

ORDINANCE NO. 4897
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**AN ORDINANCE ADDING CHAPTER 2.89 OF TITLE 2 OF THE SAN MATEO
COUNTY ORDINANCE CODE REGARDING PROCUREMENT PREFERENCE FOR
LOCAL BUSINESSES**

The Board of Supervisors of the County of San Mateo ("County") hereby finds and declares as follows:

SECTION 1. Findings.

WHEREAS, the County is committed to creating conditions that allow all San Mateo County residents to fully participate in the economic and social opportunities of the County and prosper; and

WHEREAS, the Board of Supervisors adopted an Anchor Institution Resolution No. 078744 on March 8, 2022, to ensure the economic opportunities that the County produces are intentionally aligned with its priorities for equity, inclusion, and shared prosperity; and

WHEREAS, the County recognizes that one of the key anchor institution strategies to advance shared prosperity is inclusive procurement, which aims to maximize the County's procurement processes to support an inclusive local businesses ecosystem; and

WHEREAS, the County understands that supporting local businesses has a positive impact on the local economy by supporting local jobs and investments, and increased local retention of tax dollars; and

WHEREAS, the County conducted a Supplier Diversity Study ("Study"); and

WHEREAS, the Study found that overall, the County underutilizes local small and local micro businesses, substantially underutilizes local small and local micro businesses in professional services contracts and as prime contractors, substantially underutilizes diverse businesses, and that local small and micro businesses have limited resources, capacity and/or experience to compete for County solicitations; and

WHEREAS, out of a total of approximately 21,000 businesses in San Mateo County, the Study focused on the approximately 7,600 businesses in three sectors (construction, goods and services, and professional services) and found that the vast majority of these business (approximately 93%) are small businesses as defined by the Study; and

WHEREAS, the Study recommends implementing local, and local small and local micro business measures, such as preferential weighing of proposals, when appropriate, to explicitly promote local and local small and micro business participation in County procurement.

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo ordains as follows:

SECTION 2. A new Chapter 2.89 of Title 2 of the San Mateo County Ordinance Code, to be titled "Procurement Preference for Local Businesses," is hereby adopted to read, in its entirety, as follows:

Chapter 2.89 PROCUREMENT PREFERENCE FOR LOCAL BUSINESSES

2.89.010 Purpose.

The purpose of this Ordinance is to promote a strong local economy by giving preference to local businesses, and local small and micro businesses, to the extent consistent with the law and interests of the public.

2.89.020 Definitions.

For the purpose of this Chapter, the following words, terms, and phrases have the meanings given to them in this Section.

- (a) "Local Business" means any for-profit business which has its principal place of business, or is headquartered, in San Mateo County.
- (b) "Small Business" means any business which holds a Small Business Certification awarded by the California Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS).
- (c) "Micro Business" means any Small Business certified by the OSDS which is automatically designated by the OSDS as a Micro Business due to gross annual receipts falling below the OSDS-designated dollar amount.
- (d) "Local Non-Profit" means a tax-exempt public charity organization (within the meaning of section 501(c)(3) of the Internal Revenue Code) that is formed for purposes other than making a profit, is exempt from paying federal income taxes on the income generated for their exempt purposes, and has its principal place of business, or is headquartered, in San Mateo County.
- (e) "Small Non-Profit" means a Local Non-Profit with an annual revenue of \$1,000,000 to \$2,500,000 according to its most recently filed IRS Form 990.
- (f) "Micro Non-Profit" means a Local Non-Profit with an annual revenue of less than \$1,000,000, according to its most recently filed IRS Form 990.
- (g) "Formal Solicitation" means a solicitation that is publicly advertised, requires sealed responses (or the electronic equivalent thereof), and is subject to other formal solicitation requirements, as determined by the County Purchasing Agent. Formal solicitations include price-based procurements, such as Invitations for Bids (IFBs), and best-value procurements, such as Requests for Proposals (RFPs).
- (h) "Informal Solicitation" means a solicitation that does not require public notice or sealed responses and is not subject to other formal solicitations requirements, as determined by the County Purchasing Agent.

2.89.030 Local Preference.

- (a) Where price alone is the sole evaluation factor for a solicitation for goods and/or services, an amount equal to five percent (5%) of the bid amount shall be subtracted from a bid submitted by a responsive and responsible Local Business or Local Non-Profit for evaluation purposes. If application of the five percent (5%) bid discount results in a Local Business or Local Non-Profit bid being the lowest responsive responsible bidder or tying with another bidder for the low bid, the contract shall be awarded to the Local Business or Local Non-Profit at the Local Business' or Local Non-Profit's original bid price, assuming agreement on other contract terms.

- (i) An additional three percent (3%) preference shall be given to a Local Business or Local Non-Profit (for a total of eight percent (8%)) if the bidder is a Small Business or Small Non-Profit, *or* an additional five percent (5%) preference (for a total of ten percent (10%)) if the bidder is a Micro Business or Micro Non-Profit.
- (b) Where price is not the sole evaluation factor for a solicitation (e.g., in the case of a “best-value” solicitation), five percent (5%) of the total evaluation points awardable will be added to the proposal score for each Local Business or Local Non-Profit score for evaluation purposes. In the event of a tie between a Local Business or Local Non-Profit and another bidder, the Local Business or Non-Profit shall be awarded the Contract, assuming agreement on other contract terms.
- (i) An additional three percent (3%) preference shall be given to a Local Business or Local Non-profit (for a total of eight percent (8%) of total points awardable) if the proposer is a Small Business or Small Non-Profit, *or* an additional 5 percent preference (for a total of ten percent (10%) of total points awardable) if the proposer is a Micro Business or Micro Non-Profit.
- (c) For solicitations below the competitive threshold requirements, efforts shall be made to solicit proposals and/or bids from Local Small and Micro Businesses where possible.

2.89.040 Certification.

For every solicitation process that is subject to this Chapter, the County shall require submission of the following by Local Businesses or Local Non-Profits seeking to establish eligibility for a preference:

- (a) Local Businesses provide proof of eligibility for any applicable preferences as follows:
 - (i) Local Businesses shall complete a self-attestation form verifying that they meet this Chapter’s definition of “Local Business.”
 - (ii) Small and Micro Businesses shall provide proof of OSDS certification.
- (b) Local Non-Profits provide proof of eligibility for any applicable preferences as follows:
 - (i) Local Non-Profits shall complete a self-attestation form verifying that they meet this Chapter’s definition of “Local Non-Profit.”

- (ii) Small and Micro Non-Profits shall provide IRS Form 990 demonstrating their gross annual revenue to match the definitions of "Small and Micro Non-Profit" organizations.

The County shall have the sole discretion to determine whether satisfactory proof of eligibility for a preference has been provided. In addition to any other penalties provided by law, any business that falsely claims a preference pursuant to this Chapter shall be ineligible for consideration for County contracts for a period of not less than one year from the date of discovery of the false certification.

2.89.050 Exemptions.

This Chapter shall not apply in the following circumstances:

- (a) The award of contracts for public works, as defined in the California Public Contract Code.
- (b) Where such a preference is preempted by local, state, or federal law or regulation.
- (c) The award of contracts funded in whole or in part by a grant, donation, or gift to the County where the conditions attached to the grant, donation, or gift conflict with this Chapter.
- (d) The award of contracts where all bids or proposals received are from Non-Profit Organizations.
- (e) The award of contracts exempt from competitive solicitation requirements in accordance with County policy or other controlling legal authority.

2.89.060 Waivers.

The Board of Supervisors or Purchasing Agent may waive application of this Chapter 2.89, if its application with respect to any solicitation would result in an additional estimated cost to the County that exceeds \$10,000, as compared to the amount for which the relevant goods and/or services would otherwise be procured without the award of any preferences, or if it is determined that the best interests of the County would be served by waiving application of this Chapter. For contracts that require approval by the Board of Supervisors, any such waiver must be approved by the Board of Supervisors. For other contracts, such waiver must be approved by the County Purchasing Agent or designee.

2.89.070 Powers and Duties of County Purchasing Agent.

The County Purchasing Agent shall have the authority to do the following:

- (a) Establish standards, procedures and policies for carrying out this Chapter.
- (b) Receive notification of, investigate, and determine fraudulent proof of eligibility for preferences pursuant to this Chapter.
- (c) Terminate all or part of any contract entered into with any business determined to have falsely claimed to be eligible for a preference described in this Chapter.
- (d) Perform such other duties as may be required or which are necessary to implement the purposes of this Chapter.

2.89.080 No Private Right of Action.

This Chapter does not create a private right of action or provide a statutory or other basis for a claim for damages or other relief against the County or any of its officers or employees.

2.89.090 Severability.

If any provision of this Chapter or application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of this Chapter that can be given effect without application of the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable. This Chapter shall be liberally construed to achieve the purposes of this Chapter and to preserve its validity. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

2.89.100 Effective Date.

This Ordinance shall be effective July 1, 2025.

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