

ORDINANCE NO. 2018-173

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CARSON, CALIFORNIA, AMENDING THE CARSON  
MUNICIPAL CODE TO ESTABLISH A PREFERENCE FOR  
LOCAL BUSINESSES IN THE PROCUREMENT OF SUPPLIES  
AND EQUIPMENT AND SERVICES

WHEREAS, Council finds that a local business preference ordinance allows the City to promote local business; and

WHEREAS, Council finds that local preference ordinances results in stimulating local economic activity through direct, indirect and induced effects; and

WHEREAS, multiple studies have shown that when using a local vendor, more of a cities revenue stays within the local community as local vendors are more likely to spend the money within the community and the money spent in the community recirculates in the community; and

WHEREAS, as provided in Government Code Section 12098(a), the State has recognized that it is important to assist and protect the interests of small business concerns in order to preserve a free competitive enterprise and maintain a healthy state economy; and

WHEREAS, the City Council finds and determines that providing a local preference of 5% in the City's contracts for supplies and equipment and professional services for contracts under \$100,000 to local small businesses will assist such businesses, which are often at a competitive disadvantage to large regional or national businesses because of the higher administrative costs and the inability to enjoy the economies of scale that regional or national businesses enjoy; and

WHEREAS, the City Council finds and determines that providing a local preference of 5% in the City's contracts for supplies and equipment and professional services for contracts under \$100,000 to local small businesses will support local small businesses and the local economy and that it is in the interest of the public health, safety, and general welfare for the City of Carson to do so.

NOW, THEREFORE, the CITY COUNCIL of the CITY of CARSON, CALIFORNIA, does hereby ordain as follows:

**Section 1.** The recitals set forth above are true and correct, and incorporated herein by this reference.

**Section 2.** Section 2601, "Definitions," of Chapter 6, "Purchasing System," of Article II, "Administration," of the Carson Municipal Code is hereby amended as follows (new text, if any, is identified in ***bold & italics***, while deleted text, if any, is identified in ~~striketrough~~):

"As used in this Chapter, the following words shall have the following definitions:

(a) “Awarding authority” shall mean ~~either the City Council, City Manager or his or her designee who has been given the authority to award under this Chapter Purchasing Manager, as the case may be.~~

(b) “Capitalized equipment” shall mean equipment that is reported as an asset on the City’s audited financial statements in accordance with generally accepted accounting principles.

(c) “Commission” shall mean the Uniform Public Construction Cost Accounting Commission, created pursuant to California Public Contract Code Section 22010.

(d) “Inventory” shall mean supplies that may be consumed such as light bulbs, printing paper, writing instruments, and other similar items.

(e) ***“Local business” shall mean a business that can certify that the business:***

***(1) has a headquarter, primary or branch office within the City, which was established prior to the City inviting bids for the respective procurement, and***

***(2) possesses a current City business license and City certificate of occupancy, and***

***(3) is certified by the State Department of General Services as a Small Business.***

(f) “Maintenance work” shall have the same meaning as that term is defined under California Public Contract Code Section 22002.

(g) ~~(f)~~ “Public project” shall have the same meaning as that term is defined under California Public Contract Code Section 22002.

(h) ~~(g)~~ “Purchase order” shall mean a written or electronic authorization for a particular vendor to provide particular materials, supplies, equipment, and services to the City for a particular price and which shall contain terms and conditions of such purchase and shall be in a form approved by the City Attorney.

(i) ~~(h)~~ “Purchasing system” shall mean the purchasing system established by the ordinance codified in this Chapter and codified under this Chapter.

(j) ~~(i)~~ “Surplus property” shall mean personal property belonging to the City that is no longer needed or which has become obsolete or worn out as determined by the relevant City department. “Surplus property” includes capitalized equipment, but does not include inventory.

(k) ~~(j)~~ “The Act” shall mean the “Uniform Public Construction Cost Accounting Act.” ”

**Section 3.** Section 2610(i), “Award to Lowest Responsive and Responsible Bidder,” of Chapter 6, “Purchasing System,” of Article II, “Administration,” of the Carson Municipal Code is hereby amended as follows is hereby amended to read as follows (new text, if any, is identified in ***bold & italics***, deleted text, if any, is identified in ~~strike through~~):

“Unless bids are rejected as provided in this Chapter, all contracts of the City for the purchase of materials, supplies, equipment, and services of a value equal to or exceeding \$25,000, except ***as otherwise provided in this Chapter*** ~~for contracts entered pursuant to requests for proposals and exempted purchases~~, shall be awarded to the lowest responsible and responsive bidder. “Lowest responsible and responsive bidder” means the bidder who submits the lowest monetary bid that responds to the terms upon which bids were requested, and who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the contract. To the extent permitted by law, criteria for determining whether a bidder is responsible include, without limitation, all of the following:

- (1) The conformity of the supplies, materials, equipment, or services to the required specifications;
- (2) The ability, capacity, and skill of the bidder to provide the supplies, materials, equipment, or services as required;
- (3) The ability of the bidder to provide the required items or services within the time specified;
- (4) The character, integrity, reputation, judgment, experience, efficiency, financial resources, and financial responsibility of the bidder;
- (5) The ability of the bidder to promptly provide future maintenance, repair, parts, and service after purchase;
- (6) The bidder’s prior record of performance on other procurements or projects, including timely completion of performance, quality of products and work provided, and completion of projects within the bid amount submitted and project budget;
- (7) The bidder’s involvement in prior or current litigation or contract disputes that could impair satisfactory performance of the contract to be awarded; and
- (8) The bidder’s history of noncompliance with occupational safety and health requirements, labor statutes and regulations, and other local, state, and federal laws.

The purchasing file shall contain a written summary of the basis on which the award is made. If a bidder is rejected because of an adverse determination of that bidder’s capability of performing the contract, a written determination of irresponsibility, setting forth the basis of the finding, shall be prepared by the

Procurement Officer or designee. The unreasonable failure of a bidder promptly to supply information in connection with an inquiry regarding responsibility may be grounds for a determination of irresponsibility. Prompt written notice shall be sent to the bidder of the evidence reflecting upon the bidder's responsibility that has been either received from others or adduced from independent investigation. The bidder shall be afforded an opportunity to rebut such adverse evidence and to present evidence of qualification. After consideration of the evidence and the rebuttal evidence, the Procurement Officer shall make a final determination of the lowest bidder's responsibility and promptly so notify the bidder in writing. A bidder aggrieved by any such determination may protest as provided in CMC 2613."

**Section 4.** Section 2610(j), "Equal Bids," of Chapter 6, "Purchasing System," of Article II, "Administration," of the Carson Municipal Code is hereby amended as follows is hereby amended to read as follows (new text, if any, is identified in ***bold & italics***, deleted text, if any, is identified in ~~strike-through~~):

*"If prices quoted or received in two (2) ***or more*** sealed bids ***are equally the lowest bidder, including application of the local preference pursuant to Section 2611.1,*** then ***a bidder may be chosen pursuant to any of the following options that is deemed*** ~~the City Manager or the City Council may choose whichever of the following options it deems to serve the best interest of the City:~~*

- (1) Select one (1) bid, giving preference to a business located within the City of Carson; or
- (2) Reject all bids and re-solicit for bids; or
- (3) Reject all bids and authorize negotiation of an agreement between the City and one (1) of the equivalent bidders; or
- (4) Select one (1) bid, giving preference to the business which is the most experienced; or
- (5) Take any other action that the City Council deems to serve the best interest of the City."

**Section 5.** Section 2611(j) is hereby added to Chapter 6, "Purchasing System," of Article II, "Administration," of the Carson Municipal Code as follows:

"For the evaluation and award of any bids, proposals, or offers received pursuant to this Section, a local preference shall be given to local businesses, as provided further in Sections 2611.1."

**Section 6.** Section 2611(k) is hereby added to Chapter 6, "Purchasing System," of Article II, "Administration," of the Carson Municipal Code as follows:

“If prices quoted or received in two (2) or more bids, proposal, or offers pursuant to this Section are equally the lowest, including application of a local preference pursuant to Section 2611.1, then the awarding authority may choose whichever options as provided in Sections 2610(j)(1) through (j)(5) that it deems to serve the best interest of the City.”

**Section 7.** Section 2611.1, “Local Preference for Materials, Services, Supplies, and Equipment,” is hereby added to Chapter 6, “Purchasing System,” of Article II, “Administration,” of the Carson Municipal Code as follows:

“2611.1 Local Preference for Materials, Services, Supplies, and Equipment.

(a) Local Preference for Materials, Supplies, and Equipment. Notwithstanding anything in this Chapter to the contrary, except for those contracts funded through programs or partners, including but not limited to federal or state agencies, which prohibit the use of a local preference, local businesses shall be provided a local preference for all contracts for materials, supplies, or equipment as provided in this Section.

(1) This Section 2611.1(a) shall only be applicable to contracts for materials, supplies, or equipment in an amount of \$100,000 or less.

(2) Amount of Preference. A local preference of 5% shall be extended to all bids by a local business for all applicable contracts.

(3) Application of Preference. All bids submitted by a local business that includes a certification signed by the bidder that the business meets the definition under Section 2601, shall have the bid price reduced by the local preference and the reduced bid amount shall be deemed the amount of the bid.

(4) Substantial Local Work. The local preference awarded shall be applied only if the local business substantially acts as the supplier or dealer, or substantially designs, manufactures or assembles the materials, supplies and/or equipment at a business location in the City. As used in this subsection, “substantially” means not less than two-thirds of the work performed under the contract must be performed, respectively, by the local business in the City.”

(b) Local Preference for Services. Notwithstanding anything in this Chapter to the contrary, except for those contracts funded through programs or partners, including but not limited to federal or state agencies, which prohibit the use of a local preference, local businesses shall be provided a local preference for contracts for services provided in this section.

(1) Applicable Contracts. Section 2611.1(b) shall only be applicable to contracts for services in an amount of \$100,000 or less.

(2) Preference. The City shall give a primary preference to local businesses on contracts for services, whenever such businesses have the necessary qualifications, experience and expertise to complete the project(s) being proposed for work, as determined by the City. When a proposal, bid, or offer submitted by a local business for award is being evaluated, the local business shall be provided a 5% preference for a local business in the proposal price.

(3) Substantial Local Work. The preference awarded shall only be applied if the services are provided directly by the local business using employees whose exclusive, primary working location is in the City.”

(c) Nothing in this Section is intended to require the award of any contract to any particular bidder, offeror, or proposer, regardless if they qualify as a local business.

(d) Nothing in this Section is intended to limit the City’s authority to reject any and all bids.

(e) This Section shall not apply to public projects.

(f) Failure to Maintain Status as Local Business. Without limitation to any other remedies available to the City, if for any reason a contractor that receives a local preference pursuant to Section 2611.1 fails to maintain its status as a local business for more than 60 days during the entire term of its related contract with the City, the City shall be entitled to withhold or recover funds from the contractor in an amount that represents the value of the bid.”

**Section 8.** The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment. The Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act pursuant to Section 15061(b) (3) of Title 14 of the California Code of Regulations.

**Section 9.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this section, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this section, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 10.** The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days

after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this ordinance.

**Section 11.** This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

**PASSED, APPROVED and ADOPTED** at a regular meeting of the City Council on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor Albert Robles

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney