

ORDINANCE NO. 24-02-15-02

AN ORDINANCE OF THE CITY COUNCIL OF LAGO VISTA, TEXAS, AMENDING ARTICLE 1.500 OF CHAPTER 1 OF THE LAGO VISTA CODE OF ORDINANCES TO UPDATE EXISTING PURCHASING POLICIES AND PROCEDURES TO CREATE A LOCAL PREFERENCE PROGRAM.

WHEREAS, the City of Lago Vista, Texas is a Home Rule City; and

WHEREAS, sound purchasing guidelines contribute greatly to the economical and effective operation of the City of Lago Vista and provide the public confidence and trust in government; and

WHEREAS, the City Council of the City of Lago Vista has previously established Purchasing Policies and Procedures, published in accordance with Chapter 1 of the Code of Ordinances, to ensure that City purchasing staff obtain the most value for the tax dollar in a fair, efficient, and equitable manner; and

WHEREAS, the mission of the City of Lago Vista Finance Department is to procure quality goods and services necessary to provide the citizens with the services they expect at the best possible price within the guidelines of all federal, state, and municipal purchasing laws, while complying with best practices and state procurement laws; and

WHEREAS, it is a policy of the City of Lago Vista to use its spending powers to promote fiscal responsibility and maximize the amount of resident tax dollars that remain in the local economy for the benefits of its citizens by utilizing all available legal opportunities to contract with local businesses; and

WHEREAS, it is a policy of the city 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 disadvantageous to the city; and

WHEREAS, it is the policy of the city to achieve these policy goals by utilizing a local business purchasing preference in the competitive and noncompetitive processes of procuring goods and services when those goods and services are available from a local business; and

WHEREAS, nothing in this article may be construed to require the city to enter into a contract with a bidder that is not a responsible bidder nor is the City required to find a local business if one is not available for that good or service, nor to allow the City to circumvent other provisions of the Purchasing Policies and Procedures; and

WHEREAS, except as provided by this ordinance, Local Preference Program, the city's procurement shall otherwise remain unchanged; and

WHEREAS, the City Council desires to amend the Lago Vista Code of Ordinances as described below, and to direct staff to prepare an amendment to the Purchasing Policies and Procedures in accordance with this Code amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

SECTION 1. FINDINGS OF FACT. All of the above and foregoing recitals are hereby found to be true and correct legislative findings of the City and are incorporated herein as findings of fact.

SECTION 2. AMENDMENT. The City Council of the City of Lago Vista, Texas, does hereby amend Chapter 1, Article 1.500, of the Lago Vista Code of Ordinances by replacing Section 1.501 in its entirety, and adding Section 1.503 each as shown in Exhibit “A.”

SECTION 3. SEVERABILITY CLAUSE. If any section, subsection, article, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4. CODIFICATION AND PUBLICATION. The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.013 of the *Texas Local Government Code*, and in the City's Purchasing Policies and Procedures. The City Secretary or their designee may change the formatting of the attached, including numbering, to promote uniformity throughout the Code.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and publication in accordance with the provisions of the *Texas Local Government Code*.

SECTION 6. OPEN MEETINGS. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*.

AND, IT IS SO ORDERED.

[signatures included on following page]

PASSED AND APPROVED this 15th day of February, 2024.



Mayor

ATTEST:



Lucy Aldrich, City Secretary



On a motion by Councilor Marion, seconded by Councilor Durbin, the above and foregoing ordinance was passed and approved.

EXHIBIT “A”

CHAPTER 1

General Provisions

Article 1.500 Purchasing.

State Law reference—Purchasing procedures by municipalities, generally, V.T.C.A., Local Government Code, Chapter 252.

Sec 1.501 Purchasing Policy

1. The city manager shall direct that purchases of supplies, materials or equipment by the city be made in accordance with the fiscal and budgetary policy adopted by the council and as provided by state law.
2. The city manager shall ensure all purchases under Sec 1.501 follow the Local Preference Program provisions under Sec. 1.503.

Sec 1.503 Local Preference Program

1. Declaration of policy
 - a. It is the policy of the City of Lago Vista to use its spending powers to promote fiscal responsibility and maximize the amount of resident tax dollars that remain in the local economy for the benefits of its citizens by utilizing all available legal opportunities to contract with local businesses.
 - b. It is the policy of the city 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 disadvantageous to the city.
 - c. It is the policy of the city to achieve the policy goal to support local business by utilizing a local business purchasing preference in the competitive and noncompetitive processes of procuring goods and services when those good and services are available by a local business.
 - d. Nothing in this article may be construed to require the city to enter into a contract with a bidder that is not a responsible bidder nor is the City required to find a local business if one is not available for that good or service.
 - e. Except as provided by this article, Local Preference Program, the city's procurement shall otherwise remain unchanged.
2. The following words and phrases, when used in this article, have the meanings provided in this section:

Bid means any response to a procurement issued by the City for non-professional services or for the purchase of personal property not affixed to real property.

Headquartered means the place where a business entity's officers direct, control and coordinate the entity's activities.

Joint venture means a collaboration of business entities, in response to a solicitation, which is manifested by a written agreement between two (2) or more independently owned and controlled business entities to form a third business entity solely for the purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture.

Local business means a business with a principal place of business within the incorporated limits of the City.

Managing department means the department managing the procurement for a contract.

Principal place of business means (1) a business headquartered for one (1) year or more in the incorporated limits of the city; or (2) a business having an established place or places of business in the incorporated limits of the city from which at least ten (10) of its employees or at least twenty (20) percent of its total number of full-time, part-time and contract employees are regularly based, and from which a substantial role in the business' performance of a service, retail or commercially useful function or a substantial part of its operations is conducted by those employees. A location utilized solely as a post office box, mail drop or telephone message center or any similar combination, with no other substantial work function, is not a principal place of business.

3. Purchases of professional services

- a. In procuring professional services under this Article or Texas Government Code, § 2254.004, or its successor, the managing department may, when appropriate, award a predetermined number of additional points to a respondent based upon knowledge of, and experience regarding local conditions as part of the qualifications determination.
- b. In procuring professional services not governed by statute, the managing department may, when appropriate, award more points to a respondent that is a local business headquartered within the incorporated limits of the city, or half of the points awarded to a headquartered business to a respondent that is a local business not headquartered within the incorporated limits of the city.

4. Purchases of non-professional services between fifty thousand (\$50,000) and under five hundred thousand (\$500,000) dollars.

- a. In procuring non-professional services that require an expenditure of fifty thousand dollars (\$50,000.00) to under five hundred thousand dollars (\$500,000.00), if the city receives one (1) or more bids from a bidder that is a local business and whose bid is within five (5) percent of the lowest bid price received by the city, in the event of competitive, sealed bids, from a bidder who is not a local business, the city shall enter into a contract with the bidder that is a local business. This section does not apply to construction services contracts over one hundred thousand dollars (\$100,000).

5. Purchases of personal property that is not affixed to real property

- a. In purchasing any personal property that is not affixed to real property that requires an expenditure of ten thousand dollars (\$10,000) to under fifty thousand dollars (\$50,000), if the city receives one (1) or more quotes from a vendor that is a local business and whose quote is within three (3) percent of the lowest quote from a vendor that is not a local business, the city shall enter into contract with the local business.
- b. In purchasing any personal property that is not affixed to real property that requires an expenditure of fifty thousand dollars (\$50,000.00) to under five hundred thousand dollars (\$500,000.00), if the city receives one (1) or more bids from a bidder that is a local business and whose bid is within five (5) percent of the lowest bid price received by the

- city from a bidder who is not a local business, the city shall enter into a contract with the bidder that is a local business.
- c. In purchasing any personal property that is not affixed to real property that requires an expenditure of five hundred thousand dollars (\$500,000.00) or more, if the city receives one (1) or more bids from a bidder that is a local business and whose bid is within three (3) percent of the lowest bid price received by the city from a bidder who is not a local business, the city shall enter into a contract with the bidder that is a local business.

6. Exceptions

This Section 1.503 does not:

- a. apply to any contract funded in whole or in part by the federal government or where the city acts as a conduit for federal money.
- b. apply to contracts where the City Manager, managing department or city council has determined that it would not be in the best interest of the city.
- c. apply to contracts for federal or state lobbying services.
- d. apply to purchases made through a purchasing cooperative program.
- e. prohibit the City from rejecting all bids.
- f. in accordance with Local Government Code, § 271.0951, apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C.A. Section 153.

7. Suspension or Expulsion from the Program for Cause and Appeals Process

- a. Any local business may be suspended or expelled from the local preference program for cause by the City Manager for violations of federal, state, or local ordinance, rule, or regulation (including but not limited to the City's Purchasing Policies and Procedures) related to a procurement made through the program.
- b. A determination by the City Manager that a suspension or expulsion from the program of a local business is warranted shall be written and include a list of all documented violations and any additional basis for the action taken. This written determination shall be forwarded to the local business by certified mail with a return receipt requested. If the delivery fails or is refused, the notice shall be deemed to have occurred on the date of the delivery attempt certified by the USPS. The required mailing may be waived by the local business pending a willingness to provide a signed copy of the written determination acknowledging its receipt.
- c. The determination by the City Manager that a suspension or expulsion from the program is warranted can be appealed to the City Council based on an alleged error or erroneous conclusion. The appeal shall consist of a formal letter to the Mayor alleging the specific errors made. The right to appeal the determination regarding a suspension or expulsion expires fifteen (15) calendar days following receipt of the written notice, or the next official business day of the City when the City offices are closed. Following this deadline, the suspension or revocation becomes final.

8. Responsibilities and enforcement

- a. The City shall be responsible for establishing the documentation necessary to establish a principal place of business in the city. Any entity claiming to be a local business shall submit to the city a form promulgated by the City Manager or their designee attested to by a duly authorized representative of the business. The City Manager or their designee shall make the final determination as to whether a business is a local business.
- b. The City Manager or their designee is directed to provide written guidance to departments, through the City's Purchasing Policies and Procedures upon implementation of this article and shall provide interpretative guidance and criteria related to joint ventures seeking preferences under this program to ensure uniform application that meets the intent of this

- article.
- c. The submission of documentation by a business entity that is required to establish a principal place of business, or to demonstrate the existence of and participation in a joint venture, that is found to contain false information is grounds for exclusion from the program.
 - d. The City Manager or their designee shall produce annual reports, summarizing the dollar amount of procurements awarded to local businesses under this program, the names of the businesses that were procured through the program and the total number of local businesses that were considered during procurements and how many were not chosen.
 - e. To award a contract to a bidder who is not the lowest bidder under this Section 1.503, the City Council must determine, in writing, that the local business offers the municipality the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the City and increased tax revenues to the City.
 - f. For purposes of this section 1.503, when a bidder or respondent is a joint venture, each joint venture partner must meet the definition of a local business to be eligible for the preference described in that section.

EXHIBIT “A”

CHAPTER 1

General Provisions

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Sec 1.501 Purchasing Policy

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2. The city manager shall ensure all purchases under Sec 1.501 follow the Local Preference Program provisions under Sec. 1.503.

Sec 1.503 Local Preference Program

1. Declaration of policy
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 - c. It is the policy of the city to achieve the policy goal to support local business by utilizing a local business purchasing preference in the competitive and noncompetitive processes of procuring goods and services when those good and services are available by a local business.
 - d. Nothing in this article may be construed to require the city to enter into a contract with a bidder that is not a responsible bidder nor is the City required to find a local business if one is not available for that good or service.
 - e. Except as provided by this article, Local Preference Program, the city's procurement shall otherwise remain unchanged.
2. The following words and phrases, when used in this article, have the meanings provided in this section:

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Exhibit “A”

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3. Purchases of professional services

- a. In procuring professional services under this Article or Texas Government Code, § 2254.004, or its successor, the managing department may, when appropriate, award a predetermined number of additional points to a respondent based upon knowledge of, and experience regarding local conditions as part of the qualifications determination.
- b. In procuring professional services not governed by statute, the managing department may, when appropriate, award more points to a respondent that is a local business headquartered within the incorporated limits of the city, or half of the points awarded to a headquartered business to a respondent that is a local business not headquartered within the incorporated limits of the city.

4. Purchases of non-professional services between fifty thousand (\$50,000) and under five hundred thousand (\$500,000) dollars.

- a. In procuring non-professional services that require an expenditure of fifty thousand dollars (\$50,000.00) to under five hundred thousand dollars (\$500,000.00), if the city receives one (1) or more bids from a bidder that is a local business and whose bid is within five (5) percent of the lowest bid price received by the city, in the event of competitive, sealed bids, from a bidder who is not a local business, the city shall enter into a contract with the bidder that is a local business. This section does not apply to construction services contracts over one hundred thousand dollars (\$100,000).
- b. When a bidder is a joint venture, each joint venture partner must meet the definition of a local business to be eligible for the preference described in that section.

5. Purchases of personal property that is not affixed to real property

- a. In purchasing any personal property that is not affixed to real property that requires an expenditure of ten thousand dollars (\$10,000) to under fifty thousand dollars (\$50,000), if the city receives one (1) or more quotes from a vendor that is a local business and whose quote is within three (3) percent of the lowest quote from a vendor that is not a local business, the city shall enter into contract with the local business.
- b. In purchasing any personal property that is not affixed to real property that requires an expenditure of fifty thousand dollars (\$50,000.00) to under five hundred thousand dollars (\$500,000.00), if the city receives one (1) or more bids from a bidder that is a local

Deleted: <#>For respondents submitting responses as a joint venture to solicitations for professional services not governed by statute, the following is applicable:[¶]

For joint ventures, ownership and location of the individual entities entering into the joint venture relationship may be considered in the award of points.[¶]

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Deleted: <#>Construction services contracts of fifty thousand dollars (\$50,000.00) to under one hundred thousand dollars (\$100,000.00). In procuring non-professional construction services, if the city receives one (1) or more bid from a bidder that is a local business and whose bid is within (i) five (5) percent of the lowest bid price received by the city in the event of competitive, sealed bids, or (ii) three (3) percent of the lowest bid price received by the city in the event of any other bidding process, from a bidder who is not a local business, the city shall enter into a contract that requires an expenditure of fifty thousand dollars (\$50,000.00) to under one hundred thousand dollars (\$100,000.00) with the bidder that is a local business.[¶]

When a bidder is a joint venture, each joint venture partner must meet the definition of a local business to be eligible for the preference described in that section.

Moved down [1]: <#>To award a contract to a bidder who is not the lowest bidder under this Section 4, the City Council must determine, in writing, that the local business offers the municipality the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the City and increased tax revenues to the City.[¶]

Deleted: Contracts of fifty thousand dollars (\$50,000.00) to under five hundred thousand dollars (\$500,000.00).

- business and whose bid is within five (5) percent of the lowest bid price received by the city from a bidder who is not a local business, the city shall enter into a contract with the bidder that is a local business.
- c. In purchasing any personal property that is not affixed to real property that requires an expenditure of five hundred thousand dollars (\$500,000.00) or more, if the city receives one (1) or more bids from a bidder that is a local business and whose bid is within three (3) percent of the lowest bid price received by the city from a bidder who is not a local business, the city shall enter into a contract with the bidder that is a local business.
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- preferences under this program to ensure uniform application that meets the intent of this article.
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 - e. To award a contract to a bidder who is not the lowest bidder under this Section 1.503, the City Council must determine, in writing, that the local business offers the municipality the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the City and increased tax revenues to the City.
 - f. For purposes of this section 1.503, when a bidder or respondent is a joint venture, each joint venture partner must meet the definition of a local business to be eligible for the preference described in that section.

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