



Memorandum

TO: COMMUNITY & ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Matt Cano
Julia H. Cooper

SUBJECT: SEE BELOW

DATE: January 12, 2022

Approved

Date

1/12/22

**SUBJECT: CONTRACTING WITH LOCAL AND SMALL BUSINESSES IN FISCAL
YEAR 2020-2021**

RECOMMENDATION

Accept the annual report on City contracting with local and small businesses for FY 2020-21.

BACKGROUND

Contracting with local and small businesses is an important goal of the City's procurement programs. Contracting with local businesses helps promote the hiring of local workers and has a positive impact on the Santa Clara County economy.

A. Procurement of Goods, Supplies, Materials, Equipment and Services

The Finance Department Purchasing Division is responsible for the procurement of goods, supplies, materials, equipment, and services in accordance with Chapter 4.12 of the San José Municipal Code. The procurement of consulting professional services contracts is delegated to City departments to procure under the City Manager's contract authority and are not included in this report.

Section 4.12.320 of the Municipal Code provides a preference for local businesses and for local businesses that are small. A local business is defined as a business having either the principal business office or a satellite office with at least one (1) full time employee located in Santa Clara County. A small business is defined as a local business having thirty-five (35) or fewer total employees. This preference is applied in two different ways:

- For price-determinative procurements (i.e., low bid procurements for commodity such), the preference is applied as a 2.5% credit to the bid for local businesses and another 2.5% credit to the bid for local businesses who are also small businesses.
- For qualifications-based procurements (i.e., department-led professional services procurements, where points are awarded for experience, expertise, and project approach), a preference of 5% of the total number of points is given to local businesses and an additional preference of 5% of the total number of points is given to local businesses who are also small.

B. Procurement of Public Works (Construction) Contracts

The Department of Public Works is responsible for procuring the City's major public works contracts, defined by Section 1217 of the City Charter and Title 27 of the San José Municipal Code as one exceeding \$600,000 and subject to an annual Construction Cost Index adjustment. The major public works threshold for FY 20-21 was \$620,000. Public Works contracts that fall below that threshold are referred to as minor public works and may be procured by the Department of Public Works, Environmental Services Department, or Department of Transportation. The Department of Public Works tracks those minor public works contracts procured by the other departments, and they are included in this report.

Section 27.06.050(g) of the San José Municipal Code allows for a local/small preference to be provided on minor public works contracts. The preference is that same as the one provided by Section 4.12.320 for price-determinative procurements.

ANALYSIS

The analysis in this report is divided into Finance Department Purchasing Division procurements and construction procurements that are part of the Capital Improvement Program (CIP) as tracked by the Public Works Department.

As outlined in Table 1 below, in FY 2020-21, the estimated total annual dollars awarded by Finance Department Purchasing Division increased by 3.5% when compared to FY 2019-20.

Based on available reports, the estimated local market share for total dollars awarded increased by 29.5% of total dollars awarded, or \$98.7 million, while estimated awards to small businesses that are local businesses increased by about 3.3% compared to prior year, or \$21.7 million. For purchase orders, the local business and small business data was determined by reviewing the vendor's address and number of reported employees from the City's business tax database. For contracts, the local and small business data was based on whether the business applied for the preference during the procurement. Most of the local business awards are for maintenance and repair services that typically require a local presence to meet the service delivery requirements of the City.

Not represented in the Table 1 figures below are the Procurement Card (P-Card) program statistics. The P-Card program is established to streamline small dollar purchases and reduce the acquisition period for products and services where a competitive process is not required. In FY 2019-20, there were 42,165 P-Card transactions with a total spend of \$13,248,279. Finance estimates the annual impact of the P-Card program to local businesses was approximately 29% in spend, totaling over \$3.8 million.

Table 1: Finance/Purchasing Contracts and Purchase Orders

	FY 17-18		FY 18-19		FY 19-20		FY 20-21	
	\$ (in M)	%						
All Businesses	\$210.7	100%	\$259.3	100%	\$309.6	100%	\$320.3	100%
Local Businesses	\$39.7	19%	\$85.7	33%	\$76.2	25%	\$98.7	31%
Small Businesses	\$18.1	9%	\$18.3	7%	\$21.0	7%	21.7	7%
Number of Awards	#	%	#	%	#	%	#	%
All Businesses	1967	100%	2091	100%	2013	100%	2197	100%
Local Businesses	251	15%	579	28%	542	27%	403	18%
Small Businesses	139	7%	193	9%	196	10%	87	4%

Unfortunately, due to extraordinary demand placed on the Purchasing Division as a result of the City’s response to the COVID-19 pandemic without an increase in resources, the Purchasing Division was unable to continue to expand efforts this year to participate in business outreach events and forums to educate local businesses on how to do business with public agencies and the City of San José. Staff will continue to research and pursue opportunities to participate in virtual business outreach events and in-person fairs and small/local business events as made available and appropriate. In addition, the City’s Vendor Guide on “Doing Business with the City of San José” is available on the City’s website for direction and guidance.

CIP Construction Contract Data

The Department of Public Works tracks its contract awards to local & local/small businesses throughout the year for both major and minor public works contracts. Prior to FY 2019-20, Public Works only tracked local and small business statistics for major public works contracts. However, since the introduction of local and small business preference on minor public works contracts in late 2019, the Department has captured local and small business statistics for both major and minor public works projects.

In addition to tracking local/small business participation, Public Works also started requesting that bidders submit a voluntary form to report their status as a Women-owned Business Enterprise (WBE), Minority-owned Business Enterprise (MBE), Disadvantaged Business Enterprise (DBE), Lesbian, Gay, Bisexual, and Transgender Business Enterprise (LGBTBE) and Veteran-Owned Small Business (VOSB). However, while many contractors chose to submit the voluntary form, very few reported any such statuses and Public Works has no way of verifying that the information is accurate. Additionally, due to Proposition 209 and other similar legal constraints, the City is prohibited from making any specific procurement decisions based on the information.

Over the last five fiscal years, the CIP has fluctuated in the total number of major construction contracts and the total dollars awarded. As it pertains to contracting with local and local/small businesses, the CIP analyzes the percentage of contracts and dollars awarded. During FY 2020-21 there were 39 Major Projects awarded totaling \$120.9M. Eleven of those projects (worth \$18.9M) were awarded to local contractors; of those eleven projects, six projects (worth \$10.0M) were awarded to local contractors who are also small businesses.

Table 2 below shows major public works contract activity for FY 2020-21, as well as the prior four fiscal years for comparison.

Table 2: 5-Year Comparison of Major Public Works Dollars and Awards

	FY 16-17		FY 17-18		FY 18-19		FY 2019-20		FY 20-21	
Dollars Awarded	\$ (M)	%								
All	\$167.8	100%	\$290.3	100%	\$191.2	100%	\$190.5	100%	\$120.9	100%
Local Businesses	\$32.9	20%	\$158.4	55%	\$52.2	27%	\$53.0	28%	\$19.0	16%
Local & Small Businesses	\$12.0	7%	\$8.2	3%	\$10.8	6%	\$12.0	6%	\$10.0	8%
Number of Awards	#	%								
All	82	100%	50	100%	57	100%	63	100%	39	100%
Local businesses	26	32%	16	32%	13	23%	20	32%	11	28%
Local & Small businesses	14	17%	11	22%	5	9%	13	21%	6	15%

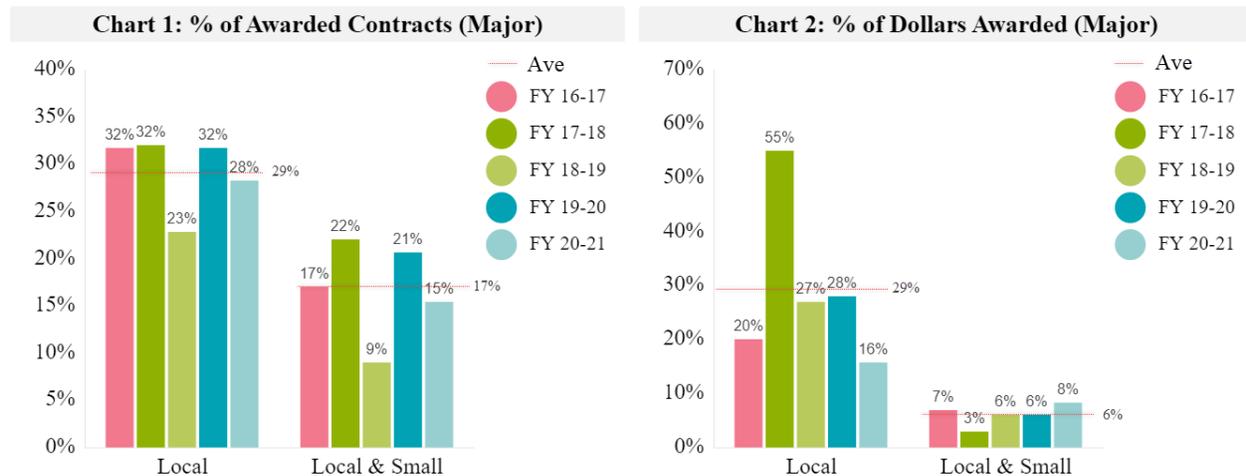
The Department of Public Works uses two methods for determining whether a contractor is local and local/small: 1) for minor public works procurements, contractors requesting a local or local/small business preference are required to submit a Request for Local and Small Business Enterprise Preference form, which is verified by staff before the preference is applied; or 2) for major public works procurements, through the address on the bid documents. It is possible that

the data underreports firms with a local presence if they do not request the preference or list a headquarters office on their bid documents instead of a local satellite office.

Overall, the program saw a decrease in the percentage of contracts awarded to local and local/small contractors for both major and minor public works contracts from the previous fiscal year. These numbers are also below the five-year average. Analyzing the data, staff identified that both sewer and concrete projects were project types that had the lowest percentage of local and local/small contract awards. The small number of contract awards could be due to a limited number of local and local/small contractors that perform this specialty work. The lower number could also be a result of high demand for contractors in the private sector; with a robust local market for private construction work, there is less need for local contractors to seek public sector work.

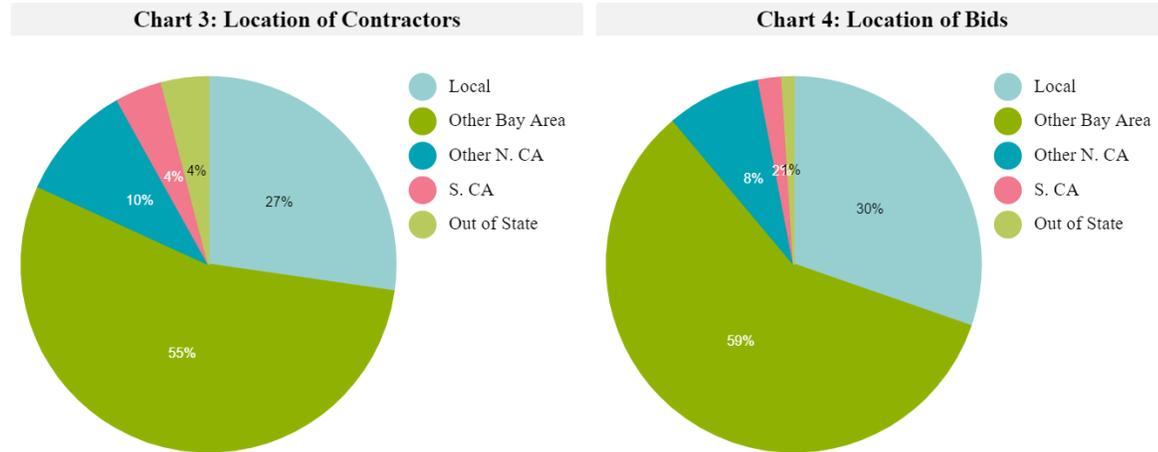
Charts 1 and 2 below show the construction contract award data from Table 2 graphically. As illustrated in chart 1, the percentage of local and small awards decreased from the prior FY and was slightly below the five-year average. Chart 2 below shows the percentage of construction dollars awarded for the past five fiscal years. As illustrated, the percentage of dollars awarded to local contractors decreased with the percentage awarded to local/small businesses slightly increased from prior fiscal year. It should be noted that this does not capture portions of the contracts that are subcontracted out and may be completed by local and/or small subcontractors. Public Works is currently looking into how to best capture such data for future evaluation.

Chart 1 & 2: 5-Year Comparison of Percentage of Major Public Works Contract Awards



The Public Works Department conducted further analysis on the bids received for procurements run during the fiscal year. The Department received 399 bids from 117 contractors. The analysis showed that of the 117 contractors, 27% of those contractors bidding on projects were local contractors, and those contractors made up 30% of the 399 total bids received. Charts 3 and 4 illustrate this data. It is interesting to note the correlation of the percentage of local contractors bidding (27%) and the percentage of local contractor bids (30%) in relation to the percentage of

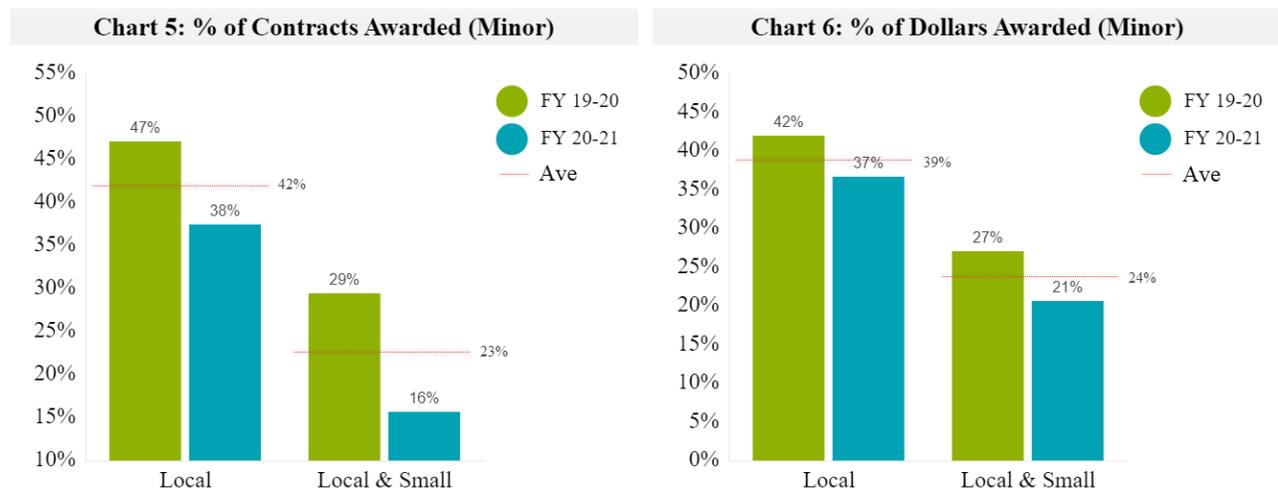
local contractors being awarded contracts (28%). The Department will continue to collect this data in the future to identify patterns (if any) and provide further insight in future reports.



As mentioned, FY 2019-20 was the first fiscal year that the CIP reported on minor public works contracts. Therefore, the program only has data for the last two fiscal years. During FY 2020-21, there were 32 minor public works contracts awarded totaling \$12.5M. Twelve of those projects (worth \$4.6M) were awarded to local contractors; of those twelve, five projects (worth \$2.6M) were awarded to local contractors who were also small. As illustrated in Charts 4 and 5, the program had a decrease in the percentage of minor contracts awarded, and a decrease in the percentage of dollars awarded to local and local/small contractors. In an effort to clearly identify the issue, Public Works procurement staff sent surveys to potential bidders in hopes of obtaining specific information for the lack of participation; however, little to no responses were received through that effort.

The program will continue to collect and report out on minor public works contracts and provide more comprehensive comparisons in future reports.

Chart 5 & 6: 2-Year Comparison of Percentage of Minor Public Works Contract Awards



Efforts to increase small/local construction businesses

With a five-year CIP valued at nearly \$4 billion, the City is committed to proactively providing opportunities for our small and local businesses. On October 8, 2019, Council approved staff's workplan of the phased implementation of the Public Works Contracting Program (PWCP). This phased implementation is meant to address the challenges local and small construction firms face in being able to financially participate in the City's construction projects. These challenges are addressed through a combination of education, outreach, and policy changes. As the Department continues to evaluate the results of these efforts, it will need to utilize lessons learned and pivot its strategy. Modifications will be made to the Public Works Construction Academy, and new additions to the programing are outlined below. During this pivot, the Department will continue to involve the Small Business Advisory Task Force in its planning efforts.

Public Works Contracting Program

- **Public Works Academy**

The Public Works Construction Academy is designed to inform contractors of contract opportunities through "Opportunity Awareness Events" as well as educate them on how to bid on and manage a public works contract through "Construction Contracting Seminars." In 2021, The Public Works Department hosted two opportunity awareness events. These events were attended by 45 vendors of various trades and specialties. The Department also hosted a construction contracting seminar series in the Spring of 2021. The seminar series was attended by 33 vendors of which 36% were local businesses and 30% were local businesses who were also small. It is worth mentioning that of the 33 participants, only four were general construction contractors with the remaining being a mix of design consultant, suppliers and specialty trades that would be best suited as sub-contractors and not a prime contract holder. The Department plans to convert the construction contracting seminar series into an interactive online module that will be available to contractors through the City's website at any time.

- **Minor Contract Pre-Qualification Pool Program**

In early 2019, the Department of Public Works launched the Minor Contract Pre-Qualification Program, which aimed to streamline routine minor public works procurements and increase opportunities for local and small contractors to bid on minor public works projects. Over two years, the program encompassed six pre-qualification pools (streets, electrical, mechanical, plumbing, general building, and general parks contractors) and pre-qualified twenty-seven contractors. 59% of the pre-qualified contractors were local businesses and, of those, 38% were local businesses who are also small. Unfortunately, the Department's experience with the pools failed to live up to expectations. Since staff still had to obtain quotes and execute task orders for each new project, entering into master agreements with the pre-qualified contractors did not save as much time in getting projects "off the ground" as staff had hoped. Not only did the pre-qualification process not result in faster, more competitive minor public works procurements, the pre-qualified local and small contractors failed to participate by

submitting quotes. And approximately 99% of the twenty-seven contractors that were pre-qualified were already bidding on City of San José solicitations.

The Minor Contract Pre-Qualification Program was intended to work in tandem with the Construction Contracting Seminar Series by providing bidding opportunities for contractors who graduated from the series. However, only one graduate went on to become pre-qualified, and that vendor was already participating in public works procurements.

Comparing program outcomes with the large investment of staff time required to administer the pools has led the Department to decide to modify its approach. The Department of Public Works is currently piloting of the solicitation of quotes for minor public works projects from local contractors only (when sufficient local contractors are available to ensure quality bids) and is working to build and maintain a robust list of qualified local contractors. This approach is more efficient for staff as well as for contractors, who do not need to submit detailed pre-qualification packages on an annual basis. Additionally, contractors can be added to the list throughout the year instead of waiting for an annual pre-qualification process to open.

- Local and Small Business Preference

In FY 2019-20, the City began giving a 2.5% local and a 2.5% local/small preference to qualifying contractors on minor public works contracts to help increase the award frequency to those contractors. The City established 5% maximum preference to align with the existing price-determinative preference for goods and services found in San José Municipal Code Section 4.12.320. Consistent with last year's report, the preference was applied on numerous occasions; however, the application did not result in the change of the apparent low bidder.

On October 26, 2021, Vice Mayor Jones issued a memorandum in which one of the recommendations was for the City Manager and City Attorney to evaluate Municipal Code Chapter 27.06.050(G), Request for Quotes, to increase the preference to a maximum of 10% to qualifying contractors. As previously mentioned, the Department of Public Works does not have robust historical data on minor public works contract awards. Staff analyzed minor public works bids from the last six months (June 2021 to December 2021) and determined that increasing the preference percentage to a maximum of 10% would have changed the results of three out of 15 procurements. That is, three contracts that were awarded to a non-local contractor would have been awarded to a local/small contractor if a maximum preference of 10% had been applied. Since the City does not conduct a large number of minor public works procurements each year, this analysis considered only a small number of procurements, making it difficult to make policy recommendations without looking at longer-term trends. In addition, the City Attorney's Office would need to evaluate whether there are legal risks associated with increasing the preference past the current 5% maximum.

- Subcontractor Networking Events

In order to continue to evolve in the engagement of local and small contractors, the Public Works Department would like to encourage participation of local and small contractors on any level of contracting. Historically, the City has only focused on and tracked local and small contractors who are prime contract holders. However, as staff has learned, being a prime contract holder requires capacity that not many small contractors have. In order to aid in growing capacity, Public Works would like to help get local and small contractors involved in public works contracts at the subcontractor level. The Department believes this level of engagement is much more realistic for most small contractors, and this can help achieve the goal of local and small contractors being a part of public works contracts. Starting in fall 2022, the Department plans on hosting a subcontractor networking event. This opportunity will allow local and small contractors to meet face to face with primes and obtain information on how they can become a subcontractor on their projects. The hope is that by being a subcontractor, they not only will keep their crews working, but will also have hands-on experience contracting with the City.

Performance Measures

Public Works will continue to track various data points in order to establish benchmarking measures. Since the PWCP currently does not have a robust historical data set, the success of the PWCP will be evaluated through contractor participation in the Public Works Academy and participation in a new sub-contractor networking event to evaluate impact on local and local/small participation in the public works procurement process.

The program will continue to coordinate with the Small Business Advisory Task Force to obtain feedback on the program's progress as well as provide an opportunity to improve local/small business outreach and communication of contract opportunities and Public Works Academy events.

CONCLUSION

It is important to note many of the City's CIP construction contracts are large-scale and suited for larger and well-resourced firms. However, staff will continue to seek opportunities to provide smaller project offerings directly to local and local/small construction firms using the minor public works procurement process and by facilitating their ability to serve as subcontractors on projects. The Finance and Public Works Departments will continue to track local and local/small business data in City contract awards and keep the Community and Economic Development Committee advised of participation levels.

January 12, 2022

Subject: Contracting with Local and Small Businesses in FY2020-21

Page 10

COORDINATION

This memorandum was coordinated with City Attorney's Office.

/s/
MATT CANO
Director of Public Works

/s/
JULIA H. COOPER
Director of Finance

For questions, please contact Matt Loesch, Assistant Director, Public Works at (408) 975-7381 or Jennifer Cheng, Deputy Director, Finance at jennifer.cheng@sanjoseca.gov.