



**THE PORT
OF LOS ANGELES**

Executive Director's
Report to the
Board of Harbor Commissioners

DATE: MARCH 21, 2012

FROM: CONTRACTS AND PURCHASING

SUBJECT: RESOLUTION NO. _____ - LOCAL BUSINESS PREFERENCE PROGRAM

SUMMARY:

On October 14, 2011, the City Council approved an Ordinance establishing a Local Business Preference Program (LBPP). Recognizing that the cost of doing business in the City of Los Angeles (City) is more than 10% higher than other cities nationally, the LBPP was designed so that local businesses get an equal opportunity to compete for City business. The LBPP provides County of Los Angeles-based bidders/proposers with an 8% preference. Although the LBPP does not apply to Proprietary Departments, the Ordinance strongly encourages Proprietary Departments to adopt a local preference program consistent with the LBPP. Staff is recommending that the Board of Harbor Commissioners (Board) adopt a local preference program, augmenting the City of Los Angeles Harbor Department's (Harbor Department) efforts to increase local jobs and spending to benefit the businesses and residents surrounding the Port of Los Angeles. The State Lands Commission has no objections to the proposed program. The Board of Commissioners of the Los Angeles Department of Water and Power approved the LBPP in its entirety on November 1, 2011. It is anticipated that the Board of Commissioners for Los Angeles World Airports will consider a LBPP in April 2012.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Adopt a Local Business Preference Program substantially the same as that adopted City-wide, except that the Harbor Department's program would include Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties;

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2. Authorize the Executive Director to implement the Local Business Preference Program;
3. Authorize the Director of Contracts and Purchasing to create and/or modify administrative documents, consistent with the adoption of the program, to implement the Local Business Preference Program;
4. Instruct staff to evaluate the Local Business Preference Program within one year to ensure that the Harbor Department is meeting the intent of the Local Business Preference Program, and to report back with a cost/benefit analysis; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background – Historically, many of the larger cities within the County of Los Angeles, especially the City of Los Angeles (City), experience labor costs that are among the highest in the nation. Los Angeles area labor costs are more than 5% higher than the hourly wages in competing neighboring states. Commercial real estate space in the Los Angeles metropolitan area is even more costly than comparable space in other counties and states. Specifically, average office rents in the Los Angeles area are 40% higher than the national average. On a national level, Los Angeles is one of the ten most expensive places to do business as a result of the local tax and fee structure. All corporations in California are subject to a corporate tax that is among the highest in the nation. These conditions create a very expensive climate in which local businesses must compete.

On October 14, 2011, the City Council approved a City Ordinance implementing the LBPP (Transmittal 1). The LBPP was based on findings that significant benefits are associated with local business preference programs. These benefits include an increase in local jobs and expenditures in the local private sector. Recognizing that the cost of doing business in the City of Los Angeles is more than 10% higher than other cities nationally, the LBPP was designed so that local businesses get an equal opportunity to compete for City business. In addition, the LBPP aims to encourage businesses to compete for City contracting opportunities, to locate operations in the City, to encourage existing local businesses to refrain from relocating to less expensive areas, and to increase local jobs and expenditures.

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Local Business Preference Program – The following is a summary of the specific requirements of the LBPP, and staff recommendations for implementing a similar local business preference program at the Harbor Department:

1. Qualified Local Business

In order to qualify as a local business under the City's LBPP, a local business must demonstrate one of the following:

- (a) The business must be headquartered in the County of Los Angeles;
- (b) The business must have at least 50 full-time employees that perform 60% of their work in County of Los Angeles; or
- (c) At least half of the business' full-time employees must perform 60% of their work in the County of Los Angeles.

Pursuant to the Tidelands Trust, the Port of Los Angeles must be managed for the benefit of all of the people of the State of California. As a result, a local preference that only benefits businesses within the County of Los Angeles would be inconsistent with the Tidelands Trust. Any preference given to local businesses must be regional, encompassing more than just the County of Los Angeles in order to be consistent with the Tidelands Trust Doctrine. Staff has discussed the program with the State Lands Commission and they have no objections to the program as proposed.

➤ Harbor Department Recommended Policy: Staff is recommending that the Harbor Department provide a local preference to businesses that are located within Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties since (1) Harbor Department operations impact the five regional counties, especially the movement of goods throughout the southland; (2) the Harbor Department conducts business with companies in all five counties; and (3) having these businesses in close proximity to the Port of Los Angeles, makes port operations more efficient. In addition, these counties are currently experiencing high commercial real estate vacancy rates from 15.3% to 23.6%, and high unemployment rates ranging from 7.8% to 12.5%. Specifically, staff is recommending that the Harbor Department define a local business as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

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2. Provisionally Qualified Local Business

The City's LBPP provides that a business not currently located in the County of Los Angeles may qualify as a local business if:

- (a) The proposed contract is greater than \$1,000,000 and has a term of no less than three years; and
- (b) The business must demonstrate that it will occupy commercial space within the County of Los Angeles within 60 days after contract execution.

➤ Harbor Department Recommended Policy: This provisional qualification of a local business is not necessary since the Harbor Department is expanding the local business definition beyond the County of Los Angeles, and includes five Southern California counties.

3. Local Business Preference

The City's LBPP allows for local businesses to receive an eight percent (8%) preference for any contract opportunity that is competitively awarded. The local preference is applicable to all procurement, professional services, and construction contracts greater than \$150,000. When applying the preference to procurement and construction contracts (contracts awarded based on low bid), the total price bid by a local business will be reduced by eight percent (8%). The reduced bid amount will be deemed the amount bid by that bidder; however, the resulting contract price will be the amount bid by the successful bidder prior to allocating the local preference percentage. The maximum preference may not exceed \$1,000,000. For professional service contracts, the local preference is applied by adding eight percent (8%) of the total possible evaluation points to the local business' score.

Below is an example of how the local preference would be applied to contracts awarded on a low-bid basis:

	Non-local Firm	Local Firm A	Local Firm B
Original Bid	\$10,500,000	\$11,000,000	\$12,750,000
8% Preference	N/A	(\$880,000)	(\$1,000,000) *
Final Bid	\$10,500,000	\$10,120,000	\$11,750,000

*Maximum Preference

In the example above, Local Firm A was the lowest bidder after applying the local preference. Although the final bid amount is \$10,120,000, the Harbor Department would award a contract based on the original bid in the amount of \$11,000,000. The Harbor Department would have expended \$500,000 more on the project as a result of the local preference, when compared to the bid submitted by the Non-local firm. In this example, the additional cost would be justified inasmuch as the Harbor

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Department would be supporting local businesses by providing an economic offset due to the higher costs of doing business in the region.

Staff believes that the financial impact of this policy is minimal. More specifically, since fiscal year (FY) 2007, 84% of the Harbor Department's procurement, construction and professional service contract dollars have been awarded to firms within Los Angeles, Orange, San Bernardino, Riverside and Ventura Counties. Given these statistics, it is assumed that a significant percentage of bidders/proposers are located within the five counties; thereby, minimizing the financial impact of this policy.

- Harbor Department Recommended Policy: Provide for an eight percent (8%) local preference for businesses located in the five counties.

4. Local Subcontractor Preference

The City's LBPP allows non-local bidders/proposers to receive a five percent (5%) preference if the bidder/proposer identifies local subcontractors that will perform work under the contract. The LBPP allows for one percent (1%) preference, up to a maximum of 5%, for every ten percent (10%) of the work that is subcontracted to a local business.

- Harbor Department Recommended Policy: Include a local subcontractor preference in the Harbor Department's local preference program.

5. Exemptions

(1) The City's LBPP only applies to contracts that involve the expenditure of funds entirely within the City's control. Projects that involve the expenditure of State or Federal grant funds are exempt from the LBPP; and (2) The LBPP allows for an awarding authority to exempt the LBPP from a contract opportunity at any time before the award of the contract if it is in the best interest of the City.

In regards to the exemptions, staff recommends that any project, which is partially or entirely funded with grant funds, be exempt from the local preference. Although staff is in concurrence with exempting the local preference when it is in the best interest of the Harbor Department, staff does not recommend allowing for an exemption at any time prior to the award. In order to maintain transparency and objectivity in the Harbor Department's contracting processes and procedures, staff recommends that an exemption to the local preference be determined prior to advertising/publishing the contract opportunity. Exempting the local preference after receiving bids or proposals could lead to protests and may give bidders/proposers the impression that the Harbor Department is subjective in its selection process.

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- Harbor Department Recommended Policy: (1) Exempt any projects/contracts that involve an expenditure of State or Federal grant funds, or any funds not entirely within the control of the Harbor Department; and (2) When in the best interest of the Harbor Department, allow the Executive Director, or her designee, to exempt the local preference policy prior to advertising/publishing the contract opportunity.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Local Business Preference Program designed to give local businesses an equal opportunity to compete for City business. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no direct employment impact. However, by establishing a contracting preference for local firms, this policy will potentially result in more economic benefits associated with future Harbor Department contract spending being captured within the five-county region.

FINANCIAL IMPACT:

For any project/bid valued at more than \$12,500,000, the Harbor Department could expend an additional \$1,000,000 per project as a result of the local preference. For any project/bid valued at less than \$12,500,000, the Harbor Department could expend an additional 8% as a result of the local preference.

It is believed that the financial impact will be much less than 8% of total Harbor Department project expenditures. Since FY 2007, 84% of the Harbor Department's procurement, construction and professional service contract dollars have been awarded to firms within Los Angeles, Orange, San Bernardino, Riverside and Ventura Counties. In addition, in Calendar Year 2011, \$28.1 million was awarded in Capital Improvement Project (CIP) contracts. If the local preference policy was applicable to these CIP contracts, the fiscal impact of this policy would be zero inasmuch as all CIP contracts were awarded to firms located within the five counties. Assuming these trends going forward, it is assumed that a significant percentage of bidders/proposers will continue to

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be located within the five-county region, resulting in no net incremental impact for this proportion of bidders/proposers. However, staff recognizes that there will be administrative costs associated with implementing and monitoring this policy which are unknown at this time. Staff will monitor the administrative costs and report back to the Board within a period not-to-exceed one year with a cost/benefit analysis.

CITY ATTORNEY:

The Office of the City Attorney approves this Resolution as to form and legality.

TRANSMITTAL:

- 1. Local Business Preference Program Ordinance

FIS Approval: ey (initials)
 CA Approval: GR (initials)


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