


LOCAL PURCHASING PREFERENCE POLICIES: THE GOOD, THE BAD, AND THE UGLY

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SESSION OVERVIEW

- What is a Local Purchasing Preference?
- Types of Preferences
- Benefits
- Downsides
- Legal Aspects
- Longmont as a Case Study




WHAT IS A LOCAL PURCHASING PREFERENCE?

- Policy that provides a defined level of “preference” to award contracts to local businesses
- Applied during the vendor selection process
- Components of a policy:
 - Definitions – “local”
 - Type and amount of preference
 - Selection methods it applies to
 - Cap
 - Exceptions




TYPES OF PREFERENCES

- Who is considered to be “local”
 - Geographic Scope
 - Ownership
 - Verification




TYPES OF PREFERENCES, CONTINUED...

- Tie Bid
- Percentage
 - With or without cap
 - With or without allowing local company to match low bid
- Reciprocal
- Absolute
- Other preferences might include:
 - Small businesses
 - Disadvantaged businesses
 - Women- or minority-owned
 - Socially responsible



TIE BID PREFERENCE

- Bidder 1: ABC Company is “local”
- Bidder 2: XYZ Company is not “local”
- Tie Bid: In case of all evaluation factors being equal, the contract is awarded to the local company



PERCENTAGE PREFERENCE – CAP VS. NO CAP

- Bidder 1: ABC Company is “local”, Bid = \$525,000
- Bidder 2: XYZ Company is **not** “local”, Bid = \$500,000

- 5% Preference policy with cap at first \$100,000
 - Award goes to Bidder 2 = amount exceeds capped allowance
- 5% Preference policy with no cap
 - Award goes to Bidder 1 at their bid amount = bid is 5% over low bid

PERCENTAGE PREFERENCE – WITH ABILITY TO MATCH LOW BID

- Bidder 1: ABC Company is “local”, Bid = \$525,000
- Bidder 2: XYZ Company is **not** “local”, Bid = \$500,000

- 5% Preference with Ability to Match to Low Bid: Bidder 1 is 5% over the low bid and so is given the opportunity to match Bidder 2’s price and receives award if they do

RECIPROCAL PREFERENCE

- Another Town has a reciprocal preference policy...
 - Bidder 1 is resident in a municipality with a 5% local preference, Bid = \$500,000
 - Bidder 2 is resident in a municipality with no local preference policy in place, Bid = \$520,000

- Another Town applies 5% to Bidder 1’s price resulting in a “bid” of \$525,000. Award is made to Bidder 2.

ABSOLUTE PREFERENCE

- Bidder 1: ABC Company is “local”, Bid = \$800,000
- Bidder 2: XYZ Company is **not** “local”, Bid = \$500,000

- Award is to Bidder 1 at any cost

BENEFITS OF A LOCAL PREFERENCE POLICY

- Encourage businesses to stay or to relocate to your town
- Multiplier effect of local dollars (2:1, 3:1)
- Create jobs
- Increase local tax revenues
- Represents commitment to local businesses
- Improve relationships with local businesses

DOWNSIDES OF A LOCAL PREFERENCE POLICY

- Increased costs and decreased competition
- Potential for reciprocal action by other communities
- Increased administration to oversee policy
- Increased risk of challenge to procurement process
- Goes against public purchasing principles of equity, impartiality, open competition, best value

LEGAL ASPECTS

- Modification to Code or other rules governing how awards are made
- Federal procurement rules prohibit “geographical preferences”



MORE LEGAL ASPECTS

- Federal constitutional issues:
 - Equal Protection (U.S. Constitution Amendment XIV)
 - Preference must have reasonable justification and cannot simply be protectionist
 - Due Process (U.S. Constitution Amendment XIV)
 - Bidding is not a fundamental right; Courts will defer to local government laws
 - “Dormant” commerce clause (U.S. Constitution Article I, Section 8, clause 3)
 - Market participant exception
 - Privileges and Immunities (U.S. Constitution Article IV, Section 2, clause 1)
 - May only be brought by “citizens”

LONGMONT’S JOURNEY TO A LOCAL PREFERENCE POLICY

- Background
- What Our Policy Is
- How We Implemented It
- Reporting and Capturing Data
- Outreach Activities
- Has It Worked?
- Side Effects



COMMUNICATION



QUESTIONS AND DISCUSSION

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