



Government Relations & Public Affairs Committee

April 1, 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:

In March, the Committee asked staff to bring this item back with additional information. First, the Committee was interested in how much benefit would be realized from implementation of the policy. Over the past five years, approximately \$1.24 million of SACOG’s contracts, or 5 percent of all contracts, would have been eligible to receive a local contracting preference. The table below summarizes the specific amounts by contract type. For classification purposes, staff went back and identified whether firms would have met the local preferences criteria being recommended. It is important to note that many firms that would be considered local did receive federal contracts, but that information was not gathered because they cannot be considered for local preference.

SACOG Contracts 2008-2012

Contract Type	Amount	% of all contracts	Number of contracts
Non-Federal / Non-Local Firm	\$ 1,007,813	4%	8
Non-Federal / Local Firm	\$ 237,216	1%	5
Federal	\$ 24,608,109	95%	126
Total	\$ 25,853,138		139

Second, the Committee was interested in the potential fiscal impact of a policy that awarded non-federal contracts to a local firm within 5 percent of the lowest bid, and what could be done to minimize the impact. Under the policy recommended below, only goods and non-professional services would be awarded based on the lowest bid price. The table above shows all contracts (goods and non-professional services as well as professional services), but only one of the 13 non-federal contracts was for goods and non-professional services (\$233,354). Generally, most of SACOG’s contracts are for professional services, so the potential fiscal impact is minimal. Staff also assumes that SACOG will continue to rely primarily on federal funds, so the vast majority of contracts will use federal funds (and therefore be ineligible for local preference).

In order to avoid the potential fiscal impacts of a local contracting preference for goods and non-professional services, SACOG has several options. Staff’s original recommendation was to avoid any additional costs to SACOG by requiring local bidders to match the lowest bids for goods and non-professional services. Under the Committee’s suggested approach, as shown above, the fiscal impact would be fairly small. Staff supports this recommendation, as well as the Committee’s suggestion to apply a cap in order to avoid a larger fiscal impact. Specifically, staff recommends setting a cap of \$250,000 for contracts to qualify for a local preference for goods and non-professional services. The average non-federal contract over the past five years was \$95,000, so this cap should allow for use of the local preference when possible, but limiting the impact of unforeseen high-cost contracts. Staff recommends revisiting this policy if the differential cost to the agency becomes significant.

Background:

After the February Committee meeting, staff further reviewed federal contracting requirements and 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 qualified candidates so that local bidders are given a chance to compete, but without giving any prohibited preferential treatment.

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 typically given to the best-qualified bidder. 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 would be awarded the contract at the price they 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:

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