

**THIS IS A PROPOSED DRAFT AND WILL BE REPLACED BY
THE FINAL, SIGNED ORDINANCE ADOPTED BY CITY COUNCIL.**

AN ORDINANCE

**AMENDING THE VETERAN-OWNED SMALL BUSINESS
PREFERENCE PROGRAM TO CLARIFY APPLICATION OF THE
PROGRAM WITH REGARD TO JOINT VENTURES.**

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WHEREAS, the City of San Antonio (the “City”) adopted a veteran owned small business contracting preference program by City Ordinance No. 2013-12-05-0864, under which 5% of the evaluation points are awarded to businesses meeting the program’s requirements; and

WHEREAS, the City wishes to amend the program to provide for allocation of those points when a veteran owned small business is a party to a joint venture that submits a proposal for a City contract; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 2, Article XI. of the City Code of San Antonio, Texas, entitled “Veterans Contracting Preference Program” is hereby amended by adding the language that is underlined (added) to and deleting the language that is stricken (~~deleted~~) from the existing text as set forth in this Ordinance.

SECTION 2. City Code of San Antonio, Texas, Chapter 2, Article XI., entitled “Veterans Contracting Preference Program” is hereby amended as follows:

CHAPTER 2 – ADMINISTRATION.

ARTICLE XI. VETERANS CONTRACTING PREFERENCE PROGRAM

Sec. 2-642. Declaration of Policy.

(a) It is the policy of the City of San Antonio to grant a preference to veteran-owned small businesses in accordance with the program set forth below, unless doing so would be contrary to the best interests of the City.

(b) Nothing in this Article prohibits the City from rejecting any and all bids or offers.

(c) Nothing in this Article requires the City to conduct a competitive solicitation for a contract.

Sec. 2-643. Definitions.

The words and phrases defined in this Section and used in this Article have the following meanings:

Concession Contracts mean the renting of City-owned space on a contractual basis for the purpose of making a profit by selling a commodity/service.

Joint Venture means a collaboration of for-profit business entities, in response to a solicitation, which is manifested by a written agreement, between two or more independently owned and controlled business firms to form a third business entity solely for 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.

Respondent means a person or business entity that submits a responsive bid or proposal for a discretionary contract.

Veteran, as defined in 38 CFR §74.1, as amended, is a person who served on active duty with the U.S. Army, Air Force, Navy, Marine Corps or Coast Guard, for any length of time and at any place and who was discharged or released under conditions other than dishonorable. Reservists or members of the National Guard called to Federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify as a veteran.

Veteran-owned small business (VOSB), as specified in 38 CFR §74.1, as amended, is a business that is not less than 51 percent owned by one or more veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; the management and daily business operations of which are controlled by one or more veterans and qualifies as “small” for Federal business size standard purposes. When used in this Article, the term “VOSB” includes Service-disabled veteran-owned small business, as that term is specified in 38 CFR §74.1, as amended.

Small Business means a business that does not exceed the U.S. Small Business Administration’s size standards for small business preference eligibility, which vary by work category, as set forth in 13 CFR, §121.201, as amended.

Sec. 2-644. Applicability

The provisions of this policy apply to procurements of discretionary expenditure and revenue contracts for goods, services, and concessions, where the selection criteria is not limited by state or federal law in a manner that prevents application

of the preference provided in this Article. This policy does not apply to any expenditure or revenue contract with a value that is less than the amount that is required to be bid pursuant to state law (Chapter 252, Texas Local Government Code, and as amended), currently \$50,000 or less.

Sec. 2-645. Preference Provided.

(a) When conducting a competitive solicitation procedure for a contract to which this policy applies, 5% of the evaluation points (5 points, based upon a 100 point scale), shall be awarded to a Respondent that is a VOSB.

(b) If the Respondent is a Joint Venture with a VOSB member who is performing a commercially useful function on the City contract for which the Respondent is seeking the preference, the Respondent shall be eligible for a percentage of the VOSB evaluation points referenced above, which shall be awarded in direct proportion to the ownership interests of the VOSB in the Joint Venture.

Sec. 2-646. Comparison of Qualifications.

The preference established herein does not prohibit or limit the right of the City to compare the quality of services proposed, or qualifications, character, responsibility and fitness of all persons or entities submitting responses to solicitations. In addition, the preference established herein does not prohibit the City from giving any other preference permitted by law in addition to this preference.

Sec. 2-647. Responsibilities and Enforcement.

(a) The Finance Department, Purchasing Division ("Purchasing"), shall establish a methodology for certification as a VOSB. The City may rely on a party's inclusion in the database of VOSBs maintained by the U.S. Small Business Administration, or certification by another public or private entity that uses similar certification procedures.

(b) The Purchasing Division shall provide written guidance to departments upon implementation of this Article, and shall work with the Director of the City's Economic Development Department to provide interpretive guidance and criteria related to Joint Ventures seeking preferences under this and other City programs to ensure uniform application that meets the intent of this Ordinance.

~~(b)~~ (c) The submission of documentation by a person or business entity that is required to establish status as a VOSB, or to demonstrate the existence of and participation in a Joint Venture, that is found to contain false information is grounds for debarment.

(d) Successor Authority. The departmental roles and responsibilities established by this Ordinance are extended to any successor department or division that performs comparable duties, in the event of an organizational restructuring or the creation of new or changed departments or divisions, or as otherwise provided by the City Manager.

Sec. 2-648 - 2-650. Reserved.

SECTION 3. All other provisions of Chapter 2, Article XI. of the City Code of San Antonio, Texas shall remain in full force and effect, unless expressly amended by this ordinance.

SECTION 4. If any provision, section, subsection, sentence, clause, phrase or portion of this Ordinance, or the application of same, to any person or set of circumstances, is held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, and all provisions of this Ordinance are declared severable for that purpose.

SECTION 5. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 6. This Ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage. In order to allow effective implementation, this Ordinance shall apply to solicitations with a response deadline on or after January 1, 2015.

PASSED AND APPROVED this ____ day of _____, 2014.

M A Y O R
Ivy R. Taylor

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek
City Clerk

Robert F. Greenblum
City Attorney