
Monterey Bay Air Resources District
Administrative Policies and Procedures

LOCAL PREFERENCE POLICY

Policy Number: B.9.

Supersedes: N/A

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Policy

The District desires whenever possible, to contract with qualified local vendors to provide goods and services within the District's Tri-County area. This policy is in conjunction with the District's procedures outlined in Policy B.4.j. *Formal Bid Procedure – Competitive Bids* and Policy B.4.k. *Informal Bid Procedure*.

Procedure

General Requirements

- A. Any vendor seeking to be recognized as local businesses for purposes of this local preference provision shall be required by the terms of the bid announcement to certify they meet the definition of local vendor as defined in Part K of this policy, and to register as a local vendor with the District. The District will track the award of contracts to local vendors and will provide future notifications to its local vendors concerning other bidding opportunities.

Vendors may register by going to the District's website at www.mbard.org.

- B. 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 subtracted from a bid submitted by a responsive local vendor in determining the lowest responsive bidder. If application of the 5% results in a local vendor's bid being at or lower than the non-local vendor, the contract award shall be made to the local vendor at the local vendor's bid price.
- C. Whenever a responsive local vendor and a responsive non-local vendor are found, upon the opening of bids, to have both submitted the lowest responsive bid, the local vendor shall be awarded the contract. This application shall apply to any contract awarded by the District, including professional services contracts.
- D. Should more than one responsive local vendor bid match a responsive non-

local vendor's lowest bid, or should there be no responsive local vendor's bids that match the lowest responsive bid, but two or more responsive non-local vendors submit bids for equal amounts, thus making both the lowest bidders, then the award of the contract shall be determined by a chance drawing, or similar tie-breaking method conducted by the Administrative Services Division and open to the public for formal bids.

- E. For formal bids where points are assigned during the bid selection process to determine best value as a means of awarding the contract, ten percent (10%) of the total points awardable will be added to the local vendors score.
- F. When a contract requires subcontractors or sub-consultants, the Contractor shall solicit proposals from qualified local vendors whenever possible. No contract awarded to a local vendor under this section shall be assigned or subcontracted in any manner that permits more than fifty percent (50%) or more of the dollar value of the contract to be performed by an entity that is not a local vendor.
- F. Any vendor falsely claiming to be a local vendor as defined within this policy will be subject to disqualification from contracting with the County for a period of three (3) years.
- G. Each solicitation for bids made by the District shall contain terms expressly describing the local vendor's preference policies of the District, and shall provide that by electing to submit a bid pursuant to a request for bids, all bidders are deemed to understand and agree to those policies.
- H. Local preference shall not apply to the following categories of contracts:
 - 1) Goods or services provided under a cooperative purchasing agreement or similar "piggyback" contract; and
 - 2) Contracts for public works, or where precluded by state or federal law or regulation; and
 - 3) 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, emergency purchases procured by the District, or where such suspension is, in the opinion of the District's Counsel, required by law.
- I. Purchases or contracts made pursuant to a non-competitive award process, including but not limited to, contracts covered by the Little Brooks Act, Government Code, Title I Division 5, Chapter 10, Sections 4525-4529.5 for the

procurement of professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of a qualification-based selection (QBS) that:

- 1) Demonstrates competence and professional qualifications for the types of services required; and
- 2) Provides fair and reasonable prices to the public; and
- 3) Prohibits practices which might result in unlawful activity; and
- 4) Specifically prohibits agency employees from participating in a selection process when a conflict of interest may occur; and
- 5) Demonstrates that the project team will provide the specific expertise required by the solicitation.

Selection criteria will address each of the above factors in addition to the relevant technical factors unless it is found the consultant's location is immaterial in its effect on the provisions of the services or supplies that are required by the solicitation. Said selection criteria will be routinely included in the solicitation package. District staff is encouraged to include scoring criteria so that all respondents are aware of the importance that is assigned to each selection criterion. Such criteria will include, but is not limited to knowledge of local regulatory environment, local agencies having jurisdiction over the project, and construction industry; experience working on projects in Monterey, Santa Cruz, or San Benito counties; and demonstrated ability to rapidly respond to District's needs during project construction and warranty periods.

A five (5%) percent preference will be applied to the scoring evaluation for a firm that qualifies as a "Local Vendor" as defined hereinafter.

- J. To qualify for local preference under this section, a local vendor must certify to the District that it:
 - 1) Qualifies as a "Local Vendor" as defined within Section K; and
 - 2) Has not within the five (5) years prior to the bid announcement admitted guilt or been found guilty by any court or state or federal regulatory enforcement agency of violation of any criminal law, or a law or administrative regulation regarding fraud; and

- 3) Is not currently subject to an unresolved citation or notice of violation of any code provision within the Area, except citations or notices which are the subject of a current legal appeal, as of the date of the bid announcement; and
- 4) Is not delinquent in the payment of any fines, liens, assessments, fees or taxes to any governmental unit or taxing authority within the Area as defined within Section K, except any such sums which are the subject of a current legal appeal; and
- 5) A Declaration of Local Business must be submitted and executed under penalty of perjury with any proposal for which a vendor is requesting a local preference.

K. **Definitions:** For the purpose of this policy, the following terms have the meanings indicated:

- 1) "Area" shall mean Monterey County, San Benito County, and Santa Cruz County.
- 2) "Best Value" shall mean a selection process in which written proposals contain both price and qualitative components where the award is based upon an evaluation of a combination of price and qualitative considerations, such as between price and performance that provides the greatest overall benefit under the specified selection criteria as determined by the District.
- 3) "Bid" includes any competitive bid, whether formal or informal, that is awarded based on price.
- 4) "Building" as defined within Section K.5 below, shall:
 - i. Have running water, restroom facilities and either: electrical services, gas service, or both; and
 - ii. Have a telephone, or telephones, listed publicly in the Vendor's name; and
 - iii. Be staffed during business hours by an employee, or employees, employed by Vendor and conducting the local business of the Vendor. An independent contractor or a person employed as "temporary labor" shall not constitute an "employee" for purposes of compliance with this policy; and
 - iv. Contain the current local business records of Vendor.
- 5) "Local Vendor" shall be defined as a:
 - i. Vendor either owns, leases, rents or otherwise occupies a fixed office

or other commercial building, or portion thereof, having a street address within the Area. Vendor possesses a valid and verifiable business license, if required, issued by a city within the Area or by one of the three counties within the Area when the address is located in an unincorporated area within one of the three counties as defined as “Area”; and

- ii. Vendor employs at least one full time employee within the “Area”, or if the business has no employees, the business shall be at least fifty percent (50%) owned by one or more persons whose primary residence(s) is located within the “Area”; and
 - iii. Vendor’s business must have been in existence, in Vendor’s name, within the “Area” for at least two (2) years immediately prior to the issuance of either a request for competitive bids or request for qualifications for the District; and
 - iv. Newly established businesses which are owned by an individual(s) formerly employed by a Local Vendor for at least two (2) years also qualifies for the preference; and
 - v. If applicable vendor must possess a valid resale license from the State Franchise Tax Board showing vendor’s local address within the “Area” and evidencing that payment of the local share of the sales tax goes to either a city within the “Area” or to one of the three counties within the defined “Area”
- 6) “Professional Services” as defined by the Little Brooks Act, Government Code Title I, Division 5, Chapter 10, Section 4525-4529.5 is those professional services of private architectural, engineering, environmental, land surveying, or construction project management firms, where the selection and award for contract shall be based on demonstrated competence and on the professional qualifications required to satisfactorily perform the services required.

L. The following conditions shall apply to the Local Vendor Preference Program.

Any Vendor claiming to be a local vendor as defined above shall so certify in writing that they meet all of the criteria listed above. The District shall not be responsible or required to verify the accuracy or any such certifications, and shall have sole discretion to determine if a vendor meets the definition of “local vendor”.