



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
19

Meeting Date: **DECEMBER 2, 2010**

Subject:

Authorize a Framework for the Development of a Policy on the Business Procurement Preference Program at San Diego International Airport

Recommendation:

Provide direction to staff to develop a framework for the Business Procurement Preference Program involving joint usage of goals and preferences that will aid in the future adoption of policy of 5.14.

Background/Justification:

During the October 7, 2010 Board Meeting, staff was given direction to explore a comprehensive preference program for Board consideration. Currently, the only preference available is for small businesses in the role as a prime contractor. Staff reviewed additional preferences that included overall small business participation for both prime and/or subcontractor, local participation, veteran-owned, service disabled veteran-owned small businesses (SDVOSB), disabled veteran business enterprise (DVBE), historically underutilized businesses (HUB) and disadvantaged business enterprises (DBE). Staff proceeded to organize the potential preferences by creating a Business Procurement Preference Matrix (Attachment A) that included information in the following categories and is attached:

- Current policy and/or regulation that governs that particular preference group
- Current performance for each group
- Policies/Resolutions implemented by other jurisdictions

Each of the preferences reviewed by staff was evaluated based on current performance levels, policies and regulations and the preferences other jurisdictions provide. The results of the review included the following:

Small Business as a prime only – The existing preference covered under Authority policy 5.12 was established to assist small businesses in competing on Authority projects and offset the competitive advantages held by larger companies. The preference is equal to 5% of award of contract up to \$100,000. This preference amount is consistent with the State's small business program. To be eligible, a small business must be enrolled in the Authority's bonding and contract financing assistance program or certified by a public agency within the

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state of California that uses size standards that fall within the Small Business Administration's guidelines as a criteria. Currently, 9% of the dollar value of active Authority contracts was received by companies that qualified as a small business under policy 5.12. However, there was additional small business participation from companies that met the criteria established under policy 5.12 but lacked the required certifications.

Small Business as prime and/or subs – The total small business participation, regardless of its role as a prime contractor or subcontractor, will be taken into consideration when applying a preference. This approach will allow for a large business prime to enjoy the benefits of a preference by using subcontractors that meet the definition established under policy 5.12. Such a preference would encourage many small businesses that generally work as a subcontractor to seek certification. California's Department of General Services (DGS) has a similar preference that offers a 5% preference to those firms certified by the DGS as a small business. The current participation including small firms as primes or subs on active Authority awarded contracts is 21%.

Local Businesses – *Assoc. Gen. Contractors, Inc., v. San Francisco* (9th Cir. 1987) 813 F. 2d 922 holds local preferences are only permitted if a rational basis exists for finding that local businesses are at a competitive disadvantage. The adopted policy must be measured appropriately and must be narrowly tailored to achieve the stated interest. Authority Policy 5.13 defines a local business as one that has a physical address within the county for not less than six months and employs at least one county resident. There is no current preference applied to local businesses. If federal grant funds are involved, it is illegal to have a local preference on public works, equipment purchases or professional services contracts other than architectural and engineering services. Federal law allows consideration of geographic location in the selection of architects and engineers but only if its application leaves an appropriate number of qualified bidders. 78% of active contract dollars have gone to firms with offices located in San Diego County.

Veteran Owned, Service Disable Veteran Owned Small Business (SDVOSB), and Disable Veteran Business Enterprise (DVBE) – A SDVOSB is a federal recognition while DVBE is a state certification. It is not necessary to be a small business to be a DVBE. There is no certification for veteran owned or SDVOSB; however, there are methods to confirm eligibility. To be considered a Service-Disabled Veteran, the veteran must have an adjudication letter from the Veterans Administration (VA); a Department of Defense Form 214, Certificate of Release or Discharge from Active Duty; or a Statement of Service from the National Archives and Records Administration stating that the veteran has a service-connected disability. California requires contracts awarded by a state agency for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement to have statewide participation goals of no less than 3% for DVBE. Currently, none of active contract dollars were awarded to firms that were certified as DVBE. The Authority does not track SDVOSB or veteran owned since there is no certification process, and it would require individual review of companies claiming SDVOSB status.

Historically underutilized business Enterprises (HUB) & Disadvantaged Business Enterprise (DBE) – The DBE program is a program under the United States Department of Transportation and only applies to federally funded projects. A DBE must be certified by the California Unified Certification Program (UCP) in order to be applied towards participation. According to the recently completed disparity study, approximately one out of four eligible firms is certified as a DBE. HUBs include DBE along with other minority/women business enterprises (M/WBE). There are various certifications that a M/WBE can obtain to show evidence that they fall within the particular category. The Authority accepts self declaration and DBE certification when determining HUB participation. Currently, 11% of active the contract dollars awarded went to certified DBE's and 17% went to M/WBE's. California prohibits the use of goals and preferences except for federally funded projects. Federal regulations allow the use of project specific DBE participation goal; however they encourage the use of race/gender neutral means.

"Green" Business - There are few certifications for "Green" businesses, and those that are offered are either regional programs or provided for a fee. Certification is based on factors including solid waste reduction, recycling, water energy conservation and more. Unlike the other certification programs, the "Green" designation is based on meeting certain commitments. The County of San Diego has a Green Business Program, but is currently not accepting enrollment. Data is not kept on those businesses that may have a "Green" business designation or exercise "Green" business practices.

Staff examined four different considerations and how a business preference program could be structured for the Authority. The considerations are as follows:

Consideration 1: Targeted preferences – Under targeted preferences, points would be allocated based on each category independent of each other under which a business concern qualifies. Under such a program, it is conceivable that a business concern could qualify for the maximum allowable preferences. Hence, if a 5% preference was offered for small, local, veteran owned or "Green", a business could qualify for 20% in preferences resulting in higher cost on the project. No preference is provided for DBE/HUB because it would be prohibited under federal and state regulations. There is also the potential that certain preferences may be overshadowed by a combination of other preferences. For example, one business may qualify for multiple preference points which could offset another business with a more competitive price and a single preference.

Consideration 2: Preference cap of 10% - By imposing a preference cap of 10% and a dollar threshold of \$100,000, multiple preferences would be allowed while also limiting the Authority's exposure. The cap will ensure that the additional cost to a project will not exceed 10% of the lowest responsive bidder or \$100,000. However, the impact of multiple preferences can still overshadow a single preference and negate the advantage one was hoping to achieve by assigning a preference in the first place, as shown in the example in Consideration 1.

Consideration 3: Combination Preference Packages – By combining multiple preferences into single categories, it may avoid the negating of a particular preference. Furthermore, multiple preferences will not be allowed. For example, a preference of 5% can be allocated to a small and local business acting as a prime contractor with a minimum of 25% self-performance, while another 5% would be available to a local SDVOSB that utilizes “Green” technology. This approach will protect key categories from being overshadowed by independent combinations while limiting the potential cost increase to 5%. However, it would require the establishment of multiple combinations of preferences.

Consideration 4: Alternative to preference system - In using this approach, multiple tools would be added to the procurement process to encourage participation while protecting the bid integrity. The utilization of goals that would earn the preference would be used. These tools would include:

1. The President/CEO will determine if a project will utilize a small business participation goal by using an approved methodology. A business that submits a bid must achieve the goal or show good faith effort. Bids without the good faith effort would be considered nonresponsive. Submittals that meet or exceed the participation goal will receive a 3% preference. This approach would be considered a race/gender neutral methodology in achieving DBE participation.
2. A local business participation goal would be established for each project that would encourage prime contractors to seek out local participation or show a good faith effort that attempted to utilize local businesses. Failure to show a good faith effort could make the bid nonresponsive. Submittals that meet or exceed the participation goal will receive a 3% preference. This would encourage a contractor from outside of the region to utilize local businesses where in some cases they may have self-performed.
3. Incorporate a DVBE goal on all Authority projects of 3% which is consistent with California’s program. Good faith effort would apply to those companies that are unable to achieve the participation level required. This program would only apply to DVBEs because of the available certification. Because of the limited number of certified DVBEs, there would be no preferences applied to those submittals that achieve their goal. Failure to demonstrate good faith effort would result in a nonresponsive bid.
4. Include minimum standards for sustainability in each contract that does not provide an unfair advantage to large business concerns. For example, a requirement for expensive equipment that conforms to, or exceeds environmental standards, may be cost-prohibitive to a small business concern.
5. The total value of the preferences cannot exceed \$100,000.

6. On federally funded projects, the Authority can incorporate contract-specific DBE goals if the race-and gender-neutral efforts are insufficient in achieving our DBE goals.

All four of the considerations listed above will have a financial impact to the Authority. The extent of that impact is dependent on the difference between the value of the lowest responsive bidder and the final contract amount awarded based on the preferences. In addition, there will be a need for more resources to administer the program which would include goal calculation, certification confirmation, fraud prevention and monitoring the work to assure commitments are followed through:

The implementation of a new business preference program will have an impact on existing Authority Policies. Should the Board direct staff to create this new policy, staff will need to amend numerous existing policies. This process will require extensive review and analysis of all of the relevant policies. It is anticipated that completion of the review and analysis will not be completed in time for the December Board meeting. Staff will present the new policy and needed amendments to the existing policies at the January Board meeting.

Given the discussion above, staff suggests consideration #4 and seeks Board direction on the framework of proposed policy 5.14 that will create a Business Procurement Preference Program.

Fiscal Impact:

The use of a preference program may have a fiscal impact on a project in that an award aided by a preference may increase project cost. It is impossible to determine the impact of this program based on the known information. In addition, staffing may need to be increased in order to monitor program compliance.

Environmental Review:

- A. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. Section 15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code Section 21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act Pub. Res. Code Section 30106.

Equal Opportunity Program:

Not applicable.

Prepared by:

BOB SILVAS
DIRECTOR, SMALL BUSINESS DEVELOPMENT

Preference	Legal Authority			Legal Prohibitions & Restrictions	Current Performance	Other Jurisdictions
	Entity	Law, Regulation or Policy	Details of Requirement			
Small Business - Prime Only	Board	Policy 5.12 Reso. 2009-0057	Provides bid preference of up to 5% in award of contracts up to \$100,000 for services, supplies, materials & equipment.	As a policy it is not mandatory.	Total = 9% ¹	California Department of General Services 5% Preference City of San Diego Public Works Contracts – Small & Local Business Enterprises (SLBE) & Emerging Local Business Enterprise (ELBE) >\$1 million – mandatory participation \$500K - \$1 million mandatory participation &/or 5% bid discount w/ \$50,000 cap \$250K - \$500K only SLBE/ELBE permitted to bid
	State	Public Contract Code §2002	Allows local agencies that are otherwise required by law to award contracts to lowest responsible bidder to provide a small business preference of up to 5% in construction, procurement of goods, or delivery of services where responsibility and quality are equal; also allows the establishment of a subcontracting participation goal and a grant of a preference of up to 5% for those contractors that meet the goal; Require bidders to make a good faith effort to meet subcontracting participation goal for small business. "Small business" is defined by each local agency.	If the Authority is not subject to the Public Contract Code, this provision does not apply. A small business preference policy that mirrors the Public Contract Code would be the most legally defensible.		
	Federal	13 CFR 121.104 13 CFR 121.106 49 CFR Part 18.36 49 CFR Part 26.43 49 CFR Part 26.51	13 CFR Part 121 sets forth the SBA's size standards which define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. 49 CFR Part 26.43 prohibits recipients of federal funds to use quotas or set asides for DBEs on DOT-assisted contracts subject to Part 26. 49 CFR Part 18.36 requires all procurement transactions will be conducted in a manner to providing for full and open competition. 49 CFR Part 26.51 requires recipients of federal funds to meet the maximum feasible portion of their overall DBE goals using race/gender neutral means. However, the Department of Transportation has recognized that race and gender neutral small business set aside programs may be an acceptable means of achieving the objective of §26.51 without running afoul of the prohibition in §26.43 against the use of set asides or quotas.	If a recipient of federal funds intends to implement a small business program as a means of achieving its annual DBE goal, the recipient must, pursuant to 49 CFR §26.21(b)(2), submit to the appropriate operating administration for prior approval, an amendment to its DBE program plan to identify the program as an initiative implemented to provide contracting opportunities to DBEs and other small businesses.		

¹ Based on certified small business as defined by Policy 5.12

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Preference	Legal Authority			Legal Prohibitions & Restrictions	Current Performance	Other Jurisdictions
	Entity	Law, Regulation or Policy	Details of Requirement			
Small Business – Combined Prime & Sub Participation	Board	None.	N/A	N/A	Total = 21% ²	California Department of General Services 5% Preference City of San Diego Public Works Contracts – Small & Local Business Enterprises (SLBE) & Emerging Local Business Enterprise (ELBE) >\$1 million – mandatory participation \$500K - \$1 million mandatory participation &/or 5% bid discount w/ \$50,000 cap \$250K - \$500K only SLBE/ELBE permitted to bid
	State	Public Contract Code §2002	Allows the establishment of a subcontracting participation goal and a grant of a preference of up to 5% for those contractors that meet the goal. "Small business" is defined by each local agency	If the Authority is not subject to the Public Contract Code, this provision does not apply. A small business preference policy that mirrors the Public Contract Code would be the most legally defensible.		
	Federal	13 CFR 121.104 13 CFR 121.106 49 CFR Part 18.36 49 CFR Part 26.43 49 CFR Part 26.51	13 CFR Part 121 sets forth the SBA's size standards which define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. 49 CFR Part 26.43 prohibits recipients of federal funds to use quotas or set asides for DBEs on DOT-assisted contracts subject to Part 26. 49 CFR Part 18.36 requires all procurement transactions will be conducted in a manner to providing for full and open competition. 49 CFR Part 26.51 requires recipients of federal funds to meet the maximum feasible portion of their overall DBE goals using race/gender neutral means. However, the Department of Transportation has recognized that race and gender neutral small business set aside programs may be an acceptable means of achieving the objective of §26.51 without running afoul of the prohibition in §26.43 against the use of set asides or quotas	If a recipient of federal funds intends to implement a small business program as a means of achieving its annual DBE goal, the recipient must, pursuant to 49 CFR §26.21(b)(2), submit to the appropriate operating administration for prior approval, an amendment to its DBE program plan to identify the program as an initiative implemented to provide contracting opportunities to DBEs and other small businesses		

² Based on certified small business as defined by Policy 5.12

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Preference	Legal Authority			Legal Prohibitions & Restrictions	Current Performance	Other Jurisdictions
	Entity	Law, Regulation or Policy	Details of Requirement			
Local Business	Board	Policy 5.13 Reso. 2009-0126	Policy: Encourage purchase of products, services & equipment from businesses in SD County. "Local business" must be in county, employ minimum of 1 county resident, & have commercial address in County for at least 6 months.	As policy, it is not mandatory.	Total = 78% ³	See Attached : Local Vendor Preference Program Survey
	State	Pub. Cont. Code §§ 10108; 20103.8	If SDCRAA subject to Code, bids are required if contract exceeds \$25,000.	<i>Assoc. Gen. Contractors, Inc., v. San Francisco</i> (9 th Cir. 1987) 813 F. 2d 922 holds local preferences only permitted if rational basis for finding that local businesses are at a competitive disadvantage. The adopted policy must be measured and appropriate and must be narrowly tailored to achieve the stated interest.		
	Federal	49 CFR Part 18.36; AC 150/5100-14D; Federal Grant Assurances (3/2005); FAA Order 5100.38C, Sec. 1, 903; 49 CFR Part 23.61 49 CFR Part 23.79	All procurement transactions will be conducted in a manner to providing for full and open competition. When contracting for architectural and engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. 49 CFR Part 23.61 prohibits the use of quotas or set asides for ACDBE participation. 49 CFR Part 23.79 prohibits the use of a local geographic preference in the selection of concessions.	If federal grant funds are involved, illegal to have local preference on public works, equipment purchases or professional services contracts other than architectural and engineering services. Can consider geographic location for architectural and engineering services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. May not use local geographic preference in the selection of concessions.		

³ Based on business location within County of San Diego

Preference	Legal Authority			Legal Prohibitions & Restrictions	Current Performance	Other Jurisdictions
	Entity	Law, Regulation or Policy	Details of Requirement			
Veteran Owned	Board	None.		N/A	N/A	
	State	Military and Veterans Code §999, et seq.	<p>Requires contracts awarded by a state agency for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 3% for disabled veteran business enterprises.</p> <p>"Disabled veteran" means a veteran of the military, naval, or air service of the United States, including but not limited to, the Philippine Commonwealth Army, Regular Scouts, "Old Scouts", and the Special Philippine Scouts, "New Scouts", who has at least a 10% service-connected disability and who is domiciled in the state.</p> <p>"Disabled veteran business enterprise contractor, subcontractor or supplier" is defined as any person or entity that has been certified by the administering entity that performs a "commercially useful function" in providing services or goods that contribute to the fulfillment of the contract requirements.</p> <p>"Disabled veteran business enterprise" means a business certified by the administering agency meeting all of the following requirements: (1) a sole proprietorship at least 51% owned by one or more disabled veterans, or in the case of a publicly owned business, at least 51% of its stock is owned by one or more disabled veterans; a subsidiary that is wholly owned by a parent corporation, but only if it is at least 51% of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51% of the 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 are by one or more disabled veterans; (3) it is a sole proprietorship, corporation, or partnership with its home office located in the United State, which is not a branch or subsidiary of a foreign corporation, foreign firm or other foreign based business.</p>	Authority is not a state agency subject to this provision. A policy that mirrors the Military and Veterans code would be the most legally defensible.		
	Federal	49 U.S.C. §47112; Federal Grant Assurances	For all contracts for work on any project funded under the grant agreement which involve labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of	A contract involving labor for carrying out an airport development project under a grant agreement under this		

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		(3/2005)	<p>the Vietnam era and disabled veterans as defined in §47114. This preference only applies where the individuals are available and qualified to do the work to which the employment relates.</p> <p>"Disabled veteran" means means an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department.</p> <p>"Vietnam-era veteran" means an individual who served on active duty (as defined in section 101 of title 38) in the armed forces for more than 180 consecutive days, any part of which occurred after August 4, 1964, and before May 8, 1975, and who was separated from the armed forces under honorable conditions.</p>	<p>subchapter must require that preference in the employment of labor (except in executive, administrative, and supervisory positions) be given to Vietnam-era veterans and disabled veterans when they are available and qualified for the employment.</p>		
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Preference	Legal Authority			Legal Prohibitions & Restrictions	Current Performance	Other Jurisdictions
	Entity	Law, Regulation or Policy	Details of the Requirement			
Service Disable Veteran Owned Business (incl. DVBE)	Board	None.	N/A	N/A	Total = 0% ⁴	California DGS 3% goal for state agency
	State	Military and Veterans Code §999.2	<p>Requires contracts awarded by a state agency for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 3% for disabled veteran business enterprises.</p> <p>"Disabled veteran" means a veteran of the military, naval, or air service of the United States, including but not limited to, the Philippine Commonwealth Army, Regular Scouts, "Old Scouts", and the Special Philippine Scouts, "New Scouts", who has at least a 10% service-connected disability and who is domiciled in the state.</p> <p>"Disabled veteran business enterprise contractor, subcontractor or supplier" is defined as any person or entity that has been certified by the administering entity that performs a "commercially useful function" in providing services or goods that contribute to the fulfillment of the contract requirements.</p> <p>"Disabled veteran business enterprise" means a business certified by the administering agency meeting all of the following requirements: (1) a sole proprietorship at least 51% owned by one or more disabled veterans, or in the case of a publicly owned business, at least 51% of its stock is owned by one or more disabled veterans ; a subsidiary that is wholly owned by a parent corporation, but only if it is at least 51% of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51% of the 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 are by one or more disabled veterans; (3) it is a sole proprietorship, corporation, or partnership with its home office located in the United State, which is not a branch or subsidiary of a</p>	Authority is not a state agency subject to this provision. A policy that mirrors the Military and Veterans code would be the most legally defensible.		

⁴ DVBE certified businesses only

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			foreign corporation, foreign firm or other foreign based business.			
	Federal	49 U.S.C. §47112; Federal Grant Assurances (3/2005)	<p>For all contracts for work on any project funded under the grant agreement which involve labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans. This preference only applies where the individuals are available and qualified to do the work to which the employment relates.</p> <p>"Disabled veteran" means means an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department.</p> <p>"Vietnam-era veteran" means an individual who served on active duty (as defined in section 101 of title 38) in the armed forces for more than 180 consecutive days, any part of which occurred after August 4, 1964, and before May 8, 1975, and who was separated from the armed forces under honorable conditions.</p>	A contract involving labor for carrying out an airport development project under a grant agreement under this subchapter must require that preference in the employment of labor (except in executive, administrative, and supervisory positions) be given to Vietnam-era veterans and disabled veterans when they are available and qualified for the employment		

ITEM 19

FRAMEWORK FOR POLICY 5.14: BUSINESS PROCUREMENT PREFERENCE PROGRAM

Presented By: Bob Silvas
Director of Small Business
Development

December 2, 2010

OVERVIEW

- ✘ Policy 5.12 & 5.13
- ✘ Explore Additional Preferences:
 - + Expanded Small Business
 - + Local
 - + Veteran, Service Disabled Veteran Owned Small Business (SDVOSB), & Disadvantaged Veteran Business Enterprise (DVBE)
 - + Green Business
 - + Historically Underutilized Business (HUB), Minority Business, Women Owned Business, & Disadvantaged Business Enterprises (DBE)
- ✘ Examine Four Considerations
- ✘ Staff Recommendation

POLICY 5.12 – PREFERENCE TO SMALL BUSINESS

- ✘ 5% Preference on Bid w/ Cap of \$100,000; or
- ✘ 5% Preference in Scoring on Qualification Based Selection
- ✘ Small Business Definition
 - + Enrolled in Bonding & Contract Financing Assistance Program (Small and Local Businesses)
 - + Certified by Public Agency w/in Calif. That Use Size Standards w/in SBA Criteria
 - + DBE is a Small Business by Definition
- ✘ Small Business Must Be Prime Contractor

POLICY 5.13 – LOCAL BUSINESS OPPORTUNITY

- ✘ Local Business Defined
 - + Headquarter or Physical Presence in County
 - + Valid Business Certificate from the County or a City w/in County
 - + Employ a Resident of the County
- ✘ Does Not Provide a Preference

SMALL BUSINESS PREFERENCE

- ✘ Expand Definition of Small Business Participation from Prime Only to Prime & Subcontractors
- ✘ Will Allow Participation by Large Business Prime Contractor for Using SB Subcontractors
- ✘ Expanded Preference Would Encourage More Small Businesses to Seek Certification
- ✘ Current Small Business Participation as Prime Contractors – 9%
- ✘ Overall Small Business Participation as Primes and Subcontractors – 21%

LOCAL

- ✘ 9th Circuit Ruling (AGC v. San Francisco) - Preference Must Have Rational Basis
- ✘ Federally Funded Projects Prohibit the Use of Preferences
 - + Excludes Architectural & Engineering
 - + Must Still Have Appropriate Number of Qualified Bidders
- ✘ Current Local Participation – 78%

VETERAN, SDVOSB & DVBE

- ✘ DVBE is State Certification (by DGS)
- ✘ SDVOSB & Veteran Owned is Demonstrated by Appropriate Paper Work Issued (No Certifications)
 - + Adjudication Letter from Veterans Administration; or
 - + Department of Defense Form 214 - Certificate of Release or Discharge from Active Duty; or
 - + Statement of Service from the National Archives and Records Administration, Stating that the Veteran has a Service-Connected Disability
- ✘ DVBE Not Required to be Small Business
- ✘ Current DVBE Participation - 0%

“GREEN” BUSINESS

- ✘ No Uniformed Certification
 - + Regional Certification
 - + Certification of Fee Basis
- ✘ Generally Based on Business Plan For:
 - + Solid Waste Reduction
 - + Recycling
 - + Energy Conservation

HUB, MBE, WBE & DBE

- ✘ HUB = MBE + WBE
- ✘ WBE Does Not Include MBE
- ✘ DBE's are Certified by Calif. UCP
 - + Economically & Socially Disadvantaged
 - + 1:4 Eligible Firms Certified
 - + Non MBE/WBE Can Be Certified
 - + DBE Must be Small Business Concern
- ✘ DBE Program is Only on Federally Funded Projects
- ✘ California Prohibits HUB/DBE Goals on Non-Federally Funded Projects (Prop. 209)
- ✘ Current HUB Participation = 17% (2/3 are DBE)

CONSIDERATION 1: TARGETED PREFERENCES

- ✘ Each Group Would Have a Targeted Preference Independent of Each Other
- ✘ Preference Could Accumulate
- ✘ Combination of Preferences Could Offset Another Preference
- ✘ When Applied, a Preference Would Increase Project Cost

CONSIDERATION 2: PREFERENCES W/ CAP

- ✘ Combined Preferences Capped (Example 10%)
- ✘ Total Value of Preferences Not Exceed \$100,000
- ✘ Combined Preferences Could Offset Another Preference

CONSIDERATION 3: COMBINATION PACKAGES

- ✘ Combining Categories to Create Single Preference (Example: Small & Local Combination Would Receive a Preference)
- ✘ Can Minimize Impacts on High Priority Preferences
- ✘ Could Create Multiple Preference Categories That May Offset Intention of Program.

CONSIDERATION 4: ALTERNATIVE PREFERENCE SYSTEM

- × Utilization of Goals w/ Preferences
- × Small Business Goal & Local Business Goal
 - + Goals Based on Methodology to Assure Achievable Levels
 - + Goal is Achieved or Good Faith Effort (GFE) Demonstrated
 - + Failure to Achieve Goal or Demonstrate GFE Makes Submittal Nonresponsive
 - + Goal Achievement Results in 3% Preference
 - + No Preference for GFE

CONSIDERATION 4: ALTERNATIVE PREFERENCE SYSTEM (CONT.)

- ✘ DVBE Goal of 3% on All Projects
 - + Consistent with State's Program
 - + Certification is Provided
 - + Demonstrate GFE if Goal is not Achieved
 - + Failure to Achieve Goal or Demonstrate GFE Makes Submittal Nonresponsive
 - + No Preference for Achievement Due to Limited Universe of Certified DVBE
 - + SDVOSB Must be DVBE Certified

CONSIDERATION 4: ALTERNATIVE PREFERENCE SYSTEM (CONT.)

- ✘ “Green” Technology Achieved Through Submittal Process/Requirements as Part of Scoring Criteria or as Minimum Requirements
- ✘ Federally Funded Projects
 - + DBE Goals Only Applied to Federally Funded Projects
 - + Race & Gender Neutral Means Primary Efforts, w/ Project Specific Goals to be Used if Neutral Means Fall Short
- ✘ HUB Goals are Not Permitted on Any Projects

RECOMMENDATION

Authorize Staff to Develop Policy 5.14 Using Consideration 4 as the Framework for Business Procurement Preference Program

Staff will present Policy 5.14 for adoption and other policies as required at the January Board Meeting.

QUESTIONS?