



**Item #13-3-3  
Action**

**Government Relations & Public Affairs Committee**

March 4, 2013

**Local Contracting Preferences and Business Engagement Strategy**

**Issue:** How can SACOG support contractors in the region in its contracting?

**Recommendation:** That the Government Relations & Public Affairs Committee recommend that the Board adopt the policy recommendations discussed below.

**Discussion:**

Staff brought this item to the Committee in February, and the Committee tabled the item so that staff could provide additional information and modifications to the recommendation. Separate from the Local Contracting Preferences Policy, staff is proposing an additional change to SACOG's Purchasing Policies that would increase the number of firms interviewed for professional services contracts, so that SACOG reviews qualified bidders, whether from inside or outside of the region.

At the request of the Committee, staff further reviewed federal contracting requirements and has confirmed that, as a general rule, federal funds cannot be awarded on a local preference basis without specific authorization by Congress. Specific authorization may only be requested for disaster and emergency response, as well as for severely economically disadvantaged areas. The only other exception to the federal prohibition of local preferences is for engineering, environmental, and design contracts funded with federal dollars. Here, federal law allows for a local preference in recognition of the fact that local engineers typically have a better knowledge of local conditions. By contrast, the law allows a local preference for most contracts funded by State or local funds.

While SACOG cannot provide a local preference in the award of its regular contracts involving federal funds, staff recommends including a policy that, to the maximum extent practicable, SACOG interview all qualified candidates so that local bidders are given a chance to compete, but without giving any prohibited preferential treatment.

**Background:**

At the request of several Board members, staff has drafted the key components of a Local Contracting Preferences Policy for the Committee's consideration. Staff is recommending that the Board act to adopt the policy now, but implement it as part of a broader set of amendments to SACOG's Purchasing Policies which will be proposed later this year. In addition to the Local Contracting Preferences Policy, staff has developed a strategy for engaging businesses within the region to better inform them about contracting opportunities at SACOG. Separate from the Local Contracting Preferences Policy, staff is recommending changes to the professional services bid review process.

***Local Contracting Preferences Policy***

Public contracting is typically handled differently based on whether the contract is for (1) goods and non-professional services, or (2) professional services. Goods and non-professional services contracts are typically given to the lowest-cost bidder, but in some cases, quality is an important factor. Professional services are sometimes given to the best-qualified bidder, while sometimes to the lowest-cost bidder, or a combination of the two. Local preference adds a third criterion to these tradeoffs. SACOG's current policy requires a formal bidding process for any contracts in excess of \$20,000.

## General Criteria

Staff recommends that a local preference policy only apply to eligible contracts requiring a formal bid (Request for Proposals/Request for Qualifications process). For the purposes of the policy, "local" would be defined as firms with a physical office in any of SACOG's 28 jurisdictions for at least six months prior to the issuance of the RFP/RFQ (with bidders self-certifying the physical office requirement). The local preference would be handled differently for goods and non-professional services versus professional services.

## Goods and Non-Professional Services

For goods and non-professional services funded with State or local dollars, if the lowest bidder is not from within the region, and if the next-lowest bidder is (1) within 5 percent of the low bid price, and (2) a qualified local firm, then the local bidder will be allowed to match the price. This offer would be extended to the next lowest local bidder if it is refused by the first local firm, and the contract could still be awarded to the non-local firm if no local firms match the low bid.

## Professional Services

For professional services funded with State or local dollars, staff recommends that proposals be scored on a 100-point scale, to be tailored based on the needs of the project, and allow up to 5 points to be awarded to local bidders. Given the range of qualifications and scope of professional services contracts, staff recommends that the Board reserve the right to waive this policy for impracticality or when not warranted. Staff recommends the same local preference be used for engineering, environmental or design services funded with federal dollars.

## Exceptions to the Local Contracting Preferences Policy

In designing a local preference policy, staff recommends providing exceptions, either because of legal restrictions or because local preference may not be in the best interests of SACOG in a particular contract.

1. Unlike cities, counties, and most special districts, councils of government receive most of their funds from the federal government, so most of SACOG's contracts will not be eligible for a local preference. The federal Grants Management Common Rule prohibits the provision of a local preference to any contract involving federal funds. Federal funds cannot be awarded on a local preference basis without specific authorization by Congress. Specific authorization may only be requested for disaster and emergency response, as well as for severely economically disadvantaged areas. However, a local preference may be applied for engineering, environmental, and design contracts funded with federal dollars.
2. State law prohibits any public agency, regardless of fund source, from using a local preference policy on "public projects" (i.e., construction of public buildings and works, except street maintenance or repair, including materials), and requires contracts to be awarded to the lowest responsible bidder.
3. The California Little Brooks Act requires that evaluation of engineering/design proposals funded with state or local dollars be on the basis of qualification-based selection, which does not include an element for local preferences.
4. To allow staff discretion to comply with regulations and laws without having to revise the policy, staff recommends including general language in the local preference policy that would prohibit its application in any other circumstances restricted by state or federal regulation or law.

## ***Professional Services Bid Review***

In addition to the scoring system for professional services proposals, staff recommends that—regardless of fund source—SACOG interview up to five proposers, based on scoring of the submitted proposals. The SACOG staff person managing each proposal review, in consultation with the panel of bid reviewers, would have discretion to determine the exact number of proposers to interview, based on scoring of proposals.

This practice would not give a local preference, but it would allow for additional consideration when several proposers all score very high on the review of written proposals. Currently, SACOG interviews up to three proposing firms (based on the rating of written proposals), and sometimes awards contracts based solely on a review of written proposals. Giving staff the direction to conduct interviews where there are several highly

qualified firms, but the discretion in determining how many firms are competitive, would be in the best interest of bidders and SACOG. Going forward, if there is only one qualified firm, staff could still award a contract without conducting an interview.

***Business Engagement Strategy***

Regardless of whether a local preference would apply to a specific contracting opportunity, based on Board feedback, staff has developed a strategy for engaging businesses located within the region about contracting opportunities at SACOG. Staff is in the process of contacting local chambers of commerce and professional associations to share information with them about how to receive notices for RFP/RFQ opportunities at SACOG.

SACOG has an email database of firms that automatically receive notification when a SACOG RFPs/RFQ is issued. Chambers and associations will be encouraged to share this notification tool with their members. Staff is targeting both general businesses as well as particular professional associations of firms that may likely bid on SACOG contracts (e.g., firms specializing in research, planning/engineering, technology, marketing, printing, financial audits, public opinion research). This outreach will continue to include associations that can help SACOG reach Disadvantaged Business Enterprises (DBEs), for compliance with federal and state DBE requirements. For services that may be outside the scope of SACOG's typical audience, staff will develop tailored outreach to reach those specialized firms.

In addition to the existing RFP/RFQ notification system, staff will share contracting opportunities on its Twitter account and SACOG homepage, and purchase public notice advertisements in the *Sacramento Bee*.

Approved by:

Mike McKeever  
Chief Executive Officer

MM:EJ:ef

Key Staff: Kirk E. Trost, Chief Operating Officer/General Counsel, (916) 340-6210  
Erik Johnson, Government & Media Affairs Coordinator, (916) 340-6247