

ORDINANCE NO. 1490

AMENDING SECTION 2-13-180 OF THE ALAMOGORDO CODE OF ORDINANCES RELATED TO BID EVALUATION CRITERION FOR AREA BUSINESSES

BE IT ORDAINED by the City Commission of the City of Alamogordo as follows:

SECTION ONE. Section 2-13-180-Bid evaluation criterion for area businesses, of the *Alamogordo Code of Ordinances* is hereby amended to read as follows:

2-13-180. - Local preference for area businesses.

(1) Intent. The City recognizes that the intent of the New Mexico Procurement Code's, Section 13-1-1 et seq. NMSA 1978, State resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, manufacturers and contractors from outside the State of New Mexico. The underlying policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Attorney Gen. No. 69-42.) Further, the City annually spends significant amounts on purchasing supplies, materials, and equipment, and contractual and professional services. The dollars used in making these purchases are derived in large measure from taxes and fees paid by local businesses and the residents of the community. The City Commission has determined that funds generated in the community should, to the extent possible, be placed back in the local economy. The City also therefore has adopted a policy to include a local preference for those persons and companies who contribute to the economy of the City and/or County of Otero by maintaining businesses and other facilities within the City and/or County and giving employment to residents of the City and/or County.

(2) An area business is one which:

- a. Is authorized to do and is doing business under the laws of the state;
- b. Possesses a current city business registration;
- c. Maintains fixed offices or distribution points within fifteen (15) miles of the corporate limits of the city. Post office box number or residential addresses may not be used solely to establish status as an area business; and
- d. Agrees to furnish evidence, in a form suitable to the city, of its payment of New Mexico gross receipts tax.

(2) Local preference. Except where otherwise provided by federal or state law or other funding source restrictions, purchases of goods, general services, construction services, or professional services under the City Purchasing Ordinance shall give preference to area businesses in the following manner:

a. Bids for Goods and Services. When bids for the purchase of goods or services are received, the lowest responsive bid received from an Area Business one shall be multiplied by a Local Preference Factor of 0.90. If the resulting price of the Area Business is lower than or equal to the lowest bid of all bids received, the Area Business shall have an opportunity to submit a best and final bid equal to or lower than the low bid. If an Area Business submits a bid equal to or lower than the low bid, the award of the contract, if made, shall be made to the Area Business. If an Area Business does not submit a best and final bid equal to or lower than the low bid, the award of the contract, if made, shall be to the lowest responsive and responsible low bidder.

b. Proposals for Goods and Services. When proposals for the purchase of goods or services are received, following the completion of final rankings, if a non-Area Business is the highest ranking proposer, the evaluation score of the proposal submitted by an Areas Business shall be multiplied by a Local Preference Factor of 1.10. If the resulting score of the Area Business receiving the Local Preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to be awarded the Area Business receiving the preference. If no proposals are received from an Area Business, or if the proposal received from an Area Business does not qualify for an award after multiplication by the Local Preference Factor, the contract shall be recommended to be awarded the highest ranking proposer.

c. Local Subcontractor Preference.

(1) Non-area primary contractors that do not qualify for the local preference are eligible to receive a percent preference if qualified local subcontractors are identified and used as subcontractors for the non-area primary contractor on City Bids and Request for Proposals in the following manner.

(a) Local subcontractors identified and used as subcontractors for the non-area primary contractor must qualify as an area business as defined in section 2-13-180 of this purchasing ordinance.

(b) Local subcontractors identified and used as subcontractors for the non-local primary contractor must be registered with the State of New Mexico in accordance with Section 13-1-22, NMSA 1978.

(c) All local subcontractor documentation must be received at the time of submittal of the Request for Bid or Request for Proposals.

(d) The local subcontractor must have been registered with the City of Alamogordo and the State of New Mexico for a period of one calendar year before the Bid or Request for proposal is publicly advertised.

(e) The percentage for local subcontractor preference shall be based on the amount of work to be preformed by the various subcontractors. The maximum allowable percentage for local subcontractor preference is 10%. Example: on a construction project of \$100,000, the stated dollar amount of work to be completed by the local subcontractor is \$40,000 or 40%. The

percentage for local subcontractor preference in this Example would be 4%.

(2) The primary non-area contractor must not replace the local subcontractor without authorized approval from the City Project Manager or the Chief Procurement Officer.

d. Administrative Rules. The Chief Procurement Officer is authorized to adopt administrative rules that supplement the provisions of the section and that are necessary or appropriate to implement the provisions of the Local Preference. The provisions of this Section and the rules adopted by the Chief Procurement Officer shall be provided to potential bidders, vendors, offerors, and contractors to the widest extent practicable.

e. Limitation. A bidder/proponent may not claim cumulative preferences.

f. Waiver. Applicable of the local preference to a particular purchase, offer, contract, or category of contracts for which the Alamogordo City Commission is the awarding authority may be waived upon written justification and recommendation of the City Manager and approval of the City Commission. Further, the preference established by this Section shall in no way prohibit the right of the City from giving any other preference permitted by law which is in addition to the Local Preference.

SECTION TWO. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional. The City Commission hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION THREE. EFFECTIVE DATE. This ordinance shall be effective upon its passage, approval, and publication as provided by law.

DONE this _____ day of _____, 2015.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susie Galea, Mayor

ATTEST:

Reneé L. Cantin, City Clerk

APPROVED AS TO FORM:

Stephen P. Thies, City Attorney

First Publication Approval: 02/10/2015

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