



CITY OF SAN MATEO

City Hall
330 W. 20th Avenue
San Mateo CA 94403
www.cityofsanmateo.org

Agenda Report

Agenda Number: 2

Section Name: {{section.name}}

File ID: {{item.tracking_number}}

TO: City Council

FROM: Drew Corbett, City Manager

PREPARED BY: Public Works

MEETING DATE: July 15, 2019

SUBJECT:

Contracting Policies for Public Works

RECOMMENDATION:

Provide direction on for modifying contracting policies for Public Works services.

BACKGROUND:

City's Ordinances and Policies

The City has a number of ordinances and policies in place governing purchasing and contracting decisions. These ordinances and policies are an important aspect of the City's fiduciary duty to ensure prudent and accountable expenditure of public funds.

Purchasing Ordinance/Purchasing Policy

Chapter 3.60 of the Municipal Code establishes the general purchasing procedures and confirms the City Council's intent "to obtain the best products, services, and construction in the public's interest". In general, the City uses a competitive bidding process for contract awards. Notable exceptions to the competitive bidding process include professional services engagements (consultants, engineers, attorneys), contracts for sole-source products, and emergency situations. In addition, the City has adopted a purchasing policy that sets forth more specific guidelines for purchasing and contracting. That policy states:

"The City Council has established in its code, conditions and procedures for purchases and contracts required by the City. This code requires the City to obtain goods and services consistent with the quality needed for the proper operation of the various departments through the use of quotes and competitive bids whenever possible. It is the intent of this policy to obtain the best value when procuring goods by utilizing a competitive environment."

The purchasing policy also contains guidelines on ethical issues that can arise during purchasing and contracting, such as financial conflicts of interest, transparency, and fairness. For example, the policy protects transparency and fairness by ensuring that there is an opportunity for all interested parties to participate in the City's purchasing processes through specific noticing requirements.

Local Minimum Wage

Chapter 5.92 of the Municipal Code requires employers to pay employees no less than the locally-established minimum wage for each hour worked within the geographic boundaries of the City. The current minimum wage for San Mateo is \$15.00 per hour (\$13.50 for non-profit corporations), and increases each January according to the local Consumer Price Index. The local minimum wage applies to all employers within San Mateo, including the City itself. The minimum wage provides a local policy for requiring employers to pay a certain wage to their employees when the contracts are not subject to Federal and State requirements for paying prevailing wage.

Prevailing Wage

Chapter 3.61 of the Municipal Code requires the City to pay prevailing wages for all public works projects, as those terms are defined in the California Labor Code. The California Department of Industrial Relations (DIR) issues prevailing wage determinations for construction trades and crafts twice per year.

Current Public Works Contracting Practices

The Public Works Department has approximately 315 contracts and purchase agreements in place in any given year. They include relatively small purchases for maintenance parts and supplies, multi-million dollar construction projects, and a wide range of specialized services, such as design/engineering, construction management, and mosquito abatement. The Department has developed procurement procedures for each type of contract based on the City's Purchasing Policy and the Municipal Code. The Department has also developed checklists that guide project managers through the procurement process.

As part of the overall procurement process, the Department reviews if any specific wage or salary requirements should be included in service contracts before circulating formal bid or Request for Proposal documents. Most often, this means including a requirement to pay prevailing wage for all contracts that fall within the "public works project" definition. The majority of contracts in the Department are considered a "public works project" and are thus required by the State DIR to pay prevailing wage. Once a contractor is selected for a project, staff updates the State DIR website with information about the contract. The contractor is required to pay the wages set by the DIR for each of the classifications they are utilizing in the contract as listed in the prevailing wage determinations. The wage for each craft is set by looking at comparable rates either at the Statewide, Northern California, or County level. Of the Department's total purchase orders, 259 are service contracts or agreements. Among these 259 purchase orders for services issued in 2018-19 by the Department, 87% required prevailing wage rates.

This leaves 34 services contracts in 2018-19 that did not require prevailing wage rates. These fall into various categories such as: non-construction related professional services, technology services, janitorial, pest control, maintenance services, installation, and hauling services. In a few cases, City staff still require the contractor to pay prevailing wage rates where there are existing applicable rates. For example, with the WWTP grit, rag, and scum hauling contract, staff required that all bidders pay the prevailing wage rate even though the contract was exempt per the State DIR requirements. For other contracts, the Department reminds vendors that they are subject to the minimum wage for the City to ensure that appropriate rates are submitted with their bid or proposal.

Additional Policy Options

A. Adopt a Living Wage Ordinance

The City of San Jose and the County of San Mateo both have living wage ordinances. These ordinances require, among other things, that contractors providing services for or on behalf of the City pay a minimum living wage as determined by the agency. Below are the current living wage rates for each agency for the period from July 1, 2018 through June 30, 2019.

Table A – Living Wage Rates

| Agency | Living Wage with Health Benefits | Living Wage Without Health Benefits |
|---------------------|---|--|
| City of San Jose | \$21.73 per hour | \$22.98 per hour |
| County of San Mateo | \$16.00 per hour | \$16.00 per hour |

For projects where both the living wage and prevailing wage are applicable, the agencies stipulate that contractors pay the higher rate.

Public Works contracts that are currently required to pay prevailing wage, or that City staff require to pay prevailing wage, would most likely not be affected by a living wage ordinance. Depending upon the living wage proposed, an ordinance of this type in San Mateo would more likely affect janitorial contracts and other

similar contracts. The overall cost impacts to public works contracts if a living wage policy were adopted are difficult to estimate without a specific living wage rate proposal. Currently, the City pays about \$16.24 an hour for a custodian in its Citywide janitorial services contract and the total contract costs the City about \$777,000 per year. As an example, if the City adopted San Jose's "Living Wage Without Health Benefits" rate of \$22.98 per hour, the janitorial services contract would increase to approximately \$1,017,000.

In addition to higher contracting costs, this new ordinance would involve ongoing staff time to educate vendors about the new rates and potential costs for monitoring compliance with the new rates.

B. Adjust Prevailing Wage Rates

The City could adopt by ordinance its own local prevailing wage rates that are indexed at the County level rather than on a Statewide or regional level. Currently, prevailing wage rates are indexed and determined based on three general geographical areas; Statewide, Northern California, and by County. For example, the Driver (On/Off-Hauling To/From Construction Site) rate is based on a regional area, which includes 12 counties. The basic hourly rate for that position is currently \$22.50. The Public Works Department could develop its own prevailing wage rate based on relevant local data for this classification or any other prevailing wage classification that is not currently set at the County level. The Department would most likely need to conduct its own local survey of wages to develop this prevailing wage since staff has not found any County-specific sources for this data.

The impacts of this increase are also difficult to measure without knowing what the new rate would be. In addition, the hourly rate for this type of work is typically only one component that makes up the per haul or per hour cost that is included in the bid or proposal for these services. An update to this classification is expected to affect many of the Department's contracts since the Driver (On/Off-Hauling To/From Construction sites) classification is relevant to all construction contracts as well as our WWTP hauling contracts.

Adopting specific prevailing wage rates would have an impact on staff time. Staff would need to annually survey local contractors for the classifications included in an adjusted prevailing wage and bring them to the Council for adoption. In addition, since the rates would not be standard prevailing wage rates, the City would need to look at potential monitoring costs for the new rates.

C. Institute a Local Business/Local Hire Preference

The City could investigate adopting a policy or ordinance that institutes a preference for selecting local contractors for Public Works services. This type of policy could lead to more local contracting and potentially higher wage rates from the contractors participating. The City of San Jose provides an example of this type of policy since they currently have an ordinance that provides local preference on procurement for both businesses providing goods and services and professional services firms. In the ordinance, they define what constitutes a local business enterprise as well as how the preference would be used in procurement decisions.

Another way to accomplish this same goal is a policy or ordinance that includes a local hire preference. This type of policy is more complicated to administer than the local business preference ordinance, since it can only be used for projects with local funding. Projects funded by State or Federal funds would not be subject to a local hire ordinance.

The additional contracting costs to the City for either of these policies are difficult to pinpoint. There may be none if local vendors are paying similar wages to those currently included in Public Works contracts. However, the cost could be significant if a local vendor/local hire preference limits the number of vendors that apply and affects the competitiveness of the proposals. If adopted for contractual service providers, the policy could affect up to 260 contracts. Staff costs for this type of ordinance are not estimated to be as high since most of the staff time would be involved with developing the official policy or ordinance.

D. Maintain Current Policies

The City may want to retain its current contracting policies. Between the State prevailing wage rates and the City's minimum wage ordinance, most of the classifications included in the Department's contracts and agreements have wage requirements. Contractors are familiar with these rates and they require no additional staff time to update, manage, or monitor. Should Council decide to maintain current policies, staff does seek direction on whether to continue the practice of requiring the prevailing wage for certain non-public works projects that do not require prevailing wage, where relevant wage rates exist.

BUDGET IMPACT:

The budget impact of each of the proposed options is difficult to determine. It is estimated that contractors would build any higher wages rates into their bids and proposals, but City staff does not know at this time how that would affect total contracting costs.

ENVIRONMENTAL DETERMINATION:

This contracting policy review is not a project subject to CEQA, because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines Section 15378(b)(5).)

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

None

STAFF CONTACT

Caio Arellano, Assistant City Attorney
carellano@cityofsanmateo.org
(650) 522-7037

Abby Veeseer, Business Manager
aveeseer@cityofsanmateo.org
(650) 522-7325

Drew Corbett, City Manager
dcorbett@cityofsanmateo.org
(650) 522-7002