

ORDINANCE NO. NS-2828

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING ARTICLE VII.II OF CHAPTER 2 OF THE SANTA ANA MUNICIPAL CODE, ESTABLISHING A PREFERENCE FOR LOCAL BUSINESSES IN THE PROCUREMENT OF MATERIALS, SUPPLIES, LABOR, EQUIPMENT OR SERVICES

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. The City of Santa Ana encourages businesses to locate in the City and desires to support businesses located in the City of Santa Ana and the surrounding Orange County area; and
- B. An examination of contracts awarded by the City indicates that local businesses are under-represented in providing goods and services to the City; and
- C. Awarding contracts to local businesses promotes not only those local businesses, but also stimulates economic activity throughout the community as the City directly invests in its local businesses; and
- D. The investment in local businesses results in a multiplier effect arising from those businesses increasing purchases of materials, supplies, equipment and labor from other local sources, resulting in the re-circulation of local dollars in the local economy; and
- E. As a result of additional local opportunities, household spending increases, which increases taxable transactions occurring in the local community; and
- F. Providing a bid preference for small local businesses will increase the number of local businesses that participate in City contracting, which will increase the circulation of city dollars, stimulate a stronger economic base and decrease the unemployment rate in the City.

Section 2. The adoption of this ordinance is exempt from CEQA and a Notice of Exemption will be filed if this ordinance is adopted.

Section 3. Section 2-802 of the Santa Ana Municipal Code is hereby amended such that it reads as follows (new language in bold, deleted language in strikethrough for tracking purposes only):

Sec. 2-802. Definitions

For purposes of this article, the following definitions shall apply:

*Agency* shall mean the Executive Director of the City agency or department which has responsibility for awarding a contract for services.

*Agreement* or *contract* shall mean a legal contract which complies fully with the provisions of section 421 of the city's charter and this article. The words agreement and contract may be used interchangeably in this article.

*Electronic* shall mean electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

*Local Business* shall mean a business certified by the State Department of General Services as a Small Business, which has a substantial presence through either a headquarters or branch office within the geographical boundaries of the City, and which headquarters or branch office was established prior to the city inviting bids for the respective procurement. Said business must possess a current business license and certificate of occupancy. For purposes of this ordinance, a Post Office box address within the City shall not qualify as a valid business location.

*Materials, supplies, labor and equipment* shall mean those goods or services, but excluding services and public works construction, that are readily ascertainable and measurable by an objective standard in terms of quantity or quality so as to be susceptible to competitive bidding.

*Orange County Business* shall mean a business certified by the State Department of General Services as a Small Business, which has a substantial presence through either a headquarters or branch office within the geographical boundaries of Orange County, and which headquarters or branch office was established prior to the City inviting bids for the respective procurement. Said business must possess a current business license to perform work in Santa Ana. For purposes of this ordinance, a Post Office box address within the County shall not qualify as a valid business location.

*Public notice* shall mean the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods can include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the city and maintained for that purpose.

*Purchasing manager* shall mean that city employee or official so designated by the city manager and authorized to carry out the responsibilities under this article, including the promulgation and enforcement of administrative procedures.

*Purchase order (PO)* shall mean that standardized contract developed pursuant to subsection 2-803(j) issued to the vendor of materials, supplies, labor and equipment.

*Services* shall mean the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. Services are of an advisory nature, provide a recommended course of action or personal expertise, have an end product comprised of a transmittal of information, written or verbal, and that is related to the governmental functions of administration, management, program management or innovation. The product may include anything from answers to specific questions to design of a system or plan, and includes provision of workshops, seminars, retreats, and conferences for which expertise is necessary. This term shall not include employment agreements or collective bargaining agreements. This term shall not include contracts for the construction, alteration, improvement, repair, or maintenance of real or personal property.

Section 4. Section 2-803.1 is added to Chapter 2 of the Santa Ana Municipal Code to read in full as follows:

Section 2-803.1 Local Preference in Contracts for Materials, Supplies, Labor and Equipment.

Except for those contracts for which the Charter of the City of Santa Ana prohibits the provision of a local preference, and/or those contracts funded through programs or partners which prohibit the use of a local preference, the City Council authorizes the purchasing manager to extend a preference to Local Business and Orange County Business as set forth herein.

(a). In the procurement of material, supplies, labor and equipment involving expenditures between five thousand dollars (\$5,000.00) and one hundred thousand dollars (\$100,000.00), the purchasing manager shall extend a preference to each local business and each Orange County business, which preference shall be applied to the bid which provides maximum quality at

minimum price. Said preference shall be set by Resolution of the City Council.

(b). If the bidder submitting the maximum quality at minimum cost bid is not a local business or an Orange County business, and if a local business or an Orange County business has submitted a responsive and responsible bid, and with the benefit of the applicable preference, the bid submitted by local business or Orange County business is equal to or less than the original maximum quality at minimum cost bid, the contract shall be awarded to the local business or the Orange County business at its submitted bid price. If two (2) or more low bids received are equal after the application of the preference, the contract shall be awarded in the following order:

- 1) to a local business
- 2) to an Orange County business
- 3) to the bidder submitting the maximum quality at minimum cost bid.

The city shall reserve the right to reject any or all bids.

(c). In order for the preference to apply, a bidder must certify under penalty of perjury, that the bidder qualifies as a local business or Orange County business. The preference is waived if the certification does not appear on the bid.

Section 5. Section 2-805 of the Santa Ana Municipal Code is hereby amended such that it reads as follows (new language in bold, deleted language in strikeout for tracking purposes only):

Sec. 2-805. Procurement of materials, supplies, labor, and equipment between five hundred dollars (\$500.00) and twenty-five thousand dollars (\$25,000.00).

(a) For those agreements exceeding five hundred dollars (\$500.00) but not exceeding five thousand (\$5,000.00), the city manager may bind the city on contracts for materials, supplies, labor, and equipment in amounts not exceeding five thousand dollars (\$5000.00) in any one contract or in the aggregate with any one vendor or service provider. These contracts can be entered into administratively without the need for informal or formal bidding.

(b) Unless exempt from bidding pursuant section 2-807, all contracts involving an expenditure between five thousand dollars (\$5,000.00) and twenty-five thousand dollars (\$25,000.00) for materials, supplies, labor, and equipment shall be let on the basis of obtaining maximum quality at minimum cost in accordance with procedures established by the purchasing manager. Those procedures shall provide for at a minimum the following:

- (1) There shall be a written or verbal invitation for bid which shall include the following information: A general description of the things to be purchased or project, the time and place for bid opening when applicable, bid instructions, and the terms and conditions of the bid and any resulting contract. The purchasing manager shall make a good faith effort to notify all businesses engaged in providing such materials, supplies, labor, and equipment located within the boundaries of the city of the opportunity to bid.
- (2) Where required by state or federal law or regulations, or upon request by a bidder, the bids shall be opened, if sealed, and declared in public at the time and place stated on the "Invitation for Bid."

Section 6. Section 2-806 of the Santa Ana Municipal Code is hereby amended such that it reads as follows (new language in bold, deleted language in strikeout for tracking purposes only):

Sec. 2-806. Procurement of materials, supplies, labor, and equipment in excess of twenty-five thousand dollars (\$25,000.00).

Unless exempt from bidding pursuant to section 2-807, all contracts involving an expenditure in excess of twenty-five thousand dollars (\$25,000.00) for materials, supplies, labor, and equipment shall be let on the basis of obtaining maximum quality at minimum cost, in accordance with procedures established by the purchasing manager. Those procedures shall provide for at least the following:

- (a) Public notices inviting bids shall include a general description of the things to be purchased and the time and place for bid opening. Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations established by the purchasing manager. To the extent that public notice is by way of publication in a newspaper of general circulation, such publication shall be for at least two (2) days, the first of which shall be at least ten (10) days before the date set for opening bids.
- (b) Invitation of bids shall be mailed or transmitted by other means established by the administrative code but not recited over the telephone or in person. Any interested bidder may obtain an invitation for bid.
- (c) All bids shall be submitted sealed in accordance with the instructions contained in the "Invitation for Bid" form.

- (d) The bids shall be opened in public, at the time and place stated on the "Invitation for Bid." All bids shall be publicly declared.

Section 7. Section 2-808 is added to Chapter 2 of the Santa Ana municipal Code to read in full as follows:

Section 2-808 Local Preference in Contracts for Services

Except for those contracts for which the Charter of the City of Santa Ana prohibits the provision of a local preference, and/or those contracts funded through programs or partners which prohibit the use of a local preference, the City Council authorizes the Agency to extend a preference to Local Business and Orange County Business as set forth herein.

(a) Contracts for services shall be awarded on the basis of demonstrated competence and on the professional qualifications necessary to for the satisfactory performance of the services required. In evaluating proposals for service contracts in amounts up to one hundred thousand dollars (\$100,000.00), proposers which qualify as Local Business or Orange County Business shall be eligible for preference points. The preference shall be added to the proposal to reach a final score in determining the most advantageous proposal. Said preference shall be set by Resolution of the City Council.

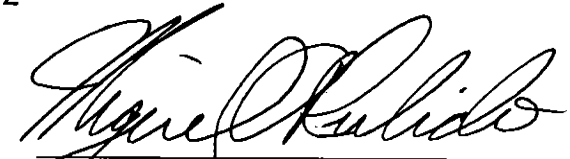
(b). A non local proposer associating with a Local Business or Orange County Business, shall be eligible for the local preference if a minimum of fifty percent (50%) of the contract value will be performed by the Local Business or Orange County Business.

Section 8. Any provision of the Code that is inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.


Section 9. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 10. This ordinance shall become effective thirty days after its adoption by the City Council.

ADOPTED this 19th day of March 2012

  
Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Joseph Straka, Interim City Attorney


By:   
Laura Sheedy  
Assistant City Attorney

YES: Councilmembers: Alvarez, Bustamante, Tinajero, Pulido (4)  
NOES: Councilmembers: None (0)  
ABSTAIN: Councilmembers: None (0)  
NOT PRESENT: Councilmembers: Benavides, Martinez, Sarmiento (3)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2828 to be the original ordinance adopted by the City Council of the City of Santa Ana on March 19, 2012 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 3/26/2012

  
Clerk of the Council  
City of Santa Ana