

AN ORDINANCE 2013 - 03 - 21 - 0167

**ADOPTING A PROGRAM GRANTING LOCAL PREFERENCES IN SPECIFIED CONTRACTING CATEGORIES.**

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**WHEREAS**, the San Antonio City Council desires to use the City's spending powers to promote fiscal responsibility and maximize the amount of citizen tax dollars that remain in the local economy for the benefit of its citizens; and

**WHEREAS**, City Council finds that by using its spending powers to encourage local business capacity, the City will also increase the competitive business pool from which it procures its goods and services, thereby maximizing return on investment in the City's fiduciary responsibility to its citizens; and

**WHEREAS**, City Council finds that, when awarding contracts, the principal place of business of a vendor is a relevant criterion in providing best value for the City; and

**WHEREAS**, City Council finds that the award of contracts to local area businesses benefits the economic vitality of the City and its area residents by providing citizen employment opportunity, increased property values and additional tax revenue to the City; and

**WHEREAS**, recent amendments to the Texas Local Government Code §271.905 and §271.9051 allow the City to consider a vendor's principal place of business in the award of certain contracts; and

**WHEREAS**, City Council determines that for any procurement award that applies to this Ordinance, local responsive and responsible bidders in specified contracting areas offer the City the best combination of contract price and additional economic development opportunities, including the employment of City residents and increased tax revenue to the City; and

**WHEREAS**, City Council finds that these determinations and conclusions meet the written determination required by Texas Local Government Code §271.905 and §271.9051 in the award of certain City contracts; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** City Council determines that the findings contained in the preamble of this Ordinance are true and correct, and hereby adopts these findings.

**SECTION 2.** City Council amends Chapter 2 of the City Code of Ordinances, San Antonio, Texas, by adding a new Article entitled "Local Preference Program" to create a contracting preference for local businesses as follows:

## ARTICLE X. LOCAL PREFERENCE PROGRAM

### Sec. 2-543. Declaration of Policy.

(a) It is the policy of the City of San Antonio (the "City") to use its spending powers to promote fiscal responsibility and maximize the amount of resident tax dollars that remain in the local economy for the benefit of its citizens by utilizing all available legal opportunities to contract with City Businesses.

(b) It is the policy of the City to place an affirmative duty on City departments to grant a preference to City Businesses unless doing so would be contrary to the best interests of the City.

(c) It is the policy of the City to achieve the policy goal in Subsection (a) above by utilizing all permissible tools.

(d) Nothing in the Article prohibits the City from rejecting any and all bids.

### Sec. 2-544. Definitions.

The words and phrases defined in this Section and used in this Article have the following meanings:

Bid – a response to a procurement method governed by the Texas Local Government Code, Title 8 Acquisition, Sale or Lease of Property awarded solely on the basis of price.

Bidder – a responsible person or business entity that submits a responsive Bid.

Centralized Vendor Registry (CVR) - a mandatory electronic system wherein the City requires all prospective Bidders, respondents and subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City.

City Business – a business with a Principal Place of Business within the San Antonio city limits.

Headquartered – the place where a business entity's officers direct, control and coordinate the entity's activities.

Managing Department - the department managing the procurement for a contract.

PDFD – the Purchasing Division of the City's Finance Department, or successor division or department with primary responsibility for procurement.

Principal Place of Business – a business Headquartered OR having an established place of business for at least one year in the incorporated limits of the City and from which at least 100 of its employees or at least 20% of its total number of full-time, part-time and contract employees are regularly-based and from which a substantial role in the business's performance of a commercially useful function or a substantial part of its operations is conducted by those employees. A location utilized solely as a post office box, mail drop or telephone message center or any similar combination, with no other substantial work function, is not a Principal Place of Business.

Service – a non-professional service procured pursuant to Texas Local Government Code, Title 8 Acquisition, Sale or Lease of Property.

**Sec. 2-545. Purchases of Personal Property.**

(a) *Contracts of \$50,000 or more.* In purchasing any personal property that is not affixed to real property, if the City receives one or more Bids from a Bidder that is a City Business and whose Bid is within 3% of the lowest Bid price received by the City from a Bidder who is not a City Business, the City shall enter into a contract that requires an expenditure of \$50,000 or more with the Bidder that is a City Business.

**Sec. 2-546. Purchases of Services.**

(a) *Services Contracts of \$50,000 to under \$500,000.* In procuring Services, excluding construction services, if the City receives one or more Bids from a Bidder that is a City Business and whose Bid is within 3% of the lowest Bid price received by the City from a Bidder who is not a City Business, the City shall enter into a contract that requires an expenditure of \$50,000 to under \$500,000 with the Bidder that is a City Business.

(b) *Construction Services Contracts of \$50,000 to under \$100,000.* In procuring construction services, if the City receives one or more Bids from a Bidder that is a City Business and whose Bid is within 3% of the lowest Bid price received by the City from a Bidder who is not a City Business, the City shall enter into a contract that requires an expenditure of \$50,000 to under \$100,000 with the Bidder that is a City Business.

**Sec. 2-547. Purchases of Professional Services.**

(a) In procuring services under the *Professional Services Procurement Act*, Texas Government Code §2254.004, the Managing Department may, when appropriate, award up to 20 points to a respondent based upon knowledge of, and experience regarding, local conditions as part of the qualifications determination.

(b) In procuring other professional services not governed by statute, the Managing Department may, when appropriate, award 10 points to a respondent that is a City Business Headquartered within the incorporated limits of the City, or 5 points to a respondent that is a City Business not Headquartered within the incorporated limits of the City.

**Sec. 2-548. Reserved.**

**Sec. 2-549. Responsibilities and Enforcement.**

(a) PDFD shall determine the feasibility of establishing functionality in the City's Centralized Vendor Registry (CVR) necessary for a Bidder to establish that it has a Principal Place of Business in the City.

(b) The Director of the Managing Department shall maintain written records of all departmental actions under this Program.

(c) The PDFD is directed to provide written guidance to departments upon implementation of this Article.

(d) The submission of documentation by a business entity that is required to establish a Principal Place of Business that is found to contain false information is grounds for debarment.

(e) The PDFD shall produce quarterly reports starting August 1, 2013, summarizing the dollar amount of procurements awarded to City Businesses under this Program.

**Sec. 2-550. Exceptions.**

(a) This Program does not apply to any contract funded in whole or in part by the federal government or where the City acts as a conduit for federal money.

(b) This Program does not apply to contracts where the Managing Department or City Council has determined that it would not be in the best interest of the City.

(c) In accordance with Texas Local Government Code §271.9051, this Program does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C.A. §153.

**SECTION 3.** If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, is held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, and all provisions of this Ordinance are declared to be severable for that purpose.

**SECTION 4.** This Ordinance shall be effective, and apply to solicitations issued after, May 1, 2013.

LOH  
3/21/13  
Item #5

PASSED AND APPROVED this 21<sup>st</sup> day of March, 2013.



M A Y O R  
Julián Castro

ATTEST:



Leticia M. Vacek  
CITY CLERK

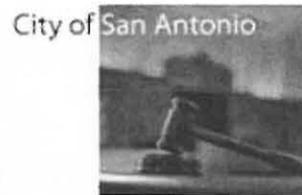
APPROVED AS TO FORM:



Michael D. Bernard  
CITY ATTORNEY



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 5

<b>Name:</b>	5						
<b>Date:</b>	03/21/2013						
<b>Time:</b>	10:33:42 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance adopting a local preference program for specific contracting categories. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

# **Proposed Local Preference Program**

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**Agenda Item #5**  
**March 21, 2013**

# Agenda

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- Background - Statute
- Proposed Local Preference Program
- Summary

# Background - Statute

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- Texas Statute Supports Local Business Enterprise Programs
    - Last Legislative Session the Texas Legislature adopted a revision to the law that allows cities to grant contracting preferences to local businesses when price alone determines the winning bid
    - Local is defined as a bidder whose principal place of business is within the City
    - The law previously allowed only cities with a population under 200,000 to grant such a preference
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# Background – Statute *(Cont'd)*

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- Under the new statute, the City may award contracts to local bidders:
  - for **personal property** if their bid is:
    - within 5% of the lowest non-local bidder for contracts under \$500,000
    - within 3% of the lowest non-local bidder for contracts over \$500,000
  - for **non-professional services** if their bid is:
    - within 5% of the lowest non-local bidder for contracts under \$500,000
  - for **construction contracts** if their bid is:
    - within 5% of the lowest non-local bidder for contracts under \$100,000

# Background – Statute *(Cont'd)*

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- Professional services governed by statute
  - Certain types of professional service contracts must be selected on demonstrated competence and qualifications and not on the basis of competitive bids (local preference cannot be applied)
  - These contracts include:
    - architecture, engineering, land surveying, landscape architecture, professional nursing, optometry, medicine, real estate appraising
- A local preference may be applied to other discretionary solicitations for services not governed by statute (revenue, concession, consulting contracts)

# Proposed Local Preference Program

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- Definition of Local Business:
  - A business headquartered **OR**
  - Meet the following conditions:
    - an established place of business for at least one year in the incorporated limits of the City
    - and from which at least 20% of its total full-time, part-time and contract employees are regularly based **OR** a minimum of 100 employees
    - and from which a substantial role in the business's performance of a commercially useful function or a substantial part of its operations is conducted
  - Headquartered is defined as the place where a business entity's officers direct, control and coordinate the entity's activities
  - Businesses will self-report this information

# Proposed Local Preference Program *(cont'd)*

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- Applicability:
    - For **goods/supplies** if their bid is:
      - within 3% of the lowest non-local bidder for contracts over \$50,000
      - Approximately 164 contracts issued last year with a value of \$89.8 million
    - For **non-professional services** if their bid is:
      - within 3% of the lowest non-local bidder for contracts of \$50,000 - \$500,000
      - Approximately 159 contracts issued last year with a value of \$52.7 million
    - For **construction contracts** if their bid is:
      - Within 3% of the lowest non-local bidder for contracts of \$50,000 - \$100,000
      - Does not apply to construction contracts awarded using alternative delivery methods
    - For purchases of **goods and non-professional services** under \$50,000
      - No local preference applied
      - Significant administrative impact
      - Approximately 13,000 purchase orders issued last year with a value of \$35 million
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# Proposed Local Preference Program *(cont'd)*

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- Professional Services Governed by Statute and Alternative Delivery Construction Methods
    - Current practice provides a preference of up to 20 Points for knowledge of local conditions where relevant
      - Criteria contained in all CIMS discretionary solicitations
      - Weighting determined by CIMS Director / City Engineer based upon scope of services, required competencies and availability
  
  - Other Services not Governed by Statute
    - Propose awarding up to 10 points to local bidders in discretionary solicitations for professional service contracts for which a local preference may be applied
      - **10 Points** – to local bidders with business headquarters in San Antonio **OR**
      - **5 Points** – to bidders from which at least 20% of its full-time, part-time and contract employees are regularly based in the City **OR** have a minimum of 100 employees in the incorporated limits of the City
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## Proposed Local Preference Program *(cont'd)*

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- Program would not apply to:
    - Federally funded programs per the statute;
    - The purchase of telecommunication or information services (as limited by the statute)
    - When the Managing Department or City Council determines that it would not be in the best interest of the City (i.e. price difference is too great)
    - Low Bid Construction Contracts over \$100,000
    - Construction Services using Alternative Delivery Methods
    - Contracts less than \$50,000
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# Summary

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- Recommend implementing Local Preference on May 1, 2013
- Incorporate the following recommendations from stakeholders to include:
  - Branding the Local Preference Program
  - Increasing accountability to the public
    - Quarterly performance reports to City Council beginning August 1, 2013
- Consistent with City Council goal of promoting San Antonio Local Businesses

# **Proposed Local Preference Program**

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**Agenda Item #5**  
**March 21, 2013**