



Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Matt Cano
Julia H. Cooper

SUBJECT: SEE BELOW

DATE: November 9, 2020

Approved

Date

11/13/20

**SUBJECT: CONTRACTING WITH LOCAL AND SMALL BUSINESSES IN FISCAL
YEAR 2019-20**

RECOMMENDATION

Accept the annual report on City contracting with local and small businesses for Fiscal Year 2019-2020.

BACKGROUND

The analysis in this report is divided into contracts awarded by the Finance Department Purchasing Division, and construction/professional service (consultant) contracts awarded in the Capital Improvement Program (CIP) as tracked by the Public Works Department.

The Finance Department Purchasing Division is responsible for the procurement of goods, supplies, materials, equipment and service in accordance with Chapter 4.12 of the San José Municipal Code. 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.

The Department of Public Works procures the largest number of CIP-related construction contracts. Other departments involved in procuring CIP-related construction contracts are the Department of Transportation and the Environmental Services Department. Airport.

The procurement of construction contracts is governed by the City Charter, as implemented through the San José Municipal Code. The City Charter defines a major public works construction contract as one exceeding \$600,000 and provides that this threshold will increase annually based on the Consumer Price Index. The Charter generally requires the City to award major public works contracts to the lowest responsive and responsible bidder.¹ The procurement of minor public works construction contracts (those valued at \$600,000 or less) is governed by Chapter 27.06 of the San José Municipal Code.

In September 2019, City Council approved the addition of the new Title 27 of the municipal code, which implemented the City Charter Section 1217 changes approved in 2018 and modernized the construction contract procurement process and administration of public works projects. The changes included a preference for local businesses and for local businesses that are small when awarding minor public works contracts.

The CIP consultant procurements are similar to any other professional service procurements in that the City gives a preference for local businesses and for local businesses that are small per Municipal Code Section 4.12.320(c). Although preference points can, and sometimes do, influence the outcome, CIP consultant procurements are predominantly qualifications-based, and the points awarded for experience, expertise, and project approach are the determining factors in selection.

ANALYSIS

As outlined in Table 1 below, in Fiscal Year (FY) 2019-2020, the estimated total annual dollars awarded by Finance Department Purchasing Division increased by 19% when compared to FY 2018-2019. The increase in contract award can be attributed to a few key reasons:

- (1) Due to the COVID-19 pandemic, Finance delayed its normal competitive bidding process prior to fiscal year close (dubbed “open season”) and allowed departments to extend and increase many existing purchase orders by six months to enable Finance to prioritize emergency procurement and contracting efforts.
- (2) Several key purchase orders were increased to address emergency and exigent purchases for the pandemic such as personal protective equipment, cleaning supplies and services for shelters.
- (3) Council approved several notable high-dollar purchases such as the purchases of new fire apparatuses and the Windows 10 upgrade project.

Based on available reports, the estimated local market share for total dollars awarded decreased to 11% of total dollars awarded, or \$76.2 million, while estimated awards to small businesses

¹ There are some exceptions, such as for design-build contracts and “best value” procurement method.

that are local businesses remained around 7% of total dollars awarded, or \$21 million. 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 2019-2020, 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 16-17		FY 17-18		FY 18-19		FY 19-20	
	\$ (in M)	%	\$ (in M)	%	\$ (in M)	%	\$ (in M)	%
All Businesses	\$193.0	100%	\$210.7	100%	\$259.3	100%	\$309.6	100%
Local Businesses	\$65.6	34%	\$39.7	19%	\$85.7	33%	\$76.2	25%
Small Businesses	\$15.4	8%	\$18.1	9%	\$18.3	7%	\$21.0	7%
Number of Awards	#	%	#	%	#	%	#	%
All Businesses	1985	100%	1967	100%	2091	100%	2013	100%
Local Businesses	596	30%	251	15%	579	28%	542	27%
Small Businesses	159	8%	139	7%	193	9%	196	10%

Unfortunately, due to the COVID-19 pandemic, 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. One virtual event has been scheduled for November 20, 2020 through the Black Chamber of Commerce. Staff will continue to research and pursue opportunities to participate in virtual business outreach events and, as the economy begins to open back up, staff will seek opportunities to participate in in-person fairs and small/local business events as appropriate. In addition, the City's Vendor Guide on "Doing Business with the City of San José" has been updated and improved and is available on the City's website.

CIP Construction Contract Data

Building our City together with our community is extremely important to the CIP. Contracting with local businesses helps promote the hiring of local workers which will result in a positive impact on the local economy. Additionally, as the City supports local business in managing

impacts of COVID-19 it is even more important to provide opportunities to local and small businesses to contract with the City.

Public Works projects are categorized as either “major” (over \$600,000) or “minor” (under \$600,000). Prior to FY 2019-2020, Public Works only tracked the local and small business (as defined by chapter 4.12 of the municipal code) statistics for major projects. However, since the approval of the new Title 27 of the municipal code, Public Works began efforts to capture local and small business statistics for both major and minor public works projects. This data is collected through a voluntary form filled out by contractors during the bidding stage.

In addition to tracking local/small business participation, Public Works also started obtaining additional CIP participation data such as 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). This was also done using a voluntary form to be submitted at the time of bid. However, contractor participation was extremely low, and the City did not obtain enough data for analysis. Additionally, due to legal constraints, the City would not be able to make any specific procurement decisions based on the information. The information would provide the City valuable data on the types of businesses being awarded City contracts and inform future outreach activities.

Table 2 below shows major public works contract activity for FY 2019-2020, as well as the prior four fiscal years for comparison.

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

	FY 15-16		FY 16-17		FY 17-18		FY 2018-19		FY 19-20	
Total Dollars Awarded	\$232.0M		\$167.8M		\$290.3M		\$191.2M		\$190.5M	
Local Businesses (M)	\$33.8	15%	\$32.9	20%	\$158.4	55%	\$52.2	27%	\$53.0	28%
Local/Small Businesses (M)	\$11.6	5%	\$12.0	7%	\$8.2	3%	\$10.8	6%	\$12.0	6%
Total Contracts Awarded	74		82		50		57		63	
Local Businesses	25	34%	26	32%	16	32%	13	23%	20	32%
Local/Small Businesses	9	12%	14	17%	11	22%	5	9%	13	21%

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 with the goal of increasing each category year over year. In FY 2018-2019, the CIP saw a substantial decrease in the percentage of dollars awarded from the prior fiscal year which was concerning. However, after further analysis, FY 2017-2018 was seen as an abnormality due to the award of two large

Design Build Contracts (Headworks Project and Interim Four Gate Boarding Facility Project) totaling approximately \$137 million.

During FY 2019-2020, the program saw a significant increase in the percentage of major contracts awarded to local (32%) and local/small (21%) contractors with a minimal increase in the dollars awarded from the previous fiscal year.

Chart 1 below shows the construction contract award data from Table 2 graphically. As illustrated, the number of overall contract awards increased as well as local and small awards.

Chart 1: 5-Year Comparison of Major CIP Construction Contracts Awarded

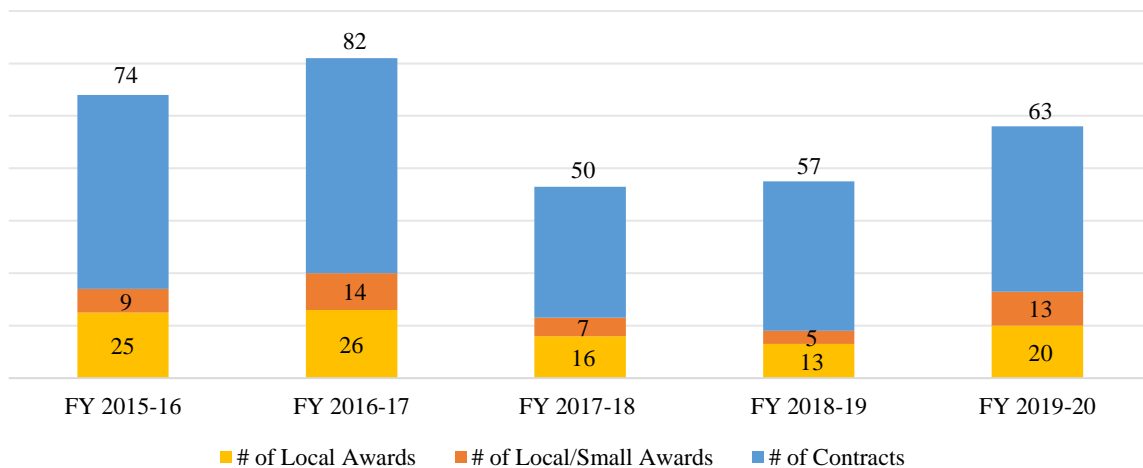
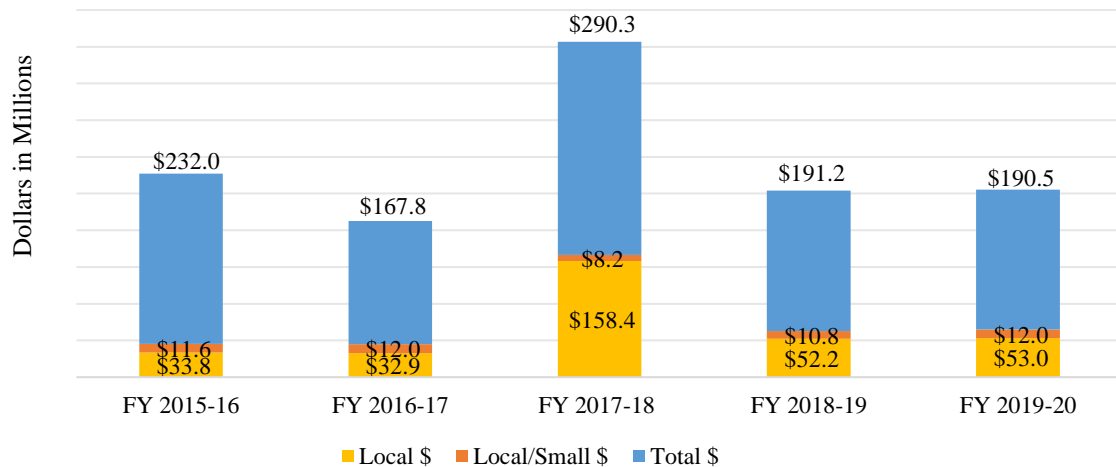
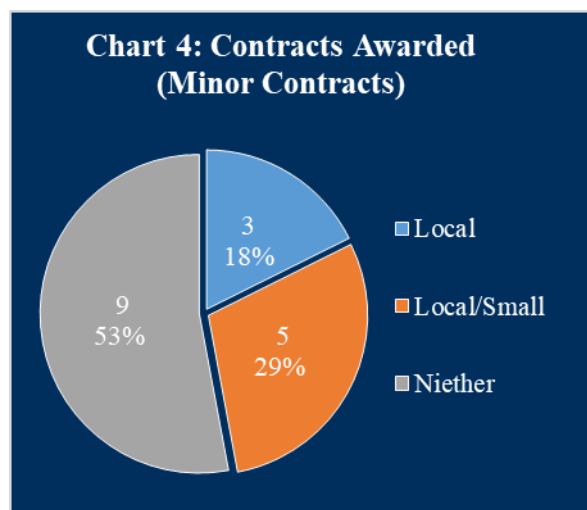
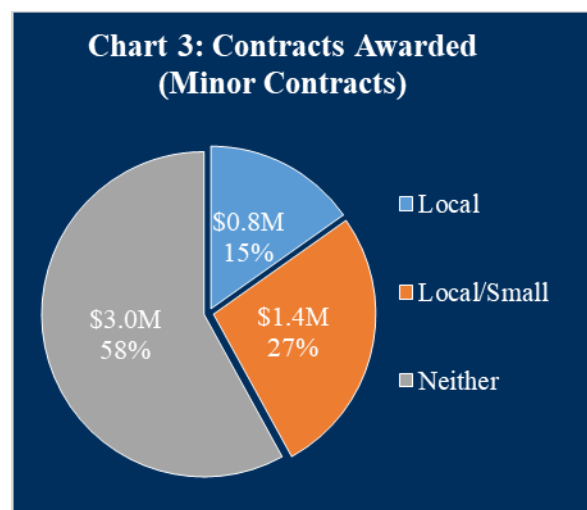


Chart 2 below shows the construction dollars awarded for the past five fiscal years. As illustrated, the proportion of dollars to local and local/small businesses remained consistent from prior fiscal year.

Chart 2: 5-Year Comparison of Major CIP Construction Dollars Awarded



As mentioned, FY 2019-2020 is the first fiscal year that the CIP has reported on minor public works contracts. During this fiscal period, there were 17 minor CIP construction contracts awarded totaling \$5.2 million. Eight projects (worth \$2.2 million) were awarded to local contractors; of those eight projects, five were awarded to local contractors who were also small. In comparison to major public works contracts, the City awards contracts to local and local/small contractors more frequently under a minor contract. The higher award percentages on minor contracts is not surprising as most smaller contractors do not have the financial capacity to hold the larger contracts and therefore their bid participation is higher on minor contracts. The program will continue to collect and report out on minor public works contracts and provide more comprehensive comparisons in future reports.



CIP Consultant Contract Data

In addition to administering procurements for its own CIP consultants, Public Works partners with the Environmental Services Regional Wastewater Facility for consultant procurements and collects CIP consultant local/small contract award data from the Departments of Transportation; Environmental Services; Park, Recreation and Neighborhood Services and the Airport.

Table 3 below shows CIP consultant contract activity for FY 2018-2019, as well as the prior four fiscal years for comparison.

Table 3: 5-Year Comparison of CIP Consultant Contract Dollars and Awards

	FY15-16		FY16-17		FY17-18		FY 2018-19		FY 2019-20	
Total Dollars Awarded	\$74.6		\$31.8		\$34.8		\$34.7		\$72.3	
Local Businesses	\$66.3	89%	\$22.7	71%	\$11.7	34%	\$20.8	60%	\$59.0	82%
Small Businesses	\$1.3	2%	\$2.7	8%	\$1.2	3%	\$15.9	46%	\$24.1	33%
Total Contracts Awarded	18		26		22		26		29	
Local Businesses	13	72%	16	62%	11	50%	18	69%	18	62%
Small Businesses	2	11%	6	23%	4	18%	11	42%	8	28%

Consultant procurement activity tends to vary depending on project resource needs and the longevity of prior contracts. For FY 2019-2020, the number of consultant contract awards (29) was within range of the previous fiscal years.

In FY 2019-2020 the percentage of local business contract awards (62%) is slightly under the 5-year average of 63%, with the percentage of local/small business contract awards (28%) just above the five-year average (24%). The percentage of dollars awarded to local businesses (82% = \$59 million) increased significantly from the prior fiscal year and is well above the five-year average of 67%. The percentage of dollars awarded to local/small businesses (33%) decreased from prior fiscal year but is still well above the five-year average (18%).

Chart 5 shows the CIP consultant contract award data from Table 3 graphically. As mentioned above, there is annual variability to the number of consultant contracts procured in the CIP.

Chart 5: 5-Year Comparison of CIP Consultant Contract Awards

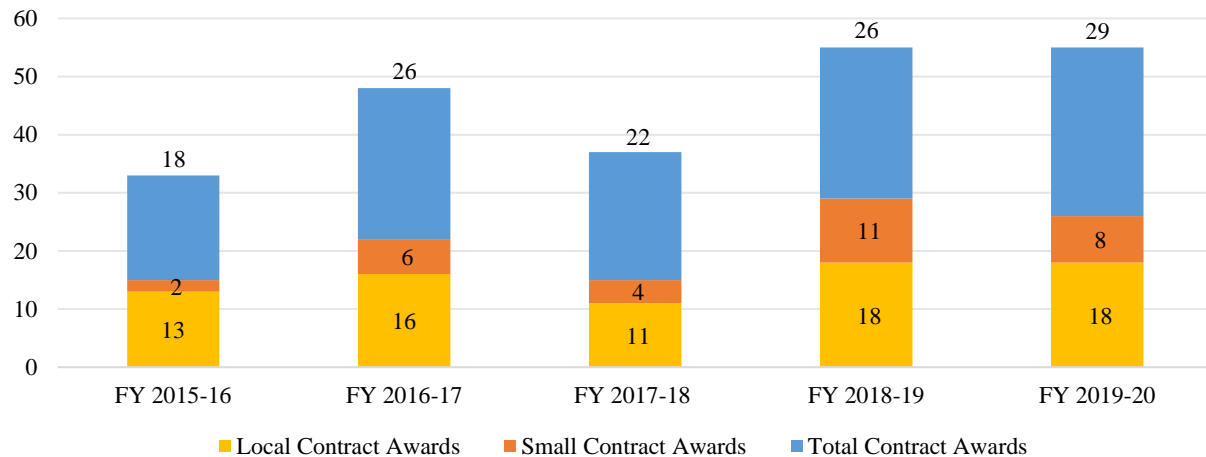
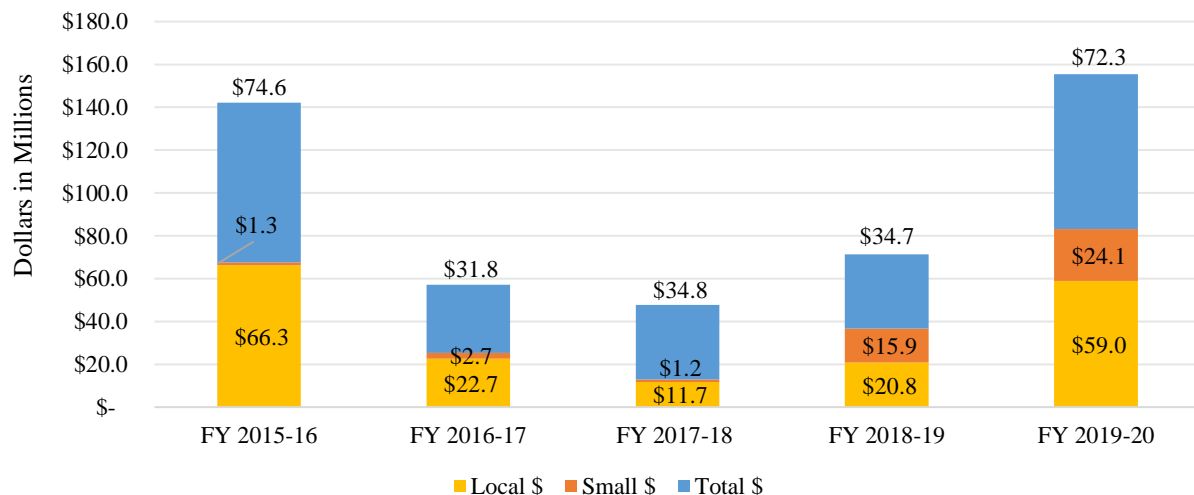


Chart 6 below shows the number of CIP consultant dollar awards for the past five fiscal years. Again, there is annual variability to the amount of consultant contracts procured in the CIP, local and small businesses are consistently awarded a meaningful portion of the available dollars.

Chart 6: 5-Year Comparison of CIP Consultant Dollar Awards



Efforts to increase small/local construction businesses

With a five-year CIP 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. On October 8, 2019, Council approved staff’s workplan of the phased

implementation of the Public Works Contracting Program (PWCP) and the removal of Council Priority #3-Disadvantaged Business Enterprises². This phased implementation is meant to address the challenges local and small construction firms face on being able to financially participate on the City's construction projects. These challenges are addressed through a combination of education, outreach, and policy changes.

Public Works Contracting Program

- **Public Works Academy**

The Public Works Academy is designed to inform contractors of contract opportunities through "Opportunity Awareness Events" as well as educate them on how to manage a public works contract through "Construction Contracting Seminars". In 2020, the Public Works Department scheduled four opportunity awareness events and two sessions of construction contracting seminars (spring/fall). Unfortunately, due to the COVID-19 pandemic, the PWCP was forced to cancel the spring events and modify the fall events to be conducted virtually. The two virtual opportunity awareness events were attended by a total of 18 vendors of which 72% were located within Santa Clara County. The virtual educational seminar was attended by 41 vendors of which 76% were local businesses. These programs will continue bi-annually and will be conducted virtually in the spring and fall of 2021. Charts 7 and 8 show the characteristics of the participants of this year's virtual educational seminars.

Chart 7: Educational Seminar Attendees

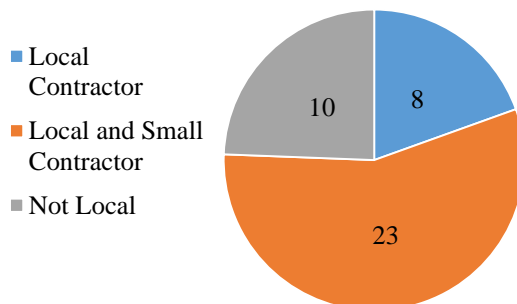
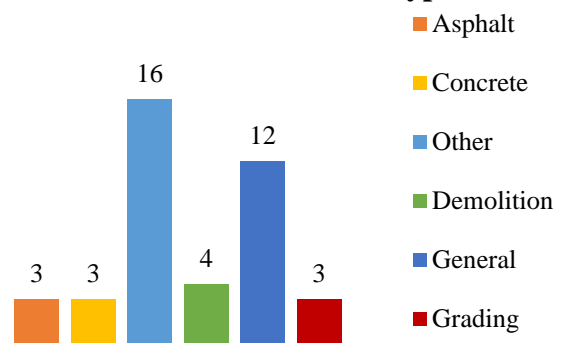


Chart 8: Educational Seminar Attendee Contractor Types



* Contractors can select more than one contractor type

- **Minor Contract Prequalification Pool Program**

The Minor Contract Prequalification Pool Program is designed to offer opportunities to bid on minor public works contracts. Currently, unlike major public works construction contracts, minor public works contracts are not subject to the City Charter's bidding requirements and can be informally bid by a selected group of contractors who meet the

² <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4145342&GUID=A7CE1A76-14CE-425F-946E-1BD73A69424D>

bid requirements. This prequalification processes allows contractors to take care of the City's contractual requirements for projects in advance of bidding so they can be better prepared to quickly take advantage of opportunities. This program launched in early 2019 with the establishment of its first prequalification pool for minor street projects. Since then, the department has added five new prequalification pools which include electrical, mechanical, plumbing, general building and general parks contractors. In total, the six established pools consist of 26 pre-qualified contractors of which 46% are local businesses and 31% are local and small businesses. The Public Works Academy's Construction Contracting Seminars are tied into this program as any contractor who completes the seminars will have a portion of the experience requirement waived.

- Local and Small Business Preference

As mentioned, on October 24, 2019, Council-approved municipal code changes went into effect. One of these changes was the requirement that the Director of Public Works to give a 2.5% preference for local contractors and a 2.5% preference for small and local contractors on all public works contracts that are \$600,000 or less. However, to date, no contract has been awarded due to the application of the local and local/small preference.

- Improve Small Business Outreach

Improving outreach to contractors remains a challenge and staff continues to work with each other to maximize their efforts. Planning and Building Code Enforcement, Environmental Services Department, and the Airport have all shared contact information with Public Works to achieve this goal. Other City Departments also have invited Public Works to their events to promote PWCP events. In addition, Public Works will continue its partnership with the Small Business Advisory Task Force and local ethnic chambers to continue advancing this goal.

Performance Measures

The CIP 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, participation in the Minor Prequalification pools with the end result of contracts awarded to participants.

As directed by Council on October 8, 2019**Error! Bookmark not defined.** in response to Staff's recommendation regarding Council Priority #3: Citywide Contracting Program Update**Error! Bookmark not defined.**, the program will continue to coordinate with other City departments to obtain contact information of registered businesses to improve outreach and communication of contract opportunities for local and local/small businesses. The program will also 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

Considering the opportunities available to local and local/small businesses to contract with the City, they are typically very successful competing for contracts. It is important to note many of the City's CIP construction and consultant 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 (<\$600,000) contract prequalification process and by facilitating their ability to serve as subcontractors on larger 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.

COORDINATION

This memorandum was coordinated with the Departments of Transportation, Environmental Services, Parks, Recreation and Neighborhood Services, Finance, City Attorney and the Airport.

/s/

MATT CANO

Director of Public Works

/s/

JULIA H. COOPER

Director of Finance

For questions, please contact Matt Cano, Director, Public Works at, (408) 535-8477 or Jennifer Cheng, Deputy Director, Finance at jennifer.cheng@sanjoseca.gov.