“LOCAL PREFERENCE” ISSUE

Each year, a few local companies continue to contact local government officials requesting that local vendors be given special consideration in contract awards. Such local vendors typically propose that special consideration should be made in the form of a local preference policy, allowing the local company to receive an award even though their offer is not the lowest responsive bid. This, in effect, would create a subsidy for a few business taxpayers at the expense of all residential and business taxpayers.

MRSC: The Municipal Research and Services Center (MRSC) advises the following in regards to the “Local Preference Issue” (Taken from the County Biding Book, Pages 24 and 28, respectively):

On page 24:

“May a county include a preference for local merchants in its advertisement?
In general, no. RCW 39.30.040 does allow counties to take any sales tax that a county will receive from purchasing supplies, materials, and equipment within its boundaries into consideration when determining the lowest responsible bidder. But, in AGO 61-62 No. 41, the Office of the Attorney General concluded that entities could not establish a policy giving local bidders a preference by reducing their bids by some specified percentage amount in determining the lowest responsible bidder. To do so would “be in the nature of an arbitrary classification for the benefit of a particular group without regard to the merits of any particular case.”

Note: See also No. 12 under the “Adverse Impact” section below.

On page 28:

“Preferences. *RCW 39.30.040 allows (but does not require) counties, in determining the lowest bid, to consider the tax revenues that are generated by a purchase of supplies, materials, and equipment, including those from a local sales tax. If a county considers these tax revenues, it must consider the taxes it would receive from suppliers located both within and without its boundaries. The bid award must be made to the lowest responsible bidder after the tax revenue has been considered.*

Counties may also give preference to products made of recycled materials or to products that may be recycled or reused.” [Ed. See RCW 36.32.245(6)] “*Rather than invoke this preference in an arbitrary manner, the county board should establish a policy that states what percentage preference will be given for various products.*

If either of these preferences will be used to determine the lowest bidder, that fact should be mentioned in the bid documents. Remember, other "local preferences" favoring local businesses in the award of a contract are not allowed.” [Ed. See AGO 61-62, No. 41]

Washington State Auditor’s Office (SAO): An SAO document dated June 13, 2002, concerning Competitive Bid Laws, states the following regarding the “Local Preference” / “Local Buy” issue (pages 7 and 9, respectively):

On Page 7:

“…state law does not recognize local preference policies…”

On Page 9:

“State law does not recognize, and implicitly prohibits, granting of preferences to local vendors in purchases of goods, supplies and services by local governments. (If an entity can justify imposing a requirement of local availability of a product, the requirement should be made a part of the bid specifications rather than being a factor in choosing bidders.)”

National Institute of Governmental Purchasers (NIGP): An excerpt from NIGP Basic Purchasing Manual states the following:

"Local preference takes several forms; the most prevalent form is the percentage preference. Eleven states still have local-preference laws. Percentage preferences of 1.5% to 10% are given to those eleven states in bid-price competition with out-of-state firms. But what if we were required to give percentage preferences to minority firms? To union shops? To small businesses? To other special-interest groups? The effect is the same: When a percentage preference is given to local businesses, it is given at the added expense of all taxpayers.

The advantages of having local-preference policies are limited and are far outweighed by the disadvantages. Vendors like to say that a local-preference policy will attract many new businesses into a community and thereby will increase the tax base. This idea is a fallacy.

Here are a few of the disadvantages of having local-preference policies:

1. The cost of goods or services are (sic) increased for all taxpayers when a percentage differential is allowed. This practice discourages outside firms that would normally compete and keep the local fellows "honest."

2. Local-preference laws and policies are a barrier to interstate commerce. When these laws have been tested in courts of Illinois, California, New York, and Georgia, they have been held to be unconstitutional.

3. Local-preference laws invite reciprocity. In at least one state, the purchasing authority is prohibited from doing business with any firm located in a state that has local-preference laws or policies.

Those business people who wish to push for local-preference laws should be made aware that they could face the possibility of retribution from other jurisdictions.

Also, preferences given to local businesses by purchasers could easily be looked upon as a subsidy to a firm that is too weak in its own operations to compete on an even, equitable basis."

The NIGP also indicates:

"Although some people assert that buy-local preferences will protect existing jobs, create new jobs, and strengthen the economy, the sad reality is that the practice of favoring vendors within a defined geographical area only encourages inflated prices which are paid by the taxpayers of the jurisdiction who administer them. By causing prices to rise, preference results in a direct subsidy to a few taxpayers at the expense of the general taxpaying public. When an agency has a preference, [ed., then] potential, reliable and sound vendors consider it futile to bid in such a climate. When they do not bid, competition becomes less keen and prices rise."

CURRENT "LOCAL" & "NON-LOCAL" SPENDING

A Spokane County financial system report indicates the following for the 2008 fiscal year:

Total Number of Purchase Orders Year-To-Date:		Total Value of Purchase Orders Year-To-Date:	
Local Vendors:	14,221	Local Vendors:	$55,634,078.16
Non-Local Vendors:	17,667	Non-Local Vendors:	$135,344,986.58
Total Purchase Orders:	31,888	Total Purchase Orders:	$190,979,064.74
% Local Vendors:	44.60%	% Local Vendors:	29.13%
% Non-Local Vendors:	55.40%	% Non-Local Vendors:	70.87%

Note: This report is based on zip code, therefore the figures in the above report excludes payments to local companies which may have payables addresses outside of Spokane County.

CURRENT "LOCAL" & "NON-LOCAL" OBERSVATIONS

1. Locally Warehoused - Goods: If there is an immediate need, locally warehoused goods are more readily available than if they had to be shipped into the area. A "Local Preference" policy is not needed in such a case since the needed time is addressed in the bid specifications in the competitive bid (i.e., delivery due date and time).

2. Response Time – Services: Local vendors may generally be better able to comply with "response time" requirements placed on service contracts. A vendor already having a local presence may possess an inherent pricing and/or a time-responsiveness advantage since they may have no new initial "start-up costs" or "mobilization costs or factors. Therefore, a "Local Preference" policy is not needed in regard to this factor.

3. Local Advertising: Local vendors often have an advantage over vendors outside of the area when it comes to their awareness of advertisements published in the County's official legal newspaper – which is a local publication.

ADVERSE IMPACTS AS OBSERVED BY OTHER POLITICAL JURISDICTIONS

The following is a list of observations made by other public jurisdictions concerning the "Local Preference" policy:

1. Prices will rise by the level of the percentage of preference given ***(Ed., Percentage preference not allowed in WA State)***, and possibly, go even higher because of the restriction on competitive and open bids. A 5% preference on our annual expenditures of approximately $23 million could raise our initial contract awards by $1.15 million or more.

2. A preference to local vendors could eliminate the minority vendor participation we get from elsewhere.

3. Federal regulations prohibit the granting of federal funds, such as F.A.A., UDAG or CDBG, to entities that have local preference policies used in bidding procedures.

4. With a "Local Preference" policy our jurisdiction would not be able to participate in many State Contracts and thereby would not be able to take advantage of the combined and leveraged spending of other large political subdivisions, and Group Purchasing Cooperatives, and Inter-local Cooperative Agreements. The County presently participates in numerous such contracts. This would force the County to issue many more bids and would likely increase costs due to reduced purchasing power.

5. Many bidders located outside of the jurisdiction have indicated that they will no longer bid when the integrity to the bidding process is compromised. Most economists believe that a restricted market raises prices.

6. "Local Preference" can actually discourage local economic development because firms which might possibly open a local office pursuant to a contract award will not, since they may be disadvantaged in winning a first contract.

7. Firms that don't qualify as a "Local Vendor" often have a greater positive impact on the local economy than competing "Local Vendors" firms (for example some "Non-local Vendors" may employ more local residents).

8. Historically, when a jurisdiction passes a "Local Preference" policy or ordinance then other jurisdictions in the surrounding areas implement retaliatory legislation.

9. A certification program would need to be implemented to determine and verify "localness," thereby, increasing the cost and burden of the acquisition and procurement process.

10. Establishing a "Local Preference" policy may eliminate the pressure brought to bear by only a few local businesses; however, it could open the door for more demands upon the political subdivision which adopted the policy.

11. "Local Preference" policies and laws have been implemented in large cities where there are many vendors on an equal footing, but it will raise costs where there is little or no competition within the jurisdiction.

12. Implementation of local preference policies elsewhere has caused bid protests lawsuits.

13. "Local Preference" policies and laws are contrary to free and open competition to minimize costs.

14. Even if the County considered sales tax under RCW 39.30.040, if then a “Local Vendor” may still be a higher bidder under the tabulation if the bids are close and if the local sales tax rate were higher than the sales tax rate for the “Non-local vendor.”

15. The “Local Preference” would only apply to bids for equipment, materials, or supplies. Taxes for services/constructions are determined by where the service is performed, effectively leveling the playing field by making all bidders essentially "Local Vendors.”

COMPLEXITIES IN DEFINING A “LOCAL VENDOR”

1. The definition and application of “local” is subject to legal challenge.
2. Would a “Local Vendor” be one which located anywhere within the County boundaries?
3. Would a “Local Vendor” be one which located only within the boundaries of County where the County (and not the City) receives the full benefit of the sales tax?
4. Would a “Local Vendor” be a taxpayer living within County but who owns a business located outside of the County boundaries?
5. Must the business own property within the County boundaries?
6. How long must a business be established within the County to qualify? What if a vendor from outside the County’s boundaries “set up shop” just to submit a bid?
7. Does the home of a sales representative within the County boundaries qualify as a local vendor?
8. Does making payments to a company’s remit-to address which is outside of the County boundaries disqualify them as a “Local Vendor?”
9. If a business is owned from outside of the County boundaries will they be allowed to bid? Should the ownership of a business be “Local” to qualify?
10. Should the business have paid local County property taxes or other taxes to qualify?
11. Should a warehouse, distribution center or a small branch office qualify a firm as local?

CONCLUSION

Buying locally is always a primary consideration when the purchase can be accomplished in accordance with sound purchasing practices.

Purchasing professionals believe “Local Preference” is inequitable because it results in part of the tax dollar being spent in “subsidy” instead of value. Sound purchasing equates to the concept of best value purchasing, i.e. lowest responsive bidder. A purchasing agent who has the marketplace artificially constrained cannot exercise the ingenuity and initiative, which is a contributing factor to their effectiveness.

A number of articles and studies have been published on this topic, leading to the same conclusions. Please see the attachments for some of them.

It is the opinion of the Purchasing Agent that the County should not adopt “Local Preference” or “Buy Local” policy.