



WEST BASIN MUNICIPAL WATER DISTRICT
17140 S. Avalon Blvd., Suite 210
Carson, CA 90746

AGENDA NO. 13

MAY 13, 2009 – Finance

Smith (Chair) / Dear

MAY 26, 2009 – Board Meeting

Prepared by: Steven O'Neill / David Shull

Submitted by: Margaret Moggia

Approved by: Rich Nagel

ACTION CALENDAR

PROCUREMENT POLICY REVISION FOR THE LOCAL BUSINESS ENTERPRISE PROGRAM

SUMMARY:

Last year, the Board adopted an outreach program to encourage local businesses to participate in West Basin Municipal Water District's (West Basin) procurement opportunities. Recently, the Finance Committee asked about expanding the existing policy to capture subcontractors who are included in a prime contractor's bid to provide professional or non-professional services to West Basin. Such a program would be governed by the same existing restrictions of Proposition 209 – West Basin is prevented from giving preferences based on a vendor's race or gender. (Cal.Const. Art. I, § 31.) Proposition 209 does not discuss local business enterprises, but such preferences could be subject to an equal protection challenge on the grounds they impose an unjustified discriminatory burden on non-resident businesses.

Our analysis of including sub-contractors identified several areas of concern. One concern was how West Basin would handle a situation where an out of service area prime contractor includes a local sub-contractor merely as a token, to gain some advantage in the evaluation process. Staff recommends adjusting the program in a manner that would allocate points based on the contractor's (prime or sub) percentage dollar amount of participation. The percentage the contracting work bears to the total project amount that would be multiplied by the three (3) available preference points. For example, if the total contract amount was \$100,000 and \$25,000 of the work was allocated to a local sub-contractor, the prime contractor (non-local) would receive .75 preference points (.25 x 3) out of the total three preference points.

Another issue staff identified was verification. West Basin does not have the staff resources available to visit job sites, interview sub-contractors, and make determinations concerning compliance to the relative percentage of work completed by subs and the prime. If it is found that a prime contractor substitutes a sub-contractor who was different from the sub-contractor identified in the original bid, West Basin has remedies. Public Contracts Code section 4107 prevents a prime contractor from substituting a person listed as a sub-contractor in the original bid. If a prime contractor violates this provision after winning the contract, Public Contracts Code section 4110 provides that the agency, as a remedy against the prime contractor, may: (1) cancel the contract; or (2) assess the prime contractor a penalty in an amount of not more than 10% of the amount of the sub-contract involved. There is a process involved in exercising either of these options, and West Basin would be required to give the offending prime contractor a public hearing with at least five days notice.

Another enforcement tool discussed was West Basin not considering future bids by prime contractors who tried to "game" the system by not using the subs to the extent that they represented in their original bid. Public Contracts Code section 1103 defines "responsible bidder" as a bidder who has demonstrated the attributes of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public work's contract. To the extent a prime contractor was deceitful to West Basin; this would certainly be relevant to the "trustworthiness" of that contractor.

Staff recommends approval of the proposed revisions to the Procurement Policy as being fair and equitable to our supplier community and in the best interest of West Basin and the community we serve. Exhibit "A" reflects the inclusion of the proposed changes to the Local Business Enterprise Program with revisions to Sections 5-1.104 and 5-1.105.

STRATEGIC BUSINESS PLAN IMPLEMENTATION:

Goal 5, Customer / Community Services – Provide for the needs of our customer agencies and the communities we serve in a way that reflects their needs.

COMMITMENT STATEMENT:

Customer Service – West Basin is committed to providing value by understanding and meeting the needs of our customers and the communities we serve.

FISCAL IMPACTS:

Not applicable.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

This item was reviewed by the Finance Committee on May 13, 2009 and recommended for approval at the May 26, 2009 Board meeting.

RECOMMENDED MOTION:

That the Board approves amending West Basin's Procurement Policy with the revisions described herein and as further defined in Exhibit "A" (attached).

LIST OF EXHIBITS:

Exhibit "A" – Administrative Code: Part 5. - Property; Chapter 1. - Procurement Policy