



CITY COUNCIL REPORT

September 26, 2006

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/ Finance & Administration
Jeanette Bennett, Purchasing Director

SUBJECT: Local Preference Issues

Background:

- There are many types of local preferences such as:
 1. Percentage Preferences: The bid price of the local bidder is discounted by an established percentage.
 2. Tie Bid Preferences: The contract award is approved for the local bidder in the event of a tie on all material aspects of the bid. (A number of years ago, Council requested that City administration institute a non-formal policy that would break a tie bid if a local vendor was one of the bidders. City administration agreed since the competitive bid process would not be compromised. To date, a tie bid involving a local vendor has not been encountered.)
 3. General Preferences: Preferences that can range from a tie bid preference to a relatively large percentage preference, based on the “best interest of the City”, the comparability of products and services offered, and the practicability of awarding or not awarding to a local bidder.
 4. Absolute Preferences: Set aside purchases for local vendors.
 5. Reciprocal Preferences: A preference to retaliate against other governments whose preferential policies adversely affect companies within the City.

- City administration has maintained free and open competition and has consistently opposed local preferences for the following reasons:
 1. Most local preferences give local businesses an advantage compromising the integrity of the bid process. Local preferences discourage competition that may result in not receiving the lowest price since out-city vendors perceive that they are not on equal footing with local businesses.
 2. Federal regulations prohibit expenditure of federal funds in this manner unless an exception is granted.
 3. A certification program would need to be implemented to determine and verify local vendor status. It is extremely difficult to establish effective criteria for the determination of a “local vendor”. Verification issues include length of residency, home office affiliation, permanent business location, actual services provided in the locality (i.e. branch offices and warehouses), residential location of workers and owners, property ownership within the City, etc.
 4. Bid award timetables would be lengthened to validate a bidder’s status.
 5. Implementation of a local preference policy can result in a higher number of bid protests and could lead to litigation causing increased administrative costs.

Financial Considerations:

- Most local preferences essentially give a tax break to the local company using taxpayers' money. If providing a local business with a subsidy is the intention, there are better, more direct and open ways to do it.
- Direct and administrative cost savings derived from participation in the many Purchasing Cooperative Programs would cease. We currently purchase computer equipment, software, carpeting, tires, gasoline, vehicles, office supplies, hardware items, to name just a few items through Cooperative Programs.
- Competitive bidding is the goal of the bid process, and therefore, prices can be expected to rise if local preferences are enacted since preferences can restrict competition.
- It is difficult to keep costs from increasing where there is little or no competition within a jurisdiction such as Troy due to the geographic size and the limited number of competing businesses.
- Increased administrative costs would result due to the verification and registration activities.

Legal Considerations:

- *City Charter*, Chapter 12, Purchases – Contracts – Leases, Section 12.1 – Purchase and Sale of Property states: "Purchases shall be made from the lowest competent bidder meeting specifications, unless the Council shall determine that the public interest will be better served by accepting a higher bid, sales shall be made to the bidder whose bid is most advantageous to the City."

To be in compliance with the Charter, City Council would have to approve an award to a local bidder and designate the bid as most advantageous to the City by determining that the public interest would be better served by spending more money by taking the higher local bid.

- *City Code*, Chapter 7 – Purchases, Contracts and Sales, Section (5) states: "...it (Council) shall award the contract to the lowest competent bidder meeting specifications, unless the Council shall determine that the public interest will be better served by accepting a higher bid."

To be in compliance with the City Code, City Council would have to approve an award to a local bidder and designate that the public interest would be better served by spending more money by taking the higher local bid.

Policy Considerations:

- Local preference is in direct conflict with Goal I (Minimize cost and increase efficiency of City government).
- Purchasing maintains an open door policy for the City's vendors. (Goal III)
- The MITN website allows 24-hour access to City bids, awards and tabulations. The system has proved to be a more reliable and timely mechanism for obtaining documents. Vendors are able to manage their accounts and commodity matches. Approximately 4,797 vendors have registered on the MITN system where 23 entities now post their competitive processes. Troy has posted 296 formal bids and quotations on this website. (Goal III)
- More vendors now have access to the City's bid processes. For example, in December 2004 street trees were posted with two (2) vendors responding. Recently, the 2007 bid for street trees resulted in seven (7) bids being received or triple the 2004 number of responses. (Goal I)

Options:

- No change recommended