

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTIONS 3-101 AND 3-505, REPEALING SUBSECTION (h) OF SECTION 3-105, AND REPEALING AND ADDING SECTION 3-109.1 OF THE FRESNO MUNICIPAL CODE, RELATING TO LOCAL PREFERENCE IN COMPETITIVE PROCURMENT PROCESSES.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3-101 of the Fresno Municipal Code is amended to read:

SECTION 3-101. PURCHASES. The purchasing agent, under the supervision and direction of the Chief Administrative Officer or his/her designee, shall be the officer in charge of the purchasing function and shall have general charge of purchases of materials, supplies, equipment, services, and/or public works construction for the use of all departments and branches of the city government, except where otherwise provided by state law or ordinance. Purchases involving the expenditure of city moneys in an amount for which advertised bidding is required by Section 3-105 shall be by contract as provided in said section. ~~The purchasing agent, in his/her discretion, may extend a preference to a local business in the purchase of materials, supplies, equipment and/or public works construction for which advertised bidding is not required by Section 3-105, provided that such preference is applied in the same manner as described in subsection (h) of Section 3-105.~~

SECTION 2. Subsection (h) of Section 3-105 of the Fresno Municipal Code is repealed.

SECTION 3. Section 3-109.1 of the Fresno Municipal Code is repealed.

SECTION 4. Section 3-109.1 is added to the Fresno Municipal Code to read:

SECTION 3-109.1. LOCAL PREFERENCE IN CONTRACTING FOR SERVICES, EQUIPMENT, MATERIALS, SUPPLIES AND ANY PUBLIC WORK OF IMPROVEMENT.

(a) The Council finds and declares all of the following:

(1) The City of Fresno is experiencing historical high rates of unemployment.

(2) The severe negative impact is compounded in the city economy with the employment reduction in the local development and utility industries.

(3) The United States Supreme Court has declared a job policy for residents to be a legitimate policy.

(4) Funds spent locally, with local businesses, recirculate through the local economy approximately four times, generating jobs, taxes and consumer spending.

(5) The provisions that the Council seeks to enact in this section as the city's restrictions on the use of its own funds as a participant in the marketplace are simply a self-imposed limitation on the city's power to contract.

(6) The provisions that the Council seeks to enact in this section have a rational relationship to the legitimate governmental purpose in that a local preference for services, equipment, materials, supplies and any public work of improvement will stimulate the local economy and reduce unemployment.

(b) Except for those contracts funded by the federal or state government when such funding would be jeopardized because of this preference, the Council authorizes the purchasing agent to extend a preference to a local business as expressly set forth herein. For purposes of this section, "local business" shall mean a business with a fixed primary or branch office within a twenty-five mile radius of Fresno City Hall, located at 2600 Fresno Street in the City of Fresno, and which fixed primary or branch office was established prior to the city inviting bids or proposals for the respective purchase.

(c) Notwithstanding subsection (a) of Section 3-105 and subsection (b) of Section 3-103 of this Code, the city shall, in contracting for equipment, materials, supplies or any public work of improvement pursuant to Sections 3-105 or 3-109, or subsection (c) of Section 3-502 of this Code, extend a five percent (5%) preference for a local business in award of the contract consistent with each of the following:

(1) The amount of the preference shall be equal to the amount of the percentage applied to the lowest responsive and responsible bid; provided, however, in no event shall the amount of the preference exceed two hundred and fifty thousand dollars (\$250,000).

(2) If the bidder submitting the lowest responsive and responsible bid is not a local business, and if a local business has also submitted a responsive and responsible bid, and, with the benefit of the preference, the local business's bid is equal to or less than the original lowest responsive and responsible bid, the city shall award the contract to the local business at its submitted bid price.

(d) Notwithstanding subsection (g) of Section 3-109, the city shall, in contracting for (i) services pursuant to Section 3-109 of this Code, or (ii) any public work of improvement pursuant to subsections (a) or (b) of Section 3-502 of this Code; extend a five percent (5%) preference for a local business consistent with each of the following:

(1) The amount of the preference shall be equal to the amount of the percentage applied to the lowest proposal price; provided, however, in no event shall the amount of the preference exceed two hundred and fifty thousand dollars (\$250,000).

(2) If the proposer submitting the lowest proposal price is not a local business, and if a local business has also submitted a proposal, and, with the benefit of the preference, the local business's proposal price is equal to or less than the original lowest proposal price, the city in judging whose proposal provides the best value on the basis of specified criteria, including price, shall consider the local business's price with the benefit of the preference. Any award of the contract to the local business will be at its submitted or best and final proposal price, whichever is applicable.

(e) The respective bidder or proposer shall certify, under penalty of perjury, that the bidder or proposer qualifies as a local business. The preference is waived if the certification does not appear on the respective bid or proposal.

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SECTION 5. Section 3-505 of the Fresno Municipal Code is amended to read:

SECTION 3-505. ESTABLISHMENT OF PRE-QUALIFICATION AND SELECTION PROCESS. The City Manager or his/her designee may establish a competitive pre-qualification and selection process for Design-Build Entities that specifies the pre-qualification criteria, as well as recommends the manner in which the winning Design-Build Entity will be selected. ~~The pre-qualification criteria for the purchase of the public work of improvement shall include whether the Design-Build Entity or any Design-Build Entity Member is a local business. For purposes of this article, "local business" shall mean a business with a fixed primary or branch office within a twenty-five mile radius of Fresno City Hall, located at Twenty-six Hundred Fresno Street in the City of Fresno, and which fixed primary or branch office was established prior to the city requesting proposals or inviting bids for the respective purchase.~~

SECTION 6. If any section, subsection, subdivision, paragraph, sentence or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, paragraph, sentence and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences or phrases had been declared invalid or unconstitutional.

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SECTION 7. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the ____ day of _____, 2007.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2007

Mayor Approval/No Return: _____, 2007

Mayor Veto: _____, 2007

Council Override Vote: _____, 2007

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Senior Deputy