

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Purchasing & Strategic Sourcing

**AGENDA DATE:** Introduction: April 8, 2014  
Public Hearing: April 15, 2014

**CONTACT PERSON/PHONE NUMBER:** Bruce D. Collins, 915-212-1181, CollinsBD@elpasotexas.gov

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

Introduce an ordinance amending Title 3 (Revenue and Finance) of the El Paso City Code by adding Chapter 3.45 (Hire El Paso First-Local Bid Preference) in order to set forth the guidelines for granting a local preference in city procurements.

**BACKGROUND / DISCUSSION:**

A presentation on the City's Hire El Paso First – Local Bid Preference was delivered to the presiding LRC on March 3, 2014 and included speakers from the public, civic organizations, and business leaders regarding the definition of a local business and application process. Recommendations were accepted regarding the definition of a local business and the application process with slight modifications from City Council.

**PRIOR COUNCIL ACTION:**

Prior council action was taken on November 8, 2011 when the Hire El Paso First Policy resolution was adopted by council.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

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**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

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*Bruce D. Collins*

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

**AN ORDINANCE AMENDING TITLE 3 (REVENUE AND FINANCE) OF THE EL PASO CITY CODE BY ADDING CHAPTER 3.45 (HIRE EL PASO FIRST-LOCAL BID PREFERENCE) IN ORDER TO SET FORTH THE GUIDELINES FOR GRANTING A LOCAL PREFERENCE IN CITY PROCUREMENTS.**

**WHEREAS**, the City Council recognizes that the foundation of a strong local economy are programs to encourage businesses to locate within the local area of the City of El Paso and to hire El Paso residents as employees; and

**WHEREAS**, the Texas Legislature has amended Texas Local Government Code Sections 271.905 and 271.9051 to allow for the City's consideration of location of a bidder's principal place of business when awarding certain contracts; and

**WHEREAS**, in the interest of economic development opportunities for the City of El Paso, the City's Purchasing and Strategic Sourcing Department has implemented a local business purchasing preference policy in order to infuse additional dollars into the local economy.

**WHEREAS**, City Council desires to add Chapter 3.45 to the El Paso City Code to follow state law and the local business purchasing preference policy to create a contracting preference for local businesses.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**Section 1.** That Title 3 (Revenue and Finance) of the City of El Paso Code, is amended to add Chapter 3.45, Hire El Paso First- Local Bid Preference, to read as follows:

**Chapter 3.45- HIRE EL PASO FIRST-LOCAL BID PREFERENCE**

**3.45.010- Statement of Policy.**

(A) It is the policy of the City of El Paso to use the City's spending powers in a manner that promotes fiscal responsibility; maximizes the effectiveness of local tax dollars; ensures that a portion of local tax dollars remain in the local economy for economic development opportunities; and, utilizes all legally-available opportunities to contract with local businesses.

(B) It is the policy of the City of El Paso to afford a bidding preference to local businesses, unless prohibited by granting agencies, exempted by Federal or State Laws/Codes, Local ordinances or City resolutions, or if doing so would be clearly be disadvantageous to the City.

(C) It is the policy of the City of El Paso to achieve the goals in subsection (A) above by utilizing a local business purchasing preference in the competitive processes of procuring goods and services.

(D) Nothing contained herein shall prohibit the City from rejecting all bids, as permitted by law.

(E) Except as provided by this Chapter 3.45 Hire El Paso First- Local Bid Preference, the City's policies and procedures governing City procurement shall otherwise remain unchanged.

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### 3.45.020- Definitions.

The words and phrases defined in this section have the following meanings:

(A) ***Economic development opportunities*** means economic benefits to/for the City of El Paso and its citizens created by the award of a procurement contract including, but not limited to, the following:

- (1) employment of residents who reside within the incorporated city limits of El Paso, Texas in the delivery of the contracted service and/or product;
- (2) employment of residents who reside within the incorporated city limits of El Paso, Texas in the manufacturing/production processes of the products being procured or the delivery of services being rendered;
- (3) increase of tax revenues to the City of El Paso; or
- (4) 25 percent of the total value of the contract is subcontracted to local businesses as defined in Section 3.45.020, if subcontractors are part of the contract.

(B) ***Local business*** means a business with a Tier 1 or Tier 2 principal place of business within the incorporated city limits of El Paso, Texas

(C) ***Headquarter*** means the executive office where the corporate officers are located and from which the operations of the business are directed and controlled by its officers or owners.

(D) ***Principal place of business***

**Tier 1 Principal place of business:** means a business whose primary headquarter is located within the incorporated city limits of El Paso, Texas and at least 10 percent the total number of full time employees reside within the incorporated city limits of El Paso, Texas. A temporary construction trailer or temporary structure shall not be construed as the headquarter structure.

**Tier 2 Principal place of business:** means a business that:

- (1) Has been physically present and operating for at least one (1) year in the incorporated limits of the City of El Paso; and
- (2) A minimum of fifty (50) of its full time employees reside within the incorporated city limits of El Paso, Texas; and
- (3) Owns or leases real property or owns or leases space in a structure in which primary business is conducted in the incorporated limits of the City of El Paso; and
- (4) The Property or space owned or leased is used as an office, plant, store, warehouse, or other function that is fully operational and has sufficient equipment, supplies, and personnel to provide the product or service of the business without significant reliance on the resources of another entity, affiliate, or an auxiliary facility of the business which is located outside the incorporated limits of the City of El Paso; and

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(5) A temporary construction trailer or temporary structure shall not be construed as a real property for purposes of meeting the ownership or lease requirement.

**3.45.030- Procedures for Granting Local Preference in Purchasing and Contracting for Certain Construction Projects, Real and Personal Property, and Services.**

(A) Construction contracts in an amount less than \$100,000.

In purchasing *construction services*, if the City receives a bid from a bidder that is a Tier 1 local business and whose bid is within five percent (5%) of the lowest bid price received by the City from a bidder who is not a local business or a bid from a bidder that is a Tier 2 local business and whose bid is within two and a half percent (2.5%) of the lowest bid received by the City from a bidder who is not a local business the City may enter into a contract with a value of less than \$100,000.00 with:

- (1) the lowest bidder; or
- (2) the bidder that is a Tier 1 or Tier 2 local business as defined herein, provided the governing body of the City determines, in writing, that awarding to the local bidder offers the City the best combination of contract price and economic development opportunities.

(B) Contracts for personal property or services in an amount of less than \$500,000.

In purchasing any personal property that is not affixed to real property, or services, if the City receives a competitive bid from a bidder that is a Tier 1 local business and whose bid is within five percent (5%) of the lowest bid price received by the City from a bidder that is not a local business or if the City receives a competitive bid from a bidder that is a Tier 2 local business and whose bid is within two and a half percent (2.5%) of the lowest bid price received by the City from a bidder that is not a local business, the City may enter into a contract for an amount of less than \$500,000 with:

- (1) the lowest bidder; or
- (2) the bidder that is a Tier 1 or Tier 2 local business as defined herein, provided the governing body of the City determines, in writing, that awarding to the local bidder offers the City the best combination of contract price and economic development opportunities.

(C) Contracts for personal property or services in an amount equal to or greater than \$500,000.

In purchasing any personal property that is not affixed to real property or services, if the City receives a competitive bid from a bidder that is a Tier 1 local business and whose bid is within three percent (3%) of the lowest bid price received by the City from a bidder that is not a local business or if the City receives a competitive bid from a bidder that is a Tier 2 local business and whose bid is within one and a half percent (1.5%) of the lowest bid price received by the City from a bidder that is not a local business, the City may enter into a contract for an amount of \$500,000 or more with:

- (1) the lowest bidder; or
- (2) the bidder that is a Tier 1 or Tier 2 local business as defined herein, provided the

governing body of the City determines, in writing, that awarding to the local bidder offers the City the best combination of contract price and economic development opportunities.

#### **3.45.040- Application Process.**

(A) Application- All businesses seeking to be certified as a Local Business under Chapter 3.45 Hire El Paso First- Local Bid Preference must submit an application to the City as designated on the form provided by the City. The Application shall contain the following:

- (1) The address of the primary headquarters of the applicant's business.
- (2) The amount of time the applicant's business has been physically present and operating in the incorporated city limits of El Paso, Texas.
- (3) The number of the applicant's full time employees who reside within the incorporated city limits of El Paso, Texas.
- (4) Information identifying whether the business owns or leases real property or owns or leases space located in the incorporated city limits of El Paso, Texas and whether the structure is a temporary construction trailer or temporary structure.
- (5) Information identifying the business activities conducted on the Property or space owned or leased located in the incorporated city limits of El Paso, Texas.
- (6) Information identifying the economic development opportunities for the City of El Paso created by the business by the award of a City contract to the business.
- (7) Information identifying subcontractors, if any, and the percent of the total value of the contract that is subcontracted to certified local businesses.
- (8) A non-refundable application fee in the amount established by City Council.

#### **3.45.050- Falsification of information.**

(A) A City contract that is awarded to a business based on a local business certification that is approved by the City based upon false information may be terminated by the City.

(B) Information presented by an applicant of a local business certification or business considered local which is false shall be grounds for finding the business non-responsible and the City may discontinue all business with the City of El Paso for a period of three years.

#### **3.45.060- Exceptions.**

(A) This program does not apply to any contract in which the federal government participates in the form of a grant or loan, or where the City acts as a conduit for federal money.

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- (B) This program does not apply to purchases made through a purchasing cooperative program.
- (C) In accordance with Local Government Code section 271.9051, this program does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

**Section 2.** This ordinance shall take effect \_\_\_\_\_, 2014

**ADOPTED THIS** \_\_\_\_\_ day of \_\_\_\_\_ 2014.

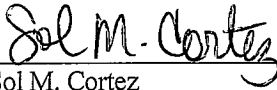
**CITY OF EL PASO**

\_\_\_\_\_  
Oscar Leeser  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sol M. Cortez  
Assistant City Attorney

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
Bruce D. Collins, Director  
Purchasing and Strategic Sourcing Department

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13-1014-053/PL #251552  
Ordinance amending Title 3  
Adding Hire El Paso First  
SMC