



Meeting Date: 12/06/2011

| ACTION | TYPE OF ITEM |
|--|--|
| <input type="checkbox"/> Approved Recommendation | <input type="checkbox"/> Info/Consent |
| <input type="checkbox"/> Ord. No(s). _____ | <input checked="" type="checkbox"/> Report |
| <input type="checkbox"/> Res. No(s). _____ | <input type="checkbox"/> Public Hearing (Info/consent) |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Other _____ |

Prepared By: Alan Holmberg, City Attorney

Agenda Item No. **0-1**

Reviewed By: City Manager *[Signature]*

City Attorney *[Signature]*

Finance *[Signature]*

Other (Specify) *J. Cameron*

DATE: November 28, 2011

TO: City Council

FROM: Alan Holmberg, City Attorney *AH*

SUBJECT: Preferences for Small Local Businesses

RECOMMENDATION

That City Council approve the first reading by title only and subsequent adoption of an ordinance providing certain monetary preferences for small local businesses in connection with trade service and public works contracts.

DISCUSSION

On September 27, 2011, City Council heard a report from the City Attorney concerning the City's ability to adopt preferences for small local businesses in connection with trade service and public works contracts. The report concluded that an ordinance providing for such preferences could be adopted, subject to state and federal statutory or program restrictions. On November 1, 2011, the City Council provided additional comments in response to an agenda report containing a proposed ordinance.

Based on those comments, and discussions with finance staff and general services staff, the attached ordinance is proposed for City Council consideration.

The ordinance defines a small local business as a business with \$20 million or less revenue per year and less than 100 employees. At least fifty percent (50%) of the employees of the business must be Oxnard residents for a business to qualify as a small local business. The business must have its principal offices in Oxnard for at least three years prior to the bid submitted on the contract for which it is seeking a preference. The ordinance contains guidelines for determining whether the principal office of the business is located in the City, and provides discretion to the City Manager to make this and other determinations as to whether a business qualifies as a small local business.

The ordinance also provides for a "sliding scale" of preference amount, depending on the amount of the lowest bid on the contract in question.

The ordinance provides for a preference of 5% of the lowest responsible bid up to \$500,000. This is an increase from the previously proposed ordinance which provided for a 5% preference on bids up to \$250,000. The proposed ordinance now provides for an incremental reduction in the preference. The preference for a contract of \$750,000 would be 5% of the first \$500,000 and 4% of the next \$250,000. The percent of the preference declines in \$250,000 increments. A maximum preference then is \$50,000, for a \$1,500,000 contract. For all contracts over this amount, the preference would remain \$50,000. This allows some preference even on very large contracts.

With respect to issues concerning employee count, Part 2 of the ordinance retains the provision that in general in order to qualify for the preference, fifty percent of the contractors' employees must be Oxnard residents for at least 90 days prior to submission of a bid.

Part 3 of the ordinance, however, contains new language which addresses the situation where an Oxnard based contractor might submit a bid on a contract to perform which it would hire labor and use subcontractors, which in turn would hire labor. Part 3 of the ordinance provides that if the contractor otherwise satisfies the Small Local Business requirements and certifies under penalty of perjury that at least 50% of the labor hours devoted to the contract will be performed by Oxnard residents, it will be able to claim the preference. If it does not make such certification, it will not be able to claim the preference. There are provisions for audit of the contractors' records to ensure compliance, and provisions for an appeal from such audit.

FINANCIAL IMPACT

The precise financial impact cannot be determined at this time. While this preference would result in a higher cost to the City if the low bidder is not a local small business, because of the sliding scale and limitation on the size of the contract, it is not anticipated that the impact would be significant.

AH:rs

Attachment #1 – Ordinance Establishing a Small Local Business Purchasing Preference Program

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO.

ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA,
ESTABLISHING A SMALL LOCAL BUSINESS
PURCHASING PREFERENCE PROGRAM

WHEREAS, the unemployment rate in the City of Oxnard in recent years consistently has been higher than the unemployment rate of other cities in Ventura County and in the State; and

WHEREAS, the Council finds it necessary, desirable, and in the best interests of the City to establish a small business preference program in order to attract businesses to Oxnard, to retain businesses, and to increase employment and reduce competitive barriers faced by small local businesses; and

WHEREAS, the City is authorized by its municipal affairs authority and state law to establish such a program.

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part 1. In cases where the Oxnard City Code requires a written competitive bid for the purchase of goods or services, in determining the lowest responsible bidder when responsibility and quality are equal, a credit in a percentage of the bid submitted by the lowest responsible bidder meeting specifications shall be given to a bidder that meets the definition of a "Small Local Business" in this ordinance as follows: 5% of the amount up to \$500,000; 4% of the amount between \$500,001 and \$750,000; 3% of the amount between \$750,001 and \$1,000,000; 2% of the amount between \$1,000,001 and \$1,250,000 and 1% of the amount between \$1,250,001 and \$1,500,000. For example, if the lowest responsible bid is \$1,000,000, the preference would be \$42,500 ($\$500,000 \times .05 + \$250,000 \times .04 + \$250,000 \times .03$). The preference applies to all contracts, including contracts over \$1,500,000, but the amount of the preference is limited as provided herein, so that the maximum preference is \$50,000.

Part 2. "Small Local Business" shall mean a business entity that has for at least thirty six (36) months immediately preceding submittal of its bid held a current business license issued by the City and maintained its principal business office within the City's geographic boundaries, and has average annual gross receipts of twenty million dollars (\$20,000,000) or less over the thirty six (36) months immediately preceding submittal of its bid, and that employs fewer than one hundred (100) employees at least fifty percent (50%) of whom are Oxnard residents and have been Oxnard residents for at least 90 days prior to submission of the bid.

Part 3. As an alternative to the employment requirements described in Part 2, and only with respect to trade services or construction contracts to perform which the contractor intends to

hire employees or to subcontract, a contractor submitting a bid shall satisfy the resident employment requirements for obtaining preference as follows. With the submission of its bid, the contractor shall submit a certification under penalty of perjury that it has verified its own proposed employee base for performance of the contract and confirmed with all subcontractors providing bids used to formulate the contractor's bid, all of whom have subcontracted with or will subcontract with the contractor, that at least 50% of the labor hours devoted to performance of the contract will be provided by residents of the City of Oxnard. During, or within one year after performance of the contract, the City Manager or designee shall have the right to audit all the contractor's records to confirm the accuracy of the contractor's certification and the contractor shall provide to the City all documents (including subcontractors' records) appropriate to perform such an audit. Should it be determined after such audit by the City Manager that the requirements of this Part 3 have not been met or should the contractor not upon request provide documents sufficient for the audit required by this Part 3 to be performed, the contractor shall be required to pay upon demand to the City the entire amount of any preference granted, which amount may be withheld from any payment otherwise due the contractor. The foregoing is in addition to any other consequences which may be imposed upon the contractor for violation of the provisions of a City ordinance. The City Manager's determination under this Part 3 may be reviewed pursuant to sections 1 - 55 et seq., of the City Code, enacted by Ordinance No. 2840.

Part 4. The principal business office shall mean the place where the principal officers or owners generally transact business and the place to which reports are made and from which orders and payments are made, and the place which the business represents to government authorities as its principal office or principal place of business. Subject to review by the City Manager or designee, the requirements to obtain a Small Local Business preference may be established by submission with the bid of certification under penalty of perjury that the business meets such requirement, including a list showing all employee addresses and affirming that the employees have granted permission for the use of their addresses.

Part 5. The City Manager or his designee shall determine whether a business is a Small Local Business under this ordinance, including whether the principal office of the business is in the city, and whether employees are residents of the City. The City Manager's determination shall be final and not appealable under any provision of the City Code, except for the determination described in Part 3.

Part 6. The City Manager may adopt or instruct the purchasing agent to adopt such regulations, applications and forms as the City Manager determines are appropriate to implement to provisions of this ordinance, and guidelines.

Part 7. The provisions of this ordinance shall not apply when the Small Local Business preference described herein is contrary to or precluded by requirements of State or federal law or contrary to or precluded by requirements of a State of federal funding source or program providing assistance to the City for the particular project.

Part 8. In addition to any other consequence which may be imposed for violation of a City ordinance, the City Manager may prohibit a business entity which he determines has falsely claimed to be a Small Local Business from bidding on City contracts for a period of up to two

Ordinance No.

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years. The City Manager's determination may be reviewed pursuant to sections 1 – 55 et seq., of the City Code, enacted by Ordinance No. 2840.

Part 9. Within fifteen days (15) after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the City.

Part 10. Ordinance No. _____ was first read on _____, 20____, and finally adopted on _____, 20____, to become effective thirty days thereafter.

AYES:

NOES:

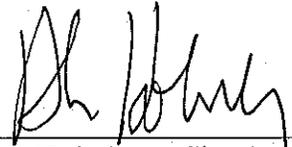
ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

APPROVED AS TO FORM:

Daniel Martinez, City Clerk



Alan Holmberg, City Attorney