City of Houston, Texas Ordinance No. 2011-766

AN ORDINANCE ADDING ARTICLE XI, HIRE HOUSTON FIRST, TO CHAPTER 15, CONTRACTS, OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO LOCAL CONTRACTING PREFERENCES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * *

WHEREAS, City Council wishes to use the City spending powers in a manner that promotes fiscal responsibility and maximizes the effectiveness of local tax dollars by ensuring a portion of citizens' tax dollars remain in the local economy for economic benefit of the citizens; and

WHEREAS, City Council finds that by encouraging the local business capacity, the City will maintain an able and competitive pool of businesses from which to choose to procure goods and services; and

WHEREAS, City Council finds that awarding contracts to local vendors provides additional economic benefit for a city's citizens by keeping their tax dollars local; and

WHEREAS, City Council finds the principal place of business of a business is a relevant criterion in providing best value for the City; and

WHEREAS, City Council finds that awarding contracts to businesses located in the surrounding eight-county area, defined herein as the *local area*, benefits the City and its residents by improving employment opportunities, increasing property values, and increasing sales tax revenues; and

WHEREAS, City Council finds that the Local Government Code Sections 271.905 and 271.9051 allow the City to consider a vendor's principal place of business in awarding certain contracts; and

WHEREAS, City Council finds that there is no definition of "principal place of business" in the statutes of the State of Texas; therefore, the City adopts its own definition herein; and

WHEREAS, City Council determines that in any procurement addressed by this Ordinance, the local bidder offers the City the best combination of contract price and additional economic development opportunities, including the employment of residents of the City and increased tax revenue to the City;

WHEREAS, City Council finds that the conclusions and determinations contained herein meet the written determination required by the Local Government Code in Sections 271.905(b)(2) and 271.9051(b)(2) or as they may be amended or renumbered; and

WHEREAS, City Council desires to add Article XI to Chapter 15, Contracts, of the Code of Ordinances to create a requirement to utilize state law to create a contracting preference for local businesses; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted.

Section 2. That Chapter 15 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article that reads as follows:

"ARTICLE XI. HIRE HOUSTON FIRST

Sec. 15-175. Declaration of policy.

(a) It is the policy of the city to use the city's spending powers in a manner that promotes fiscal responsibility and maximizes the effectiveness of local tax dollars by ensuring a portion of citizens' tax dollars remain in the local economy for economic benefit of the citizens by utilizing all available legal opportunities to contract with city and/or local businesses.

(b) It is the policy of the city to place an affirmative duty on city departments to grant a preference to city and/or local businesses unless doing so would be clearly contrary to the best interests of the city.

(c) It is the policy of the city to achieve the policy goal in subsection (a) above by utilizing all permissible tools.

(d) Nothing in this article prohibits the city from rejecting all bids.

Sec. 15-176. Definitions.

The words and phrases defined in this section have the following meanings:

Bid means any procurement method governed by the Texas Local Government Code, Title 8 Acquisition, Sale or Lease of Property, or as it may be amended.

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

Local area means the eight counties in and surrounding Houston city limits. The counties are Harris, Fort Bend, Montgomery, Brazoria, Galveston, Chambers, Waller and Liberty.

Local business means a business with a principal place of business in the local area.

Principal place of business means the business must be headquartered or have an established place or places of business in the incorporated limits of the city or the local area, as applicable, from which 20% or more of the entity's workforce are regularly based, and from which a substantial role in the entity's performance of a commercially useful function or a substantial part of its operations is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed as a principal place of business.

Sec. 15-177. Hire Houston First Program—Purchases of personal property.

(a) *Contracts of $100,000 or more.* In purchasing any personal property that is not affixed to real property, if the city receives one or more bids from a bidder that is a city business and whose bid is within three percent of the lowest bid price received by the city from a bidder who is not a city business, the city shall, subject to the provisions of section 15-181, enter into a contract with a value of $100,000 or more with:

(1) The lowest bidder; or

(2) The bidder that is a city business, as defined in this article.

(b) *Contracts under $100,000.* In purchasing any personal property that is not affixed to real property, if the city receives one or more bids from a bidder that is a city business and whose bid is within five percent of the lowest bid price received by the city from a bidder that is not a city business, the city shall, subject to the provisions of section 15-181, enter into a contract for an expenditure of less than $100,000 with:

(1) The lowest bidder; or

(2) The bidder that is a city business, as defined in this article.

Sec. 15-178. Hire Houston First Program—Purchases of services.

(a) In procuring services, including construction services, the contracting department shall, subject to the provisions of section 15-181, grant a preference to a local business. In no event shall a contract for services be granted to a local business that is not within:

(1) Five percent of the lowest bidder for contracts under $100,000; or

(2) Three percent of the lowest bidder for contracts of $100,000 or more.

(b) In procuring architectural, engineering or land surveying services under the Professional Services Procurement Act, Tex. Gov't Code, Sec. 2254.004, the contracting department shall, when appropriate, consider knowledge of local conditions as part of the qualifications determination.

Sec. 15-179. Hire Houston First Program—Purchases under $50,000.

Subject to Texas Government Code §2254.004, when procuring goods or services valued at less than $50,000 that are not the subject of a blanket purchase order or contract, the City shall, subject to the requirements of section 15-181, select vendors and services providers with a principal place of business in the local area, provided that any such vendor's bid is no more than five percent greater than the lowest bid, in the event the lowest bid is from one other than a city business or a local business.

Sec. 15-180. Hire Houston First Program—Responsibilities and enforcement.

(a) The Mayor's Office for Business Opportunities (MOBO) shall be responsible for establishing the documentation necessary to establish a principal place of business in the city or local area. Any entity claiming to be a local business shall submit to the city a form promulgated by the MOBO, attested to by a duly authorized representative of the business. The MOBO shall make the final determination as to whether a business is a local business.

(b) Department directors shall maintain written records of all departmental actions under this program. Departments are charged with primary responsibility for monitoring their contracts for compliance with the program.

(c) The contracting or evaluating department shall award additional points to a local business in any bid based on a 'best value' evaluation.

(d) The strategic purchasing division ("SPD") and MOBO, in consultation with the legal department, are directed to provide written guidance, including guidance on best value bids, to departments for implementing this article. Such guidance shall include a preference structure that grants the highest number of points to a city business, the next higher number of points to a local business, and no points to a business located outside of the city or local area.

(e) The submission of a form pursuant to subsection (a) above found to contain false information is grounds for debarment per section 15-103(1)(c) of this Code.

(f) The MOBO shall produce semi-annual reports, commencing July 1, 2012, summarizing the dollar amount of procurements awarded to city businesses and local businesses under this program.

Sec. 15-181. Hire Houston First Program—Exceptions.

(a) This program does not apply to any contract in which the federal government participates in the form of a grant or loan, or the city acts as a conduit for federal money.

(b) This program does not apply to contracts in which the contracting department has determined that it would unduly interfere with contract needs. In cases of purchases over $100,000, such determination shall be made in writing, expressly approved by the department director, and furnished in advance to the MOBO.

(c) In accordance with Local Government Code section 271.9051, this program does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153."

Sec. 15-182. Hire Houston First Program—Effective Date.

This Article shall be effective as to solicitations for procurements published on or after September 1, 2011.

Section 3. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason 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, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 4. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under the Program without further authorization from Council.

Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 31st **day of** August**, 20** 11**.**

APPROVED this 31st **day of** August**, 20** 11**.**

Annise D. Parker
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

_____
City Secretary

Prepared by Legal Dept. _____
City Attorney

L.D. File No. _____

AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
	✓	SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		COSTELLO
✓		LOVELL
ABSENT ON PERSONAL BUSINESS		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW
DATE: SEP 0 6 2011

MAY 017 Rev. 12/09