




City of Austin

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MEMORANDUM

TO: MBE/WBE and Small Business Advisory Committee

FROM: Rosie Truelove, Director 
Contract Management Department

DATE: March 2, 2015

SUBJECT: Analysis of the City of Houston Hire Houston First Program Local Preference in Low Bid Construction Contracting

During the February 3rd MBE/WBE Small Business Enterprise Procurement Program Advisory Committee Meeting, Contract Management Department staff was asked to provide an analysis of the City of Houston's application of local preference for construction contracts. CMD staff contacted the City of Houston Office of Business Opportunity in the Mayor's Office, to discuss the program application, reviewed the Hire Houston First Program requirements, the Hire Houston First Program Ordinance, and Texas Government Code Chapter 271.905 and 271.9051.

Statute and Austin Construction Program

Texas Government Code Chapter 271.9051 is the provision applicable to procurement of services and states the following:

Sec. 271.9051. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS IN CERTAIN MUNICIPALITIES.

(a) This section applies only to a municipality that is authorized under this title to purchase real property or personal property that is not affixed to real property.

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for construction services in an amount of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.

(c) This section does not prohibit a municipality from rejecting all bids.

(d) This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

This is translated into our Construction Contract solicitations as follows:

00100 – Instructions to Bidders

12. Award and Execution of Contract

Notwithstanding anything in this Section 00100 to the contrary, the OWNER may award a contract for construction services in an amount of less than \$100,000 to a bidder whose principal place of business is in the City of Austin and whose bid is within 5% of the lowest bid price received from a bidder whose principal place of business is not within the City of Austin, if the City finds that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award including the employment of resident of the City and increased tax revenues to the City.

The City of Houston

The City of Houston's Hire Houston First Program was developed to promote economic opportunity for Houston businesses and to support job creation. Hire Houston First grants the City the ability to give preference to local companies with competitive pricing on City procurements. In 2011, the City of Houston passed an ordinance (Ordinance No. 2011-766) that provides a preference in awarding contracts to firms located in the surrounding ten-county area. The counties in and around the Houston City limits include Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, Waller, Austin, and San Jacinto.

In order for a firm to participate in Hire Houston First, businesses must meet at least one of two requirements: 1) Be headquartered in the incorporated limits of the City or the ten (10) local counties; or 2) Have 20% or more of the entity's workforce regularly based and have a substantial part of its operations based in the incorporated limits of the City or the ten (10) local counties. Houston's program for services includes construction services. Per the ordinance, for contract values \$100,000 or greater, if the city receives one or more bids from a bidder that is a city business and whose bid is

within three percent (3%) of the lowest bid received by a non-city business, the city shall enter into a contract with the lowest bidder or the bidder that is a city business. If the contract value is under \$100,000, then the city business bid must be within five percent (5%) of the lowest non-city business bid. The Hire Houston First Program also allows for the awarding of points in the evaluation of a bid based on "best value" to a local business. Hire Houston First does not apply to federally funded contracts.

Discussion

It has been asked how the City of Houston can have a program that is more liberal than the City of Austin's. According to the Law Department, the answer comes to a tolerance for risk. The Houston City Council passed a resolution stating that "in procuring services, including construction services, the contracting department shall...grant a preference to a local business" to include "(1) Five percent of the lowest bidder for contracts under \$100,000; or (2) three percent of the lowest bidder for contracts of \$100,000 or more" without applying the cap to construction services of \$100,000 or to other purchases for services as imposed by Texas Government Code Chapter 271.9051. To our knowledge (and confirmed by Houston), there has been no challenge to their program. In discussion with the Law Department, the Austin program for local preference in construction contracting is in compliance with state statute.

Summary

In accordance with Texas Government Code 271.9051, the City of Austin local preference for construction applies to contracts valued under \$100,000 where the bidder whose principal place of business is in the city and whose bid is within five percent (5%) of the lowest bid.

Please let me know if you have questions or require additional information.

cc: Rolando Fernandez, Assistant Director
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