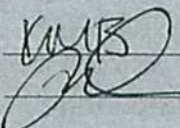



COUNCIL AGENDA REPORT

City of El Centro

MEETING DATE: February 5, 2013
AGENDA ITEM NO. <u>8</u>
Approved by: _____
City Attorney: 
City Manager: 

FROM: Terry Hagen, Director of Public Works / City Engineer

PREPARED BY: Debra L. Benavidez, Staff Assistant

SUBJECT: Approval of Ordinance No. 13-___ of the City Council of the City of El Centro adding Division 10 to Article IV, Chapter 2 of the Code of the City of El Centro establishing a local business program for Public Works contracts and exceptions thereto

CITY MANAGER'S RECOMMENDATION:

Approve Ordinance No. 13-___ of the City Council of the City of El Centro adding Division 10 to Article IV, Chapter 2 of the Code of the City of El Centro establishing a local business program for Public Works contracts and exceptions thereto

FISCAL IMPACT:

There is a potential impact of up to \$10,000 per project (local funds only projects), over the low bid.

STRATEGIC PLANNING PROGRAM 2008-2013 RELATION:

Goal #4 Economic Development and City Beautification

BACKGROUND:

In order to stimulate the local economy and provide local businesses opportunities to grow, succeed and create jobs, City staff is requesting consideration to adopt the attached ordinance. This will encourage the employment of local workforce in order to promote job opportunities for local citizens, enhance community involvement in City-funded public works projects and to strengthen the region's local economy.

On September 18, 2012, Staff presented to Council for approval the above sited ordinance. After further review and public comments, staff was directed to make the following changes to the initial ordinance.

The proposed changes are as follows:

- 1) Definitions added for *Minority-Owned Small Business, Veteran-Owned Small Business, and Women-Owned Small Business*.
- 2) The definition for Principal Place of Business was modified to include *the point of sale*, and that its *sales are located within the City of El Centro*.
- 3) Section 2-216 title was changed to *Eligibility for Local Contractor Preference* along with (a), (b), and Section 2-217. *Eligibility for LBE List* deleted.
- 4) *Section 2-217 Verification of local contractor preference eligibility* was added along with the definition.
- 5) Section 2-218 was changed to *Enforcement*, and (a) now reading as *A contractor shall not be recognized as a LBE should any of the following occur*, (1) also being deleted under this section along with the renumbering of the remaining items.
- 6) (e) and (f) were added to Section 2-219, which explains what would happen in the event of a tie been different types of bidders.
- 7) *Section 2-220* was changed to *Exception* along with the deletion of (e)

DISCUSSION:

The ordinance shall permit a bid discount of ten percent (10%) for LBE (Local Business Enterprise) contracts on all public works contracts. The maximum allowable bid discount will be \$10,000. This preference is only for the purpose of determining the low bidder, and does not actually reduce the price.

The contractor shall also retain ultimate discretion on all hiring practices, and for the purposes of calculating whether a contractor meets the eligibility requirements of a LBE, workers whose primary residence is outside of California shall not be included in this calculation.

For bid proposals in which a joint venture is formed between one or more LBE and one or more non-LBE, only the portion of the work to be performed by a LBE shall be eligible for local contractor preference. Also for a Prime Contractor who is using Subcontractors, only the portion of work performed by LBEs shall be eligible for local contractor preference. If the Prime Contractor is a LBE, but he uses non-LBE Subcontractors, again only the portion of work performed by LBEs shall be eligible for local contractor preference.

In the event of a tie between a discounted bidder and a non-discounted bidder the discounted bidder will be awarded the contract.

In the event of a tie between two (2) discounted bidders, a discounted bidder that is also either a minority-owned small business, a veteran-owned small business or a women-owned small business will be awarded the bid. In the event the tie cannot be broken because both discounted bidders are also either a minority-owned small business, a veteran-owned small business or a women-owned small business, the bid will be awarded by lot.

CONCLUSION:

Due to the anticipated economic benefits of the attached ordinance, City staff recommends approval of the attached ordinance establishing a local business program for public works contracts.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Hagen", with a long horizontal flourish extending to the right.

Terry Hagen
Director of Public Works

ATTACHMENT(S):

LBE Contractor Certification Form. Ordinance No. 13-___ of the City Council of the City of El Centro adding Division 10 to Article IV, Chapter 2 of the Code of the City of El Centro establishing a local business program for Public Works contracts and exceptions thereto

ORDINANCE NO. 13-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CENTRO ADDING DIVISION 10 TO ARTICLE IV, CHAPTER 2 OF THE CODE OF THE CITY OF EL CENTRO ESTABLISHING A LOCAL BUSINESS PROGRAM FOR PUBLIC WORKS CONTRACTS AND EXCEPTIONS THERETO

THE CITY COUNCIL OF THE CITY OF EL CENTRO, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Article IV of Chapter 2 of the Code of the City of El Centro is hereby amended by adding Division 10 entitled "Local Contractor Preference," which reads as follows:

"DIVISION 10. LOCAL CONTRACTOR PREFERENCE

Section 2-213. Purpose.

The purpose of this division is to encourage the employment of the local workforce in order to promote job opportunities for local citizens, enhance community involvement in City-funded public works projects and to strengthen the region's local economy. In addition, the City has a compelling interest in ensuring that it is neither an active nor passive participant in marketplace discrimination and in promoting an equal opportunity for all segments of the contracting community. This division, therefore, establishes a local business program for public works contracts, which includes a local business bid preference for public works projects.

Section 2-214. Applicability.

This division applies to all public works contracts which are subject to public bidding requirements under local or state law, except as provided for in this division.

Section 2-215. Definitions.

For the purposes of this division, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directive.

Contractor means any prime contractor or subcontractor performing work for the City pursuant to a public works contract.

Local Business Enterprise or *LBE* means a business that has both a principal place of business and significant employee presence residing in the Imperial County and that has been in operation for no less than twelve (12) consecutive months.

Minority-owned small business means a small business (a) which is at least fifty-one percent (51%) owned by one (1) or more members of an identified minority group; or in the case of any publicly-owned business, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of an identified minority group; and (b) whose management and daily business operations are controlled by one (1) or more members of an identified minority group.

Principal Place of Business means a location where a business maintains a physical office and the point of sale through which it obtains no less than fifty percent (50%) of its sales is located within the City of El Centro.

Significant Employee Presence means no less than twenty-five percent (25%) of a contractor's total number of full time equivalent employees.

Veteran-owned small business means a small business (a) which is at least fifty-one percent (51%) owned by one (1) or more veterans (as defined at 38 U.S.C. 101(2)); or in the case of any publicly-owned business, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more veterans; and (b) whose management and daily business operations are controlled by one (1) or more veterans.

Women-owned small business means a small business (a) which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of any publicly-owned business, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women; and (b) whose management and daily business operations are controlled by one (1) or more women.

Section 2-216. Eligibility for local contractor preference.

To be eligible for the local contractor preference, a LBE shall:

- (a) be owned by construction professionals licensed by the California Contractors State Licensing Board;
- (b) be owned by construction professionals in good standing with the City of El Centro;
- (c) have a City of El Centro business license authorizing it to do business in the City;
- (d) provide a statement of an authorized representative of the business affirming that it meets the eligibility requirements of a LBE set forth in this division, signed under penalty of perjury under California law;
- (e) submit a completed certification in accordance with procedures established by the City; and
- (f) have a Significant Employee Presence.

Section 2-217. Verification of local contractor preference eligibility.

Any contractor claiming to be a LBE shall so certify in the bid response, in writing under penalty of perjury, to the City. Contractors are encouraged to provide documentation that supports the certification with the bid response. The City shall not be required to verify the accuracy of any such certifications, and shall have sole discretion to determine if a contractor meets the definition of a LBE. Certification cannot be made after bid opening; failure to certify LBE status in writing under penalty of perjury in the bid response is a material irregularity that will not be waived by the City.

Section 2-218. Enforcement.

- (a) A contractor shall not be recognized as a LBE should any of the following occur:
 - (1) the contractor has used its status as a LBE to assist another business in obtaining benefits of this division to which the other business would not otherwise be entitled, or for any other fraudulent purpose; in the event of this occurrence, the contractor will not be recognized by the City as a LBE for a period of two (2) years; or
 - (2) the contractor ceases to meet eligibility requirements in accordance with the section 2-216 or ceases to fall within the definition of an LBE as set forth in section 2-215.
- (b) If a contractor fails to comply with the provisions set forth in this division, the City may terminate or suspend the public works contract, seek debarment proceedings as appropriate or pursue any other remedy available by law.

Section 2-219. Local contractor preference.

- (a) The City shall permit a bid discount of ten percent (10%) for LBE contractors on all public works contracts. The maximum allowable bid discount is ten thousand dollars (\$10,000). This preference is only for the purpose of determining the low bidder, and does not actually reduce the bid price.
- (b) Contractor shall retain ultimate discretion to hire, promote, suspend, discharge or layoff employees and to accept and reject applicants for employment, subject to any applicable labor union agreement.
- (c) For the purposes of calculating whether a contractor meets the eligibility requirements of a LBE, workers whose primary residence is outside California shall not be included in the calculation.
- (d) For bid proposals in which a joint venture is formed between one (1) or more LBE and one (1) or more non-LBE, only the portion of the work to be performed by a LBE shall be eligible for the local contractor preference.

- (e) In the event of a tie between a discounted bidder and a non-discounted bidder, the discounted bidder will be awarded the contract.
- (f) In the event of a tie between two (2) discounted bidders (prime contractors), a discounted bidder that is also either a minority-owned small business, a veteran-owned small business or a women-owned small business will be awarded the bid. In the event the tie cannot be broken because both discounted bidders are also either a minority-owned small business, a veteran-owned small business or a women-owned small business, the bid will be awarded by lot.

Section 2-220. Exceptions.

This division shall not apply to the following public works contracts:

- (a) Contracts where the provisions of this division would conflict with federal or state law or any applicable grant provision;
- (b) Contracts between the City and another public agency;
- (c) Emergency contracts; or
- (d) Sole source contracts."

SECTION 2. This Ordinance shall take effect thirty (30) days from and after its adoption. Within fifteen (15) days after adoption, a copy of this Ordinance shall be published once in a newspaper, published and circulated within the City of El Centro, California.

INTRODUCED at a regular meeting of the City Council of the City of EL Centro, California, held on the _____ day of _____, 2013.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of El Centro, California, held on the _____ day of _____, 2013.

CITY OF EL CENTRO

ATTEST:

By _____
Benjamin James Solomon, III, Mayor

By _____
L. Diane Caldwell, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

By *Kris M. Becker*
Kris M. Becker, City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF EL CENTRO)

I, L. Diane Caldwell, City Clerk of the City of El Centro, California, do hereby certify that the foregoing Ordinance No. 13- had its first reading on , 2013, and had its second reading on , 2013, and was passed by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

AYES:
NOES:
ABSENT:
ABSTAINED:

By _____
L. Diane Caldwell, City Clerk

City of El Centro

Local Business Enterprise (LBE)

Prime Contractor and Subcontractor Certification Form

This form must be completed and submitted with the Bid Documents, in order to receive Local Contractor Preference per Ordinance 13-___. The Prime Contractor and his Sub Contractors seeking LBE Status shall each complete this form. (Note: Subcontractors do not need to include "Total Bid Amount")

Date: _____ Project Name: _____

Total Bid Amount: \$_____; Type of Work: _____; Dollar Value of work: \$_____

Contractor Name: _____ State Contractor License No. _____

City of El Centro Business License No. _____

Principal Place of Business Address: (Street Address) _____

(City, State, Zip) _____

(Phone Number) _____

Number of Months at this address: _____

Total Number of Full Time Equivalent Employees: _____

Total Number of Full Time Equivalent Employees, who live in Imperial County: _____

Percent of Imperial County Resident Full Time Equivalent Employees: _____%

As the owner(s) of this Contracting Company, I also certify that I am a: (Prime Contractor Only)

Minority Owned; Veteran Owned; Woman Owned Not Applicable

I certify that the above information is true; and that any false information will result in disqualify me as a LBE for a 2 year period.

Printed Name of Licensed Contractor Owner(s): _____

Signature(s): _____