars (\$5,000.00).

The proposed ordinance has two distinct means of encouraging local participation in City contracts; a Local Business Preference Rating Incentive and a Local Business Participation Goal.

### **Local Business Preference Rating Incentive**

The Local Business Preference Rating Incentive includes the following provisions:

- a) Solely for the purpose of calculating the lowest bid or proposal, ten percent (10%) shall be deducted from the total bid amount submitted by a contractor or supplier whose principal place of business is located within the City of San Leandro.

- b) Solely for the purpose of calculating the lowest bid or proposal, five percent (5%) shall be deducted from the total bid amount submitted by a contractor or supplier that is a joint venture wherein one of the joint venturers is a business that has as its principal place of business, its headquarters, or a significant portion of its operations within the City of San Leandro.
- c) Under no circumstances will the real dollar amount of the percentage applied under sections (a) or (b) exceed \$50,000 in the reduction of the lowest bid.

As an example, if the City received qualifying bids for a project in the amounts of \$100,000 and \$110,000, with the higher bid coming from a San Leandro company and the lower bid coming from a non-local company, the local bid would be subject to the 10% incentive. Solely for the purposes of determining the low bidder, the \$110,000 bid of the local company would be reduced by 10% and recalculated to \$99,000. Thus, the local company would be determined to be the apparent low bidder. The local company would receive a contract for its full bid amount of \$110,000 with the City paying an additional \$10,000 for this service.

Under the proposed ordinance, the City does maintain the authority to award some contracts based solely on qualifications rather than a quantitative review of bid amounts. In these cases, the Local Business Preference Rating Incentive would not apply. These instances are limited to projects for which the City requires specialized expertise, competence or qualifications.

### **Local Business Participation Goal**

The Local Business Participation Goal pertains to contracts that exceed \$100,000 and are subject to the Local Inclusion Policy. For these contracts, the ordinance requires the contractor, prime contractor or supplier engage in good faith efforts to hire San Leandro businesses, nonprofit organizations or residents to perform the contract so that a goal of at least 25% of the total contract dollar amount is spent on local businesses. The 25% goal is not a “hard” contract requirement, such that a contractor would be in breach of contract if it failed to meet the 25% local participation goal. However, engaging in good faith efforts, and documenting the evidence of good faith efforts would become a requirement of the bid or proposal submission, such that failure to properly submit documentation of good faith efforts with a bid or proposal when it is due would be grounds for rejecting a bid or proposal as non-responsive to the City’s bid or proposal instructions, rules or requirements. This component of the ordinance is designed to encourage large contractors to engage local San Leandro businesses as subcontractors on major projects.

The Local Business Participation Goal outlines a specific set of activities required to meet this objective. The contractor or supplier must achieve at least five of the following activities:

- (1) Attending pre-solicitation or pre-bid meetings scheduled by the City to inform all contractors, subcontractors, suppliers, and San Leandro residents of the project;
- (2) Convening a meeting for San Leandro businesses to identify specific items of work to be performed on the project;
- (3) Listing all contact information for any San Leandro business that will participate in the project if a contract is awarded to the prime contractor or supplier;
- (4) Advertising for subcontracting, supplying or employment opportunities on the project not less than twenty calendar days before the date bids are due in newspapers, websites, trade association publications, or other media;
- (5) Documentation of personal contacts with San Leandro businesses or nonprofit organizations informing them of the opportunity to subcontract;
- (6) Documentation of good faith negotiations with San Leandro businesses and nonprofit

- organizations to subcontract;
- (7) Making the project plans and specifications available for review upon the request of interested San Leandro businesses;
  - (8) Documentation of requests for assistance from San Leandro community organizations, contractors or professional groups, local, state or federal business assistance offices or other organizations that provide assistance in the recruitment of San Leandro businesses.

### **Compliance**

The proposed Local Inclusion ordinance puts the onus on contractors and vendors to demonstrate that they have met the requirements of the program and to document participation by San Leandro businesses. Failure to meet the good faith efforts requirements of the ordinance may subject a violator to de-barment from bidding on City contracts for five years. Additionally, violators are subject to penalties of 10% of the contract amount.

### **Discretionary Incentive**

In addition to the ordinance's requirements noted above, the proposed ordinance would authorize the City Manager to award, at his or her discretion, if funds are available within the project budget, a monetary bonus for any prime contractor or supplier that exceeds the local Business Participation goal by 100% or more.

### **Program Benefits**

It is a long-standing policy of the City of San Leandro to support local businesses in a variety of ways. Increased success by San Leandro businesses boosts the local economy by generating increased sales, jobs, and wages. This, in turn, increases City revenues allowing the delivery of increased service benefits to San Leandro residents.

A successful Local Inclusion ordinance can help keep local tax revenues within San Leandro. Additionally, an ordinance that encourages large contractors to engage with smaller, local businesses for subcontracts could help local companies develop business relationships that may lead to greater opportunities in the future. Lastly, an ordinance that successfully supports local San Leandro businesses may encourage other businesses to locate in San Leandro so that they may derive similar benefits.

### **Implementation and Program Challenges**

Staff review of the proposed ordinance had led to several questions about the implementation of the program. In addition to potentially increasing the cost of City contracts, the ordinance has the potential to increase the amount of time needed to get a business under contract, thus increasing the time required to complete City projects.

Although specific ordinance implementation activities are not defined in the proposed ordinance, staff believes implementation would be most effective if a pre-qualified list of local businesses was developed. Although doing so will require substantial staff time and resources, it will also simplify the bidding process and minimize controversy and delay when the time comes to determine if bidders are subject to the Local Business Preference Rating Incentive. Effective development of a prequalified list will require a significant outreach campaign to ensure that local businesses are aware of the opportunity and know what materials they need to submit to get on the pre-qualified list. Partnerships, especially with the Chamber of Commerce, appear best suited to assist in the accomplishment of this procedure.

**Compliance and Monitoring:** Although the program largely puts the onus on businesses to show that they have complied with the program, staff will be responsible for reviewing that documentation and resolving disputes when they arise. The complexity of both the definition of a local business and the best efforts activities required to comply with the local business participation goal dictate that significant staff resources will be required to monitor, implement and track the program. Given current staffing levels, additional personnel costs will likely be required.

If disputes do arise regarding implementation of the program, it may be necessary to define an appeal process that makes the City Manager the final arbiter.

**Low Threshold for Contract Amounts:** Because contracts as small as \$5,000 may be subject to this program, it has the potential to slow the process of making relatively minor purchases if staff is required to collect and review documentation from local bidders.

**Outreach and Education:** To successfully implement a Local Inclusion Program a substantial amount of outreach and education will be required. With limited staff resources, this effort will require effective partnerships with outside organizations, including the Chamber of Commerce.

**Tracking and Program Review:** Although the City has the current capacity to review the share of purchase orders going to local businesses, the City has not historically tracked the share of larger projects going to San Leandro businesses. This can be particularly challenging when local businesses serve as a subcontractor and do not have a direct contracting relationship with the City. Consequently, it will be difficult to assess the impact of the program with limited baseline data available.

### **Current Agency Policies**

The current City policy for local inclusion is contained in the San Leandro Municipal Code (Title 1, Chapter 6, Article 2, Section 225).

### **Legal Analysis**

The proposed ordinance was prepared by the City Attorney based on policy guidelines from the Local Inclusion Working Group and City staff.

### **Fiscal Impacts**

The fiscal impact of the proposed ordinance cannot be estimated with precision. Based on the rating incentive for local businesses of 10%, the ordinance has the potential to increase the cost of City contracts by 10%, up to a maximum per contract increase of \$50,000. Depending on the number of contracts impacted in a given year, the cost could be substantial.

Implementation of the ordinance will also require increased staff time, particularly if the City finds that it is necessary or advisable to develop a program for prequalifying local businesses based on the definition contained in the ordinance.

### **ATTACHMENTS**

None

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