

From: Hardy, William P (Pat)
Sent: Friday, January 23, 2015 12:01 PM
To: dtomita@johnsoncitytn.org
Subject: Answer to your Question

David,

We don't know of a city that has formally adopted exactly what you are suggesting as a policy. However, we get calls all the time from cities who do something like this on an informal basis. But in all cases, whatever you do must comply with the law, which states that the awarded bid must be the "...lowest and most acceptable." On occasion, using a local criteria for purchases can probably be considered as a part of the "...most acceptable" terminology, especially if there were secondary criteria such as "responsiveness when called for service." But remember, the bid law exists to provide the Board an informed choice, and competition when bidding is part of that.

Attached is an Attorney General (AG) opinion which strongly suggests that "local preference" is not legal. Also please be aware, I can't find it but I'm reasonably sure there is a prohibition against using "local preference" when purchasing with federal funds (and this is reflected in the example below). The AG opinion appears to apply to cities under the 1983 Purchasing Act. I don't know if Johnson City is under that Act (your Code, Section 5-101, references a Purchasing Policy which may supplant the 1983 Purchasing Act), but in any event I would bet the basics of the AG opinion would probably apply to other purchasing policies as well.

The cities of Norris and Bristol have done something akin to what you are suggesting but without violating the intent of the purchasing law. Here's the language they use in their policies:

Preference to Local Dealers:

When buying supplies, materials, equipment and services for the City's requirements, preference shall be given dealers who have stores or warehouses within the City when price, quality, delivery, and service are equal. Notwithstanding the foregoing, geographic preference shall not apply to procurements utilizing federal funds.

Please note, this policy does not extend a 5% preference, as you are suggesting, but does lean toward local preference when all else is equal. This seems to comply with the law and yet extend the message that the City desires to purchase local.

Sincerely,

Pat Hardy