

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL,
SIGNED ORDINANCE ADOPTED BY THE CITY COUNCIL.**

ORDINANCE

**AMENDING A PROGRAM GRANTING LOCAL
PREFERENCES TO EXPAND APPLICATION TO
SPECIFIED CATEGORIES IN ALIGNMENT WITH
STATE LAW, TO INCLUDE CONTRACTS FUNDED IN
WHOLE OR IN PART BY THE FEDERAL GOVERNMENT
WHEN THE FEDERAL GRANTOR EXPRESSLY
MANDATES OR ENCOURAGES GEOGRAPHIC
PREFERENCE, AND TO ALLOW APPLICATION TO NON-
PROFIT ORGANIZATIONS THAT ARE COMPETING FOR
CITY CONTRACTS.**

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WHEREAS, the San Antonio City Council established a program to grant local preferences in specified contracting areas through Ordinance No. 2013-03-21-0167, as amended by Ordinance No. 2013-12-05-0865 and Ordinance No. 2014-11-13-0923 (the “Local Preference Program Ordinance”); and

WHEREAS, the City now desires to expand the scope of application of this Local Preference Program Ordinance to align with State law by increasing the preference from 3% to 5% within certain thresholds for low bid good/supplies, low bid non-professional and construction contracts; and

WHEREAS, due to certain prohibitions when using federal funds, the current Local Preference Program Ordinance specifically prohibits application to contracts funded in whole or in part by the federal government or where the City acts as a conduit for federal money; and

WHEREAS, staff recommends the City expand application of the Local Preference Program in all areas allowable, such as in instances allowed by applicable federal statutes or where the federal grantor expressly mandates or encourages geographic preference; and

WHEREAS, the original and amended ordinances did not include a local preference for non-profit organizations; and

WHEREAS, in order to use the City’s spending powers to maximize the amount of resident tax dollars remaining in the local economy for the benefit its citizens by utilizing all available legal opportunities to contract with city businesses staff also recommends amending the Local Preference Program Ordinance to be applicable to non-profits organizations for both low bid non-professional services and discretionary professional services, where not restricted by statute; and

WHEREAS, upon approval of this ordinance, the proposed changes the Local Preference Program Ordinance will become effective immediately, and apply to solicitations with response deadlines after January 1, 2023, to allow for implementation; **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 Ordinance Nos. 2013-03-21-0167, 2013-12-05-0865 and 2014-11-13-0923 remain true and correct and apply with equal force to the amendments contained herein, and hereby affirms those findings.

SECTION 2. City Council hereby amends Chapter 2 of the City Code of Ordinances, San Antonio, Texas, Article XII entitled "Local Preference Program" which created a contracting preference for local business. All other provisions of Chapter 2, Article XII remain in full force and effect, unless expressly amended as follows:

ARTICLE XII. LOCAL PREFERENCE PROGRAM

Sec. 2-661. 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. 2-662. Definitions.

The words and phrases defined in this section and used in this article have the following meanings:

Bid means a response to a procurement for goods or non-professional services awarded solely on the basis of price.

Bidder means a responsible person or business entity that submits a responsive bid.

Centralized vendor registry (CVR) means 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 means a ~~for-profit~~ business with a principal place of business within the city limits.

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

Joint venture means a collaboration of ~~for-profit~~ business entities, in response to a solicitation, which is manifested by a written agreement between two (2) or more independently owned/governed and controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses/surplus or deficits of the joint venture enterprise commensurately with its contribution to the venture.

Managing department means the department managing the procurement for a contract.

PDFD means the purchasing division of the city's finance department, or successor division or department with primary responsibility for procurement.

Principal place of business means a business headquartered for one year or more or having an established place of business for one year or more in the incorporated limits of the city and from which at least one hundred (100) of its employees or at least twenty (20) percent 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.

Sec. 2-663. Purchases of personal property.

(a) Contracts of fifty thousand dollars (\$50,000.00) ~~or more~~ to under five hundred thousand dollars (\$500,000.00). 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 ~~three (3)~~ five (5) percent 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 fifty thousand dollars (\$50,000.00) ~~or more~~ to under five hundred thousand dollars (\$500,000.00) with the bidder that is a city business.

(b) Contracts of five hundred thousand dollars (\$500,000.00) 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 three (3) percent 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 five hundred thousand dollars (\$500,000.00) or more with the bidder that is a city business.

~~(b)~~ (c) When a bidder is a joint venture, each joint venture partner must meet the definition of a city business to be eligible for the preference described in this section.

Sec. 2-664. Purchases of non-professional services.

(a) Non-professional services contracts of fifty thousand dollars (\$50,000.00) to under five hundred thousand dollars (\$500,000.00). In procuring non-professional 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 ~~three (3)~~ five (5) percent 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 fifty thousand dollars (\$50,000.00) to under five hundred thousand dollars (\$500,000.00) with the bidder that is a city business.

(b) Construction services contracts of fifty thousand dollars (\$50,000.00) to under one hundred thousand dollars (\$100,000.00). In procuring non-professional construction services, if the city receives one or more bids from a bidder that is a city business and whose bid is within ~~three (3)~~ five (5) percent 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 fifty thousand dollars (\$50,000.00) to under one hundred thousand dollars (\$100,000.00) with the bidder that is a city business.

(c) When a bidder is a joint venture, each joint venture partner must meet the definition of a city business to be eligible for the preferences described in this section.

Sec. 2-665. Purchases of professional services; revenue and concession contracts.

(a) In procuring professional services under the Professional Services Procurement Act, V.T.C.A., Government Code § 2254.004, the managing department may, when appropriate, award up to twenty (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, revenue and concession contracts, the managing department may, when appropriate, award ten (10) points to a respondent that is a city business headquartered within the incorporated limits of the city, or five (5) points to a respondent that is a city business not headquartered within the incorporated limits of the city.

(c) For respondents submitting responses as a joint venture to solicitations for professional services not governed by statute, revenue and concession contracts, the following is applicable:

(1) For joint ventures, ownership and location of the individual entities entering into the joint venture relationship may be considered in the award of points. To be considered for points, at least one of the entities must be a city business; and

(2) Allocation of points for joint ventures may be determined by the percentage of ownership by a city business(es). If the city business entity(ies) is (are) headquartered within the incorporated limits of the city for one year or more, the managing department may, when appropriate, allocate a percentage of ten (10) points based upon the percentage of city business ownership in the joint venture. If the city business entity(ies) is (are) not headquartered within the incorporated limits of the city for one year or more, the managing department may, when appropriate, allocate a percentage of five (5) points based on the percentage of city business ownership in the joint venture.

Sec. 2-666. Reserved.

Sec. 2-667. 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 and shall work with the director of the city's economic development department to provide interpretive guidance and criteria related to joint ventures seeking preferences under this and other city programs to ensure uniform application that meets the intent of this article.

(d) The submission of documentation by a business entity that is required to establish a principal place of business, or to demonstrate the existence of and participation in a joint venture, that is found to contain false information is grounds for debarment.

(e) The PDFD shall produce quarterly reports, summarizing the dollar amount of procurements awarded to city businesses under this program.

(f) Successor authority. The departmental roles and responsibilities established by this article are extended to any successor department or division that performs comparable duties, in the event of an organizational restructuring or the creation of new or changed departments or divisions, or as otherwise provided by the city manager.

Sec. 2-668. 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, unless otherwise allowed by

applicable federal statutes or the federal grantor expressly mandates or encourages geographic preference.

(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 V.T.C.A., 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 effected thereby, and all provisions of this ordinance are declared to be severable for that purpose.

SECTION 4. Codification. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing Code.

SECTION 5. Effective Date. This ordinance is effective immediately upon passage by eight or more affirmative votes; otherwise, it is effective on the tenth day after passage. In order to allow effective implementation, this ordinance shall apply to solicitations with a response deadline on or after January 1, 2023.

PASSED and APPROVED this ___ day of ___, 2022.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Debbie Racca-Sittre, City Clerk

Andrew Segovia, City Attorney