



# City of Sunnyvale

## Agenda Item

14-0991

Agenda Date: 1/30/2015

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### 2015 COUNCIL STUDY ISSUE

#### **NUMBER**

FIN 15-02

**TITLE** Local Business Preference Relative to City Purchases

#### **BACKGROUND**

**Lead Department:** Finance

Support Department(s): N/A

#### **Sponsor(s):**

Councilmembers: Griffith, Hendricks, Martin-Milius

#### **History:**

1 year ago: N/A

2 years ago: N/A

#### **SCOPE OF THE STUDY**

##### **What are the key elements of the study?**

The Sunnyvale Municipal Code grants local businesses a one percent preference when participating in competitive bidding for the City's purchase of *goods* (SMC §2.08.200). The one percent advantage is applied to the bid price to determine if its application results in the lowest bid for the local business, but the City pays the full price of the bid.

The one percent preference was adopted by Council in 1990 as a way to enhance the competitive status of local businesses when bidding for contracts, increase employment opportunities within the City, and encourage businesses to locate and remain in Sunnyvale thereby increasing overall tax revenue. In that the City receives a one percent share of the sales tax derived from business transacted in Sunnyvale, a one percent local preference was adopted on the basis of its cost neutrality - a higher preference would put the City at an economic disadvantage due to the loss of sales tax.

Council has requested that staff propose a Study Issue to extend the one percent local preference to the procurement of *services*. This study would focus on the pros and cons of such an application.

##### **What precipitated this study?**

The issue was precipitated by a Council contract award associated with the sale of a City-owned condominium, whereby staff selected a Cupertino realtor based on overall value of the firm to effect the transaction. Council inquired as to why the contract was not going to a Sunnyvale firm, which was echoed by a member of the public. Council then proposed a Study Issue to evaluate the merits of extending the City's one percent preference to the procurement of services.

**Planned Completion Year:** 2015

**FISCAL IMPACT**

**Cost to Conduct Study**

Level of staff effort required (opportunity cost): Moderate

Amount of funding above current budget required: \$0

Funding Source: N/A

Explanation of Cost:

Existing staff can conduct a study at no additional cost to the City.

**Cost to Implement Study Results**

Some cost to implement.

Explanation of Cost: Providing a one percent preference to businesses for the procurement of services would result in negative fiscal impacts to the City, particularly in terms of potential legal challenges more fully explained below.

**EXPECTED PARTICIPATION IN THE PROCESS**

Council-approved work plan: No

Council Study Session: Yes

Reviewed by Boards/Commissions: No

**STAFF RECOMMENDATION**

**Position:** Drop

**Explanation:** Council has periodically considered broader application of the local preference, most recently in 2006 (Study Issue), 2007 (Study Issue follow up) and 2009 (Budget Issue). Following the study in 2006, and the follow up in 2007, Council opted not to expand the local preference. In 2009, Council decided to drop the Budget Issue. Expanding the local preference to services would be economically disadvantageous to the City and would be difficult/problematic to implement given the current Municipal Code requirements and potential legal challenges. In the case of goods purchases, applying the local preference is relatively straightforward because contract awards are always made to the lowest responsive and responsible bidder. Procuring services, on the other hand, typically involves a competitive Request for Proposals (RFP) process, whereby the services offered are evaluated on a variety of objective criteria (with price being one factor of many). In these instances, contract award is based on the best value, not the lowest bid, e.g., the City can pay a higher price than the lowest cost if the overall value is justified. Additionally, the final contract cost is negotiated in good faith with the top-rated proposer, in many cases resulting in pricing reductions. Providing a one percent price preference to a local firm that was not the top-rated proposer would give an unfair advantage over firm(s) that were more favorably evaluated, increasing the risk of legal challenges to the City's selection process. This would be particularly true for architectural and engineering design-related services, for which State law requires a Qualifications Based Selection (QBS) process before price can be negotiated.

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