

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

103



SUBMITTAL DATE:
March 26, 2013

FROM: Purchasing and Fleet Services Department

SUBJECT: UPDATE TO THE LOCAL PREFERENCE POLICY

RECOMMENDED MOTION: That the Board of Supervisors:

Approve the attached amendment to the Board of Supervisors Policy B-17 and to the County Purchasing Procedure #19 Related to Local Preference in the Bidding Process.

Departmental Concurrence

BACKGROUND: March 12, 1996, the Board of Supervisors adopted a local business utilization program which established a five percent (5%) price preference for businesses which met the criteria to be considered a local business. This policy was developed to promote growth, jobs, and maintain local business within Riverside County as well as return taxpayer monies to the area in which they are generated.

(Continued on Page 2)

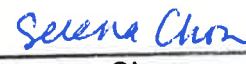
Attachments: BOS Policy B-17
Purch. Procedure #19


ROBERT J. HOWDYSHELL, Director
Purchasing and Fleet Services Dept.

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$	Budget Adjustment:	No
	Annual Net County Cost:	\$	For Fiscal Year:	2012/13

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: 
Serena Chow

County Executive Office Signature

- Consent
- Policy
- Consent
- Policy

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: #3.13 March 12, 1996 #3.3 April 10, 2007 #3.19 Nov. 27, 2012	District: ALL	Agenda Number:
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ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3-24

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BACKGROUND (Continued)

As currently written, this policy allows for the County to purchase from the lowest local bidder when they are within 5% of the overall lowest bidder in response to a bid. When applied, the Local Preference Policy results in the County paying a premium cost to award to the local vendor, which can be a substantial sum in these economically challenged times.

At the November 27, 2012 Board of Supervisors meeting, the Board directed the County Purchasing Agent to explore the possibility of modifying the existing policy to offer the lowest responsible/responsive local bidder the opportunity to match the overall lowest bidder's price. Research shows there are other counties in California, including Contra Costa, Fresno, Kern, Solano, and Sonoma that have local preference policies which allow the lowest local vendor to match the overall lowest offer. This allows the agency to receive the benefit of awarding to a local business, while receiving the lowest overall price. Therefore, it is recommended that the Board of Supervisors amend the County policy to allow for the lowest responsive/responsible local vendor who is within 5% of the overall lowest bidder the opportunity to match the overall lowest bid where possible.

The Public Contract Code is specific about the bidding of local agency contracts for public works and requires the County to award to the lowest responsible/responsive bidder regardless of the vendor's location. Additionally, certain grant and federal funding sources do not allow for the application of preferences. Therefore, public works and programs with funding source restrictions would be exempt from this policy.

REVIEW/APPROVAL

County Counsel has reviewed the policy and procedure.

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Policy:

It is the policy and practice of the County of Riverside to encourage the utilization and participation of Disabled Veterans Business Enterprises (DVBE) in county procurements and to align preference with the state requirements. All county departments include in bid documents a statement that a three percent (3%) price preference for disabled veteran owned businesses will be utilized in bid evaluations. The Board adopted this practice to encourage greater economic opportunity for Disabled Veteran Business Enterprises for funds spent under county and Board-governed Special Districts' contracts and purchase orders.

The county also has a local vendor preference that directs all departments and agencies to include in bid documents a statement that the county may, where applicable, apply local preference in determining the award of a contract or purchase. This policy will provide the lowest local responsive and responsible bidder the opportunity to match the price and terms of the overall lowest responsive and responsible non-local bidder provided the local bidder's bid was within five percent (5%) of the lowest overall bidder. Should the local bidder be willing to match the price of the lowest overall bidder, the award will be made to the local bidder. In the case where the local vendor will not match the price and terms of the lowest overall bidder, and there are other local bidders within 5% of the lowest overall bidder, the same offer to match will be provided to the next lowest local bidder. If no local bidder within 5% of the lowest overall bidder matches the price, the award shall be made to the lowest overall bidder. The definitions and qualifications for a local bidder and detailed procedures are included in the Purchasing and Fleet Services Department Procedure #19. This local preference policy shall not be utilized where restricted by law or funding source requirements.

The Board encourages equal opportunities for Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), and small businesses to compete for contracts of all types entered into by entities governed directly or ex-officio by the Board of Supervisors, and to promote the increased use by same in joint ventures and as sub-contractors.

POLICY AMPLIFICATION

I. SCOPE

This policy shall apply to agreements, contracts, acquisition leases, and purchase orders for materials, services, professional services, professional consultants or trainers from firms or individuals engaged in "for profit" business activities paid for in whole or in part out of county funds or funds administered by the county. To the extent of any conflict between this policy and any requirements imposed by the federal and state government relating to participation in a contract by a DVBE as a

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condition of receipt of federal or state funds, the federal or state requirements shall prevail. Local business preference shall also apply as listed in this policy.

II. DEFINITION

A. Disabled Veteran Business Enterprise (DVBE) as used in this policy means a business concern certified by the state Office of Small and Minority Business (OSMB) as meeting the following legal requirements:

1. It is a sole proprietorship, at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture's management, control and earnings are held by one or more disabled veterans.
2. The management and control of the daily business operations is by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
3. A sole proprietorship, corporation, or partnership, with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm or other foreign-based business.

B. Local Business as used in this policy means business firms meeting the following requirements:

1. Fixed offices located within the geographical boundaries of Riverside County, authorized to perform business within the county, and in doing so, credit all sales tax from sales generated within Riverside County to the county, and provides, produce/s, or performs contracted work using employees, of whom the majority are physically located in said local offices.
2. A Riverside County business street address, shall be open and staffed during normal business hours and,
3. The business must establish proof that it has been located and doing business in Riverside County for at least six (6) months preceding its certification to the county as a local business.

C. Minority Business Enterprise (MBE) as used in this policy means a business concern, consultant, or contractor that meets all of the following criteria:

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1. It is a business enterprise that is at least 51 percent owned by a minority individual or group(s), in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups;
2. The management and control of daily business operations is by one or more minority individuals. Legal aliens with permanent residence status are included in this definition;
3. A business concern with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. Black American, Hispanic American, Native American, and Asian Pacific Americans are presumed minorities.

Other groups are considered minorities if found to be disadvantaged by the Small Business Administration, pursuant to Section 8(d) of the Small Business Act as Amended (15 U.S.C 637 (d)), or the Secretary of Commerce pursuant to Section 5 Executive Order 11625.

- D. Women Business Enterprise (WBE) as used in this policy means a business concern, consultant or contractor that meets all of the following criteria:
1. It is a business enterprise that is at least 51 percent owned by a woman or women, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women;
 2. The management and control of daily business operations is by one or more women;
 3. A business concern with its home office located in the United States, which is not a branch or subsidiary of a foreign corp., foreign firm, or other foreign-based business.

III. FUNCTION

- A. The Purchasing Department, through the county Contract Compliance Office, shall develop, manage, and implement the W/M/DVBE program on a day-to-day basis. The Contract Compliance Officer shall be responsible to:
1. Provide assistance and guidance to all departments, offices, agencies, and Board-governed special districts in matters related to the implementation, interpretation, and enforcement of this policy.

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2. Develop a systematic method for identifying and maintaining an inventory of certified minority and women and disabled veterans business enterprises (MBE, WEB, and DVBE), their capabilities, services, supplies, and/or products.
 3. Participate in business opportunity-related meetings, conferences, seminars, etc., with minority, women, disabled veteran, owned and small business organizations.
- B. Board Governed Special Districts with delegated contracting authority shall provide the County Contract Compliance Office with contracting information, as requested, to insure compliance with this policy.

IV. PROCEDURES MANUAL

An operating procedures manual was developed for implementation of the County Purchasing Ordinance.

V. RACE AND GENDER NEUTRALITY

Under no circumstances shall this policy be construed as requiring or permitting the county, or any office or agency to which this policy may apply, to award any agreement, contract, acquisition lease, lease, or purchase for supplies, equipment, materials, services, professional services, public works, professional consultants, or trainers to any person, company, firm, or other business organization or entity whatsoever on any basis other than the best and most responsive bidder, or the best qualified bidder, as set forth in the pertinent bid or proposal documents, without regard to race, religious creed, color, national origin, ancestry, physical disabilities, medical condition, marital status, veteran status, pregnancy, age, or sex.

Reference:

Minute Order 3.16 of 03/08/94
Minute Order 3.32 of 06/01/99
Minute Order 3.3 of 04/10/07
Minute Order X-X of 04/09/13

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~~The county also has a Local Preference Policy that directs all departments and agencies to include in bid documents a statement that a five percent (5%) price preference for local businesses may be utilized in bid evaluations.~~

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POLICY AMPLIFICATION

I. SCOPE

This policy shall apply to agreements, contracts, acquisition leases, and purchase orders for materials, services, professional services, professional consultants or trainers from firms or individuals engaged in "for profit" business activities paid for in

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whole or in part out of county funds or funds administered by the county. To the extent of any conflict between this policy and any requirements imposed by the federal and state government relating to participation in a contract by a DVBE as a condition of receipt of federal or state funds, the federal or state requirements shall prevail. Local business preference shall also apply as listed in this policy.

II. DEFINITION

A. Disabled Veteran Business Enterprise (DVBE) as used in this policy means a business concern certified by the state Office of Small and Minority Business (OSMB) as meeting the following legal requirements:

1. It is a sole proprietorship, at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture's management, control and earnings are held by one or more disabled veterans.

2. The management and control of the daily business operations is by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.

3. A sole proprietorship, corporation, or partnership, with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm or other foreign-based business.

B. Local Business as used in this policy means business firms meeting the following requirements:

1. Fixed offices located within the geographical boundaries of Riverside County, authorized to perform business within the county, and in doing so, credit all sales tax from sales generated within Riverside County to the county, and provides, produce/s, or performs contracted work using employees, of whom the majority are physically located in said local offices.

2. A Riverside County business street address, shall be open and staffed during normal business hours and,

3. The business must establish proof that it has been located and doing business in Riverside County for at least six (6) months preceding its certification to the county as a local business.

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C. Minority Business Enterprise (MBE) as used in this policy means a business concern, consultant, or contractor that meets all of the following criteria:

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2. The management and control of daily business operations is by one or more minority individuals. Legal aliens with permanent residence status are included in this definition;
3. A business concern with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. Black American, Hispanic American, Native American, and Asian Pacific Americans are presumed minorities.

Other groups are considered minorities if found to be disadvantaged by the Small Business Administration, pursuant to Section 8(d) of the Small Business Act as Amended (15 U.S.C 637 (d)), or the Secretary of Commerce pursuant to Section 5 Executive Order 11625.

D. Women Business Enterprise (WBE) as used in this policy means a business concern, consultant or contractor that meets all of the following criteria:

1. It is a business enterprise that is at least 51 percent owned by a woman or women, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women;
2. The management and control of daily business operations is by one or more women;
3. A business concern with its home office located in the United States, which is not a branch or subsidiary of a foreign corp., foreign firm, or other foreign-based business.

III. FUNCTION

A. The Purchasing Department, through the county Contract Compliance Office, shall develop, manage, and implement the W/M/DVBE program on a day-to-day basis. The Contract Compliance Officer shall be responsible to:

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1. Provide assistance and guidance to all departments, offices, agencies, and Board-governed special districts in matters related to the implementation, interpretation, and enforcement of this policy.
 2. Develop a systematic method for identifying and maintaining an inventory of certified minority and women and disabled veterans business enterprises (MBE, WEB, and DVBE), their capabilities, services, supplies, and/or products.
 3. Participate in business opportunity-related meetings, conferences, seminars, etc., with minority, women, disabled veteran, owned and small business organizations.
- B. Board Governed Special Districts with delegated contracting authority shall provide the County Contract Compliance Office with contracting information, as requested, to insure compliance with this policy.

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An operating procedures manual was developed for implementation of the County Purchasing Ordinance.

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Under no circumstances shall this policy be construed as requiring or permitting the county, or any office or agency to which this policy may apply, to award any agreement, contract, acquisition lease, lease, or purchase for supplies, equipment, materials, services, professional services, public works, professional consultants, or trainers to any person, company, firm, or other business organization or entity ~~whatever~~whatsoever on any basis other than the best and most responsive bidder, or the best qualified bidder, as set forth in the pertinent bid or proposal documents, without regard to race, religious creed, color, national origin, ancestry, physical disabilities, medical condition, marital status, veteran status, pregnancy, age, or sex.

Reference:

Minute Order 3.16 of 03/08/94
Minute Order 3.32 of 06/01/99
Minute Order 3.3 of 04/10/07

**COUNTY OF RIVERSIDE
PURCHASING DIVISION
PROCEDURE #019**

Issue Date: 05/21/2004

Subject: Local Business Preference Program

Latest Revision Date: 1-29-2013

Branch: Purchasing

Approval: _____

Objective(s): To give guidance in implementation of the Local Business Preference Program and ensure uniform application in evaluation of bids.

- I. **General** - On October 24, 1995, the Board of Supervisors directed the implementation of a local bid preference mechanism through the establishment of a Local Business Utilization Pilot Program. Subsequent to a successful test program, On March 12, 1996, the Board adopted this as a permanent policy. This program, directed all County departments and agencies, to include in the bid documents a statement that a five percent (5%) price preference for local businesses may be utilized in bid evaluations.

On November 27, 2012, the Board of Supervisors directed the modification of the Local Business Preference Program to allow the lowest responsive local vendor submitting a bid within five percent (5%) of the lowest responsive bid (if received from a non-local vendor) to have the option of submitting a new bid. Such new bid must be in an amount less than or equal to the lowest responsive bid in order to be awarded to the local vendor.

It is the intent of this policy to:

- 1.) Promote growth and maintain local businesses within Riverside County.
- 2.) Promote jobs within Riverside County.
- 3.) Return taxpayer monies to the area in which they are generated.
- 4.) Promote local economy by bringing tax dollars into Riverside County.
- 5.) Offset economic disadvantages faced by local businesses not shared by non-local businesses.

- II. **Definition of Local Business** - A local business shall mean business firms with fixed offices located within the geographical boundaries of Riverside County, authorized to perform business within the County, and in doing so, credit all sales tax from sales generated within Riverside County to the County, and who provide product or perform contracted work using employees, of whom the majority are physically located in Riverside County.

"Local businesses" shall have a Riverside County business street address. Post office box numbers, residential addresses, or un-staffed sales offices shall not suffice to establish status as a "local business." To qualify as a "local business," the location must be open and staffed during normal business hours and the business must establish proof that it has been located and doing business in Riverside County for at least (6) six months preceding its application to the County as a local business.

Supporting documentation should include:

- 1.) **A current SS2 form** (State, Local & District Sales and Use Tax Return Form). This is what businesses submit to the State Board of Equalization when paying the sales tax to the State of California indicating the amount of the payment to be credited to each jurisdiction (i.e.

Counties, Cities).

- 2.) **A current business license** if required by the political jurisdiction where the business is located.
- 3.) **A Local Business Qualification Affidavit - Form (116-260)** shall be included in the bid documents and must be submitted by vendors claiming local preference status.

III. Exceptions - Local preference shall not apply to the following situations:

Contracts for public works, or where prohibited by law; and

Goods or services provided under a cooperative purchasing agreement or similar "piggyback" contract; and

This preference cannot be combined with any other pricing preference established by the Board of Supervisors; and

Any bid announcement which specifically provides that the general local preference policies set forth in this policy are suspended due to: the unique nature of the goods or services sought; the existence of either a local emergency as determined by the County Board of Supervisors; emergency purchases procured by the County Purchasing Agent and/or authorized delegated representative in accordance with the County's Emergency Purchases Procedures; or where such suspension is, in the opinion of County Counsel, required by law.

IV. Application -

Step I - Develop a Tabulation Matrix from all responsive bids.

Step II - Calculate bids and apply Local Preference adjustment of five percent (5%).

(a) **In the procurement of goods or services in which price is the determining factor for award of the contract:** a five percent (5%) preference shall be added to the total bid submitted by responsive non-local vendors in determining the lowest responsive bidder. If application of the 5% results in a local vendor's bid being at or lower than that of a non-local vendor, the local vendor shall be given the opportunity to match the low bid per Step IV below.

Example 1:	Low Bid not local	\$92	Calculate $\$92 \times 1.05 = \96.60
	Low Local Business	\$96	Allow Local vendor (lower by \$0.60) to match low bid price of \$92.00 (per Step IV below)

Example 2:	Low Bid not local	\$92	Calculate $\$92 \times 1.05 = \96.60
	Low local business	\$97	Award to Non-local (lower by \$0.40) as price differential exceeds 5%

(b) **In the procurement of goods or services in which best value is the determining basis for award of the contract:** the bids should be evaluated according to the evaluation criteria and process as set forth in the RFP. During the evaluation of the pricing criterion, multiply the total bid price of each non-local business by 1.05 to obtain preference-applied prices for comparison. Then score the proposals based on this new pricing.

Step III - Award Contract.

Whenever a responsive local vendor and a responsive non-local vendor are found, upon the opening of bids, to have both submitted the best value or lowest responsive bid, the local vendor shall be awarded the contract. This application shall apply to any contract awarded by the County, including professional services contracts.

Should more than one responsive local vendor's bid match a responsive non-local vendor's lowest bid, or should there be no responsive local vendor's bid matching the lowest responsive bid, but two or more responsive non-local vendors submit bids for equal amounts, (thus creating a tie for lowest bidder) then the County reserves the right to split or make the award of the contract that is most advantageous to the County.

Step IV - Second Chance for Local Vendor(s) with bids within 5% of the lowest responsive non-local bidder.

When competitive bidding is used pursuant to Riverside County's procedures for development and use of RFQ/P's, and the lowest responsive bidder is a **non-local vendor**, the Purchasing Agent shall provide the lowest responsive **local vendor**, (who is within 5% of the lowest responsive bidder) with notice and an opportunity to reduce its bid to match that of the lowest responsive bidder. Notice shall be by telephone and/or electronic mail. The local business shall have three business days from the date of notice to match or decline to match the lowest bid in writing. Should the local business so match, it will be deemed the lowest responsive bidder and receive the award.

Should the lowest responsive local business vendor decline to match, the Purchasing Agent shall provide the next lowest responsive local bidder (who is within five (5%) of the lowest responsive bidder) with the same notice of opportunity to match the bid of the lowest responsive bidder as outlined above. This process shall continue as necessary until an award is made either to a responsible local vendor who is within five (5%) of the lowest responsive bidder, or the lowest responsive bidder itself.