

# Local Preference in City of Austin Contracting

MBE/WBE & Small Business Procurement  
Program Advisory Committee

October 6, 2015 > November 3, 2015



# Construction

- Texas Local Government Code Chapter 271 allows municipalities to consider bidder's principal place of business in certain instances
- Construction – if local bidder is within 5% of non-local bidder and contract is less than \$100,000 (§ 271.9051)
- The municipality must determine, in writing, that the local bidder offers best combination of contract price and additional economic development opportunities, including:
  - Employment of local/city residents
  - Increased tax revenue to the city

# Contract Provision

## 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.”

# Alternative Delivery

- Construction Manager at Risk
- Job Order Contracting
- Competitive Sealed Proposals
  
- Assessment of local business presence is supported in the criteria outlined for consideration.

“(8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.”

# Criteria Language

## Item: Team's Local Business Presence 5 points max

The City seeks opportunities for businesses with a Local Business Presence in the Austin Corporate City Limits to participate on City contracts thereby providing a minimal environmental footprint through reduced transportation time and costs associated with Project delivery. A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the past five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation. Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the proposed team members on the Offeror's MBE/WBE (or DBE) Compliance Plan.

# Professional Services

- Chapter 2254.003 of the Government Code (Professional Services Procurement Act)
  - Governmental entity may not select a provider of professional services...for the services on the basis of competitive bids...., but shall make selection and award:
    - on the basis of demonstrated competence and qualifications to perform the services; and
    - for a fair and reasonable price

# Legal Interpretation

- Letter Opinion No. 93-73 (1993)
  - Municipalities are required to select based on “demonstrated competence and qualifications” alone.
  - If satisfactory contract cannot be negotiated with the most highly qualified provider....entity shall select the next most highly qualified provider.
- Summary Finding –
  - According to the Opinion: “Professional Services Procurement Act, article 667-4,... prohibits a home-rule city from giving a preference to a local engineering firm in awarding a contract for professional engineering services.”

Source: Attorney General of Texas Cumulative Subject Index AG Opinions (1990-Present)

# Professional Services (CMD)

## CONSIDERATION ITEM 7

### TEAM'S EXPERIENCE WITH AUSTIN ISSUES

10 Points Maximum

- City is interested in team's (including subconsultants) experience with Austin issues, as may be evidenced by work in the Austin area during the past five (5) years. Briefly describe experience in the following areas and reference projects relating to that experience:
  - City of Austin site development and/or building permit requirements.
  - Austin area construction in the public right-of-way.
  - Austin area construction costs and practices.
  - Austin environmental community, conditions, and constraints.
  - Public awareness and involvement in project development in the Austin area.
  - Responsiveness due to proximity of projects to local office.

# Purchasing Office

- Professional Services –same legal restrictions presented above
- Texas Local Government Code Chapter 271 allows municipalities to consider bidder's principal place of business in certain instances. Two sections apply:
  - Section 271.9051: if local bidder is within 5% of non-local bidder and contract is less than \$500,000;
  - Section 271.905: if local bidder is within 3% of non-local bidder
- The municipality must determine, in writing, that the local bidder offers best combination of contract price and additional economic development opportunities, including:
  - Employment of local/city residents
  - Increased tax revenue to the city

# Goods and Services - Bidding

- For commodities purchases, 3% preference with no dollar limit.
- For mixed commodity and service purchases, such as auto repair services with parts as necessary, 3% without limit as long as the services component does not exceed \$500,000; if services component exceeds \$500,000, no percentage allowed.
- For services only, 3% up to \$500,000; none thereafter.

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# Goods and Services - Evaluated

- “Best Value” bids (IFB-BV) or Requests For Proposals (RFP):
  - Evaluation points (up to 10 points of 100 total points)
  - For consulting services, including any goods, evaluation points (up to 10 points of 100 total points) where goods are not the largest component of the expenditure.