



# Memorandum

**TO:** COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** Matt Cano

**SUBJECT: COUNCIL PRIORITY #3:  
CITYWIDE CONTRACTING  
PROGRAM UPDATE**

**DATE:** September 13, 2019

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Approved      /s/  
Kim Walesh

Date

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## **RECOMMENDATION**

- 1) Approve the workplan for the phased implementation of the Public Works Contracting Program report on Council Priority #3- Disadvantage Business Enterprise Program, currently identified as the Public Works Contracting Program;
- 2) Approve removal of this Council Priority #3 – Disadvantaged Business Enterprise Program, from the Council Priority list at the next priority setting session.

## **OUTCOME**

Approval of this item would implement an ongoing city program based on the priority referred to the City Manager in Council Policy Priority #3, resulting in an ongoing City program to support the inclusion of a broader spectrum of our community in the construction opportunities offered by our capital improvement program.

## **BACKGROUND**

At the June 23, 2015 City Council Priority Setting Session, Mayor Liccardo and Councilmembers Karla, Peralez and Matthews' March 20, 2015 memorandum provided direction (Council Agenda 3/24/15, Item 6.1) to return to the Community and Economic Development Committee (CED) with a strategy to implement a Disadvantaged Business Enterprise (DBE) Program. At the May 23, 2017 City Council meeting (Item 2.16), Council approved Master Agreements with Silvy Group and Keen Independent Research LLC and Milagro Marketing LLC, a Joint Venture, for consulting services for the Public Works Contracting Program (PWCP). The PWCP is currently Council Priority number three.

At the June 26, 2018 CED Committee, staff provided information gathered, analyzed, and reported by the consultants on the City of San Jose's ability to expand opportunities for diverse

businesses in its public works contracting. The consultants identified barriers by reviewing current practices and constraints, and examining the external business environments. The Committee approved staff recommendations as follows: 1) Analyze each program for feasibility, legal considerations, staffing, and resource consideration and 2) Develop and implement an Outreach and Engagement Action Plan.

At the January 14, 2019 CED Committee, staff provided an update on the Outreach and Engagement Action Plan and the introduction of the Public Works Academy.

Specifically, the Keen Independent Research report detailed nine potential small business initiatives that needed to be reviewed for feasibility as follows:

1. Small Business Enterprise contract participation goals on locally-funded City Contracts;
2. Local and Small business preference program (extension of non-construction contracts);
3. Socially and economically disadvantage business program;
4. Minority-owned Business Enterprise (MBE), Women- owned Business Enterprise (WBE), and Other Business Enterprise (OBE) contract goals similar to the City of Los Angeles;
5. Sheltered Market Program;
6. Working Capital Program;
7. Changes to bonding, prevailing wage, and other requirements;
8. Other methods of open procurement opportunities and increase transparency of awards; and
9. Direct contact with local, small businesses to directly inform them of bidding opportunities, education, and training.

Additionally, the Silvy Group report detailed the need for increased outreach and engagement of the contracting community. The analysis section of this report provides staff's recommendation on a phased implementation plan for the PWCP.

## **ANALYSIS**

With a five-year Capital Improvement Program valued at nearly \$4 billion, the City must be proactive to ensure that we are "Building our City *with* our Community" by providing opportunities for our small and local businesses and workers to financially participate on the City's construction projects. The Public Works Contracting Program (PWCP) is meant to specifically address this challenge through a combination of education, outreach, and policy changes.

Importantly this program applies only to the City's procurement of one type of contract: a public works construction contract. Public works construction contracts are governed by different procurement requirements than are applicable to the City's procurement of other goods and services.

There are many definitions for local, small, and disadvantaged businesses. The City has a preference program for the procurement of contracts other than public works construction contracts. It also has a preference program for procuring public works contracts that are \$600,000 or less. Both preferences use the terms “Local Business Enterprises” and “Small Business Enterprises.” San Jose Municipal Code Section 4.12.030 defines a Local Business Enterprise as a business entity within the County of Santa Clara. Section 4.12.060 defines a Small Business Enterprise as a business that has 35 or fewer employees. This memorandum uses these definitions of “small” and “local.”

This memorandum uses the Caltrans definition of a disadvantaged business as being a business in which the owner who is “economically disadvantaged.” Caltrans defines an owner as being economically disadvantaged if he/she has a personal net-worth of less than \$1.32 million.

As discussed in the Silvy report, the City had not established consistent avenues for general and subcontractor outreach to inform them of upcoming opportunities and resources. Staff used Caltrans Disadvantaged Business Enterprise contractor lists and the San Jose business license tax database (companies with 35 or less employees within Santa Clara County) to develop the mailing/e-mailing lists for the PWCP. In total, 6000+ contractors with a wide range of specialties were notified of the PWCP and upcoming events.

In order to achieve the maximum possible impact on the local, small, and disadvantaged business community, staff is recommending a phased approach to implementation of the PWCP. A number of the items recommended in the Keen and Silvy reports have been implemented or are in the process of implementation. The below table provides a breakdown of the items that are recommended for inclusion in the PWCP. Further description and explanation of each component is included in following sections.

**Public Works Contracting Program Summary (further detail of these items are included in Attachment A)**

Component	Description
<b>Education, Outreach, and Support</b>	
Public Works (PW) Academy	<p><u>Phase I</u>  <i>Status:</i> Implemented  <i>Description:</i> PW Academy has been implemented to increase knowledge and experience in local contractor community.</p> <p><u>Future Phase to be evaluated</u>  Expansion of number of academies per year, language and cultural capacity and investigate feasibility of partnering with other local agencies on contractor outreach and education.</p>
Contractor Outreach Enhancement	<p><u>Phase I</u>  <i>Status:</i> Implemented  <i>Description:</i> Outreach through e-mail and hardcopy to 6000+ contractors on the Caltrans DBE list and the San Jose Business license tax registry. Multiple</p>

	<p>outreach sessions, including in Vietnamese and Spanish, aimed to inform contractors of upcoming opportunities and Public Work Academy.</p> <p><u>Future Phase to be evaluated</u> Expansion of quantity of events, prime and subcontractor networking events.</p>
Biddingo	<p><u>Phase I</u> <i>Status:</i> Implemented <i>Description:</i> Implementation of new bidding software to enhance contractor outreach</p> <p><u>Future Phase to be evaluated:</u> Continue to expand the use of available tools from new software.</p>
Local Chamber relationships	<p><u>Phase I</u> <i>Status:</i> Partially implemented <i>Description:</i> As part of the general outreach program, develop ongoing relationships with Black, Hispanic &amp; Vietnamese Chambers. Additionally, work with local chambers to connect small businesses to providers who can help them build their administration capabilities such as accounting, insurance, and payroll.</p> <p><u>Future Phase to be evaluated:</u> Continue to expand and build on programs and networking opportunities offered by local chambers.</p>
<b>Policy Changes</b>	
Local & local/small preference	<p><u>Phase I</u> <i>Status:</i> Implemented <i>Description:</i> Include a 2.5% preference for local contractors and a 2.5% preference for small contractors in procurement of all public works contracts that are \$600,000 or less.</p> <p><u>Future Phase to be evaluated:</u> Potential to look at ways to provide same local/small preference on procurement of major public works contracts over \$600,000.</p>
Procurement modifications	<p><u>Phase I</u> <i>Status:</i> Implemented <i>Description:</i> New procurement method that includes as one of its goals increasing the use of local and small contractors. Contract with a pool of pre-qualified contractors who will compete for smaller size public works projects.</p> <p><u>Future Phase to be evaluated:</u> Consider sheltering specific types of work for only small local contractors in the future.</p>

	<p>Sheltered Market Program determines a type of contract (e.g. sidewalk repairs, structure demolition, etc.) under certain dollar thresholds, that City staff would request bids from a selected group of small, local contractors.</p> <p>Staff believes the new procurement method is more flexible, time saving, and beneficial to a greater number of contractors – while accomplishing many of the same goals as a sheltered market program. Staff will analyze the effectiveness of the new procurement method and will bring forward future policy changes if needed.</p>
Government Experience work waiver	<p><u>Phase I</u>  <i>Status:</i> Implemented  <i>Description:</i> A barrier to contracting and working with the City is Contractors must have previous government experience to be qualified to bid and be awarded City Public Work construction contracts.</p> <p>Contractors are required to provide, at the time of bid, three (3) previous work experiences similar in scope to the project being bid and two (2) need to be with a government agency.</p> <p>Should a contractor attend the Public Works Academy and pass a course-exam, the contractor may use completion of the Academy in-lieu of prior government work experience.</p> <p><u>Future Phase to be evaluated:</u>  Partner with other local jurisdictions to determine if the PW Academy certificate can be used to waive any government work requirement from those jurisdictions.</p>
Bonding & Insurance Support	<p><u>Phase I</u>  <i>Status:</i> Implemented  <i>Description:</i> The new procurement method discussed above benefits small and local contractors by lowering the bonding requirements and capacity. Instead of one high value contract, the new procurement method allows for a variety of contract values, lowers the bonding threshold, and increase the number of opportunities and potential contractors awarded contracts. It also allows them to wait until they have been guaranteed work to secure their bonding.</p> <p><u>Future Phase to be evaluated:</u>  Consider options involving the City assisting contractors in obtaining bonding/insurance and building connections that may provide support to small and local contractors.</p>

### **Public Works Contracting Program Alternatives**

The majority of the recommendations in the Phase I implementation of the PWCP focus on creating more opportunity for local and small businesses to compete for public works construction contracts through enhancing opportunity, awareness, education, and tools. Another alternative recommendation is to set specific standards for inclusion of certain types of contractors in Public Works construction projects. At this time, staff is not recommending the implementation of a Minority-owned Business Enterprise (MBE), Women- owned Business Enterprise (WBE), and Other Business Enterprise (OBE) contract program. Implementation of a MBE/WBE/OBE program would be resource intensive and is not guaranteed to increase participation. At this time, staff's recommendation is to focus on the items recommended in the preceding sections and continue to report back to the Mayor and City Council on an annual basis. If, at a future date, the PWCP is not showing the intended results, staff recommends further consideration of a program that sets specific inclusion targets and/or goals. Further description of a potential MBE/WBE/OBE program, along with other programs not recommended at this time, is included as Attachment B of this memorandum.

### **Small Business Advisory Task Force**

The Small Business Advisory Task Force (SBATF) was established to facilitate feedback and recommendations to the City regarding proposed changes to policies affecting small business growth, such as procurement and other key items. In a memo dated September 5, 2019, the SBATF provided recommendations on the Public Works Contracting Program. The memo recommends the following:

- Strengthen Education Outreach and Support;
- Continue cultivation of local chamber relationships;
- Expand accessibility to Bidding help and support;
- Offer compliance education and resources for small businesses;
- Increase access to data across departments;
- Promote or create a matchmaking/mentorship program for small and underrepresented businesses; and
- Utilize SBATF as a forum for communication.

Public Works generally agrees with the recommendations and a number of these recommendations are included as part of the recommended PWCP Phase I implementation. Some of the recommendations require additional analysis regarding the resources and timeline for implementation as noted in Attachment C. Attachment C provides staff's recommended approach to each of the recommendations from the SBATF as well as a copy of the letter.

### **CONCLUSION**

Many of the barriers for small, local, disadvantage businesses in contracting with the City of San Jose are required by state law. Many potential changes to address these barriers are prevented by, or may be legally challenged, under state and federal law. To meet the needs of the community and the goals of increased participation within our small, local, and disadvantaged

community, a program requires flexibility and adaptability. The Public Works Contracting Program developed and implemented meets those requirements in a manner that efficiently uses limited resources, is consistent with state and federal law and minimizes the risk of legal challenges. Public Works will continue to collect and analyze data on the effectiveness of the program. Annual updates will be provided through the Contracting with Local and Small Business report to CED.

### **COORDINATION**

This memo has been coordinated with the Office of Economic Development and the City Attorney's Office.

/s/

MATT CANO

Director of Public Works

For questions, please contact Christopher Hickey, Division Manager, Public Works Department at (408) 535-8481.

## **Attachment A**

### **Public Works Contracting Program – Description of Programs**

As staff reviewed the potential programs for feasibility, legal constraints and risk, and resources needed, it was apparent that each program had strengths and flaws and not one program would meet the needs of the City. Staff analyzed each program in order to develop a functioning program with the goal of increasing participation from small and local contractors, while reducing the risk of legal challenge and increased staffing and resource costs. Staff also sought stakeholder input on a potential program from the City's contracting community, non-profits, other business organizations, and the City's Small Business Advisory Task Force. The Public Works Contracting Program is summarized in the body of this report and this section provides further detail on the elements of the program.

#### **Education, Outreach & Support – Public Works Academy & Contractor Outreach Enhancement**

Community outreach and engagement on construction, maintenance/service, and professional opportunities to the community was found to be unreliable and in some instances, non-existent. The Silvy Group recommended the City improve its communication and engagement approach to the underrepresented contracting community, including small and local, through an action plan that included workshops, on-line videos, and potential one on one counseling.

Staff developed the Public Works (PW) Academy, focused on engagement and outreach to the local construction community and seminar series to develop contractors to bid and ultimately be awarded future construction contracts.

The Public Works Academy is a multiple pronged program; Opportunity Awareness Events to engage the community at multiple community centers across the City, seminars to educate potential contractors on requirements and working with the City, workshops to address specific concerns in more detail (i.e. Prevailing Wage and Bidding training), and online tutorials providing contractors an opportunity to learn at their own time. Staff conducted extensive outreach to 6000+ contractor via e-mail and hardcopy notifications to contractors found on the Caltrans certified DBE list, San Jose Business license tax for companies within Santa Clara County and with 35 or fewer employees (defined as "Small Business" within the Municipal Code). Additionally, staff partnered with the Hispanic Chamber of Commerce, Vietnamese Chamber of Commerce, the Silicon Valley Black Chamber of Commerce, SCORE, and BusinessOwnersSpace.com in an effort to reach contractors not certified or performing work within the City of San Jose.

In the inaugural Public Works Academy there were five Opportunity Awareness Events which attracted 65 attendees and a four-part seminar series that had 36 students with 29 graduates. A second Public Works Academy consisting of Opportunity Awareness Events and a six-part seminar series concluded on September 4, 2019. Additionally, although the primary academy is taught in English, translation services are available and, if there is enough interest, staff will



consider a future Vietnamese and/or Spanish language academy. The program has been, and will continue to be, adjusted after engagement with the potential contractors in order to meet their needs, reduce potential barriers, and meet the goal of City.

To ensure Public Works can continue this level of service to the contracting community, the Fiscal Year 2019-2020 budget approved a position in Public Works to oversee training for internal capital improvement program staff and will also oversee the external Public Works Academy trainings. This position will increase the effectiveness and reach of the Public Works Contracting Program, including but not limited to, development of a marketing program to reach businesses who have not previously worked with the City of San Jose or our partners in the chamber of commerce, match-making and mentorship programs, and Biddingo and prevailing wage workshops. In addition, Public Works also received one-time funding which will assist with the marketing, branding, and materials for the Academy.

Staff developed, with assistance from the Silvy group, sixteen (16) YouTube videos examining and explaining the requirements and process in entering into a construction contract with the City, including but not limited to, prevailing wage, e-procurement (Biddingo), bonding and insurance. Contractors are able to view the videos multiple times and at their own convenience.

Moreover, Staff has performed six Opportunity Awareness Events, which are In-person workshops designed for face-to-face contact between Public Works staff and the contracting community. The events focus on contractor networking, upcoming opportunities, registration for the vendor management system (Biddingo), minimum requirements for contracting with the City, and information for online tutorials, future educational programs, and the Public Works Academy. Public Works mail, email, call local and small businesses found on the Caltrans website for DBEs, the San Jose Business license tax, and mailing lists from other organizations like the Hispanic, Vietnamese, and Black Chambers of commerce.

### **Education, Outreach & Support – Biddingo**

Keen Independent reviewed the City's procurement process and the Bidsync system to identify potential improvements. Keen noted that Bidsync may not be difficult to use for companies familiar with that system or similar systems; however, companies who had not previously worked on Bidsync or similar might perceive the system as a barrier. Due to complicated forms, membership/fee confusion (free for the City of San Jose projects), search functions, and level of details provided by the City, many contractors would be unable to obtain the information needed to successfully bid on City projects.

On August 21, 2018, City Council authorized the City Manager to execute an Agreement with Purchasing Technology Corporation of an e-Procurement Solution, later named "Biddingo." Biddingo simplifies the process for contractors to obtain notifications on potential projects by reducing the number of National Institute of Governmental Purchasing Commodity/ Service (NIGP) codes from 8,000 to 200, company specific profiles, and less burdensome search perimeters. The process for transition from Bidsync to Biddingo will take multiple months beginning with Public Works Construction that transitioned on June 3, 2019. Public Works staff

worked closely with Finance/Purchasing in development of an e-Procurement solution. The Public Works department focus was on ease of use and quick response to potential contractors, including company profiles that can be updated with bonding and insurance information, reducing the number of work codes that typically confused contractors and limited their ability to be notified of opportunities.

### **Education, Outreach & Support**

In an effort to expand the City's general outreach to all contractors, the City entered into grant agreements with the Hispanic Chamber of Commerce Silicon Valley and the Silicon Valley Black Chamber of Commerce in an effort to increase awareness and expand communication with underrepresented businesses. Staff partnered with the Vietnamese Chamber of Commerce on a Opportunity Awareness Event at the Vietnamese- American Community Center on July 10, 2019. The relationship developed with these three Chambers has been fruitful, as half of the attendees to the Public Works Academy received notification through at least one of the Chambers. Additionally, staff attends, sponsors, and networks at annual events and summits held by these groups. An ongoing regular relationship with the local chambers will continue to be a key component to the success of enhancing small, local and disadvantaged business participation on City Public Works projects.

### **Policy Changes – Local & Small Preference**

Currently, the City's local and small businesses preference program applies only to goods and service contracts. Public Works will be proposing to expand the program to apply to Public Works projects.

With the passing of Measure S- Procurement Modernization in November 2018, the minor public work construction contract threshold was increased from \$100,000 to \$600,000. Additionally, the following provision was added to the City Charter:

Nothing herein precludes the City from implementing otherwise lawful programs supporting the use of small, local or economically disadvantaged businesses.

Staff presented the proposed municipal code changes related to Measure S to the City Council in September 10, 2019. As part of these changes, staff recommended a small and small/local preference be applied to *minor* public works projects (e.g. up to a 5% preference on bid). With these changes, it is anticipated that the number of opportunities and contract awards for small and small/local business will increase for two reasons (1) The number of projects available through the Minor Public Works procurement process will increase with the dollar threshold increasing to \$600,000 and (2) a preference will be in place to assist local and small/local contractors to in competing for bids.

## **Policy Changes- Prequalification process, government work waiver & bonding & Insurance Support**

Public Works staff has embarked on a procurement process for minor public works construction contracts intended to create a pool of qualified contractors that the City will enter into retainer agreements for various projects of general scopes. The pool will be used to solicit bids on individual task orders under the Minor Public Works amount that would normally contract with the City through the “On-Call” or minor public works contracts. Two specific benefits of the prequalification program for contractors include:

- 1) Contractors can waive the government work experience requirement by attending a session of the Public Works Academy and;
- 2) Unlike “On-Call” contracts that combines multiple task orders into one, high value contract and requires contractors to provide bonding on the total contract value, the prequalification pool allows the City to procure smaller valued projects to the prequalification pool, thus, lowering the bonding requirements for contractors while maintaining a competitive award process.

The contract pre-qualification pool process will create a more competitive award process for task orders, leading to a potential reduction in on-call contracts and better pricing and the use of more small/local contractors. The program should ease the path to new contractors to the City work by easing the barrier to entry of City work that some new contractors perceive is the full solicitation process of Major Public Works. Finally, it is anticipated that there could be an increase of local and small contractors competing for City work by introducing them to City project procurement in a more approachable way.

The construction pools allow City departments flexibility in procuring contracts with specific or broad types of work, and/or procuring contracts under specific dollar amounts. For example, the new procurement process has created contractor pools for Mechanical, Electrical, and Plumbing projects with varying scopes of work and also contractor pools for ADA sidewalk ramp repair work that is less than \$100,000. This flexibility increases opportunities to contractors, removes barriers to working with the City, while maintaining lowest costs through competition.

## **Attachment B**

### **Programs Not being recommended at this time**

The following programs are not being recommended at this time, however can be considered further during annual reporting and discussion regarding the successes of the PWCP in advancing opportunities for small and local businesses.

#### **Minority-owned Business Enterprise (MBE), Women- owned Business Enterprise (WBE), and Other Business Enterprise (OBE)**

An additional option for the PWCP is the implementation of specific MBE/WBE and OBE contract goals. Given the intensity of resources necessary for a program such as this staff is not recommending implementation of these goals at this time.

An MBE/WBE/OBE program is one that requires prime/general contractors to make “good faith efforts” to solicit bids from MBE, WBE, and Other Business Enterprises. Many of these programs do not require businesses to accept or use any of the bids received, although they do require the prime/general contractor to show some sort of good faith efforts to use certain kinds of subcontractors. At this time, staff does not recommend implementation of a MBE/WBE/OBE program at this time for the following reasons:

1. Contractor requirements- Contractor are required to be certified, certifications require private/personal information including but not limited to, personal tax returns, major projects/contracts/sales, and proof of ethnicity and/or gender;
2. Staffing resources- Public Works estimates 5.0 FTEs are required for application review, certifications, and on-going compliance review;
3. Focus on subcontracting- MBE, WBE, and OBE programs require prime/ general contractors to solicit subcontractor bids from these groups, neither guaranteeing opportunities or preparing the business to be awarded a contract as a prime/general.
4. Potential Proposition 209 problems depending on how the program is structured.

The City of Los Angeles (LA) has a “good faith” MBE/WBE/OBE program under the Office of Contract Compliance and Centralized Certification Administrations for Request of Bids, Request for Proposals, and Request for Quotes of \$100,000.00 or more. General Contractors interested in bidding on LA construction projects are required to make “good faith” efforts to receive subcontractor bids from companies who are certified as MBE, WBE, and OBE. However, the program is a traditional, general outreach program. There is no requirement that General Contractors accept or use these subcontractor bids, thus, not making more opportunities available to underrepresented contractors.

Staff believes this type of program is burdensome for contractors and requires enormous amount of city resources. Contractors are required to be certified as an MBE/WBE/OBE by providing personal and business information through an application process. This information includes list of major equipment (Owned/Leased), ownership interest, current licenses and permits, list of

major projects/contracts/sales, three (3) years of Federal tax returns, and proof of ethnicity and/or gender. Additionally, the City of Los Angeles administers the certification process through application review to determine validity of the information provided, including work place visits, and issuing annual certifications.

The PWCP focuses on contractor engagement, increased opportunities as general contractors through training and development, reducing barriers, including, burdensome application and certification processes.

Staff does not recommend an MBE/WBE/OBE Program at this time due to the lack of benefit to the contractors and substantial increase of City staffing costs. Staff would be required to market, certify, and maintain a list of MBE/WBE/OBE contractors, disseminate that information to general contractors in request bids, and verify that general contractors met “good faith efforts” of the program. Should the City Council decide to pursue an MBE/WBE/OBE Program similar to Los Angeles’s, staff estimates the program, including outreach and certification process, will require on-going staffing of at least 5.0 FTEs and an annual budget of \$150,000 for outreach, engagement, and marketing.

Staff will revisit this programs at a future date if annual reporting to the Community & Economic Development Committee on the status of the PWCP are not showing a significant impact in the participation of small and disadvantaged businesses in Public works projects.

### **Small Business Enterprise Participation Goals**

Similar to MBE/WBE/OBE programs and other goal setting programs, Small Business goal setting focus on small businesses as subcontractors; providing them with opportunities for work but does not guarantee the use of their business, nor do these programs develop the contractor as potential prime contractors.

The PWCP engages and develops small businesses to be general contractors, while addressing multiple barriers in contracting with the City of San Jose. For example, small businesses are required to have prior experience as a prime/general contractor. In order to be eligible to bid on public works construction contracts, a contractor must provide references for a minimum of three (3) similar projects in which they were a prime contractor, and two (2) need to be with a government agency/ municipality. Through participation and completion of the Public Works Academy, small businesses are afforded the opportunity to use course completion in-lieu of government work experience. Additionally, small and local preferences have been added to minor public work construction contracts, further increasing the participation and opportunities to the small business community.

Staff does not recommend setting and/or requiring small business participation goal setting at this time. Staff will analyze the participation of small businesses on public work construction and may consider goal setting requirement at a later date.

## **Socially and Economically Disadvantage Business Program**

Some cities have established assistance programs focused on economic and/or social disadvantaged individuals. Economic Disadvantaged Programs focus on the personal net-worth of an owner, not including business assets or personal residence.

To reduce potential legal challenges, a Social Disadvantage Business Program would be required to define “social” in a race, gender, ethnically neutral manner. Staff have researched similar programs and have not located a program that meets these requirements.

Socially and Economically Disadvantage Business Programs have similar barriers and challenges to programs listed above, including but not limited to, certification process placing burden on contractors to provide enormous amounts of personal information, focus of the program to encourage use of certified DBE contractors as subcontractors, and the lack of development of contractors as potential general contractors. Staff does not recommend development of a social and economic disadvantage business program due to effectiveness and potential legal challenge.

## **Working Capital Program**

A Working Capital Program provides contractors lending opportunities to incentivize and support potential contractors to bid on City projects, including loans for bonds and insurance. This type of program may be implemented so long as there is no preference based on race, sex or ethnicity.

A barrier for some contractors is the bonding and insurance requirements. A bidder’s bond is required at time of bid and holds working capital for a contractor when award of a contract is not guaranteed. Additionally, performance bonds, payment bonds and insurance are required at contract execution and are for the entire amount of the contract, which for some contractors is higher than their bonding capacity.

This type of program would share the cost and risk between the City and the contractor. Bonding requirements, bidders, and performance, reduce the potential cost liabilities to the City. For instance, a performance bond is required in the full contract amount to guarantee the fulfillment of a particular contract and should a contractor fail to fulfill the contract, the performance bond would be used to complete the project

Additionally, staffing would be required for oversight of the funds being dispersed, repaid, and any interest (if any) collected that the City does not current have.

Staff does not recommend a Working Capital Program. However, as part of the new procurement method discussed above staff expects that the bonding and insurance requirements for small contractors will become simpler moving forward. Additionally, as part of the contractor outreach events, staff has partnered with Work2Future, SCORE, BusinessOwnerSpace.com, and local chambers to provide information and assistance to contractors requiring support.

## **Prevailing Wage and Waiver of Bonding Requirements**

Senate Bill No.7, which the State legislature enacted in October 2013, added Section 1782 to the California Labor Code. Section 1782 requires charter cities to implement prevailing wage requirements at least as stringent as State law as a condition of receiving State funds for public works constructions projects. In November 2013, the City Council approved the Prevailing Wage Ordinance related to public works project to maintain the City's eligibility for State Funds.

Payment bonds protects subcontractors, workers and suppliers from nonpayment by the general contractor. In accordance with State law, a public entity must require a general contract to provide a payment bond for any public works contract exceeding \$25,000. The amount of the payment bond must be 100% of the contract amount. State law does not permit alternative forms of security and does not permit the waiver of a payment bond. The Public Entity awarding the contract must approve the bond before work begins.

Performance bonds were established to mitigate risk for public funds allowing the City complete projects in case a contractor is unable to complete a project. The City generally requires the performance bond to be for 100% of the contract amount. The City can waive a payment bond; however, there is really no savings in doing so because surety companies often issue performance bonds in conjunction with payments bonds as on public property mechanic liens cannot be used.

The City requires contractors to provide Bidders bonds at 10% of the aggregated bid amount, and payment and performance bonds for the total bid. Bidders bonds prevent companies and contractors from submitting flippant bids to secure contract. and The bonds required insures the City's and public's interest.

Staff does not recommend adjusting the bond and/or insurance requirements at this time.

**Attachment C****Small Business Advisory Task Force Recommendations**

ATF Recommendation	Staff Recommendation
1. Strengthen Education Outreach & Support	Recommended for implementation as part of Phase I of the Public Works Contracting Program (PWCP)
2. Continue Cultivation of Local Chamber Relationships	Recommended for implementation as part of Phase I of the Public Works Contracting Program (PWCP)
3. Expand Accessibility to Bidding Help & Support	Recommended for implementation as part of Phase I of the Public Works Contracting Program (PWCP)
4. Offer Compliance Education & Resources for Small Businesses	Recommended for implementation as part of Phase I of the Public Works Contracting Program (PWCP). To be delivered in a Phased approach, starting with making basic connections and building over time.
5. Increase Access to Data across Departments	Staff agrees with this recommendation. Vital information is maintained by multiple departments and requires coordination. Public Works will support an initiative to connect and share data across departments. Updates will be provided to CED.
6. Promote or Create a Matchmaking/Mentorship program for small and underrepresented businesses	Staff agrees with this recommendation. Upon recruitment of the Public Works trainer, staff will begin analysis of a program to identify the staffing and resource needs for such an undertaking. These programs are utilized in other cities and require additional staffing and resources to accomplish. Updates will be provided to CED.
7. Utilize SBATF as a Forum of Communication	Recommended for implementation as part of Phase I of the Public Works Contracting Program (PWCP)