



City of San Leandro

Meeting Date: January 6, 2014

Staff Report

File Number: 13-630

Agenda Section: ACTION ITEMS

Agenda Number: 10.B.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: 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-barmen 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

PREPARED BY: Jeff Kay, Business Development Manager, Community Development Department



City of San Leandro

Meeting Date: January 6, 2014

Ordinance

File Number: 13-629

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: 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 (expands preferences given to local businesses in City purchasing and contracts)

The City Council of the City of San Leandro does ORDAIN as follows:

SECTION 1: Section 1-6-225 of Article 2, Purchasing by Competitive Bid, of Chapter 1-6 of the San Leandro Municipal Code is hereby amended in its entirety to read as follows:

1-6-225 COMPARISON OF BIDS.

(a) Findings

The City Council of the City of San Leandro hereby finds that it is in the City's interest to have a healthy local business community. The City Council also finds that San Leandro businesses, particularly small and nonprofit organizations, often encounter obstacles to participating in City projects and procurements, obtaining financing and credit, and bonding and insurance, which affects the economic viability and growth of these businesses and organizations.

(b) Declaration of Policy and Purpose

(1) It shall be a policy of the City of San Leandro that San Leandro business enterprises, including small and nonprofit businesses, should be encouraged to participate as contractors and suppliers in the provision of goods and services to the City. Policies and programs that enhance opportunities and utilize the skills and expertise of San Leandro businesses, including small businesses and nonprofit organizations, serve the public interest, primarily because the growth and development of such businesses have a significant positive impact on the economic health of the City of San Leandro. A City ordinance that grants a preference for awarding contracts for projects and procurements to businesses located or operating

within the City serves the public interest by encouraging businesses, including small and nonprofit businesses, to locate, hire residents and remain in San Leandro.

(2) Investment in San Leandro businesses is important to sustain and expand regional partnerships that connect workforce and local business participation, a vibrant arts community and educational development.

(3) It is a goal of this ordinance to encourage the enactment of legislation that mandates setting aside a percentage of the City's budget for all projects developed or built by the City for workforce training, local employment and the arts.

(4) Because many San Leandro businesses are small and may not have the resources, capability or experience to act as a prime contractor or to provide specialty services, it shall be a policy of the City of San Leandro to encourage qualified prime contractors to use San Leandro businesses, including small businesses and nonprofit organizations, as subcontractors and suppliers to participate in City projects and purchases and gain experience in a way that will enhance their ability to eventually compete for contracts as prime contractors.

(c) Definitions.

(1) "Contract" means any contract or agreement between the City and a person to provide or procure labor, goods, materials, equipment, furnishing, supplies or services to, for or on behalf of the City. Except as otherwise specifically defined in this section a contract does not include:

(i) Awards made by the City with federal or state grant monies or City general fund grants to a nonprofit entity where the City offers assistance, guidance or supervision on a project or program and the recipient of the grant award uses the monies to provide services to the community;

(ii) Contracts wherein the funding or monies available for the project, service or procurement, whether for the whole or a portion of the project's scope, are restricted by the funder, donor or grantor, whether as to amount, use or otherwise;

(iii) Sales transactions where the City sells its personal or real property;

(iv) Gifts of materials, equipment, supplies or services to the City;

(v) Contracts exempted from the provisions of Chapter 1-6 of the San Leandro Municipal Code; or

(vi) Contracts that would violate any State or Federal law or grant requirements.

(2) "Contract Awarding Authority" or "CAA" means the City officer, department, employee or legislative body authorized and empowered by law to enter into contracts on behalf of the City. In the case of an agreement with a prime contractor to perform or fund the performance of construction related services, the term "contract awarding authority" or "CAA" shall mean the prime contractor receiving funds from the City to perform or fund the performance of such

services.

(3) "Contractor" or "Prime Contractor" means any person who submits a bid or proposal to perform, perform any part of, agrees with a person to provide services in relation to or enters into any contract subject to this chapter with the CAA for public works or improvements to be performed, or for goods or services or supplies to be purchased at the expense of the City or to be paid out of monies deposited in the treasury or out of trust monies under the control of, or collected by, the City.

(4) "Joint Venture" means and may be referred to as an "association" of two or more businesses, one of which is a San Leandro business or San Leandro nonprofit organization acting as a contractor and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill and/or knowledge. The San Leandro business or nonprofit organization participating in the joint venture shall have a commensurate share of the profit or loss to be realized from the joint venture. The joint venture must conform to all pertinent laws that govern the creation of such entities.

(5) "Person" means one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, nonprofit organizations, and cooperatives.

(6) "San Leandro business" means any business which possesses or establishes all of the following at least six (6) months before bids or proposals are opened by the City. Such a business will be subject to monitoring to prove validity of the following:

(i) A written agreement for City occupancy or proof of ownership of a San Leandro office;

(ii) Proof that business is transacted or revenue generated in an office located in San Leandro;

(iii) A conspicuously displayed business sign at the San Leandro business premises except where the business operates out of a residence;

(iv) Proof that the office is appropriately equipped for the type of business for which certification as a San Leandro business is sought. Where equipment, such as computer and reproduction and communications machines are typically and routinely used in a non-San Leandro location, comparable equipment shall be installed and routinely used at the San Leandro office;

(v) A valid City of San Leandro business license.

(d) Contracts Subject to this Ordinance

The provisions of this chapter shall apply to the following categories of contracts awarded by the City:

(1) Construction and Public Works Contracts awarded to Prime Contractors 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).

With respect to special services and professional personal services contracts, no provision or requirement of this ordinance shall supersede or pre-empt the City's powers to contract with and employ any persons for the furnishing to the City special services as described in California Government Code section 53060, and California Government Code section 4526, including but not limited to advice in financial, economic, accounting, engineering, legal or administrative matters if such persons are specially trained and experienced and competent to perform the special services required. The City shall have the sole discretion to determine what bases of competence and professional qualifications are necessary for the satisfactory performance of the services required.

(e) Local Business Preference

Whenever a competitive process is utilized by the City of San Leandro to award a contract identified in Section 1-6-225(c)(1), the following shall apply:

(1) Solely for the purpose of calculating the lowest bid or proposal, a sum equal to ten percent (10%) of the total bid, or of the base bid and each alternate, of the proposal shall be deducted from the amount of the total bid, or the base bid and each alternate, respectively, of the bid or the proposal of a Contractor, Prime Contractor or 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 Contractor, Prime Contractor or supplier whose principal place of business is located within the City of San Leandro shall be deemed the lowest bid subject to the qualifications concerning responsibility, as required by law. If the tie bidders both have as their principal places of business the City of San Leandro, then the City Council shall draw lots to determine to whom to award the contract.

(2) Solely for the purpose of calculating the lowest bid a sum equal to five percent (5%) of the total bid, or of the base bid and each alternate, or the proposal shall be deducted from the amount of the total bid, or the base bid and each alternate, respectively, of a bid or proposal submitted by a Contractor, Prime 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.

(3) Under no circumstances shall the real dollar amount of the percentage applied under sections (a) or (b) exceed \$50,000 in the reduction of the lowest bid, or the base bid and each alternate, or the proposal respectively.

(f) Local Business Participation Goal

(1) Prior to award of a contract governed by this Chapter that is or exceeds \$100,000, the Contractor, Prime Contractor or supplier shall engage in good faith efforts to hire or contract with San Leandro businesses, nonprofit organizations or residents to perform the contract with the goal that at least 25% of the total contract dollar amount is spent on local businesses.

(2) Good faith efforts shall be established by any combination of five of the following activities. In order to show good faith efforts towards meeting the local business participation goal, the contractor or supplier shall certify that it has already completed, or will complete during the course of the project, the activities identified herein through submittal of a declaration at the time bids or proposals are due:

(i) Attending any pre-solicitation or pre-bid meetings scheduled by the City to inform all contractors, subcontractors, suppliers, and San Leandro residents of the project and the requirements of this ordinance;

(ii) Convening a meeting within the City of San Leandro for San Leandro businesses, suppliers, nonprofit organizations and residents to identify specific items of work to be performed on the project in order to increase the likelihood of meeting the business participation goal and intent of this chapter, including breaking down contracts into smaller units;

(iii) Listing all contact information for any San Leandro business or nonprofit organization that will participate in the project, or provide services or supplies to the prime contractor or supplier if a contract is awarded to the prime contractor or supplier;

(iv) Advertising for subcontracting, supplying or employment opportunities on the project not less than twenty (20) calendar days before the date bids are due in one or more daily or weekly newspapers, websites, trade association publications, trade journals or other media;

(v) Documentation of personal contacts with San Leandro businesses or nonprofit organizations informing them of the opportunity to subcontract or supply to the project.

(vi) Documentation of good faith negotiations with San Leandro businesses and nonprofit organizations to subcontract or supply to the project;

(vii) Making the project plans, specifications and in the case of a construction, design or engineering contract, the City Engineer's estimates available for review upon the request of interested San Leandro businesses and San Leandro nonprofit organizations;

(viii) Documentation of requests for assistance from San Leandro community organizations, San Leandro contractors or professional groups, local, state or federal business assistance offices or other organizations that provide assistance in the recruitment and placement of San Leandro businesses and San Leandro nonprofit organizations, if any are available

(g) Compliance

Prior to award of a contract, Contractors, Prime Contractors, or suppliers shall do the following, which shall be subject to a verification process:

(1) Demonstrate in their bids or proposals that they have used good faith efforts through documenting proof of completion of good faith activities as identified in Section 1-6-225(f)(2)

to utilize San Leandro businesses, San Leandro small businesses and/or San Leandro nonprofit businesses; or

(2) Identify the particular San Leandro businesses, San Leandro small businesses and/or San Leandro nonprofit businesses and suppliers to be utilized in performing the contract, specifying for each such business the dollar value of the San Leandro business' scope of work in the project or procurement and the type of work the San Leandro business will perform.

(3) Evidence of willful failure to enact good faith efforts or intentional misrepresentation of San Leandro businesses' participation as certified in the bid or proposal submitted shall be grounds for finding a breach of contract, subsequent debarment from bidding or proposing on City contracts in the future, and further legal action at the City's discretion.

(4) The City is empowered to take actions to ensure compliance with the provisions of this chapter. The actions which the City is empowered to take may include, but are not limited to:

(i) Ordering the suspension of the selection process for the award of the contract;

(ii) Intervening in the selection process to correct contracting practices which hinder business opportunities for San Leandro businesses, San Leandro small businesses and San Leandro nonprofit businesses;

(iii) Declaring the Contractor, Prime Contractor, or Supplier to be nonresponsive and ineligible to receive the award of contract;

(iv) Declaring an existing contract terminated;

(v) Imposing penalties in the form of liquidated damages. The liquidated damages shall be in an amount equal to ten percent (10%) of the total amount of the contract. All liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor, Prime Contractor, or supplier from any contract with the City and the City shall have the right to withhold payments due to the contractor to satisfy the penalty.

(vi) Disqualifying the Contractor, Prime Contractor or Supplier from eligibility to provide goods or services to the City for a period not to exceed five (5) years. Any business disqualified under this subsection shall have a right to review and reconsideration by the City Manager after two (2) years upon a showing of corrective action indicating that violations are not likely to recur.

(h) Incentive Program

Per the City Council's findings and stated purpose, the City Manager is authorized to award, at his or her discretion, if funds are available within the project budget, a monetary bonus for any Contractor, Prime Contractor or supplier that exceeds the local Business Participation goal by 100% or more.

SECTION 2. SEVERABILITY. This Chapter shall be enforced to the full extent of the

authority of the City. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

SECTION 3. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.