

# Bay Area Toll Authority Oversight Committee

January 8, 2020

Agenda Item 6a

## MTC / BATA Preference Programs and Goals

---

- Subject:** An update on Agency preference programs including SBE Preference Program revisions, results of CA Preference Program research and planned future efforts to expand preference programs.
- Background:** MTC and BATA are continually evaluating opportunities to promote and increase Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) participation on MTC and BATA projects. In addition to the SBE Preference Programs, BATA directed staff to research and develop a California Preference Program in an effort to promote California based businesses. Michael Brinton, Assistant Director, Contracts/Compliance Manager will present information to the Committee on the following areas:
- Overall goals of MTC/BATA preference programs
  - Update on the California Preference Program efforts
  - Update on improvements to the SBE Preference Programs that will be presented in February 2020
  - Workforce Development programs in the 9 county San Francisco Bay Area
- Issues:** None – Information Item.
- Recommendation:** None – Information Item.
- Attachments:** Presentation Slides;  
Appendix A; and  
Appendix B

  
Therese W. McMillan

# Preference Programs Update

- What is the goal of establishing Preference Programs?
- California Preference Program research and staff recommendation
- SBE Preference Program Update
- Workforce Development Programs

# Agency Goals

- Increased job opportunities for San Francisco Bay Area residents
- Increased contract opportunities for Disadvantaged Business Enterprises (DBEs) and Small Business Enterprises (SBEs) located in the San Francisco Bay Area and throughout California
- Increased competition
- Meaningful support of work force development programs

# California Preference Program

- As a result of multiple procurements related to FasTrak<sup>®</sup> Toll Tags in Fall 2018 and early 2019, the Committee directed staff to research and develop a preference program to increase the competitiveness of California based businesses
- Staff researched local preference programs (see Appendix A) as a statewide preference program does not currently exist
- After drafting a pilot California Preference Program, staff analyzed the potential impact of the program versus the required resources for monitoring and compliance
- Below are the some of the guidelines for the program included in a presentation to the Committee in 2019:

## Considerations

- ☐ Impacts on competition
- ☐ Increased protest / legal challenge risks
- ☐ Increased costs
- ☐ Validating location, monitoring compliance, consequences of non-compliance, agency staffing needs

## Pilot Preference Program

- ☐ 5% Preference if Consultant/Contractor/Vendor has at least one physical location situated within the State of California
- ☐ Create Location Requirements Proposer must meet
- ☐ Create Monitoring/Compliance measures and enforcement

# California Preference Program

## MTC Agency Vendors

	#	%
Total # of Vendors	10,464	
Vendors in CA	8,587	82%
Vendors not in CA	1,877	18%

Includes all persons/entities currently in Agency vendor database

## BATA Procurement Proposers

### California Status

7/1/2017 - Present

	#	%
Procurements:	15	
Total Proposers:	73	
California	56	77%
Non-California	17	23%

See Appendix B

# Toll Tag Vendor California Status

- Kapsch – Pleasanton, CA & Carlsbad, CA
- Neology – San Diego, CA
- Transcore – Pleasanton, CA
- Star Systems – Texas

# CA Preference Program Recommendation

- Staff recommends not proceeding with a CA Preference Program
  - ❖ Statistics from current vendors and Proposers on recent contract opportunities demonstrates that a CA Preference Program will have minimal impact on contract award results
  - ❖ Resources required to implement a meaningful monitoring and compliance program could be directed at other efforts that offer a higher return on investment
  - ❖ Unknown risk of protest/legal challenges to the program

# SBE Preference Program

- October 2015 – Agencies adopted Resolution 4203, implementing the Construction Project SBE Program
  - ❖ 7 Civil Construction IFBs issued since adoption
    - ❖ 6 of 7 IFBs included Bidders claiming the SBE Preference
    - ❖ 3 of the IFBs were awarded to Bidders claiming the SBE preference
- January 2017 – staff implemented the MTC Professional Services SBE Pilot Program
  - ❖ Pilot program included on 10 RFPs
    - ❖ 5 of 10 RFPs included Proposers claiming the SBE Preference
    - ❖ 2 of the RFPs were awarded to Proposers claiming the SBE Preference



# SBE Preference Program

- Although SBE programs resulted in successful participation and multiple awards directly influenced by the preference, staff is striving for a larger impact
- In February 2020, staff will present resolutions seeking approval of a revised SBE Program that will include the following:
  - ❖ Create two tiers of SBE participation within increasing preference points awarded for larger SBE participation
  - ❖ Expanding qualified SBEs to include DBEs and SBEs from any certifying agency in the 9 county San Francisco Bay Area that offers an online, searchable database of certified SBEs/DBEs
  - ❖ Require inclusion of SBE Program on all non-federally funded RFPs

# Workforce Development Programs

- Staff would like to explore supporting workforce development programs such as those offered by:
  - ❖ City and County of San Francisco
  - ❖ Mission Economic Development Agency
  - ❖ Alameda County
  - ❖ NOVA (Northern Santa Clara County/San Mateo County)
  - ❖ Work2future (Southern Santa Clara County)
  - ❖ Contra Costa County
  - ❖ Solano County
  - ❖ Napa County
  - ❖ Mandela Partners

## **Appendix A**

### **Local Preference Programs Research**

## LBE Information for SF Bay Area Public and Transportation Agencies

	AC Transit	Alameda County	Alameda CTC	City of Oakland	Port of Oakland	San Francisco City and County	Santa Clara County
Type of Program	SBE/LBE	SBE/LBE	SBE/LBE/VSLBE	SBE/LBE	VSBE, SBE, LBABE or LIABE	SBE/LBE	LBE
% Preference	SBE preference 5% of the lowest bid meetings specs, 7% for SLBE.	Varies, see <a href="http://www.acgov.org/auditor/sleb/components.htm">http://www.acgov.org/auditor/sleb/components.htm</a>	Varies	2%	10% or 1M whichever is less	Varies	5%
Program Document	<a href="http://www.actransit.org/wp-content/uploads/board_policies/BP%20351%20-%20Small%20Local%20Business%20Procurement.pdf">http://www.actransit.org/wp-content/uploads/board_policies/BP%20351%20-%20Small%20Local%20Business%20Procurement.pdf</a>	<a href="http://www.acgov.org/auditor/sleb/documents/SLEBprogram.pdf">http://www.acgov.org/auditor/sleb/documents/SLEBprogram.pdf</a>	<a href="https://www.alamedactc.org/wp-content/uploads/2018/11/LBCE_Program_Policy_20171207.pdf">https://www.alamedactc.org/wp-content/uploads/2018/11/LBCE_Program_Policy_20171207.pdf</a>	<a href="https://cao-94612.s3.amazonaws.com/documents/oak029719.pdf">https://cao-94612.s3.amazonaws.com/documents/oak029719.pdf</a>	<a href="https://www.portofoakland.com/files/pdf/responsibility/ndslbu_policy.pdf">https://www.portofoakland.com/files/pdf/responsibility/ndslbu_policy.pdf</a>	<a href="https://sfgov.org/cmd/sites/default/files/FileCenter/Documents/13050-CH14B_Rules_07012015_Final_clean.pdf">https://sfgov.org/cmd/sites/default/files/FileCenter/Documents/13050-CH14B_Rules_07012015_Final_clean.pdf</a>	<a href="https://www.sccgov.org/sites/pr/policies/Pages/default.aspx">https://www.sccgov.org/sites/pr/policies/Pages/default.aspx</a>
Requirements / Measures of a Local Business:	Local Business - A business having a fixed office with a street address in Alameda County, and having a valid business license issued by the County or a City within Alameda County.	Local Business - A business having a fixed office with a street address in Alameda County, and having a valid business license issued by the County or a City within Alameda County.	a. Hold a valid business license issued by Alameda County or a city within Alameda County for at least six (6) months prior to certification date;	Local Business Enterprise (LBE)	“Local Business Area (LBA)” shall mean all of Alameda County and Contra Costa County.	LBEs must go through a certification and registration process to set the Principal Place of Business in San Francisco Certification Criteria	Local business must be a lawful business with a physical address and meaningful production capability located within the boundaries of the County of Santa Clara
	5% Local Business Preference - Any local business located within the County at least 6 months prior to date upon which a request for sealed bids or proposals is issued may be eligible for a 5% local bid preference.	5% Local Business Preference - Any local business located within the County at least 6 months prior to date upon which a request for sealed bids or proposals is issued may be eligible for a 5% local bid preference.	b. Be located and fully operational at a fixed place of business within Alameda County where administrative, clerical, professional, and other productive work is continuously performed relative to its commercial contracts for at least six (6) months prior to the certification date, with two types of evidence of maintaining a working office at such business address: (1) proof of a prior or current fully executed contract containing such business address, and (2) a lease agreement or proof of ownership of real property for the fixed place of business (a temporary, mobile or virtual office, project work station, telephone answering and/or mail service in an office suite, post office box or address, etc., do not constitute a fixed place of business location);	<input type="checkbox"/> substantial presence in Oakland <input type="checkbox"/> operational for at least twelve (12) consecutive months <input type="checkbox"/> valid business tax license <input type="checkbox"/> fixed office space <input type="checkbox"/> employees in fixed office <input type="checkbox"/> permits and fines and fees are current <input type="checkbox"/> documents certifying the existence of the business (contracts, leases bills, etc) <input type="checkbox"/> registration in the City’s iSupplier system	“Local Impact Area (LIA)” shall mean the area most impacted by Port projects. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro.	1. The business owner(s) must declare under penalty of perjury that the business maintains its principal place of business in San Francisco consistent with Chapter 14B.3(A)(5).	Agencies/Departments to work with County Counsel to determine whether the business has meaningful production capability within the County.

AC Transit	Alameda County	Alameda CTC	City of Oakland	Port of Oakland	San Francisco City and County	Santa Clara County
		c. Have a minimum of one full-time equivalent employee staffing the Alameda County office, if the business has one or more offices located outside of Alameda County;	Local Business Enterprise –Locally Produced Goods (LBE-LPG)		2. The business must submit documentation demonstrating that it has been located and doing business in San Francisco for at least six (6) months preceding its application for certification as an LBE.	
		d. Be bona fide with real and continuing business activities and ownership interests which are not created merely for the purpose of meeting the objectives of the LBCE Program; and	Same as LBE except: <input type="checkbox"/> Business must manufacture goods within the Oakland geographic boundaries	The Port will implement a Surety Bond and Financing Program to assist contractors in obtaining bonding and financing to meet the Port’s small local business utilization goals.	3. If a business seeking to be certified has more than one operating location, it must demonstrate that its local office is its principal place of business. It must maintain its principal place of business in a fixed office within the geographic boundaries of the City, where it provides all of the services for which LBE certification is sought, other than work required to be performed at a job site. All businesses, except for suppliers, must demonstrate that the majority of its principals are based in the San Francisco office.	
		e. Be economically independent, perform commercially useful functions, and have a customer base (a business acting as a passive conduit rather than contributing a value added or actual portion of the work performed does not qualify for certification).		1.1.1. The business must be located at a fixed commercial or residential address, which constitutes a business location where administrative, clerical, professional, or other productive work is continuously performed relative to its commercial contracts. A temporary or moveable office, a project work station, a post office box, or a telephone answering and/or forwarding service are not acceptable; and		

AC Transit	Alameda County	Alameda CTC	City of Oakland	Port of Oakland	San Francisco City and County	Santa Clara County
				1.1.2. The business must have located within the LBA or LIA at least one (1) year prior to the certification application date; and	4. To be certified as a supplier, a business is not required to maintain its principal place of business in San Francisco, but must maintain a fixed office in San Francisco that meets all of the local office requirements other than the principal place of business requirement.	
				1.1.3. The business must provide evidence of performing prior contracts while based within the LBA or LIA; and	5. All business owners are considered principals for purposes of determining principal place of business.	
				1.1.4. The business must be economically independent and perform commercially useful functions. A business acting as a passive conduit rather than contributing a value added or actual portion of the work performed does not qualify for certification; and	6. A business must operate from an independent office site, have daily functions, fixtures and equipment and sufficient space necessary to operate the business for which certification is sought.	
				1.1.5. The business must be currently licensed, where applicable, in the type of work in which it is seeking a contract with the Port of Oakland at least one year prior to the certification application date; and	7. An arrangement for the right to use office space on an ‘as needed’ basis where there is no office exclusively reserved for the firm does not qualify as an ‘office’. The applicant must submit a rental agreement for the office space/home, rent receipt or canceled check. If the office space is owned by the business or applicant, the business must submit property tax or deed statement documenting ownership.	

AC Transit	Alameda County	Alameda CTC	City of Oakland	Port of Oakland	San Francisco City and County	Santa Clara County
				1.1.6. The business must be bona fide with real and continuing business ownership interests which are not created merely for the purpose of meeting the objectives of the Port’s Non-Discrimination and Small Local Business Utilization Policy.	8. The business location, unless located in a residence, must prominently display the name of the firm. A business that is located in a residence and that seeks to be certified as an LBE must substantiate that none of the owners of the business also maintain an office that is located outside of the home for this business activity.	
					9. Businesses must submit copies of their annual San Francisco Business Tax Registration Certificate as well as Federal and State Payroll documents (i.e. DE-6 or DE-9).	

**Appendix B**  
**BATA Proposers List**



## Appendix B

Name of Procurement	Proposers:	Date Adv	Location	
<b>Bond Counsel &amp; Public Finance Counsel</b>		11/9/2018		
	KutakRock		Denver	CO
	Orrick Herrington & Sutcliffe		San Francisco	CA
	Nixon Peabody		Los Angeles	CA
	Thompson Coburn LLP		Chicago	IL
<b>AET Program Management &amp; Oversight</b>		5/6/2019		
	WSP		San Francisco	CA
	HNTB		Oakland	CA
	Jacobs Engineering Group		Oakland	CA
	Silicon Transportation Consultants		Palo Alto	CA
	Traffic Technologies		San Francisco	CA
<b>Fas Trak Customer Service Center Credit Card Processing Services</b>		9/12/2018		
	Bank of America merchant Services		Charlotte	NC
	First Data		Atlanta	GA
	JP Morgan		San Francisco	CA
	Worldplay		Symmes	OH
<b>SR 37 Interim Project Mini-Procurement</b>		1/22/2019		
	AECOM		Oakland	CA
	Kimley-Horn & Ass		Pleasanton	CA
	T.Y. Lin International		Oakland	CA
<b>Fas Trak 6C Electric Toll Tags *</b>		3/6/2019		
	TransCore		Albuquerque	NM
	Kapsch TrafficCom USA		McLean	VA
<b>On Call Construction Management &amp; Design</b>		9/26/2017		
	AECOM		San Francisco	CA
	Arup North America		San Francisco	CA
	BKF Engineers		Pleasanton	CA
	Ghirardelli Ass		Oakland	CA
	HDR		Oakland	CA
	Hill International		San Francisco	CA
	HNTB		Oakland	CA
	Jacobs		Oakland	CA
	Kimley-Horn & Ass		Pleasanton	CA
	Park Engineering		Orinda	CA
	S&G Engineers		Oakland	CA
	T.Y. Lin International		Oakland	CA
	WHM Corp		Oakland	CA
	WSP		San Francisco	CA
	Zoon Engineering		Emeryville	CA
<b>Mini Procurement: Fas Trak Ad Hoc Communications Service</b>		6/20/2019		
	Auriga Corp		Milpitas	CA
	Caribou Public Relations		Martinez	CA
	MIG Inc		Berkeley	CA
<b>Consultant Assistance Fas Trak Regional Customer Service Center</b>		7/11/2017		
	HNTB Corp		Oakland	CA
	Jacobs		San Francisco	CA
	Traffic Technologies		New Windsor	NY
<b>SF-Oakland Bay Bridge (SFOBB) Metering Lights Upgrade Project</b>		4/30/2019		
	St Francis Electric		San Leandro	CA
<b>Fas Trak General Information Webpage Update</b>		10/2/2018		
	Convey		Emeryville	CA
	Lowercase Productions		San Francisco	CA
	MIG Inc		Berkeley	CA
	Sidecar		Oakland	CA
	The Glue		Los Angeles	CA

## Appendix B

Name of Procurement	Proposers:	Date Adv	Location	
<b>Fas Trak Regional CSC RFI</b>		5/10/2018		
	Cognizant Tech Solutions		College Station	TX
	Conduent		Genmantown	MD
	Cubic Transportation Systems		San Diego	CA
	Electronic Transaction Consultants(ETC)		Richardson	TX
	Emovis Technologies US		Westbury	NY
	Etan Industries		Dallas	TX
	Faneuil		Hampton	VA
	Indra		Miami	FL
	Kapsch Traffic Com		McLean	VA
	Vertiba		Dallas	TX
	WSP		San Francisco	CA
<b>Richmond-San Rafael Bridge Access Improvement Project</b>		10/16/2017		
	OC Jones		Berkeley	CA
	Ghilotti Bros Inc		San Rafael	CA
	Proven Management Inc		Oakland	CA
<b>2017 RFQ Toll Bridge Assest management Program Support</b>		1/24/2017		
	Arup North America		San Francisco	CA
	HDR		San Francisco	CA
	HNTB Corp		Oakland	CA
	Mott MacDonald		San Francisco	CA
	TY Lin International		San Francisco	CA
	WSP		San Francisco	CA
<b>Asset Management Support for RSR Bridge</b>		8/22/2018		
	WSP		San Francisco	CA
	Arup North America		San Francisco	CA
	HDR		San Francisco	CA
	HNTB		Oakland	CA
	Mott MacDonald		San Francisco	CA
	TY Lin International		San Francisco	CA
<b>Toll Bridge Signage &amp; Striping Project</b>		7/26/2018		
	AECOM		Oakland	CA
	Kimley-Horn & Ass		Oakland	CA