

FC 1025 (09-20-13)

A duly executed copy of this document has been received and placed on file.
Date: 12/10/13

Meeting Date: 12/10/13
Agenda Item: **7.1**
Unclassified Manager: R. Subramanian
Extension: 3021
Director(s): All

CONFORMED COPY BOARD AGENDA MEMO

SUBJECT: Local Business Enterprise Program Ordinance

RECOMMENDATION:

- A. Make findings that businesses in Santa Clara County seeking to enter into contracts with the District are at a competitive disadvantage due to the higher costs of doing business in the County;
- B. Adopt the Local Business Enterprises (LBE) Preference percent (between 1 and 10) for price based awards;
- C. Adopt the LBE Preference point(s) (between 1 and 10) for best value based awards; and
- D. Adopt the Ordinance Directing the Establishment of Procedures for Local Business Enterprise Preference in Procurement of Goods and Non-professional Services.

SUMMARY:

The Board has indicated strong support for opportunities to help the local economy. The Board directed staff to evaluate options to support local businesses and thereby the local economy.

At the August 13, 2013 Board meeting, the Board accepted staff analysis pertaining to Local Business Enterprises (LBEs). Specifically, it analyzed studies on the cost of doing business prepared by various organizations, and performed a benchmark study of other government organizations' LBE preference policies. In the August 13, 2013 Board Agenda Memo staff concluded that Santa Clara County businesses are at a competitive disadvantage compared to businesses from outside the Bay Area and that grounds exist for the District to pursue a preference policy for LBEs. A copy of the August 13, 2013 memo and attachments is included for reference as Attachment 2.

At the August 13, 2013 Board meeting, the Board directed staff to develop a Local Business Preference policy, for adoption by the Board. This Board Agenda Memo recommends the adoption of a Local Business Enterprises Program Ordinance (Attachment 1) for solicitations that undergo a formal competitive bid process (currently over \$50,000) using Invitation to Bids (price based awards) and Request for Proposals (best-value based awards). Staff also recommends the adoption of preference percent (between 1 and 10%) for price based awards and points (between 1 and 10 out of 100 points) for best value based awards.

ADOPTED

LOCAL BUSINESS ENTERPRISE and LBE PREFERENCE

Definition of Local Business Enterprise

“Local business” means a business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business presence in the County of Santa Clara as evidenced by:

- a. Having a current business tax certificate from a city within the County of Santa Clara (not required for local businesses in unincorporated areas of the County of Santa Clara); and
- b. Having either of the following types of offices operating legally within the County of Santa Clara:
 - i. A principal business office; or
 - ii. A regional, branch or satellite office with at least one full-time employee located in the County of Santa Clara.
- c. Post Office box numbers, residential addresses, a local sales office without any support or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a Local Business Enterprise.

Applying Local Business Enterprise Preference in Government Procurements

The purpose of the local preference policy is to equalize the competitive disadvantage local businesses face because they are located in a jurisdiction which has a higher cost of doing business or other disadvantages. Such a policy also serves the public interest by encouraging businesses to locate and remain in the jurisdiction through the provision of a minimal good faith preference in the awarding of contracts.

In the procurement of goods or services in which price is the determining basis for award of the contract, a “preference” could be given to Local Businesses by subtracting a percentage from the bid of the lowest responsive and responsible bidder. If best value is the determining basis for award of the contract, a “preference” could be given to the Local Business as percentage points to the rating score of the Local Business’ proposal. In both cases, if the Local Business’ bid or proposal results in the lowest price or the highest score respectively, the contract is awarded to the Local Business. However, the application of the LBE preference is subject to California regulations.

Currently, California law prohibits the District from providing local businesses a preference when government organizations purchase:

- (i) public works services valued at \$25,000 or more (“Public Works Services”); or
- (ii) architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services (“Professional Services”) as defined pursuant to Government Code Section 4526.

Please note that there are consultant services that do not fall under the definition of Government Code Section 4526, for example, marketing, real estate, socio-economic studies, community relations, insurance, and other services. In addition, the terms and conditions of certain funding

agreements (e.g., federal or state grants) may prohibit or limit use of local preference when acquiring goods or services with those funds.

In the current procurement process at the District, local businesses (addresses in Santa Clara County) are selected only when there is a tie (i.e., two or more contractors/suppliers were rated equally or had proposed the same lowest bid price). This practice is similar to many other government agencies. Apart from selection of a local business during a tied bid process, the District does not provide any preference to local businesses.

The District may procure goods and services other than Public Works and Professional Services under a policy that provides local businesses with a preference, if the District legitimately finds that local firms are disadvantaged absent that preference. These findings are necessary in order to withstand any legal challenge that the policy violates the equal protection clause of the U.S. Constitution. (U.S. Const., 14th Amend.)

In *Associated General Contractors, Inc. v. City and County of San Francisco*, 813 F. 2nd 922 (9th Cir. 1987),¹ the court determined that the following findings by the City and County of San Francisco were sufficient to withstand this constitutional scrutiny:

- San Francisco found that local businesses seeking to enter into contracts with it were at a competitive disadvantage with businesses from other areas given the higher administrative costs of doing business in San Francisco. Examples of these costs included higher taxes, higher rents, higher wages and benefits for labor, and higher insurance; and
- San Francisco found that it would be in the public interest to encourage businesses to locate and remain in San Francisco through the provision of a minimal good faith preference to local businesses in the awarding of City contracts. (*Id.* at 942-943.)

LOCAL BUSINESS ENTERPRISES PREFERENCE BENCHMARKS

A number of public sector entities have local business preference programs and the table below lists the jurisdictions and the preference information. The preferences provided to LBEs are either price-based (lowest bid price) or best value-based (qualifications, experience, suitability, and other factors, including price), or both.

| No. | Jurisdiction | LBE Preference of total price (awards based on price) | LBE Preference of total points (awards based on best value) | Comments |
|-----|----------------------------------|---|---|--|
| 1 | City of Milpitas | 10% | 10% | |
| 2 | City of Sunnyvale | 1% | No preference | |
| 3 | City of San Jose | 2.5% | 5% | |
| 4 | County of Santa Clara | 1% | 5% | |
| 5 | County of Alameda | 5% | 5% | On sealed bid (formal bids) procurements an additional 5% for LBEs |
| 6 | City and County of San Francisco | 10% | No preference | (incl. SF Public Utilities Commission) |

¹ Partially overruled on other grounds by *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991)

| No. | Jurisdiction | LBE Preference of total price (awards based on price) | LBE Preference of total points (awards based on best value) | Comments |
|-----|-------------------------------------|---|---|----------------------------------|
| 7 | Port of Oakland | 10% | 5% | or \$1 M whichever is less |
| 8 | East Bay Municipal Utility District | 5% | 5% | |
| 9 | City of Los Angeles | 8% | 8% | On bids/proposals over \$150,000 |
| 10 | Metropolitan Water District | 5% | 5% | |

A keyword search (“local business preference”) of approximately 200 California jurisdictions (cities, counties, special districts, etc.) on the Municode (legal publisher of municipal codes on a subscription basis) web pages resulted in approximately 59 jurisdictions with local business preference policy/language in the ordinances/administrative codes of those jurisdictions.

FINANCIAL IMPACT:

A financial impact would result if the Board adopted a Local Business Preference Ordinance. The District’s FY 14 Budget is \$472 million. The anticipated expenditures are as follows:

| | |
|--------------------------|----------------------|
| Capital Program Services | \$241 million |
| Salaries and benefits | \$126 million |
| Debt Service | \$ 31 million |
| Products and services | <u>\$ 74 million</u> |
| | \$472 million |

Over the past 3 years, the District has spent approximately \$15 million annually on Professional Services (as defined under Government Code Section 4526) that would be excluded from the Local Business Preference policy, if adopted. If FY14’s expenditure for Professional Services was anticipated to be \$15 million and this amount is deducted from the \$74 million budgeted for Products and Services, the expenses for Products and Services that could be impacted by a Local Business Preference policy would be approximately \$59 million.

The District expenses for Products and Services average between \$45 and \$70 million each year. Depending on the preference percentage applied, the maximum additional costs could range from between \$450,000 and \$700,000 (1% preference) to between \$4.5 million and \$7 million (10% preference) depending on the preference ratio used. The costs will need to be included within each contract or project budget. Please note that the assumption here is that all the solicitations for products and services (i.e., the entire \$45 to \$70 million could be satisfied by local businesses).

| LBE Ordinance Preference Percent/Points | Approximate cost range to the District | |
|---|--|-------------|
| 1 | \$450,000 | \$700,000 |
| 2 | \$900,000 | \$1,400,000 |
| 3 | \$1,350,000 | \$2,100,000 |
| 4 | \$1,800,000 | \$2,800,000 |
| 5 | \$2,250,000 | \$3,500,000 |
| 6 | \$2,700,000 | \$4,200,000 |
| 7 | \$3,150,000 | \$4,900,000 |

| | | |
|----|-------------|-------------|
| 8 | \$3,600,000 | \$5,600,000 |
| 9 | \$4,050,000 | \$6,300,000 |
| 10 | \$4,500,000 | \$7,000,000 |

Applying Local Business Enterprise Preference in District Procurements

Staff recommends that the Board adopt the LBE preference:

- a. Between 1 and 10 percent for price based awards
- b. Between 1 and 10 point(s) for best value based awards.

Staff also recommends that the LBE ordinance (Attachment 1) be applicable only to formal solicitations for goods and non-professional services (currently over \$50,000). The competitive solicitation threshold established under the Board’s Executive Limitation 5.2 is \$25,000. Solicitations over \$25,000 are competitively bid; those between \$25,000 and \$50,000 undergo an informal competitive bid process for the sake of expediency, cost-effectiveness, and best practice; and solicitations over \$50,000 undergo a formal competitive bid process using Invitation to Bids (price based awards) and Request for Proposals (best-value based awards). LBEs that submit bids or proposals will be required to complete the Local Business Enterprise Declaration Form (Attachment 3)

NEXT STEPS:

If the Board adopts this ordinance, it will be effective 30 days after adoption and must be published once in a newspaper of general circulation in the District’s jurisdiction within ten days of adoption.

District staff will coordinate and publicize the adoption of the policy through a communication campaign. The District’s Communications Division with assistance from the Procurement and Operational Services Division will develop fact sheets, and other informational materials for publication and distribution to the business community. Through the District’s Government Relations Division, the materials will also be distributed to the Chambers of Commerce for distribution to their members.

The District’s public website will be revised along with all the informational materials on the Business web pages.

Procurement and Operational Services Division staff will revise the District’s solicitation documents and procedures.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

- Attachment 1: Local Business Enterprise (LBE) Preference Program Ordinance
- Attachment 2: August 13, 2013, staff report with attachments
- Attachment 3: Local Business Enterprise Declaration Form

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ORDINANCE NO. 13-02

DIRECTING THE ESTABLISHMENT OF PROCEDURES
FOR LOCAL BUSINESS ENTERPRISE PREFERENCE IN
PROCUREMENT OF GOODS AND NON-PROFESSIONAL SERVICES

WHEREAS, the Santa Clara Valley Water District is a public agency that contracts for goods and services with outside businesses; and

WHEREAS, in 2004, the Board of Directors for the Santa Clara Valley Water District adopted Ordinance 04-01 to provide Small Business Enterprises with a preference of five percentage points when competing for professional services contracting opportunities; and

WHEREAS, there is no existing preference program at the District for local business enterprises; and

WHEREAS, on August 13, 2013, District staff made a presentation to the Board regarding options to support local business and the local economy. This staff presentation included detailed information regarding the competitive disadvantage local businesses face when operating in Santa Clara County; and

WHEREAS, this August 13, 2013, staff report and its attachments were reproduced for the Board of Directors in consideration of this ordinance; and

WHEREAS, the Santa Clara Valley Water District encourages the use of local businesses in the contracting and procurement of goods and services for the District, in accordance with the Board's governance policies and executive limitations that promote values which support equal opportunity, fairness, diversity, and reinvestment of District resources in its services and benefit to the community; and

WHEREAS, the Board of Directors hereby makes the following findings:

- a. Local businesses that seek to enter into contracts with the Santa Clara Valley Water District are at a competitive disadvantage when compared with businesses from other areas because of the higher costs of doing business in the County of Santa Clara. The higher costs of doing business in Santa Clara County are reflected in a July 8, 2008, report from Moody's Analytics entitled North American Business Cost Review. This study found that the San Jose Metropolitan Statistical Area, comprising the counties of Santa Clara and San Benito, had the highest unit labor cost and was ranked the third highest in overall cost of doing business, behind New York and Boston. That study computes the cost of doing business as an aggregate of labor, energy, taxes (state and local), and office rent costs.
- b. The September 2012 Moody's Analytics report of the same title also reflects the higher cost of doing business in Santa Clara County. That updated report showed that the San Jose metropolitan area had the highest unit labor cost and was ranked the seventh highest in overall cost of doing business. The report also showed that the San Jose metropolitan area was ranked the second most expensive in the state of California—behind El Centro and ahead of San Francisco.
- c. The June 2013 U.S. Department of Commerce's Bureau of Economic Analysis Regional Data Report (2009–2011), also reflects the higher cost of doing business in Santa Clara

Directing the Establishment of Procedures for Local Business Enterprise Preference in Procurement of Goods and Non-Professional Services

County. That report shows that the San Jose-Sunnyvale-Santa Clara metropolitan area ranked fourth in the nation for per capita personal income.

- d. The annual Kosmont-Rose Institute Cost of Doing Business Survey Report (2010), released by the Rose Institute of State & Local Government at Claremont McKenna College also reflects the higher cost of doing business in Santa Clara County. That report looked at the cost of doing business in California, along with eight other western states (Arizona, Colorado, Nevada, New Mexico, Oregon, Texas, Utah, and Washington). The rankings for each city ranged from "Very Low Cost" to "Very High Cost." The survey found that California dominated the list of the most expensive cities (in the very high cost category), with a total of eleven. Three of these eleven (San Francisco, Berkeley, and Oakland) are in the Bay Area. San Jose was listed in the "High Cost" category.
- e. The 2012 edition of KPMG's Competitive Alternatives Guide to International Business Location Costs also reflects the higher cost of doing business in Santa Clara County. That report outlined the findings and analysis of the relative costs of doing business in fourteen countries in the Americas, Europe, and Asia Pacific. The report found that San Francisco (included as a metropolitan area with a population over two million) was the third most expensive metropolitan area to do business in North America. While San Jose was not evaluated separately as a separate metropolitan area, in light of its close ranking with the San Francisco area in the other reports reviewed, the results are indicative of ranking for the San Jose area.
- f. The studies by Moody's, the Bureau of Economic Analysis, the Kosmont-Rose Institute, and KPMG are supported by anecdotal evidence from local businesses in Santa Clara County as set forth in an August 13, 2013, staff report from Ravi Subramanian, Deputy Administrative Officer, Procurement and Operational Services Division, and presented to this Board with this Ordinance.
- g. The public interest would be best served by encouraging businesses to remain in Santa Clara County through the provision of a minimal good faith preference to local businesses in awarding of Santa Clara Valley Water District contracts. Beyond the ameliorative effect on businesses, this ordinance also supports the public interest of residents in Santa Clara County who are likely to be employed by local vendors.
- h. The local preference mechanism does not bar any potential contractor from competing for Santa Clara Valley Water District contracts. It therefore encourages competition while at the same time addressing the competitive disadvantages faced by businesses located in Santa Clara County.

NOW THEREFORE, the Board of Directors of the Santa Clara Valley Water District does ordain as follows:

Section 1. To help ameliorate the disadvantage faced by Local Business Enterprises due to the higher cost of doing business within the County of Santa Clara, the Santa Clara Valley Water District shall give Local Business Enterprises the preferences set forth below in a formal solicitation of goods or services.

Directing the Establishment of Procedures for Local Business Enterprise Preference in Procurement of Goods and Non-Professional Services

Section 2. This Local Business Enterprise preference shall not apply to the following:

- a. Public works contracts;
- b. Contracts for Professional Services as defined herein;
- c. Where application of the preference would be prohibited by local, state or federal law or regulation;
- d. Contracts subject to state or federal grant requirements that prohibit the utilization of local business preferences; and
- e. Contracts exempt from solicitation requirements under Santa Clara Valley Water District rules and regulations.

Section 3. The following definitions shall apply for this ordinance:

- a. "Local Business Enterprise" means a business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business presence in the County of Santa Clara as evidenced by:
 1. Having a current business tax certificate from a city within the County of Santa Clara (not required for local businesses in unincorporated areas of the County of Santa Clara); and
 2. Having either of the following types of offices operating legally within the County of Santa Clara:
 - (a) A principal business office; or
 - (b) A regional, branch or satellite office with at least one full-time employee located in the County of Santa Clara.
 3. Post Office box numbers, residential addresses, a local sales office without any support or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a Local Business Enterprise.
- b. "Professional Services" shall mean private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms as set forth in California Government Code Section 4526.

Section 4. In the procurement of goods or services using a solicitation method in which price is the determining factor for award of the contract five percent shall be subtracted from a bid submitted by a responsive and responsible Local Business Enterprise in determining the lowest responsive responsible bidder. If application of the five percent results in a Local Business Enterprise bid being lower than the non-Local Business Enterprise bid, the contract award shall be made to the Local Business Enterprise at its original bid price. If after applying the five percent discount, two or more competing vendors have bid the same price, the Local Business Enterprise shall be given preference.

Directing the Establishment of Procedures for Local Business Enterprise Preference in Procurement of Goods and Non-Professional Services

Section 5. In the procurement of goods or services in which best value is the determining basis for award of the contract—for example, a Request for Proposals—five percent of the total points awardable will be added to the Local Business Enterprise’s score.

Section 6. When a contract for goods or services, as defined in this ordinance, is presented to the Board of Directors for approval, the accompanying transmittal document shall include a statement as to whether the proposed vendor is a Local Business Enterprise, and whether the application of the local preference ordinance was a decisive factor in the award of the proposed contract. The local preference ordinance may only be applied based on the entity submitting a bid or proposal and not a subcontractor or business partner.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on December 10, 2013.

AYES: Directors R. Santos, T. Estremera, B. Keegan, D. Kennedy, B. Schmidt, L. Lezotte, N. Hsueh

NOES: Directors None

ABSENT: Directors None

ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By: 
NAI HSUEH
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC


Clerk/Board of Directors



Meeting Date: 08/13/13
Agenda Item: **7.1**
Unclassified Manager: R. Subramanian
Extension: 3021
Director(s): All

CONFORMED COPY
BOARD AGENDA MEMO

SUBJECT: Local Business Enterprises Analysis

RECOMMENDATION:

- A. Accept staff's analysis regarding Local Business Enterprises (LBEs); and
- B. Provide direction regarding development of a new Local Business Enterprises preference policy.

SUMMARY:

The Board has indicated strong support for opportunities to help the local economy. The Board has directed staff to evaluate options to support local businesses and thereby the local economy. This memo presents the analysis pertaining to Local Business Enterprises (LBEs). Specifically, it analyzed studies on the cost of doing business prepared by various organizations, and performed a benchmark study of other government organizations' LBE preference policies. Based on the report in Attachment 1, staff concluded that Santa Clara County businesses are at a competitive disadvantage compared to businesses from outside the Bay Area and that grounds exist for the District to pursue a preference policy for LBEs.

If the Board elects to proceed with implementing a Local Business Preference policy, the Board would need to adopt a resolution at a future meeting.

BACKGROUND

The District relies on business entities to implement projects that help accomplish its overall mission of water supply, flood protection and environmental stewardship in a practical, cost-effective and environmentally sensitive manner for current and future generations. The District depends on private companies when District staff do not have the expertise or are not available due to other projects' priorities/schedule.

Capital Program Services

Over the next five fiscal years, the District has planned expenditures of approximately \$1.1 billion on Capital Projects. These expenditures include construction, consultant services, purchase of equipment/supplies, and other services. Approximately 6,800 to 13,500 jobs are expected to be created or sustained as a result of the construction expenditures over the next five fiscal years.

ACCEPTED

AUG 13 2013

| (in Thousand \$) | FY-14 | FY-15 | FY-16 | FY-17 | FY-18 |
|---------------------------|---------|---------|---------|---------|---------|
| Total CIP Expenditures | 273,654 | 225,288 | 363,743 | 207,696 | 130,611 |
| Construction Expenditures | 184,732 | 226,658 | 77,973 | 152,873 | 30,560 |

Small Business Enterprises (SBE) Program

The District’s Small Business Enterprises Program continues to exceed its goal of 10% each year. Averaged over the past 3 fiscal years, SBEs received:

- 34% of all capital construction services expenditures (excl. Federal DBE/SBE)
- 39% of all consulting services expenditures
- 15% of all products and non-consultant services expenditures

In 2004, the Board adopted Ordinance 04-01 to provide SBEs a preference of 5 percentage points when competing for professional services contracting opportunities. There is no such preference program for local businesses enterprises (LBEs).

LOCAL BUSINESS ENTERPRISE and LBE PREFERENCE

Definition of Local Business Enterprise

“Local business” means a lawful business with a physical address and meaningful “production capability” located with the boundary of the County of Santa Clara. “Production capability” means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm’s or bidder’s ability to perform a proposed contract with the District. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status of a “Local Business.”

Applying Local Business Enterprise Preference in Government Procurements

The purpose of the local preference policy is to equalize the competitive disadvantage local businesses because they are located in a jurisdiction which has a higher cost of doing business or other disadvantages. Such a policy also serves the public interest by encouraging businesses to locate and remain in the jurisdiction through the provision of a minimal good faith preference in the awarding of contracts.

In the procurement of goods or services in which price is the determining basis for award of the contract, a “preference” could be given to Local Businesses by subtracting a percentage from the bid of the lowest responsive and responsible bidder. If best value is the determining basis for award of the contract, a “preference” could be given to the Local Business as percentage points to the rating score of the Local Business’ proposal. In both cases, if the Local Business’ bid or proposal results in the lowest price or the highest score respectively, the contract is awarded to the Local Business. However, the application of the LBE preference is subject to California regulations.

Currently, California law prohibits the District from providing local businesses a preference when government organizations purchase:

- (i) public works services valued at \$25,000 or more (“Public Works Services”); or

- (ii) architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services (“Professional Services”) as defined pursuant to Government Code Section 4526.

Please note that there are consultant services that do not fall under the definition of Govt. Code Section 4526, for example, marketing, real estate, socio-economic studies, community relations, insurance, and other services. In addition, the terms and conditions of certain funding agreements (e.g., federal or state grants) may prohibit or limit use of local preference when acquiring goods or services with those funds.

In the procurement process at the District, local businesses (addresses in Santa Clara County) are selected only when there is a tie, i.e., two or more contractors/suppliers were rated equally or had proposed the same lowest bid price. This practice is similar to many other government agencies. Apart from selection of a local business during a tied bid process, the District does not provide any preference to local businesses.

The District may procure goods and services other than Public Works and Professional Services under a policy that provides local businesses with a preference, if the District legitimately finds that local firms are disadvantaged absent that preference. These findings are necessary in order to withstand any legal challenge that the policy violates the equal protection clause of the U.S. Constitution. (U.S. Const., 14th Amend.)

In *Associated General Contractors, Inc. v. City and County of San Francisco*, 813 F. 2nd 922 (9th Cir. 1987),¹ the court determined that the following findings by the City and County of San Francisco were sufficient to withstand this constitutional scrutiny:

- San Francisco found that local businesses seeking to enter into contracts with it were at a competitive disadvantage with businesses from other areas given the higher administrative costs of doing business in San Francisco. Examples of these costs included higher taxes, higher rents, higher wages and benefits for labor, and higher insurance); and
- San Francisco found that it would be in the public interest to encourage businesses to locate and remain in San Francisco through the provision of a minimal good faith preference to local businesses in the awarding of City contracts. (*Id.* at 942-943.)

LOCAL BUSINESS ENTERPRISES PREFERENCE POLICY BENCHMARKS

A number of public sector entities have local business preference programs and the table below lists the jurisdictions and the preference information. The preferences provided to LBEs are either price-based (lowest bid price) or best value-based (qualifications, experience, suitability, and other factors, including price), or both.

| No. | Jurisdiction | Preference (on cost of price-based contracts) | Comments |
|-----|-------------------|---|----------|
| 1 | City of Milpitas | 10% | |
| 2 | City of Sunnyvale | 1% | |

¹ Partially overruled on other grounds by *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991)

| No. | Jurisdiction | Preference (on cost of price-based contracts) | Comments |
|-----|-------------------------------------|---|--|
| 3 | City of San Jose | 2.5% | The City offers a preference of 5% of total points to LBEs when there is a tied rating on best value-based procurements. Please note that best value procurements are consultant services that do not fall under the definition of Govt. Code Section 4526. E.g., marketing, real estate, socio-economic studies, community relations, insurance, etc. |
| 4 | County of Santa Clara | 5% | Same best value preference as the City of San Jose. |
| 5 | County of Alameda | 5% | Only on sealed bid (formal bids) procurements |
| 6 | City and County of San Francisco | 10% | (incl. SF Public Utilities Commission) |
| 7 | Port of Oakland | 10% | or \$1 M whichever is less |
| 8 | East Bay Municipal Utility District | 5% | Same best value preference as the City of San Jose. |
| 9 | City of Los Angeles | 10% | Under \$100,000 |
| 10 | Metropolitan Water District | 5% | |

A keyword search ("local business preference") of approximately 200 California jurisdictions (cities, counties, special districts, etc.) on the Municode (legal publisher of municipal codes on a subscription basis) web pages resulted in approximately 59 jurisdictions with local business preference policy/language in the ordinances/administrative codes of those jurisdictions.

LOCAL BUSINESS ENTERPRISE PREFERENCE POLICY CONSIDERATIONS

Pros

- Good for the local economy, if the jobs and the expenditures are local
- Good for relationship with the local business community and constituents
- Possibly creates new jobs and/or protects existing jobs, if the jobs and the expenditures are local
- Enhances the District's role and image in the community as a local contributor

Cons

- Could be viewed as favoritism by non-local businesses
- Could possibly reduce competition (depending on the product or service and its availability in the local area) and contractors may decline to bid
- Could increase prices for the District
- Creation of new jobs or preservation of existing jobs as a result of District expenditures is an approximation. Therefore, difficult to explain direct benefits.

Other Information

National Institute of Governmental Purchasing

The National Institute of Governmental Purchasing opposes Local Business Preference policies and the NIGPs Basic Purchasing Manual states that, *"Although some people assert that buy-local preferences will protect existing jobs, create new jobs, and strengthen the economy, the sad reality is that the practice of favoring vendors within a defined geographical area only*

encourages inflated prices which are paid by the taxpayers of the jurisdiction who administer them. By causing prices to rise, preference results in a direct subsidy to a few taxpayers at the expense of the general taxpaying public. When an agency has a preference, [ed., then] potential, reliable and sound vendors consider it futile to bid in such a climate. When they do not bid, competition becomes less keen and prices rise."

Staff Report on Local Businesses and Competitive Disadvantage

Staff conducted an analysis of studies and reports on the cost of doing business in the County. The report concludes that local businesses are at a competitive disadvantage with businesses from other jurisdictions.

Letters from Santa Clara County Businesses

Attachment 2 includes letters from local business entities that have expressed support for a Local Business Preference Policy. The letters reflect staff's conclusion in Attachment 1 that businesses in the County are at a competitive disadvantage compared to other jurisdictions.

NEXT STEPS: If the Board wishes to pursue a Local Business Preference Policy, staff will prepare the proposed policy and bring it to the Board for adoption as a Resolution at a future meeting.

FINANCIAL IMPACT: This item is only for informational purposes and has no financial impact. A financial impact would result only if the Board adopted a Local Business Preference policy.

The District's FY 14 Budget is \$472 million. The anticipated expenditures are as follows:

| | |
|--------------------------|----------------------|
| Capital Program Services | \$241 million |
| Salaries and benefits | \$126 million |
| Debt Service | \$ 31 million |
| Products and services | <u>\$ 74 million</u> |
| | \$472 million |

Over the past 3 years, the District has spent approximately \$15 million annually on Professional Services (as defined under Government Code Section 4526) that would be excluded from the Local Business Preference policy, if adopted. If FY14's expenditure for Professional Services was anticipated to be \$15 million and this amount is deducted from the \$74 million budgeted for Products and Services, the expenses for Products and Services that could be impacted by a Local Business Preference policy would be approximately \$59 million.

Depending on the preference percentage applied, the maximum additional costs could range from \$590,000 (1% preference) to \$5.9 million (10% preference) depending on the preference ratio used. The costs will need to be included within each contract or project budget. Please note that the assumption here is that all the solicitations for products and services (i.e., the entire \$59 million, could be satisfied by local businesses).

CEQA: The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

1. Staff Report on Local Businesses and Competitive Disadvantage
2. Letters from local business entities supporting a preference policy.

STAFF REPORT ON LOCAL BUSINESSES AND COMPETITIVE DISADVANTAGE

INTRODUCTION

The purpose of this report is to determine whether "Local Businesses" in the County of Santa Clara are at a disadvantage as compared to businesses in other jurisdictions.

METHODOLOGY

Staff researched and analyzed various documents and reports. The analysis included studies and reports from various organizations like Moody's Analytics, Bureau of Economic Analysis, Kosmont-Rose Institute of Claremont McKenna College, Bay Area Council, and KPMG. For the sake of this study, the San Jose Metropolitan Area and Santa Clara County are considered the same.

FINDINGS AND ANALYSIS

"Local business" means a lawful business with a physical address and meaningful "production capability" located within the boundary of the County of Santa Clara. "Production capability" means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform a proposed contract with the District. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status of a "Local Business."

The findings and analysis are presented below.

1. Moody's Analytics Study

Moody's Analytics conducts a study annually of the cost of doing business in the U.S. titled, North American Business Cost Review. The report compares a state or metropolitan area's average business cost with that of the U.S. The report computes the cost of doing business as an aggregate of labor, energy, taxes (state and local), and office rent costs.

According to its July 2008 report, California ranked as the 2nd most expensive state, behind Hawaii, to conduct business. San Jose metropolitan area (comprising of Santa Clara and San Benito counties) had the highest unit labor cost and was ranked the 3rd highest in overall cost of doing business, behind New York and Boston. The San Jose metropolitan area ranked highest in the state.

According to the September 2012 report (latest available report), even though, California ranked as the 11th most expensive state, the San Jose metropolitan area had the highest unit labor cost and was ranked the 7th highest in overall cost of doing business. The San Jose metropolitan area ranked 2nd most expensive in the State behind El Centro and ahead of San Francisco.

The 2008 and 2012 reports demonstrate that San Jose's ranking, as one of the most expensive metropolitan areas in the State, is not an anomaly.

2. Bureau of Economic Analysis (BEA) Data

The U.S. Department of Commerce's Bureau of Economic Analysis releases Regional Economic Accounts for States and Metropolitan Areas on various indicators like the GDP (Gross Domestic Product), Personal Income, and other information.

According to the BEA's June 2013 Regional Data (2009-2011), the San Jose-Sunnyvale-Santa Clara metropolitan area ranked 4th in the nation for Per Capita personal income. San Francisco-Oakland-Fremont was 3rd.

3. Kosmont-Rose Institute Survey

The annual Kosmont-Rose Institute Cost of Doing Business Survey Report (Survey) released by the Rose Institute of State & Local Government at Claremont McKenna College gathers data on business fees and a variety of tax rates from 305 selected cities. The Survey looks at the cost of doing business in California, along with eight other western states that many companies view as possible alternatives to California (Arizona, Colorado, Nevada, New Mexico, Oregon, Texas, Utah, and Washington). Rankings for each city are divided into one of five "Cost Ratings" groups: Very Low Cost, Low Cost, Average Cost, High Cost, and Very High Cost.

The Survey found that California dominated the list of the most expensive cities (Very High Cost category), with a total of eleven cities – eight in Southern California and three in the San Francisco Bay Area (San Francisco, Berkeley, and Oakland). San Jose was in the High Cost category.

4. Bay Area Council's Economic Institute Report

The Bay Area Economic Council's October 2012 Report on the Regional Economic Assessment of the Bay Area was prepared at the request of the Joint Policy Committee of regional government agencies and leaders in the Bay Area's business community.

The Report noted that, *"Taken as a whole, the Bay Area's economy is productive, highly innovative, and a competitive presence in the national and global economies. It also faces major challenges. Its strengths come from the quality and diversity of its labor force, its high quality of life, the large-scale presence of venture capital and other investors, and the abundance of both private and public research that takes place here. The challenges come from the high costs of living and doing business in the region, ..."* The Report attributed those high costs to the high housing costs, slower rate of new business formation as compared to other regions in the State, regulatory costs, education and skills for workers in middle-skill and middle-wage jobs, and other factors.

5. KPMG's Study

The 2012 Edition of KPMG's Competitive Alternatives Guide to International Business Location Costs, outlined the findings and analysis of the relative costs of doing business in 14 countries in the Americas, Europe, and Asia Pacific. The analysis was based on cost information collected primarily between July 2011 and January 2012. KPMG's report, found that San Francisco (included as a metropolitan area with a population over 2 million) was the 3rd most expensive metropolitan area to do business in North America after Honolulu and Anchorage. Internationally, San Francisco ranked 6th with Tokyo being the most expensive city in the world. San Jose was not listed as a separate metropolitan area, however, one could assume that San

Francisco and San Jose's cost indices are similar for the purposes of this analysis. Moody's Analytics study, BEA data, the Kosmont-Rose Institute report, and the Bay Area Economic Council's report, confirm that both San Francisco and San Jose rankings are not far apart and are often interchangeable as far as costs of living and doing business are concerned. Therefore, San Francisco's ranking in KPMG's study can be extrapolated to San Jose.

CONCLUSION

Based on the information above, staff concludes that Santa Clara County is a high cost area and "Local Businesses" are at a competitive disadvantage given the higher costs of doing business in the County.



Edward R. Bacon Company
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Phone: 408-288-9500/408-846-1600
Fax: 408-846-1662
License #: 906345

To: Dannette Lewis
Fr: Harry N. How III
Re: Local Preference Support Letter
Dated: 6/30/2013

dlewis@valleywater.org (email)
(408) 630-2224 (office)
(408) 355-4253 (mobile)
(408) 979-5628 (fax)

The purpose of this document is to express my support for the adoption by the District of a local preference policy for businesses within Santa Clara County. Our Company has been in the construction equipment distribution business for over 103 years. We provide our customers in Santa Clara Valley quality construction products and services, including parts and accessories, repair and construction related projects. We employ 9 employees out of our San Martin facility and are the source of support for a network of dozens of local small business within our area in the normal chain of commerce. We have supported hundreds of families and hundreds of business throughout the Bay Area during our 103 years in business.

The costs of doing business in Santa Clara County are simply higher than in other areas of California. We know this first hand because we also operate a facility in Sacramento and across the board our operating costs are higher in our Bay Area Santa Clara Branch versus our Sacramento operation. Our Santa Clara County insurance rates for vehicle insurance, liability insurance, and even our employee health benefit rates are higher for our San Martin facility versus our Sacramento facility. Across the board, our Bay Area Branch is straddled with higher cost of doing business: utility expenses, rental rates, local taxes, etc. are higher out of our Santa Clara County facility. Even a gallon of gasoline is generally 5 to 10 percent higher here in the Santa Clara Bay Area than in our Sacramento facility.

Its simply good business

State and local public agencies have recognized the disadvantages encumbered by local vendors due to these cost barriers. Recently, some cities and county agencies have implemented and have incorporated into their contracts stipulations that business must have local staff to support their goods and services. These agencies recognize that granting construction projects and purchase contracts to out of the area vendors or contractors simply adds no value to the local community and actually costs these agencies money and does not serve the agencies long terms goals and commitments.

The District mission vision, and value statement expresses the District's commitment to the local community:

Mission: The mission of the district is to provide Silicon Valley safe, clean water for a healthy life, environment, and "*economy.*"

Vision: We are a *fiscally responsible* water resources agency valued by the community.

Values: We are committed to *creating an inclusive work environment*, which reflects and *supports the diversity of our community* and enriches our perspectives.

Our Company shares the District's mission and is "*committed to providing excellent service to all its customers.*" We believe that the Districts support of a local preference policy will help our Company overcome some of the above-mentioned economic barriers by supporting our Company's business and also be another step towards the Districts commitment to meet their goals.

Truly,

Harry N. How III

Saratoga Tree Service
13745 Skyline Blvd.
Los Gatos, CA 95033

7-2-2013

S.C. Valley Water District
P.O. Box 20670
San Jose, Ca 95160-0670

Attn: Dannette Lewis.

My name is Blair Glenn and I am the owner of Saratoga Tree Service. I have been in business for 40 years now (established in 1973). My mailing address is 13745 Skyline Blvd. Los Gatos, CA 95033.

My business is a local small business doing all my work in the Santa Clara County. My business suffers from considerable disadvantages when compared to other businesses in other counties. My labor costs as well as the costs associated with doing business in this county are much higher than most other counties.

Our employees also suffer from higher costs associated with living in the Santa Clara County. It is much harder to retain quality employees unless I can afford to pay them enough to sustain their needs. Rent is much higher here and also the basic costs of living (food, fuel, etc.).

I run my business according to all A.N.S.I. standards for proper tree care as well as follow all O.S.H.A. guidelines for safety practices in the work place. I understand and comply with the B.M.P. standards set forth while doing work for the Santa Clara Valley Water District.

My crew and my family take pride in doing quality work and maintaining a good and lasting relationship with my clients.

There is yet another disadvantage in my industry that is very difficult to deal with. So many of my competitors in this field do not follow basic rules for business and don't pay the required liabilities for insurance or licensing. Because of these fraudulent activities in business, many of my competitors charge considerably less than I can afford to charge. Many people are suffering financial hardships and many others just don't care and will take the lowest bid regardless of insurance or legalities. When working for larger firms and associations, this is not an issue but I am often out of the running in bids for homeowners or small businesses.

Respectfully submitted.

Blair Glenn

July 3, 2013

RE: LOCAL VENDOR'S STATEMENT IN SUPPORT OF LOCAL PREFERENCE POLICY

To Whom it may Concern:

My name is Doug Green and I am the COO/CFO of CCT Technologies, Inc. I have been with CCT Technologies, Inc. since it's founding in 1991. We do business as ComputerLand of Silicon Valley and are located at 482 West San Carlos Street, San Jose CA 95110. We are a California corporation with 50 plus employees. As a reseller of IT equipment and services we have worked with Santa Clara Valley Water District in different capacities over the past 20 years.

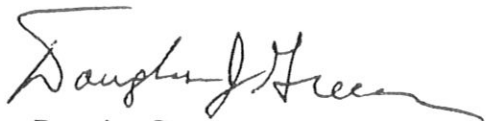
Being in the high tech industry we need to compete with many other nationwide and statewide resellers who do not have to face the much higher labor costs that we see in Santa Clara County. As a service related company, labor is by far the largest business expense we deal with. We compete with very large High Tech companies in the area for quality engineers, sales and operational staff. The high cost of housing for our employees also contributes to our needing to provide high salaries. Most of our 60 employees are residents in this high cost area.

We also have to deal with high cost of office and warehouse space. To serve our local customers we need to be here to meet with them in person, address their concerns and warehouse and deploy the IT equipment we sell.

We are a long time corporate citizen of Santa Clara County and support the economy and give back to the area by the employees we have and the taxes we pay. We are often at a severe disadvantage because of our higher costs compared to our competition located elsewhere.

A local preference policy is widely used by many public sector entities as a way to support a healthy local economic ecosystem and provide a level playing field for doing business as it would help alleviate some of the disadvantage we face operating as a local business.

Respectfully,



Douglas Green,
COO/CFO
CCT Technologies, Inc.
DBA: ComputerLand Silicon Valley



LOCAL VENDOR'S STATEMENT IN SUPPORT OF LOCAL PREFERENCE POLICY

- 1.) My name is Rich Voss and I am the President of Rich Voss Trucking, Inc (RVT) located at 12100 Stevens Canyon Road, Cupertino, CA. RVT has been providing transportation of materials for more than 30 years and we employ more than 20 full time employees.
- 2.) Our business in Santa Clara County suffers from considerable disadvantage when compared with businesses outside of the local area. For instance, labor costs (salaries plus employee benefits) are considerably higher in Santa Clara County than in many other counties and are the largest component of our business costs. In addition to operating our fleet the exceedingly high labor cost required for maintaining our vehicles creates a substantial disadvantage to our company.
- 3.) Our company experiences a disadvantage due to higher fuel costs as compared to those outside Santa Clara County. Support of our business will reduce overall emissions by eliminating vehicles traveling long distances from outside of the local area.
- 4.) Commercial real estate cost per square foot in Santa Clara County is extraordinarily high which makes storage costs substantially higher than that of the competition outside of the Santa Clara County.
- 5.) Competition in our business is very fierce and we experience the loss of contracts to businesses outside Santa Clara County. We have provided a very high level of customer service in order to compete. When we bring in the talent necessary to provide our customers with this service the employees encounter substantially higher housing costs than are available in other areas around the country and areas outside of Santa Clara County. This premium on housing cost translates directly to the salaries we must provide these individuals which in turns makes it more difficult to compete with companies which are not local to Santa Clara County.



6.) RVT is proud to be a local tax payer and supporter of the local businesses, charities and the community in general for over 30 years despite the particularly high cost of doing business. A Local Preference Policy would greatly help alleviate the disadvantages created by this locale.

July 3, 2013

A handwritten signature in blue ink that reads 'Richard A. Voss'. The signature is written in a cursive style and is positioned above a horizontal line.

Richard A. Voss President - RVT

**Santa Clara Valley Water District
LOCAL BUSINESS ENTERPRISE DECLARATION FORM**

Santa Clara Valley Water District gives local businesses a preference in formal solicitations of goods and services as set forth in the Board Ordinance No. 13 - xx. A bidder or proposer has the option of qualifying for the preference by self-declaring its qualification as a "local business." By signing below, the bidder or proposer is certifying its qualification as a "local business" for purposes of application of the District's policy and is deemed to be applying for the local preference.

All information submitted is subject to investigation, as well as disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid or proposal not being considered for application of Santa Clara County's local preference policy. False or dishonest responses will result in rejection of the bid or proposal and curtail the firm or individual's ability to conduct business with the County in the future. It may also result in legal action.

Section 2. of the Local Business Enterprise ordinance defines "Local Business Enterprise" as:

- (a) A business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business presence in the County of Santa Clara as evidenced by:
 - a. Having a current business tax certificate from a city within the County of Santa Clara (not applicable for local businesses in the unincorporated areas of the County of Santa Clara); and
 - b. Having either of the following types of offices operating legally within the County of Santa Clara:
 - i. A principal business office; or
 - ii. A regional, branch or satellite office with at least one full-time employee located in the County of Santa Clara.
 - c. Post Office box numbers, residential addresses, a local sales office without any support or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a Local Business Enterprise.

Provide the complete physical address of your business with meaningful "production capability" located within the county of the County of Santa Clara. The term "production capability" means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm's/bidder's/proposer's ability to perform the proposed contract. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status as a "Local Business." If you have more than one physical address in Santa Clara County, please provide an attachment with all of the addresses in the form specified below.

| |
|------------------------------|
| Business Name: _____ |
| Street: _____ |
| City/State: _____ Zip: _____ |

**Santa Clara Valley Water District
LOCAL BUSINESS ENTERPRISE DECLARATION FORM**

Please Indicate Business Organization (Check One)

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> Individual Proprietorship | <input type="checkbox"/> Corporation |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Other |

By filling this form, bidder/proposer declares its qualification as a local business as defined in the Santa Clara Valley Water District Ordinance No. 13 - xx.

The undersigned declares that he or she is an official/agent of responding firm or individual and is empowered to represent, bind, and execute contracts on behalf of the firm or individual. The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in the Exhibit and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response may be grounds for denial or revocation of the accompanying bid or proposal and may result in being barred from doing business with the Santa Clara Valley Water District as well as additional legal consequences.

Signature

Title

Name

Date

Business License Number (if applicable)