

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING THE SAN JOSE MUNICIPAL CODE BY ADDING A NEW CHAPTER 4.06 AND AMENDING SECTION 4.12.117 OF AND ADDING SECTION 4.12.118 TO CHAPTER 4.12 AND AMENDING SECTIONS 4.13.135 AND 4.13.040 OF CHAPTER 4.13 OF TITLE 4 TO ESTABLISH CONTRACTING PREFERENCES FOR LOCAL AND SMALL BUSINESSES**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 4 of the San José Municipal Code is hereby amended by adding a new chapter to be numbered and entitled and to read as follows:

**Chapter 4.06  
Contracting Preferences for Local and Small Businesses**

**4.06.010 Local Business Enterprise**

As used in this Title, "Local Business Enterprise " means a business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business presence in the County of Santa Clara. Evidence of legitimate business presence in San Jose shall include:

- A. Having a current San Jose business tax certificate; and
- B. Having either of the following types of offices operating legally within the County of Santa Clara:
  - 1. The contractor's principal business office; or
  - 2. The contractor's regional, branch or satellite office with at least one full-time employee located in the County of Santa Clara.

**4.06.020 Small Business Enterprise**

As used in this Title, "Small Business Enterprise" means a Local Business Enterprise that has Thirty-Five (35) or fewer total employees.

**4.06.030 Requirements for the Contracting of General and Professional Services**

- A. Three (3) competitive proposals shall be obtained, if practicable, on all contracts for general and professional services with a payment amount exceeding Five Thousand Dollars (\$5,000).
- B. Contracts or purchase orders for general and professional services shall be made or awarded on the basis of the most advantageous proposal to the City.

**4.06.040 Application of Preference in Contracting For General and Professional Services**

- A. Prior to the issuance to a request for quotes or proposals for general or professional services the City Manager or the Director of General Services shall make a determination of whether price shall be the determinative factor in selection of the vendor or contractor for such services.
- B. For solicitations where price has been chosen as the determinative factor the preferences granted under this Chapter shall be applied as follows:
  - 1. A credit of two and one-half percent (2.5%) of the cost bid by proposers meeting the definition of "Local Business Enterprise" set forth in Section 4.06.010; and
  - 2. A credit of two and one-half percent (2.5%) of the cost bid by bidders meeting the definition of "Small Business Enterprise" set forth in Section 4.06.020.
- C. For solicitations where price has not been chosen as the determinative factor the preferences granted under this Chapter shall be applied as follows:
  - 1. Proposers who qualify as a Local Business Enterprise shall be given a credit equal to five percent (5%) of the total points used to determine the most advantageous proposal under Subsection A and Section 4.13.040 of this Title.
  - 2. Proposers who qualify as a Small Business Enterprise shall be given a credit equal to five percent (5%) of the total points used to determine the most advantageous proposal under Subsection A and Section 4.13.040 of this Title.

**4.06.050 Exceptions to the Application of Preferences**

Application of the preferences for Local Business Enterprises and Small Business Enterprises shall not be made in the following procurements:

- A. Procurements where legal constraints on the expenditure of funds prohibit the application of the policy.
- B. Procurements on behalf of the San Jose-Santa Clara Water Pollution Control Plant.

SECTION 2. Section 4.12.117 of Chapter 4.12 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

**4.12.117 Low Bidder Determination - Criteria**

The low bidder shall be determined based on the lowest total cost to the City, including but not limited to, the effect of:

- A. Trade discounts;
- B. Shipping costs, when included in the specifications;
- C. Life cycle costs, when included in the specifications;
- D. A credit of two and one-half percent (2.5%) of the cost bid by bidders meeting the definition of "Local Vendor" set forth in Section 4.12.118; and
- E. A credit of two and one-half percent (2.5%) of the cost bid by bidders meeting the definition of "Small Business Enterprise" set forth in Section 4.06.020.

SECTION 3. Chapter 4.12 of Title 4 of the San José Municipal Code is hereby amended by adding a new section to be numbered and entitled and to read as follows:

**4.12.118 Local Vendor**

As used in this Chapter, "Local Vendor" means a vendor who qualifies as a Local Business Enterprise as defined in Section 4.06.010 of Chapter 4.06 of this Code.

SECTION 4. Section 4.12.135 of Chapter 4.12 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

**4.12.135 Open Market Purchasing Procedure**

- A. Open market purchases of supplies, materials and equipment which exceed Five Thousand Dollars (\$5000) shall, whenever practicable, be based on at least three (3) price quotations and shall be awarded on the basis of the price quotation most advantageous to the City. Price quotations may be solicited by any reasonable means including but not limited to mail, telephone, fax, e-mail or posting on the City's web site for bids. A record of open market purchases and price quotations shall be maintained by the Director.
- B. In addition to the factors set out in Sections 4.12.115 and 4.12.117, the most advantageous price quotations to the City for an open market purchase shall be based on consideration of:
1. Quality and performance of the supplies, materials and equipment;
  2. Ability of the vendor to perform the transaction;
  3. Ability of the vendor to complete the transaction within the time specified;
  4. Quality of the vendor's performance on prior purchase by the City or others;
  5. Ability of the vendor to provide future maintenance, repair parts and service;
  6. Capacity and experience of the vendor.
  - ~~7. The amount of sales tax revenue to be received by the City as a result of the purchase, as applicable pursuant to City Council policy;~~
  - ~~8. Status of the vendor as a local business enterprise, as applicable pursuant to City Council policy.~~
- C. If an award in excess of Five Thousand Dollars (\$5,000) is made to a vendor other than the vendor submitting the lowest price quotation, written reasons for the award decision shall be prepared and will be kept as a part of the record of the transaction.

- D. Purchases which do not exceed Five Thousand Dollars (\$5,000) may be made without price quotations, if such procedure is determined by the City Manager to be in the best interest of the City.

SECTION 5. Section 4.13.040 of Chapter 4.12 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

**4.13.040 General Services Contracting Procedure**

- A. Formal bidding shall not be required for contracts or purchase orders for general services. Three (3) competitive proposals shall be obtained, if practicable, on all contracts or purchase orders for general services with a payment amount exceeding Five Thousand Dollars (\$5,000).
- B. Proposals may be solicited by direct mail requests to prospective contractors or by telephone. A record of general services contracts and purchase orders and proposals shall be kept as part of the record of the transaction.
- C. Contracts or purchase orders for general services shall be made or awarded on the basis of the most advantageous proposal to the City.
- D. In determining the most advantageous proposal to the City, the following factors shall be considered:
1. Cost to the city;
  2. Quality of the proposal;
  3. Capabilities and expertise of the contractor;
  4. Adherence to applicable City Council Policies;
  5. Status of the vendor as a Local Business Enterprise and/or Small Business Enterprise in accordance with Section 4.06.040 of Chapter 4.06 of this Title, as applicable pursuant to city council policy.
- E. Contracts or purchase orders which do not exceed Five Thousand Dollars (\$5,000) may be made without competitive proposals, if such procedure is determined by the City Manager to be in the best interests of the City.
- F. If a contract or purchase order is made or awarded in excess of Five Thousand Dollars (\$5,000) to other than a contractor submitting the proposal containing the lowest price, written reasons for the award decision shall be prepared and shall be kept as part of the record of the transaction.

RD:BD  
03/25/04

**PROPOSED**

PASSED FOR PUBLICATION OF TITLE this \_\_\_\_ day of \_\_\_\_\_, 2004  
by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES  
Mayor

ATTEST:

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DEANNA J. SANTANA  
Acting City Clerk