



# County of Santa Cruz

## BOARD OF SUPERVISORS

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THIRD DISTRICT

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JEFF ALMQUIST  
FIFTH DISTRICT

AGENDA: 5/25/99

May 19, 1999

BOARD OF SUPERVISORS  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

RE: LOCAL HIRE ORDINANCE

Dear Members of the Board:

As Board members are aware, for years the County has suffered from higher than average levels of unemployment. The problem is particularly severe in South County. The Board of Supervisors has consistently supported efforts to increase the hiring opportunities of our locally unemployed residents. In light of this commitment, it seems counterproductive for County tax dollars to be spent on capital projects to pay the wages of workers imported from other counties, when contractors hiring local workers could do the job at a comparable cost. In addition, local workers spend their paychecks in the local economy.

In recent years, a number of jurisdictions have adopted local hire ordinances to encourage the hiring of local workers on their capital construction projects. Locally, the cities of Watsonville, Santa Cruz and Monterey, and the County of Monterey, have adopted such ordinances.

Attached is a draft local hire ordinance for our County. County Counsel has reviewed the ordinance. To summarize, it provides that contractors and their subcontractors who submit bids on County capital projects make a good faith effort to hire at least 50% of their workers from the Monterey Bay Area. Attached, also, is background material on the proposed ordinance.

In our view, the adoption of a local hire ordinance is both reasonable and desirable. The proposed ordinance is consistent with case law and treats contractors fairly while attempting to encourage the hiring of local workers for County construction jobs funded by County tax dollars.

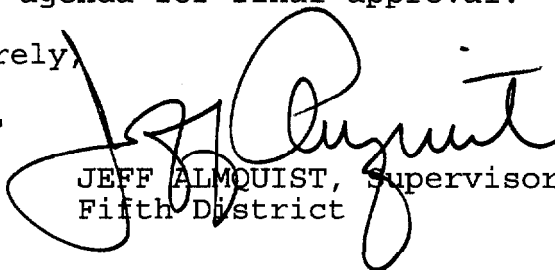
May 19, 1999  
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Therefore, we recommend that the Board of Supervisors adopt the attached local hire ordinance and direct County Counsel to return the ordinance to the Board's next agenda for final approval.

Sincerely,



MARDI WORMHOUDT, Supervisor  
Third District



JEFF ALMQUIST, Supervisor  
Fifth District

MW:JA:lg  
Attachments

cc: Allyne Hammer

1044H3

**Allyne Hammer, TWB Consulting Services**

Watsonville, CA 95076 \*\*\* phone/fax (408) 728-4343 \*\*\* gohammer@cruzio.com

TO: Susan Mauriello, CAO  
County of Santa Cruz

FROM: Allyne Hammer

DATE: June 3, 1998

SUBJECT: **Local** Hire Ordinance .....

I am writing on behalf of the Building/Construction Trades Council of Monterey/Santa Cruz Counties. I am asking you to revisit the issues of the County adopting a local hire ordinance. Since the last time I approached you with this idea, the county of Monterey has also adopted a similar ordinance.

As you know, the City/County of San Francisco has had a Local Hire Ordinance in place since 1989. In 1991 their ordinance was challenged in court and San Francisco prevailed. Associated General Contractors of California, Inc. v. City & County of San Francisco #748 fed.Supp.1443,cite950s.sec1401.1990

Although County Counsel cites City of Inglewood-L.A. County Civic Center Auth. v. Superior Court (1972) 7 Cal.3d 861,867 as their source for defining "lowest responsible bidder" as the *lowest* monetary **bidder**, we strongly disagree with that interpretation. Below I have provided case law to the contrary.

- ◆ Associated Builders and Contractors, Inc. v. San Francisco Airports Commission #97 Daily Journal D.A.R. 13933 S.F. Superior Court First Appellate District 1997
- ◆ Rubio v. Lolli (1970) 10 Cal.App.3d 1059, (1062)
- ◆ Ghilotti Construction Co. V City of Richmond (1996) 45 Cal.App.4th 897,903
- ◆ Domar Electric, Inc. v City of Los Angeles (1994) 9Cal.4th 161, 176
- ◆ Associates Builders and Contractors, Inc., Southern California Chapter v Metropolitan Water District of Southern California, Court of Appeal of State of California, Second Appellate District, Division 7 #B109426.

This ordinance would greatly benefit the county residents, local businesses, local workers and local government. The ordinance merely asks the contractors to make *a good faith effort* to hire 50% of the **workforce** locally. It is based solely on economic *need* and no preference is given in the ordinance. In addition, a similar ordinance has been challenged and did prevail in San Francisco in 1991.

In closing, I'm reminded of something I read recently that says that every dollar earned locally, goes **around** 7.2 times before it leaves the area.

**# 1****GUIDELINES FOR IMPLEMENTATION OF LOCAL HIRING ORDINANCE****PURPOSE:**

These administrative guidelines implement Santa **Cruz** County Code \_\_\_\_\_ Article \_\_\_\_.  
The terms used in these Administrative Guidelines shall be defined as in the Ordinance.

**PERSONS SUBJECT TO GUIDELINES:**

These guidelines apply to all contractors and subcontractors who provide labor or materials for any Public Works contract that is subject to competitive bidding requirements, unless prohibited by state or federal law.

**LOCAL HIRING GOAL:**

The contractor shall make a good faith effort to hire qualified individuals, including any subcontractor's work force, who are residents of the Monterey Bay Area, so that no less than 50% of the contractor's total construction workforce, including any subcontractor work force, measured in labor work hours, shall be comprised of Monterey Bay Area residents. The documentation required by these Guidelines is intended to show the contractor's, and subcontractor's, good faith efforts towards that goal.

**PERSONS WHO ARE LOCAL HIRES:**

The local hiring goal applies to any "qualified individual" who is in a certified state or federally approved apprenticeship program in an applicable trade or has become a journeyman in his or her applicable trade with 5 years experience or more." In order to be considered a "local hire" each qualified individual must either:

1. Reside in the Monterey Bay Area ( Santa **Cruz**, Monterey, and San Benito Counties) prior to the advertisement of the competitive bid on the Public Works contract, or,
2. Be hired through a local hiring hall that has jurisdiction over all or part of the Monterey Bay Area.

**GOOD FAITH EFFORT:**

A good faith effort on the part of the contractor or subcontractor shall include a review of the current local hire requirements and existing staffing for compliance with the requirements. If they are not in compliance, or need to do additional hiring for the project, the contractor or subcontractor shall, at a minimum, perform all of the following hiring and documentation efforts:

1. Advertise for qualified Monterey Bay Area residents in trade papers and newspapers that have a general circulation within the area;

2. Contact local recruitment sources to identify qualified individuals who are Monterey Bay Area residents (*Public Works Administration shall maintain a **List of Potential Local Hire Recruitment Sources** in the Public Works office for review by any interested party. This list shall not be considered a complete record of all sources, but rather a catalogue of contacts that may provide referral numbers for assisting contractors in meeting their local hiring obligations. The list shall be updated periodically.*); and

3. Document and submit all efforts to meet the ordinance requirements on forms available in the Bid documents and at the Santa Cruz County Public Works Department.

#### NOTICE TO SUBCONTRACTORS:

The contractor shall include in all contracts with subcontractors on County Public Works contracts the language required by Santa Cruz County Code Section \_\_\_\_.

#### REQUIRED DOCUMENTATION:

The contractor and/or subcontractor shall complete all of the following documents and submit them within the time specified:

##### 1. Statement Of Good Faith For Local Hire

Every contractor participating in a competitive bid on a Public Works contract shall include a completed and signed Statement of Good Faith for Local Hire form which will be supplied in the bid documents. If at any time during the term of the contract additional employees or subcontractors are hired for the project, a revised Statement of Good Faith For Local Hire form shall be completed, signed, and submitted, including any additional employees or subcontractors, with the weekly prevailing wage statement as required in the plans and specifications of the project for the week immediately following the addition of employees or subcontractors.

##### 2. Local Hiring Residency Compliance Form

During the term of the contract, a Local Hiring Residency Compliance Documentation form shall be completed, signed and submitted with each weekly prevailing wage statement as required in the plans and specifications of the project.

#### TRACKING AND MONITORING:

At the time of bid opening, all documents and contract language required in the proposal and agreement shall be checked for compliance with this Article. Any subcontractors listed in the proposal shall also have their contract submissions checked for the appropriate documentation and language at that time. The County employees opening the bids shall also determine whether the names of any contractors, subcontractors, or bidders have been disqualified by the County and are not authorized to perform County contracts. If any bidder or subcontractor fails to comply with the good faith local hiring provisions required by the ordinance in its bid submissions prior

to awards, the bidder shall be declared to be a non-responsive bidder by the County. *(reference to Local Hire Ordinance, Section \_\_\_\_)*

**ENFORCEMENT:**

If the inspector and/or Public Works contract administrator for the project have cause to believe there have been violations the Local Hiring Ordinance, or any other term of the contract, there shall be an investigation of the issue. Should the investigation show that violations have occurred, a written Finding of Noncompliance can be presented to the contractor and subsequently to the Board, along with a Declaration of Irresponsibility, asking the Board to support the findings and issue the Declaration. The contractor shall be notified at least 10 calendar days prior to the Board meeting and has the right to appeal the findings to the Board. *(reference to Local Hire Ordinance, Section \_\_\_\_)*

**CONFLICT:**

In the event of a conflict between the requirements of these Guidelines and the local Hiring Ordinance, the terms of the ordinance shall prevail.

### STATEMENT of GOOD FAITH EFFORT for LOCAL HIRE

In conformance with Article \_\_\_\_ in Chapter \_\_\_\_ of the Santa **Cruz** County, \_\_\_\_ each Contractor and Subcontractor shall complete and submit this Statement of Good Faith Effort for Local **Hire** to the County **following Award of Contract and prior to issuance of the Notice to Proceed.**

Project Title \_\_\_\_\_ No. \_\_\_\_\_ For Pay Period Ending \_\_\_\_\_

Contractor (or Subcontractor): \_\_\_\_\_ Lic # \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name & Address of Local Recruitment source	Date of Recruitment	Person Contacted & phone #	Trade & Classification	# Hire Referrals Requested	# of Local Hire(s) Made as Result of Contact	Name & Address of Local Hire(s) as a Result of Contact

### LOCAL HIRING RESIDENCY COMPLIANCE MONITORING FORM

In conformance with Article \_\_\_\_ in Chapter \_\_\_\_ of the Santa Cruz County, \_\_\_\_ each Contractor and subcontractor shall complete and attach this Local Hiring Residency Compliance Monitoring Form to each weekly prevailing wage statement as they are submitted to the County.

Project Title \_\_\_\_\_ No. \_\_\_\_\_ For Pay Period Ending \_\_\_\_\_

Contractor (or Subcontractor): \_\_\_\_\_ Lic # \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name & Address of Local Hire	Date of Hire	Trade & Classification	Estimated work hours on job	# of hours worked on the job	Last Day Worked

This is a brief response to issues that sometimes arise when the idea of a Local Hire Ordinance is first introduced.

1. Will this Ordinance cost the County more money if contractors hire locally?

***Absolutely not. The wages are the same no matter where the workers reside and no matter where the contractor is based. This ordinance merely asks contractors, regardless of where they are based, to make a good faith effort to hire %50 of their workforce locally. This does not affect the cost of the job. It is only fair to local residents, local businesses, local workers and local government if that an attempt be made to help that public money be spent locally.***

2. What is the legal definition of **the** term **Lowest Responsible Bidder** and is this ordinance legal in light of that definition?

***See section # 4 of this packet with lists and explanations of case law that answer this question. In addition to that list, Z also direct you to an enclosed document prepared by Assistant County Counsel Pamela Fyfe, dated December 11, 1996, page 2 where she writes:***

***"Although the Public Contract Code does not define the word "responsible", the courts have given us some guidance in this area. The California Supreme Court stated the term "responsible" includes the attribute of trustworthiness, ... [and] also has reference to the quality, fitness and capacity of the low bidder to satisfactorily perform the proposed work." (City of Inglewood-L.A. County Civic Center Aufh. V. Superior Court [1972] 7 Cal. 3d 861. 867).***

3. Can the County enact this ordinance and still comply with Public Utilities Code 20128, which requires the Board to award the contract to the Lowest Responsible Bidder?

***Definitely. This ordinance only asks the contractor who is awarded the bid, to make a good faith effort to hire % 50 of his or her workforce locally. It in no way interferes with the awarding of the bid. The bid is still awarded to the Lowest Responsible Bidder, as defined by both the Public Utilities Code § 20128 and existing case law.***

4. Does this ordinance establish preferences ?

***No. This ordinance does not give any preference to a contractor based on the location of his or her place of business nor is any preference given in favor of a local vendor. After the bid is awarded to the Lowest Responsible Bidder, the ordinance asks the contractor to make a good faith effort to hire %50 of his or her workforce locally.***

***This is an economic based ordinance. Economic findings are entered into the text of the ordinance speaking to the economic need of this ordinance. It asks that contractors receiving local money, make an effort to hire just a portion of his or her workforce locally, so some of that public money may be spent locally. This is only fair to local residents, local businesses, local workers and local government.***



**Local agencies** that have similar ordinances in place.

1. County of Monterey
2. City of Salinas
3. City of Marina
4. Fort Ord Reuse Authority, Procurement Code
5. County/City of San Francisco
6. City of Watsonville
7. City of Santa **Cruz**
8. City of Monterey, on agenda May, '99
9. City of Sand **City**, on agenda May '99

For your information, I have put together a list of existing case law that speaks to the issue of the term ***Lowest Responsible Bidder***. Below that you will find a definition of ***Lowest Responsible Bidder*** as well as an explanation of each case.

- West v. Oakland 30 Cal.App.556 (1916)
- Rubio v. Lolli 10 Cal.App.3d 1059, (1970)
- City of Inglewood-LA, County Civic Center Auth. V. Superior Court 7 Cal.3d 861 (1972)
- Associated General Contractors of California, Inc. v. City & County of San Francisco 748 Fed.Supp. 1443 (N.D.Cal1990)
- Domar Electric, Inc. v City of Los Angeles(1994) 9 Cal.4th 161, 176 (1994)

### **Definition:**

Parties have often judicially contested the meaning of *lowest responsible bidder*. The earliest such attempt to interpret the phrase, is one still frequently quoted. It is written by Justice Richards in West v. Oakland 30 Cal.App.556 (1916). The phrase ***lowest responsible bidder*** encompasses significantly more than the lowest arithmetic bidder. By this Case Law, the term has been held to mean the lowest ***bidder whose offer best responds in quality, fitness, and capacity to the particular requirements of the proposed work.***

### **Case Law:**

In Domar Electric? Inc. v City of Los Angeles 9Cal.4th 161, 176, (1994) a disqualified bidder argued that its failure to comply with a Los Angeles City Subcontractor outreach program should not have precluded its bid because the requirement conflicted with Los Angeles City Charter §6.02.362 requiring contracts be awarded to the lowest and best regular responsible bidder". In this case the Supreme Court held that a requirement that a bid be let to the lowest responsible bidder means ***a bidder who submits the lowest monetary bid and is qualified to do the job.***

In City of Inglewood-LA, County Civic Center Auth. v. Superior Court 7 Cal.3d 861 (1972) the Court noted the term ***responsible*** connotes an attribute of trustworthiness and also references the ***"quality", fitness, and capacity of the low bidder to satisfactorily perform the proposed work.***

In Rubio v. Lolli 10 Cal.App.3d 1059, (1970) the Court ruled that an award of a competitively bid contract is within the sound authority of the contract authority and will only be overturned where evidence shows that the entity's actions were "arbitrary, capricious, entirely lacking in evidentiary support or inconsistent with proper procedure."

Included in these ordinances are findings of high rates of unemployment and underemployment in the local and surrounding labor market, *demonstrating that the local agency did not act arbitrarily or capriciously.*

In 1991, the City/County of San Francisco's Local Hire Ordinance was challenged in court and San Francisco prevailed. Associated General Contractors of California, Inc. v. City & County of San Francisco §748 Fed.Supp. 1443, (N.D.Cal 1990). The court ruled that both state law and San Francisco's Administrative Code defined **lowest reliable and responsible bidder** as either individually or collectively, including the virtue of timely completion of the contracted work. This ruling found their awarding of the bid to be in compliance with the competitive bidding regulations.

## ORDINANCE NO.

**ORDINANCE ADDING CHAPTER 2.33 TO THE  
TO THE SANTA CRUZ COUNTY CODE RELATING TO  
THE HIRING OF LOCAL RESIDENTS  
ON COUNTY PUBLIC WORKS PROJECTS**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

## SECTION I

The Santa Cruz County Code is hereby amended by adding Chapter 2.33 to read as follows:

## LOCAL HIRING FOR PUBLIC WORKS PROJECTS

## Sections:

2.33.010	Findings and purpose
2.33.020	Definitions
2.33.030	Local hiring requirements
2.33.040	Required documentation
2.33.050	Forms submitted under penalty of perjury
2.33.060	Binding on subcontractors
2.33.070	Declaration of non-responsive bidder
2.33.080	Declaration of irresponsibility
2.33.090	Finding of noncompliance
2.33.100	Disqualification
2.33.110	Contracts, bid documents, subcontracts
2.33.120	Bid protests
2.33.130	Appeals
2.33.140	Appeal time limits
2.33.150	Initiation of appeals
2.33.160	Appeal procedure
2.33.170	Rules and regulations

### 2.33.101 Findings and purpose.

A. Findings. The Board of Supervisors of the County of Santa Cruz finds and declares as follows:

1. The annual average unemployment rates in Santa Cruz County are consistently higher than in California as a whole. Seasonal impacts from the agricultural, retail and visitor serving industries in the County lead to a fluctuating unemployment rate throughout the year. This points to the need for economic diversification to provide more year-round employment for County residents.

2. The Santa Cruz County economy is characterized by small, locally owned and operated firms. The State estimates over 80% of county businesses employ less than 20 people. In the construction sector, a majority of the firms are very small; approximately 75% have less than 5 employees.

3. The State reports that construction firms in Santa Cruz County employ about 4,000 people and generate about \$30 million in payroll to the Monterey Bay economy. But compared to statewide averages, the County has a lower concentration of jobs in construction.

4. Given the high cost of living in Santa Cruz County, a single parent with two children, one in elementary school, the other pre-school age, would need to earn a wage in excess of \$17 per hour, full time, to no longer need government subsidies. The construction industry can provide a family supporting wage. Statewide, the average hourly wage is in excess of \$20 per hour for construction workers.

B. Purpose. The purpose of this chapter is to encourage contractors who receive County public works contracts to hire residents of the Monterey Bay Area in order to provide job opportunities to County residents, expand the County's employment base, and lessen the drain on public assistance resources caused by high unemployment.

### 2.33.020 Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

A. "Contractor" means any person or entity, which, pursuant to a written agreement or purchase order, provides labor or materials on public works projects for the County.

B. "Days" means calendar days unless otherwise specified.

C. “Qualified Individual” means an individual who is in a certified state or federally approved apprenticeship program in an applicable trade or has become a journeyman in his or her applicable trade. A journeyman shall demonstrate proof of five years experience in each applicable trade by declaring under penalty of perjury that his or her sworn statement of experience is complete and correct.

D. “Monterey Bay Area” means Santa Cruz County, Monterey County and San Benito County.

E. “Public works project” means any project of the County of ten thousand dollars or more which is required by Section 2.35.030B to be subject to formal bidding procedures.

F. “Resident of the Monterey Bay Area” means an individual who is domiciled within the boundaries of the Monterey Bay Area at the time of the opening of the bids for a project, who can verify his or her domicile upon request of the contractor or County by producing documentation such as rent/lease agreement, telephone and utility bills or payment bills, a valid California driver’s license or identification card, and/or any other similar, reliable evidence that verifies that the individual is domiciled within the Monterey Bay Area. A worker who is a building trade journeyman or building trade apprentice whose local hiring hall has jurisdiction over the Monterey Bay Area is also deemed a resident of the Monterey Bay Area.

G. “Subcontractor” means any person or entity, which, pursuant to an agreement or purchase order with a County contractor or another subcontractor, participates in the provision of labor or materials on public works projects for the County.

#### 2.33.030 Local hiring requirements.

Unless such provision would conflict with a state or federal law regulation applicable to a particular contract for a public works project, all County contractors for a public works project shall contain provisions pursuant to which the contractor promises to make a good faith effort, with the assistance of local labor union hiring halls, to hire qualified individuals who are residents of the Monterey Bay Area in sufficient numbers so that no less than 50 percent of the contractor’s total construction work force, including any subcontractor work force, measured in labor work hours is comprised of Monterey Bay Area residents.

#### 2.33.040 Required documentation.

A. The contractor shall keep an accurate record on a standardized form showing the name, place of residence, trade classification, hours employed, proof of

journey person or apprenticeship status, per diem wages and benefits of each person employed by the contractor, and the contractor's subcontractors, on the specific public works project, including full-time, part-time, permanent and temporary employees, and make such records available to the County, upon request, within five working days.

B. The contractor shall keep, and provide to the County, on forms acceptable to the County, an accurate record documenting compliance with this chapter. Said records shall include: a listing by name and business address of all local recruitment sources contacted by the contractor, the date of the local recruitment contact and the identity of the person contacted, the trade and classification and number of hire referrals requested, the number of local hires made as a result of the contact, the identity of the business address of the person(s) hired pursuant to the contact.

**2.33.050** Forms submitted under penalty of perjury.

All forms required under this chapter shall be attested to as true as to the information set forth therein and shall be submitted under penalty of perjury.

**2.33.060** Binding on subcontractors.

A. The good-faith local hiring provisions of this chapter shall bind the contractor both with respect to persons hired directly by the contractor and to all persons hired by the contractor's subcontractors. The contractor shall be responsible for assuring that all subcontractors document said compliance by submitting the forms required by Section 2.33.040 to the County.

B. The contractor shall include the following language and a copy of this ordinance as may be amended from time to time in all contracts with the contractor's subcontractors: "This contract is for labor or materials for a County of Santa Cruz public works project. As a subcontractor on a County project, you are required to comply with all of the requirements of the Santa Cruz County local hiring preference ordinance, County Code Chapter 2.33, attached hereto and incorporated herein by reference. Failure to comply with the provisions of the local hiring preference ordinance may subject the contractor and/or subcontractor to disqualification from eligibility for County of Santa Cruz contracts.

**2.33.070** Declaration of non-responsive bidder.

Should any bidder or its subcontractor fail to comply with the good-faith local hiring provisions of this chapter, in its bid submissions prior to award, the bidder shall be declared by the County to be a non-responsive bidder.

### 2.33.080 Declaration of irresponsibility.

Where a County contractor or subcontractor has failed, or the County has cause to believe a bidder shall fail, to abide by a material term of the County contract, applicable prevailing wage laws called for by the contract, other applicable laws governing labor standards or working conditions, any of the provisions of this chapter applicable to contractors or subcontractors, or any of the other provisions of the Code which expressly reference the sanctions provided for in this chapter, said contractor, subcontractor or bidder pursuant to procedures outlined in Section 2.33.090, shall be declared an irresponsible contractor.

### 2.33.090 Finding of noncompliance.

If the County department head with responsibility for contract administration has cause to believe that any contractor or subcontractor has violated this chapter or that any bidder shall not perform the contract in compliance with this chapter, the department head may conduct an investigation. If, upon investigation, the department head determines that evidence exists to conclude that a violation of this chapter has occurred, or that cause exists to indicate a bidder will fail to perform the contract, the department head, after consultation with the County Administrative Officer or his or her designee, shall make a written Finding of Noncompliance which shall include a declaration of irresponsibility. The written Finding of Noncompliance shall provide the contractor, subcontractor or bidder with an opportunity to appeal the Finding of Noncompliance to the County Board of Supervisors in accordance with Section 2.33.130 et seq. of this Code. If the Board concurs with the Finding of Noncompliance, it shall affirm that finding along with the declaration of irresponsibility contained therein. The decision of the County Board of Supervisors shall be final.

### 2.33.100 Disqualification.

Any contractor, subcontractor or bidder declared to be irresponsible pursuant to the provisions of this chapter shall be disqualified from eligibility for providing goods, labor, materials or services to the County for a period of one year for the first violation and three years for a second, with a right of review and reconsideration by the County Board of Supervisors after two years upon a showing of corrective action indicating violations are not likely to occur.

### 2.33.110 Contracts, bid documents, subcontracts.

A. Contracts and bid documents shall incorporate this chapter by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of contract or subcontract.



B. Contracts and bid documents shall require bidders, contractors and subcontractors to maintain and submit records necessary for monitoring their compliance with this chapter.

#### 2.33.120 Bid protests.

Any contractor who has submitted a bid but is not apparent lowest responsible bidder on a County contract may file a protest. The bid protest shall be filed with the County Clerk within three working days of the bid opening. The County Board of Supervisors shall hear the bid protest prior to the execution of the contract. The protesting party may protest the bid award for the County's or successful bidder's failure to comply with the requirements of this chapter, the bid documents or any other applicable provision of this Code. The Board shall sustain a bid protest only if it finds evidence that award of the bid would violate the Code or other applicable law. The decision of the Board shall be final.

#### 2.33.130 Appeals.

To avoid results inconsistent with the purposes of this chapter, decisions of the department head or County Administrative Officer, other than bid protests which are heard separately under Section 2.33.120 may be appealed by the affected contractor to the County Board of Supervisors.

#### 2.33.140 Appeal time limits.

A. Appeals by Contractor. Appeals of decisions shall be initiated within ten days of the decision. The County shall be considered an interested party.

B. Time Limits. When the appeal period ends on a day when the County offices are not open to the public for business, the time limits shall be extended to the next full working day.

#### 2.33.150 Initiation of Appeals.

A. Filing of Appeals. An appeal shall be filed with the Clerk of the Board of Supervisors on a form provided and shall state, as appropriate, any of the following:

1. A determination or interpretation is not in accord with the purpose of this chapter;
2. There was an error or abuse of discretion;

3. The record includes inaccurate information; or
4. A decision is not supported by the record.

B. Effect on Decisions. Decisions that are appealed shall not become effective until the appeal is resolved.

#### 2.33.160 Appeal procedure.

A. Appeal Hearing Date. An appeal shall be scheduled for a hearing before the Board within thirty days of the County's receipt of an appeal unless the contractor and County consent to a later date.

B. Notice and Public Hearing. An appeal hearing shall be a public hearing. Notice of the public hearing shall be mailed or delivered to the contractor within ten days.

C. Hearing. At the hearing, the Board shall review the record of the decision and hear testimony of the contractor and any other interested party.

D. Decision and Notice. After the hearing, the Board shall affirm, modify or revise the original decision. When a decision is modified or reversed, the Board shall state the specific reasons for modification or reversal. The Clerk of the Board of Supervisors shall mail notice of a County Board decision. Such notice shall be mailed to the contractor within five working days after the date of the decision and to any other party requesting such notice.

E. A decision by the Board regarding an appeal shall become final on the date the decision is announced to the public.

#### 2.33.170 Rules and regulations.

The County Administrative Officer shall prescribe rules, regulations and procedures relating to the application, administration and interpretation of the provisions of this chapter. The rules, regulations and procedures shall be consistent with the provisions of this chapter, and may specify forms to be used.

## SECTION II

**SEVERABILITY.** The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, provision, subsection, section or other portions of the ordinance, or the invalidity of the application thereof to

any person or circumstances, shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

### SECTION III

This ordinance shall take effect on the 3 1st day after the date of final passage.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 1999, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS  
 NOES: SUPERVISORS  
 ABSENT: SUPERVISORS  
 ABSTAIN: SUPERVISORS

\_\_\_\_\_  
 Chairperson of the  
 Board of Supervisors

Attest: \_\_\_\_\_  
 Clerk of the Board

APPROVED AS TO FORM:

  
 DWIGHT L. HERR, County Counsel

DISTRIBUTION: County Counsel  
 County Administrative Office  
 Public Works Department