

ORDINANCE NO. 13-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CENTRO ADDING DIVISION 11 TO ARTICLE IV, CHAPTER 2 OF THE CODE OF THE CITY OF EL CENTRO ESTABLISHING A LOCAL VENDOR PREFERENCE PROGRAM 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 11 entitled "Local Vendor Preference Program," which reads as follows:

"DIVISION 11. LOCAL VENDOR PREFERENCE PROGRAM

Section 2-221. Purpose.

The purpose of this division is to establish a local business preference program for goods, services and equipment contracts that will provide contracting opportunities to a broader cross-section of the community in order to enhance diversity and increase competition. 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 vendor community.

Section 2-222. Applicability.

This division applies to new contracts for supplies, materials equipment, and services first solicited on or after January 1, 2013. This section shall be implemented in a manner consistent with otherwise applicable provisions of this division.

Section 2-223. 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.

Local Business Enterprise or LBE means a business that has both a principal place of business in the City of El Centro that has been in operation for no less than twelve (12) consecutive months and that has a valid City of El Centro business license.

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 with the City of El Centro.

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 2-224. Local vendor preference.

All contracts for goods and services shall comply with the advertising, bidding and award requirements of state and local law. In order to stimulate the local economy and provide local businesses opportunities to grow, succeed and create jobs, the City shall apply a ten percent (10%) bid discount for all LBEs bidding for contracts to provide goods and services to the City. The maximum allowable bid discount is ten thousand dollars (\$10,000). 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.

Section 2-225. Exceptions.

This division shall not apply to the following purchases or agreements:

- (a) Goods or services provided under a cooperative purchasing agreement;
- (b) Purchases or contracts where legal constraints on the expenditure of funds prohibit the application of the local preference or those contracts funded by the federal or state government, including federal or state grant funding, when such funding would be jeopardized by application of local preference;
- (c) Purchases for goods, equipment or services made or agreements let under emergency or noncompetitive situations;
- (d) Purchases with an estimated cost of five thousand dollars (\$5,000) or less;

- (e) Items which may only be contracted from a sole source;
- (f) Contracts for professional services;
- (g) Additions to and repairs and maintenance of equipment, which may be more efficiently added to, repaired, or maintained by a certain person;
- (h) Equipment which, by reason of the training of the personnel or of any inventory of replacement parts maintained by the City, is compatible with the existing equipment;
- (i) Computer equipment and software;
- (j) Books, library, materials and subscriptions; and
- (k) Any insurance.

Section 2-226. Verification of local vender preference eligibility.

Any vendor claiming to be a LBE shall so certify in the bid response, in writing under penalty of perjury, to the City. Vendors 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 vendor 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 2-227. Enforcement.

- (a) A vendor shall not be recognized as a LBE should any of the following occur:
 - (1) The vendor 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 either occurrence, the vendor will not be recognized by the City as a LBE for a period of two (2) years; or
 - (2) The vendor ceases to fall within the definition of an LBE as set forth in section 2-223.

(b) If a vendor fails to comply with the provisions set forth in this division, the City may terminate or suspend the contract, seek debarment proceedings as appropriate or pursue any other remedy available by law.”

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 5th day of Feb., 2013.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of El Centro, California, held on the 19th day of Feb. , 2013.

CITY OF EL CENTRO


By 
Benjamin James Solomon, III, Mayor

ATTEST:

By 
L. Diane Caldwell, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

By 
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- 02 had its first reading on Feb. 5, 2013, and had its second reading on Feb 19, 2013, and was passed by the following vote:

AYES: Jackson, Silva, Viegas-Walker, Solomon, Sanders
NOES: None
ABSENT: None
ABSTAINED: None

AYES: Jackson, Viegas-Walker, Sanders
NOES: None
ABSENT: Silva, Solomon
ABSTAINED: None

By 
L. Diane Caldwell, City Clerk

**CITY OF EL CENTRO
LOCAL BUSINESS ENTERPRISE (LBE)
SELF-CERTIFICATION FORM**

This self-certification form must be completed and submitted with the bid documents or proposal in order to receive Local Vendor Preference. Any vendor claiming LBE shall so certify in the bid response or proposal, in writing under penalty of perjury, to the City of El Centro. Certification cannot be made after bid opening; failure to certify as a LBE status in writing under penalty of perjury in the bid response or proposal is a material irregularity that will not be waived by the City.

Project Name: _____

Total Bid/Proposal Amount: _____

Name of Business: _____

Address: _____

City/State/Zip Code: _____

Phone Number: _____

Local Business Certification:

Any business claiming to be a "Local Business Enterprise (LBE)," as defined under Ordinance No. 13- ___ shall so certify in writing to the City of El Centro. The City shall not be required to verify the accuracy of any such certifications, and shall have sole discretion to determine if a vendor meets the definition of a LBE.

Any person or business falsely claiming to be a LBE under Ordinance No. 13-___ will not be recognized by the City as a LBE for a period of two (2) years. The City shall also have the right to terminate or suspend the contract, seek debarment proceedings as appropriate or pursue any other remedy available by law.

STATEMENT OF LOCAL BUSINESS ENTERPRISE CERTIFICATION

Qualified local vendors desiring consideration under the City of El Centro's Local Vendor Preference Program must complete the following and submit with their bid/proposal. *Please print or type.*

I _____, _____,
(Name of person submitting bid/proposal) (Title)

Off/for _____, certify that _____
(Company name) (Company name)

Is a City of El Centro "Local Business Enterprise," as defined in Ordinance No. 13-____ and qualifies for the Local Vendor Preference Program.

If applicable, please check if your business falls under any of the categories listed below. This information is being requested in the event of a tie between two 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.

Minority-owned Small Business

Veteran-owned Small Business

Women-owned Small Business

Not applicable

I certify that the above information is true and that any false information will result in my disqualification as a local business enterprise for a period of two years.

(Signature)

(Title)

(Date)