



**TO:** Elizabeth Pauli, City Manager  
**FROM:** Bill Fosbre, City Attorney  
**COPY:** GPFC; Andy Cherullo, Director of Finance  
**PRESENTER:** Martha Lantz, City Attorney's Office  
**SUBJECT:** Responsive Bidding  
**DATE:** November 20, 2018

**PRESENTATION TYPE:**  
Informational Briefing

**SUMMARY:**

This memo summarizes the City's ability to take into consideration a business' status such as local, green, or minority or women owned when awarding contracts.

**BACKGROUND:**

The City cannot give preference solely on the basis that the bidder is a local firm, a green firm or a minority or woman owned business. The City is required, by state law and by municipal code to observe competitive bidding requirements in awarding contracts.<sup>1</sup> However in certain, limited circumstances a business' status may be legitimately considered as a factor in contract award.

Locality:

For virtually all City contracts, award is directed to the "lowest and best responsible" bidder'. (Charter Section 7.11 and TMC 1.06.254). By use of the term "responsible," Charter and Code allow consideration of award criteria beyond the simple computation of lowest bid price. The contract is awarded to the lowest bidder only if that low bidder has also demonstrated that their bid is the best "responsible" bid. Tacoma's responsibility criteria are in TMC 1.06.262 and include "Other qualification criteria set forth in the specification or advertisement that the appropriate department or division head determines to be in the best interests of the City."

There is no authority for the City to make a bidder's locality, in and of itself, a factor for contract award. However, if locality is a legitimate and necessary factor in the performance of the contract and would add legitimate value to the services performed, as opposed to a general favoring of a local business over a non-local business, it can be included as a requirement in the bid documents.

TMC 1.06.253 U states City purchasing policy shall direct that locality criteria be included in bid documents where appropriate for the specific purpose of eliciting respondents who demonstrate knowledge and understanding of factors unique to the relevant locality. When included in bid

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<sup>1</sup> While state law does not require competitive bidding of personal or professional services (except for architectural and engineering services), the City requires that such services be obtained by competitive bid, except when direct solicitation is determined by the City Manager or Utilities Director to be in the best interest of the City. TMC 1.06.256 B.



documents, locality criteria shall be considered when determining the lowest and best responsible bidder.

Green Business:

Similar to the locality analysis above the City cannot make “green” status the basis for award in and of itself. However, the City’s purchasing policy directs that where appropriate bid documents shall include criteria designed to demonstrate the bidder’s ability to advance the City Sustainable Procurement Policy.<sup>2</sup> Satisfaction of the sustainability criteria contained in the bid documents shall be considered when determining the lowest and best responsible bidder.

Minority and Women Owned Businesses:

RCW 39.19.010 sets out Washington state policy to provide the maximum practicable opportunity for increased participation in public contracting opportunities by minority and women-owned and controlled businesses. Nonetheless, preferential contracting simply on the basis of race or gender, when it has the result of selecting a less qualified contractor over a more qualified contractor, is not permissible, except in the very narrowest of circumstances. The narrow instances where preferential award of contracts to minority or women owned businesses may be permitted is very fact specific and the justification for the preference must be documented.

The City’s policy is to promote access to and equitable participation in City contracts. Like locality and sustainability, social responsibility factors, such as equity and inclusion, can be considered amongst the responsibility criteria a contractor must meet in order to be awarded a contract, but only if there is a legitimate purpose in including those factors that is linked to the performance of the contract.

**ISSUE:**

To the extent possible within legal constraints, the City has in place specific mechanisms for award to local and green businesses, as well as to promote and encourage participation by minority and women businesses.

**ALTERNATIVES:**

This is an information briefing only. There are no alternatives presented.

**FISCAL IMPACT:**

This is an information briefing only. There is no fiscal impact.

**RECOMMENDATION:**

This is an information briefing only. There is no recommendation.

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<sup>2</sup> The City’s Sustainable Procurement Policy is contained in the Purchasing Policy Manual at Section XXIV A.