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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**IBA Report Number:** 10-62

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# San Diego Local Hire Policy

## OVERVIEW

On Monday, July 12, 2010 the City Council is being asked to approve an ordinance to establish a Local Hire Policy. The policy aims to promote job opportunities for local residents and veterans on the City's major public works projects. This policy was proposed by Council President Ben Hueso in a January 11, 2010 memo and a draft ordinance of the policy by the City Attorney's Office was discussed at the Rules Committee on February 24, 2010.

Following the direction of the Rules Committee, a subsequent draft ordinance by the City Attorney's Office was prepared and discussed at an April 28, 2010 Rules Committee meeting. At that meeting, the City Attorney's Office was directed to develop an ordinance that incorporates a 20 percent bid discount for contractors willing to participate in a local hire agreement and forward to the full City Council.

If approved, this policy would be in addition to the Small Local Business Enterprise (SLBE) Program, which was implemented in July 2010. The SLBE program provides a bid discount and/or the awarding of "preference points" to eligible Small and Emerging Local Business Enterprises for the contracting out of Public Works Projects, Consultant Projects, and Goods & Services Contracts.

This report provides observations for consideration regarding requirements contained in the proposed Local Hire Ordinance. It also discusses possible fiscal impacts to the City by implementing the Local Hire program as well as eligibility and enforcement concerns.

## FISCAL/POLICY DISCUSSION

### **New Requirements for Public Work Contractors as outlined in Section 22.2904 – Local Hire goals**

If approved, the Local Hire Ordinance would require contractors on *Major Public Works Contracts* (a *contract* for the construction, reconstruction or repair of public buildings, streets, utilities and other public works projects) valued at more than \$500,000 to comply with the following requirements. It should be noted that the implementation of these requirements will be at the discretion of the Mayor.

- If a contractor requires additional workforce above their current employees to accomplish the project at hand, they will make a good-faith effort, with assistance from local hiring halls or local employment agencies, to hire qualified local workers to comprise not less than 80 percent of the contractor's work force, measured in labor hours. In addition, of the 80 percent of local workers, 10 percent would be comprised of disadvantaged workers. It is important to note that the requirement is a good-faith effort. (Section 22.2904 (a))
- Requires contractors to keep the following records and provide to the City as requested (Section 22.2904 (b)):
  - Record showing name, place of residence for the three-month period *prior* to the date of hire by contractor;
  - Unemployment history for the six-month period prior to the date of hire;
  - Veteran status and hours employed.
- Accurate records describing in detail contractor's good-faith efforts to secure employment of local workers, disadvantaged workers, and veteran workers. (Section 22.2904 (c))

The IBA has contacted representatives from the building industry to discuss possible impacts to contractors if these requirements are implemented. Industry representatives have stated that the requirements related to the records could increase their operating costs. Job application forms, where used, would likely need to be changed to accommodate the additional information. Contractors would also need to check that the personal information requested does not violate federal privacy laws. An additional concern is that the contractors could face legal issues if unable to hire a perspective employee due to their place of residence.

Another area of concern with the Local Hire Ordinance is the City's ability to monitor and enforce the ordinance. Currently, the City's Equal Opportunity Contracting Program (EOCP) enforces contract compliance. The IBA has discussed with the Administration

Department Director the possible impacts to the EOCP if the Local Hire Ordinance is approved. The Administration Department Director has stated that enforcement of this ordinance would be a challenge. Staff would be able to spot check documents or investigate complaints but they would not be able to actively monitor and enforce the ordinance. It is important to note that the EOCP has nine budgeted positions to monitor all public works contracts. By adding an additional contracting enforcement requirement to the EOCP, existing programs such as the Subcontracting Outreach Program (SCOPE) and the Small Local Business Enhancement Program (SLBE) could also be impacted.

As stated above, if approved the Mayor would be responsible for implementing the program. *The IBA recommends that the City Council request a proposal from the Mayor outlining how this program will be implemented.*

### **Eligibility Requirements for Public Works Contractors as Outlined in 22.2904-Local Hire Goals**

Also included in Section 22.2904 is the criteria for how a contractor is determined eligible to receive the 20 percent bid discount and the penalties for not complying.

- If a contractor indicates at the time of bid that for the duration of a particular major public works contract its workforce will be comprised of 80 percent local workers, and of the 80 percent at least 10 percent will be comprised of disadvantaged workers, veteran workers, or some combination thereof, the contractor shall receive a bid discount of 20 percent. (Section 22.2904 (f))
- If the contractor receives the 20 percent bid discount, and is later determined by the City to have not retained local workers, disadvantaged workers, or veteran workers in the aforementioned percentages throughout the duration of the major public works contract, the City may seek any legal remedy against the contractor in accordance with Section 22.2906. (Section 22.2904 (f))
- For the purpose of calculating whether a contractor's workforce is comprised of 80 percent local workers, workers whose primary residence is *outside* California shall not be included in the calculation. (Section 22.2904 (g))

The Purchasing and Contracting Department has expressed concerns regarding the timing of when verification of compliance for the program would occur. According to the proposed Local Hire Ordinance, a contractor can receive a bid discount by indicating that he or she will comply with the 80 percent local hire requirement. However, per the ordinance, verification of this requirement does not occur until the bid discount is administered and the project is underway. This verification timing differs from the newly implemented SLBE program where a business must be certified with the Equal Opportunity Contracting Office *prior* to applying for the discount offered.

If verification was required prior to receiving the bid discount, the length of time for the contract award process could be impacted. Purchasing and Contracting Department staff has indicated that verification of this nature could add at least three to six weeks to the contract award process. *To avoid delay, the IBA recommends that Council consider alternatively to require verification of residency prior to the start of construction as the contractor should have his or her workforce vetted at this time.* It is important to note that if a contractor is out of compliance at the time of verification it could cause a delay in construction of the project.

Another item to note is the provision in the Local Hire Ordinance stating that when determining local hire percentages, out-of-state residents shall be excluded from the calculation. The IBA understands the legal reasons for including this language. However, if implemented, out-of-state contractors may have an advantage over California contractors. For example, if an Arizona contractor whose workforce is made up of workers from his or her home state decides to bid on a City project and five additional workers are needed, 4 of the 5 *new workers* would need to be local hires. In addition, the Arizona contractor would still be able to use his or her workers who reside out of state. Alternatively, the California contractor would be required to maintain the local 80 percent requirement for the entire workforce to qualify for the discount.

**Fiscal Impact of 20 Percent Bid Discount for Local Hire Public Works Contracts**

The proposed Local Hire program includes a 20 percent bid discount for contractors who commit to hiring and maintaining an 80 percent local workforce. To illustrate the potential fiscal impact to the City in the bidding process, we provided two scenarios for consideration. The scenarios are based on an estimated \$25 million project and include the bid amounts when a 20 percent discount is applied to an original bid.

Scenario A-Lowest Responsible Bid Wins

Responsible Bidder	A	B	C
Bid	\$27.0 M	\$25.0 M	\$21.0 M
Elected to Participate in 80% Local Hire	Yes	Yes	Yes
20% Bid Discount	\$5.4 M	\$5.0 M	\$4.2M
<b>Bid including the 20% Discount</b>	<b>\$21.6 M</b>	<b>\$20.0 M</b>	<b>\$16.8 M</b>
Winner of Bid			X

Scenario B-Lowest Responsible Bid Does Not Win

Responsbile Bidder	A	B	C
Bid	\$40.0 M	\$25.0 M	\$30.0 M
Elected to Participate in 80% Local Hire	Yes	No	Yes
20% off Bid Discount	\$8.0 M	-	\$6.0 M
<b>Bid including the 20% Discount</b>	<b>\$32.0 M</b>	<b>\$25.0 M</b>	<b>\$24.0 M</b>
Winner of Bid			X

It is important to note that the 20 percent discounted bid is only used to competitively compare bids and the City would still pay the non-discounted bid amount. Scenario A illustrates that if all bidders participated in the program discount, the original lowest responsible bidder would win and there would be no negative impact on the city. In Scenario B the original lowest responsible bidder would *not* be awarded the contract because they did not participate in the program and the City would pay an additional \$5.0 million (difference between bidder B and C). We understand that Scenario B is a more extreme example as there is strong incentive for all bidders to participate in the Local Hire program. However, we provided it to demonstrate the impact that a discounted bid could have if the original lowest responsible bidder does not receive the contract. It seems unlikely however, that due to the size of the proposed discount, that a contractor would be able to remain competitive without participating in the program.

Additionally, it should be noted that the Local Hire Ordinance includes language stating that the discount permitted under the Small and Local Business Program for Public Works Contracts can be in addition to the Local Hire discount. This could make bidders eligible for a total bid discount of 25 percent.

***Due to the possible increase of cost to the City from this program and other City programs already in place, the IBA recommends that the Mayor begin to include the following information in the fiscal impact statement section on Department 1472s to inform the City Council on the ongoing city impacts of these programs:***

- ***The original lowest responsible bid on the project;***
- ***An explanation of why the lowest bid did not receive the contract.***

#### **Local Employees on Existing Prevailing Wage Public Works Jobs**

At the April 2010 Rules Committee meeting the Administration Department discussed statistics for employees that work on prevailing wage jobs in the City (set wages for certain trades and crafts as per Federal and State requirements). It was explained that a majority of employees on these jobs are residents of San Diego and a majority of labor hours are worked by residents of San Diego. Specifically, on prevailing wage jobs in the City, 77 percent of the employees are San Diego residents and 76 percent of the hours on these projects were worked by San Diego residents. Addresses of employees on prevailing wage projects are available due to the information required on certified payroll records. Certified payroll is required to ensure a contractor is complying with prevailing wage requirements. Payroll for non-prevailing wage jobs is not monitored in the same way and therefore, information regarding addresses of residents is not available.

## **CONCLUSION**

This report provides observations for consideration regarding requirements contained in the proposed Local Hire Ordinance. It also discusses possible fiscal impacts to the City by implementing the Local Hire program as well as eligibility and enforcement concerns.

This report includes the following recommendations:

- *The City Council request a proposal from the Mayor outlining how this policy will be implemented.*
- *That verification of residency is required prior to the start of construction as the contractor should have his or her workforce vetted at this time rather than after the project is underway as currently proposed.*
- *Due to the possible increase of cost to the City from this program and other City programs already in place, the IBA recommends that the Mayor begin to include the following information in the fiscal impact statement section on Department 1472s to inform the City Council on the ongoing city impacts of these programs:*
  - *The original lowest responsible bid on the project;*
  - *An explanation of why the lowest bid did not receive the contract.*

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