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REPORT TO THE NATURAL RESOURCES
AND CULTURE COMMITTEE

ANALYSIS OF CHARTER SECTION 94 AND PROPOSAL FOR A BID PREFERENCE PROGRAM FOR SMALL AND EMERGING BUSINESSES

INTRODUCTION

At the March 5, 2003, meeting of the City Council's Natural Resources and Culture Committee, the Equal Opportunity Contracting Office [EOC] of the City Manager proposed a municipal contracting program that grants bid preferences to small and emerging businesses on certain municipal construction contracts. This report analyzes the legality of such a program in light of the San Diego Charter section 94 [Section 94] mandate that the City award contracts to the "lowest responsible and reliable[1] bidder" and outlines the three options to reconcile the Program with the charter.

BACKGROUND

Historically the City has attempted to provide opportunities for small and emerging businesses in the contracting community. One such program is the Subcontractor Outreach Program [SCOPe] that was adopted March 6, 2000. SCOPe operates on an "outreach" basis; prime contractors must procure a certain percentage of small subcontractors and submit documentation of outreach efforts to the City within five days from bid opening.
If a contractor does not meet the participation level set on a case-by-case basis by a City Engineer, or fails to submit outreach documentation, the City rejects the bid as "non-responsive."

On March 5, 2003, the EOC presented a SCOPe status report (Exhibit "A") to the City Council's Natural Resources and Culture Committee. The report analyzed the efficacy of SCOPe and concluded that SCOPe: (1) has not statistically increased the participation levels of small

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[1] Although Charter section 94 reads "lowest responsible and *reliable* bidder" [emphasis added] that phrase has the same legal effect as "lowest responsible bidder" since the word "reliable" is defined in Webster's Collegiate Dictionary as "can be relied on; dependable," which meets the definition of "responsibility," as defined in *City of Inglewood- L.A. County Civic Center Auth. v. Superior Court*, 7 Cal. 3d 861, 867 (1972). For that reason the word "reliable" will be excluded from this analysis.

businesses; (2) unduly burdens contractors with outreach and documentation requirements; and (3) results in expensive re-bidding costs to the City when the apparent low bidder fails to comply with SCOPe. According to the EOC, the documentation requirements are so administratively intensive that they result in a substantial increase in costs to contractors and drive bids higher. Small businesses often have limited administrative staff, so it is particularly difficult for them to comply with this component of SCOPe. The EOC report ultimately recommended that City Council rescind the SCOPe program and that a replacement program be implemented that grants a five percent bid preference to small and emerging businesses on construction contracts of $250,000 and above.

This report focuses on one element of the EOC's proposed replacement program [Program]. A brief description of the Program follows. The Program as proposed would grant bid preferences to small and emerging businesses on construction contracts $250,000 and above. As occurs with SCOPe, a City engineer would determine the small business participation goal on project-by-project basis. This means that the engineer would evaluate the job in terms of subcontracting opportunities and set the minimum percentage of the work that must go to small and emerging firms. The City would then accept bids and subtract up to five percent from submissions from two classes of contractors: (1) primes that reach the predetermined goal for small business participation; and (2) all small business prime bidders. The adjusted bids would then be evaluated against all other bids to determine the lowest bidder. If the contract is awarded to an adjusted bidder then the City would pay the *unadjusted* bid amount and incur the cost of the five percent preference. Unlike SCOPe, the Program would operate on an incentive "preference" basis; contractors would be rewarded with a bid preference if they meet the goal but there would be no punitive measure if contractors fall short.

The genesis for the Program was a state statute, California Public Contract Code section 2002 [Section 2002] (Exhibit "B"), that appears to give localities the discretion to grant bid preferences. The EOC modeled the Program on that statute. Section 2002 was enacted to implement the August 2000 recommendations of the Governor's Task Force on Diversity and Outreach. In 1999, Governor Davis appointed the task force to address the adverse effect of Proposition 209[2] on minority businesses and women-owned businesses.
The task force concluded in its report that the vast majority of minority and women-owned businesses are small businesses and outlined various outreach strategies to strengthen small businesses statewide.

In regard to public contracting, the task force specifically suggested legislation, such as a

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[2] Proposition 209 reads in relevant part: "The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, education or contracting." By banning preferential treatment, Proposition 209 bans affirmative action programs implemented by government agencies that use percentage, quotas, or set-asides to meet a goal including or benefitting minorities and women. The proposed Program is not based on race or gender, but is structured to give preferences based on economic data only. Because Proposition 209 does not prohibit preference based on economic factors, the Program has no Proposition 209 implications.

bid preference law, designed to encourage large businesses to enter subcontracts with, or mentor, small businesses. The state legislature responded and Section 2002 was the result. Section 2002 attempts to give localities authority to grant bid preferences on construction, procurement, and services contracts. The statute intends to authorize, but does not require, localities to award contracts to small businesses despite any provision of local law that requires localities to award contracts to the "lowest responsible bidder." *See* Cal. Pub. Cont. Code § 2002. Under Section 2002 both small prime bidders and prime bidders who meet a subcontracting participation goal for small businesses would be eligible for preferences. However, instead of the SCOPe *requirement* that prime bidders conduct outreach to subcontractors and provide documentation of those efforts, Section 2002 is an incentive plan that simply grants a bid preference if primes meet the goal.

It is the EOC's position that a local preference-based Program fashioned after Section 2002 would increase the numbers of prime contractors that contract with small subcontractors on municipal construction contracts. Opportunity for small primes should increase because the Program eliminates burdensome documentation requirements that have hobbled small primes in the past.

DISCUSSION

I. THE CHARTER IS THE SUPREME LAW OF THE CITY IN REGARD TO PUBLIC CONTRACTING ON SOLELY MUNICIPAL PROJECTS

A. "Home Rule"

The City of San Diego is a charter city. Under the California Constitution, a chartered city enjoys autonomy over its "municipal affairs." Cal. Const. art. XI, § 5. Section 5 states:

> It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this
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> Constitution shall supersede any existing charter, and with respect to municipal affairs shall supercede all laws inconsistent therewith.

The charter of a municipality is its constitution or "supreme" law. *Brown v. City of Berkeley*, 57 Cal. App. 3d 223, 231 (1976). The principle of "home rule" means that a charter city has the power to control all municipal affairs without interference from general state laws and that a charter city is subject only to limitations contained in the state constitution and charter itself. *City Council v. South*, 146 Cal. App. 3d 320, 326-27 (1983). "Home rule" originated to curtail the state legislature's authority to intrude into matters of local concern because cities are most familiar with their own problems and can often address those problems more promptly than the state legislature. *Isaac v. City of Los Angeles*, 66 Cal. App. 4th 586, 599 (1998).

Consequently, charter provisions and ordinances which deal with purely municipal affairs are supreme when they conflict with general laws. *Vial v. City of San Diego*, 122 Cal. App. 3d 346, 348 (1981).

Generally, the award of public contracts is a municipal affair. As case law has clearly established, charter cities may have their own rules governing city-funded contracts for city projects. *Domar Electric Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 170-71 (1994); *Piledrivers' Local Union v. City of Santa Monica*, 151 Cal. App. 3d 509, 512 (1984); *Smith v. City of Riverside*, 34 Cal. App. 3d 529, 534 (1973); *Loop Lumber Co. v. Van Loben Sels*, 173 Cal. 228, 232-34 (1916). Furthermore, except as otherwise determined by the courts, the City has always viewed its ability to enter into contracts as a municipal affair. *See* 1993 City Att'y MOL 217; *See also* San Diego Municipal Code § 22.3002 (specifically exempting the City from adopting the California Public Contract Code). It is therefore permissible for the City to create a unique municipal contract bidding scheme so long as it does not conflict with the state constitution or city charter.

An example of "home rule" in action is the City's recently implemented Minor Construction Contract Program [MCCP]. The City created the MCCP by ordinance to increase the use of historically underutilized construction contractors by providing unique policies and procedures for minor public works projects. *See* San Diego Municipal Code §§ 22.3601-22.3616. "Minor construction contracts," or those valued at $50,000 through $250,000 are awarded on a competitive bid process open only to small and emerging businesses. *See* San Diego Municipal Code § 22.3610.

The principle of "home rule" allows the creation of the MCCP for solely municipal contracts. This distinction is relevant because MCCP may only be applied when a matter is exclusively a municipal affair, instead of a matter of statewide concern. The courts have been reluctant to set a strict definition of municipal affairs but have interpreted certain factors as indicative. These factors include:

(1) the extent of non-municipal control over the project; (2) the source and control of the funds used to finance the project; and (3) the nature and purpose of the project including the geographic scope of the project. *Southern California Roads Co. v. McGuire*, 2 Cal 2d 115 (1934).

The City makes a distinction between municipal projects and regional projects in bidding, awarding, and administering its contracts. As such, MCCP can be used for certain projects that are funded and controlled solely by the City, like the Metropolitan Wastewater Department [MWWD] *municipal* service projects. In contrast, the *regional* MWWD projects, which receive non-City funds, are performed in coordination with multiple public entities and service areas outside the city are considered matters of statewide concern.[3] For this reason these contracts must

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[3] For a more detailed treatment of the comparison of the state's public contracting requirements and the City's Public Works contracts practices, *see* City Att'y Memo (December 18, 2002) (Exhibit "C").

be awarded in accordance with state bidding procedures, and bid preferences would be permissible.

B. Charter Construction

A city charter has been aptly termed the local constitution of the city, so it is well-settled that a charter city may not act in conflict with its charter. *Domar Electric Inc. v. City of Los Angeles*, 9 Cal. 4th at 170-171. While the charter is designed to protect the City's autonomy over municipal affairs, the supremacy of the charter also binds the City to its mandates. By accepting the privilege of autonomous rule, the City has all powers over municipal affairs subject only to the clear and explicit limitation and restriction contained in the charter. *City of Grass Valley v. Walkinshaw*, 34 Cal. 2d 595, 599 (1949).

As explained above, the courts have granted considerable latitude to local legislatures in the municipal contracting arena. However, to be valid, ordinances enacted by local legislative bodies must harmonize with the charter. *Brown* v. *City of Berkeley*, 57 Cal. App. 3d at 231. In fact, ordinances can no more change or limit the effect of the charter than a statute can modify or supercede a provision of the California Constitution. *Marculescu v. City Planning Commission*, 7 Cal. App 2d 371, 373-374 (1935).

When municipal officials are charged with carrying out a charter provision, the provision must provide a uniform standard or rule of conduct. *Stacy & Witbeck, Inc. v. City and County of San Francisco*, 36 Cal. App. 4th 1074, 1084 (1995). If the City opts to propose an amendment to the Charter, the amendment must give potential bidders some certainty in how the amendment to Section 94 will be interpreted. A charter provision, like a statute or ordinance, must be definite and certain so that individuals can determine whether his or her proposed activity is prohibited.

3 McQuillin, Muni.Corporations, vol. 9, § 26.73, p. 235-236, supp. 16 (2001), *citing Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th at 161.

II. THE BID PREFERENCE PROGRAM, AS CURRENTLY CRAFTED, CONFLICTS WITH THE LOWEST RESPONSIBLE BIDDER REQUIREMENT OF CHARTER SECTION 94

A. Mandate of "Lowest Responsible Bidder"

The Program as proposed conflicts with the "lowest responsible bidder" requirement in several respects. First, a five percent bid preference could result in awards to small primes and primes that meet the subcontracting goal but *have not submitted the lowest bid*. Charter Section 94 is the provision of law that requires the City to award contracts to the "lowest responsible and reliable bidder." Section 94 reads, in relevant part:

> In the construction, reconstruction or repair of public buildings, streets, utilities and other public works, when the expenditure therefor shall exceed the sum established by

> ordinance of the City Council, the same shall be done by written contract, except as otherwise provided in this Charter, and the Council, on the recommendation of the Manager or the head of the Department in charge if not under the Manager's jurisdiction, shall let the same to the *lowest responsible and reliable bidder*, not less that ten days after the advertising for one day in the official newspaper of the City for sealed proposals for the work contemplated. [Emphasis added.]

Due to the "lowest responsible bidder" mandate of the charter, the City has long recognized that it may not consider factors other than the amount of the bid and *responsibility* of the bidder. See, 1992 City Att'y MOL 341, 342; *City of Inglewood-L.A. County Civic Center Auth. v. Superior Court*, 7 Cal. 3d at 867. [Emphasis added.] Further, an award *must* be made to the lowest bidder unless the bidder is found not responsible, that is, not qualified to perform the particular work under consideration. *Id.*

With respect to municipal affairs, the courts have *defined* "responsible" in the context of responsible bidders. The court defines "responsible" to include not only trustworthiness but also quality, fitness, and the capacity of the bidder to perform the proposed agreement satisfactorily. *Id.* However, the courts have also reserved broad discretion to cities in determining the *mode* of selecting the lowest responsible bidder. For example, the City has considerable latitude to set bid specifications, one method of identifying responsible bidders, but those specifications must not go beyond the court's definition of "responsible." "Bid specifications are generally permissible if the requirements reasonably relate to the 'quality, fitness, and capacity of a bidder to satisfactorily perform the proposed work.'" *Associated Builders and Contractors, Inc. Golden Gate Chapter v. San Francisco Airports Commission*, 21 Cal. 4th 352, 366 (1999). Thus, a "responsible bid" is one that responds to all proper bid specifications.

By necessary implication the direct cost of the project need not be the City's sole consideration in setting bid specifications. *Cf.* Op. City Att'y 03-1 (April 8, 2003) (discussing the City's authority to include prevailing wage specifications in its public works municipal affair contracts). However, the City's mode of selecting the lowest responsible bidder should remain consistent with definition of "responsible." If an otherwise responsible bidder meets the City's bid specifications and offers the lowest bid, then under the charter and current definition of responsibility, the contract must be awarded to that bidder. In short, while the City controls selection of responsible contractors through bid specifications, it remains bound to consider only the "quality, fitness and capacity of a bidder to satisfactorily perform the work" as well as the amount of the bid. Because preferences are a mode of selection that consider factors other than responsibility, they are counter to the plain language of the Charter.

B. Purpose of "Lowest Responsible Bidder"

Second, the Program in its current form may be criticized as inconsistent with the policy underlying the lowest responsible bidder mandate, that is, to protect competitive bidding. Despite the City's broad discretion in municipal affairs, its competitive bidding procedures must be strictly construed so they do not conflict with the Charter objective of ensuring economy.

The rationale of competitive bidding has been explained in one leading treatise as follows:

> "The provisions of statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of the property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to public interest. These provision are strictly construed by the courts, and will not be extended beyond their reasonable purpose. Competitive bidding provisions must be read in light of the reason for their enactment, or they will be applied where they were not intended to operate and thus deny municipalities authority to deal with problems in a sensible, practical way." 10 McQuillin Mun. Corp. § 29.29 (3d ed. 1990).

Thus, charters requiring competitive bidding must be "construed to ensure economy and exclude favoritism and corruption." *Los Angeles Dredging Co. v. Long Beach*, 210 Cal. 348, 354 (1930). Section 94 requires competitive bidding to protect public interest in securing the "best work" on municipal projects at the "lowest practicable price." The Program would award preferences, which would not be most efficient for the City in the short term. For this reason preference programs, as opposed to outreach programs, have been ruled anti-competitive. *Domar Electric Inc. v. City of Los Angeles,* 9 Cal. 4th at 177.

SCOPe is an outreach program: currently contractors must conduct outreach to procure subcontractors. Courts have ruled that there is no conflict between outreach programs and purposes of competitive bidding. *Id.* at 173. Because outreach programs mandate reasonable good faith outreach by primes to subcontractors, these programs actually guard against favoritism and improvidence by primes, increase opportunity and participation within the competitive bidding process, and simulate advantageous marketplace competition. *Id.* at 174.

In contrast, the Program would grant preferences. There is a significant distinction between set-asides or bid preferences and outreach efforts. The foremost goal of competitive bidding is to protect against insufficient competition so that the government gets the most work for the least money. *Id.* at 177. The *Domar* court reasoned that requiring prime contractors to reach out to all types of subcontracting enterprises broadens the pool of participants in the bid process, thereby guarding against the possibility of insufficient competition. "In stark contrast, mandatory set-asides and bid-preferences work against the goal of competitive bidding by narrowing the range of acceptable bidders solely on the basis of their particular class." *Id.*

The core goal of the Program is to increase opportunity for small and emerging businesses. This objective would be met through preferences, which accept a higher cost of completion and award a fictional low bid. However, because the City and taxpayers would not be "getting the most work for the least money," critics could view this practice as a sacrifice of efficiency, wasteful of public resources and, therefore, counter to the Section 94 mandate.

III. OPTIONS

The most highly recommended option is a charter amendment, which could create a bid preference program and an exception to the "lowest responsible bidder" requirement. A second option is an ordinance that could define the permissible boundaries of preferences and state an intention to increase competition by empowering small and emerging firms. A third option, that is not recommended, is an ordinance that redefines "responsibility."

A. Amend the Charter

The best option is for the City voters to adopt an amendment to Section 94 of the Charter to allow for a bid preference program. The charter amendment would make a substantive change to the charter by creating certain exceptions to the lowest responsible bidder requirement. There are several advantages to this option. Because the City's ability to contract is a purely municipal affair, any charter changes regarding the award of City-funded contracts need not comply with the state model, Section 2002. A Charter amendment could address the unique environment within the City's contracting community. For example, the EOC is gathering data to determine which types of contracts would be most beneficial to small and emerging businesses. That information could assist in developing a Charter amendment that both provides a "uniform standard or rule of conduct" to bidders on how preferences would be awarded as well as an objective basis for selection.

Furthermore, to ensure consistency with the objectives of competitive bidding, the proposal would set out an intention and plan to increase competition among all construction contractors as well as to foster small and emerging businesses. With such a charter amendment it would be permissible for the City to adopt a municipal contracting program that includes bid preferences for small and emerging businesses.

B. Adopt an ordinance that is narrow enough to both implement the Program and preserve the meaning of Section 94.

The second option is for City Council to adopt an ordinance to implement the bid preference program for a narrow class of major public works construction contracts. For example, the Program could apply to construction contracts from $250,000 to a specific capped monetary amount instead of *all* construction contracts over $250,000. A monetary cap, based on economic data from the EOC, would be necessary so that the majority of construction contracts are still awarded to the "lowest responsible bidder"and Section 94 is preserved. Authority for such an ordinance is located in Section 94, which reads in relevant part:

> In the construction, reconstruction or repair of public buildings, streets, utilities and other public works, *when the expenditure* therefor *shall exceed the sum established by ordinance of the City Council*, the same shall be done by written contract, except as otherwise provided in this Charter, and the Council, on the recommendation of the Manager or the head of the Department in charge if not under the Manager's jurisdiction,

shall let the same to the lowest responsible and reliable bidder, not less that ten days after the advertising for one day in the official newspaper of the City for sealed proposals for the work contemplated. [Emphasis added.]

History supports this approach. The 1931 charter required contracts over $1,000 to be let to the "lowest responsible bidder." A 1953 charter amendment raised that figure to $2,500. Finally, in the 1977 election the constituents voted to amend charter section 94 to grant City Council the discretion to set the minimum monetary limits *by ordinance*. This amendment was structured to eliminate an inflexible provision of the charter, to acknowledge the changing needs of the City in the arena of public contracting, and to broaden City Council's authority to adjust this figure from time to time to meet those needs.

It is within the City Council's power to enact ordinances which interpret the charter, the City's "constitution." Legislative enactments may furnish a guide to the construction of constitutional provisions. *Legault v. Board of Trustees,* 161 Cal 197 (1911). Furthermore, deference must be accorded the view of the legislative branch in matters of constitutional interpretation. *Methodist Hosp. of Sacramento v. Saylor*, 5 Cal. 3d 685, 692 (1971). However, as explained above, an ordinance cannot change or limit the effect of the charter. For this reason, a proposed ordinance should apply to a narrow class of construction contracts, so that the exception would not destroy the rule, Section 94 of the charter.

Availing itself of its city charter status, the City has adopted some innovative programs designed to achieve a fair and expeditious public works contracting process. For example, in 2002 the City Council exercised this authority and passed an ordinance to implement the MCCP. Among other additions to the San Diego Municipal Code, the MCCP ordinance established a new division entitled "Bidding and Award Requirements for Minor Public Works Contracts" and created an alternative advertising, bidding, and award procedure for minor public works projects. While MCCP has not been challenged legally, it has effectively diversified minor construction contracts. The EOC reported that 62 percent of contract dollars went to certified small and emerging businesses from July 2002 to December 2002.

A similar ordinance to implement the proposed Program could establish alternative competitive bidding and award procedures for construction contracts between $250,000 and a specific monetary limit. As the EOC envisioned, the new procedures could include bid preference of up to five percent for both small and emerging prime bidders and primes that meet the participation goal for small and emerging subcontractors. To maintain the validity of Section 94 the lowest responsible bidder mandates would control construction contracts above the new sum established.

As explained above, any ordinance must harmonize with the charter and not change or limit the effect of the charter. To withstand a legal challenge the Program ordinance must carve out an *exception* to the Section 94 mandate, not create a new *rule* that would render the "lowest responsible bidder" principle meaningless.

C. Adopt an Ordinance to Redefine "Responsibility"

A final option, which is not recommended, is for the City to adopt an ordinance that redefines "responsibility" as it applies to the "lowest responsible bidder." For purposes of comparison it is helpful to examine other jurisdictions that have exercised this option. At least one other California charter city, Sacramento, has attempted to reconcile the "lowest responsible bidder" mandate with a bid preference program by this means.

The City of Sacramento, charter mandate, Article XIV, Section 201 reads in relevant part:

> "... in the case of a contract for the undertaking if any public project, *where the amount therefore equals or exceeds the amount set by said ordinance*, that said contract will be
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> open to competitive bidding and that the procedures for bidding shall include the public advertisement thereof and *an award to the lowest responsible bidder*." [Emphasis added.]

Sacramento faces the same charter constraints as the City; its charter has an similar "lowest responsible bidder" requirement for project amounts beyond what the local legislature has carved out through ordinance.

Nevertheless, in 1999 Sacramento designed a bid preference program that grants five percent bid preferences to small and emerging businesses. In an effort to reconcile the charter mandate with a bid preference program, the Sacramento City Council made two relevant amendments to its City Code. The first amendment redefines the "lowest responsible bidder" as the responsible bidder whose bid price is the lowest after all bids prices are re-calculated to include the preference. *See* Sacramento City Code § 57.01.102(c). Another amendment adds a factor to the determination of responsibility. To be considered responsible a bidder must comply with any small and emerging business enterprise program that applies to the contract. *See* Sacramento City Code § 57.01.102(b). It is of note that although construction contracts are included in these amendments, to date Sacramento uses preferences only for its procurement contracts, which are less controversial.

Cities may craft unique bid selection procedures as long as they adhere to the definition of "responsibility" as defined by the state courts. State courts have recognized that municipalities retain broad discretion in setting procedures that deviate from state practices. Consistent with those rulings, it is this City's long-standing position that the mode of determining responsibility is a municipal affair. *See* City Att'y Rpt. (October 1, 2001). And yet,

as explained above, municipalities are still bound by state court precedent that has defined "responsibility" narrowly. Sacramento's program and amendments have not been challenged in a court of law. However, it is our opinion that although Sacramento's approach of redefining "responsibility" to allow for economic preferences is based on a legitimate municipal interest in supporting small and emerging businesses, it may not be legally defensible. Therefore, the City may not simply redefine "responsibility" to obviate the low bid requirement.

The EOC report also refers to several state agencies that have implemented programs that favor small and emerging businesses through bid preferences. However, City cannot look to the state for guidance on the legality of such a program because the state does not face the same constraints as a charter city. The State of California is required to award state contracts to the lowest responsible bidder pursuant to a statute. *See* Cal. Pub. Cont. Code § 10180. Without a supreme mandate requiring otherwise, the State legislature simply passed a statute which codified a bid preference program. *See* Cal. Gov't Code § 14835.

CONCLUSION

The Program as currently crafted conflicts with Section 94. Therefore, the City should use one of two strategies before it implements the Program. The best option is for the City voters to amend the Charter to create a bid preference program. A second option is for City Council to adopt an ordinance which carves out an exception to Section 94 for construction contracts ranging from $250,000 to an amount to be established, based on economic data. A third option, which is not recommended, is for City Council to adopt an ordinance which redefines "responsibility" as it relates to "responsible bidders."

Respectfully submitted,

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Attachments:
- Exhibit A: Report No. 03-038: Status of the Subcontractor Outreach Program (SCOPe)
- Exhibit B: California Public Contract Code section 2002
- Exhibit C: City Attorney Memo: Comparison of California Public Contract Code and City of San Diego Public Works Contract Practices

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