Local Preference Option: A Contractor’s Perspective

By David A. Beach
for the entire FSAAWWA Contractors Council

Throughout the state of Florida, some governmental entities are using local preference when awarding contracts for public projects and commodities. Some areas have had this purchasing system in place for over 10 years, and some began using it as recently as last year.

Current economic conditions seem to be the driving force behind new purchasing ordinances. Local government entities are trying to develop jobs and opportunities for local businesses by giving them a percentage preference or a second-chance right to match a non-local vendor’s or contractor’s bid in awarding publicly bid projects.

The premise upon which local vendor preference policies are founded is that awarding contracts to local contractors keeps tax dollars in the community—an idea that at first blush is appealing to constituents. Whatever intentions policymakers have when they vote for the local preference option, from the perspective of a contractor who specializes in water and wastewater construction projects, it is not a good idea—and in fact, stands to harm the local economy much more than it helps. It may be appropriate for some goods and services provided by local businesses, but not for large construction contracts.

Competitive bidding among responsible contractors is the very heart of providing a municipality with the best price for a project, and thus the taxpayers with the most value for their dollars. Bidding for a job has always been a blind process, with each contractor searching for qualified suppliers and subcontractors who will give the best price for their portion of the work. Each contractor carefully scrutinizes the general conditions, costs of labor and equipment, and trims the margin as much as the company can responsibly sustain in the pursuit of work.

The costs associated with bidding a multi-million dollar job can easily run over $20,000 for a contractor. This is a process and a cost that a contractor embraces, knowing that the competition is doing the same and that one of them will emerge with a job. The local preference option, however, destroys the level playing field and effectively shuts down the competition that has always yielded the best price for the job.

A survey of the larger metropolitan areas of the state reveals that eight of 13 counties have enacted some form of local preference option. These include Brevard, Broward, Collier, Leon, Manatee, Miami-Dade, Orange, and Palm Beach.

Notably, one large municipality, the city of Tampa, has not passed a local preference ordinance. Reasons cited are that such ordinances would limit competition and thus increase costs to the taxpayer. In fact, on November 12, 2009, the City Council voted to back the efforts of the Associated Builders and Contractors (ABC) to pass a state law to prohibit local preference options—a decision that was later reversed in January of this year as elections neared.

While some local preference options place a cap on the upper dollar amount to which the option applies, others do not. Consider, for example, the situation created by the bidding of a project worth $5 million, with a 10-percent unlimited local preference. Since no contractor realistically expects to place a 10-percent margin on a project, the job would have to be bid for less than costs, just to match the preference being given to the local contractor.

There is no incentive to waste time and dollars with such a bid, knowing that there is no hope of being awarded the job. That municipality will not benefit from the receipt of a number of competitive bids from qualified, experienced contractors.

Moreover, the local contractor, who is certainly aware of the advantage being given to the company, now has the opportunity to actually increase the bid being offered, in this case by as much as 10 percent. If a contractor from another area does actually submit a bid and has a lower price, the local contractor is still offered a “right to match,” so the local contractor has nothing to lose by bidding a higher price. A double standard has been set. Bidding documents require a contractor to list major suppliers and subcontractors to prevent “bid shopping” after the fact, yet this is now being allowed for the main contract.

A contractor on a utility project who is not from the local area nevertheless still has a significant impact on the local economy. The same subcontractors, material suppliers, and service providers from the local area will be solicited prior to the bid and, in most cases, used for the work. Relationships with these subcontractors and suppliers are invaluable, and often result in repeat business in future years.

Utility contractors who bid throughout the state usually have employees who live in areas other than where the home office is located. Denying the contractor a job because of local preference may result in employees who indeed live in the local area being without a job.

In other situations, the contractor will frequently supplement the workforce with local employees. Since those seeking employment may be currently without work, this actually improves the local economy. When superintendents or project managers from outside the area are assigned to the job, they use the services of local hotels, restaurants, and grocery stores.

It is important to know the funding source for publicly bid projects. This is not always apparent in the specifications and can be difficult to obtain from purchasing departments. When projects that are funded in whole or part by state or federal dollars, such as the Florida Department of Environmental Protection or the American Recovery and Reinvestment Act, local preference options do not apply.

There are certain niche construction markets, such as utilities and infrastructure, which tend to have fewer experienced, competent contractors than do other markets. Utilities and infrastructure projects often have more than local impact. They often draw from regional resources and serve adjacent communities, visitors, and seasonal residents.

All of the citizens are better served by policies that promote free market conditions and foster healthy competition among contractors from all areas.