

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES, AT CHAPTER 66, PROCUREMENT, TO CREATE SECTION 66-76 TO PROVIDE A LOCAL WORKFORCE REQUIREMENT FOR CITY CONSTRUCTION CONTRACTS; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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WHEREAS, the mission of the City of West Palm Beach includes partnering with the community to enhance the quality of life; and

WHEREAS, the vision of the City includes providing visionary and creative government leadership; and

WHEREAS, promoting the employment of City residents will benefit both the residents and the local economy;

WHEREAS, to achieve this objective without disrupting the procurement practice and priorities already in law, and in compliance with statute, the City Commission desires to amend the Procurement Code of the City of West Palm Beach to provide a local workforce requirement in City procurements for construction.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission hereby finds and determines that promoting the employment of City residents benefits the public welfare and local economy and serves a public purpose.

SECTION 2: The Code of Ordinances of the City of West Palm Beach is hereby amended at Chapter 66, Procurement, to create Section 66-75 – Local Workforce, which shall read as follows:

CHAPTER 66 - PROCUREMENT

ARTICLE IV – PROCUREMENT METHODS

Sec. 66-76. –Local workforce.

(a) Definitions. When used in this section, the following term is to be defined and construed as follows:

Local resident means a person who resides at a physical address within the city limits. A post office box or location at a postal service center shall not constitute a physical business address.

Road and right-of-way work means work in the city right-of-way related to road or public utilities construction, but does not include routine maintenance and minor tasks. Road construction does not include pavement patching, shoulder repair, pavement striping and other similar activities as determined by the procurement official.

(b) Application. The local workforce requirement shall be applicable to city construction contracts: 1) for utility work or road and right-of-way work; 2) with a contract price in excess of \$200,000; and 3) with an on-site labor component greater than or equal to 25% of the contract value.

(c) Local workforce requirement. Except where state or federal law, regulations, or grant requirements mandate to the contrary, and subject to reservations or limitations provided in state, federal, or city laws, regulations, or grant requirements, contractors for applicable utility work and road and right-of-way construction work shall employ a minimum of 15% of on-site labor, from persons residing within the municipal boundaries of the city. Determination of the local workforce participation may include employees of both the contractor and its subcontractors to meet the requirement. The city residency of the onsite labor component will be subject to verification by the city.

(d) Procurement specifications. The local workforce requirement shall be included in the procurement specifications and solicitations for all applicable construction contracts on which bids or proposals are solicited. The procurement specifications shall include a requirement that contractors and their subcontractors agree to produce all documents and records relating to payroll and compliance with this section upon request from the city.

(e) Job fair. For contracts with a contract price over \$1,000,000, the contractor shall be required to hold one job fair within the city for the purpose of encouraging local workforce participation.

(f) Verification. The contractor shall provide the names, addresses and employer of each local workforce employee and shall certify compliance with these local workforce requirements as a part of each pay application and invoice.

(g) *Waiver.* The application of the local preference to any particular contract award may be waived by the procurement official upon written determination by the procurement official, prior to the issuance of a competitive solicitation, that the requirements are not feasible for the specific solicitation and such waiver would be in the best interests of the city.

SECTION 3: The Code of Ordinance of the City of West Palm Beach is hereby amended at Chapter 66, Procurement, Article IV, Procurement Methods, at Section 66-71, Selection of respondent; Best Value, to include provisions regarding use of local workforce for applicable contracts, as a factor of best value.

Sec. 66-71. - Selection of respondent; best value.

(a) The selection of a respondent with whom to contract for a procurement solicitation shall be based on the best value to the city. The procurement official, after considering the recommendation of the selection committee, if applicable, shall select the bid, proposal, or response that will provide the best value to the city.

(b) Best value means the overall value to the city, in the city's sole discretion, as determined by consideration of the following:

- (1) Skill, workmanship, and experience demonstrated by the respondent in performing the same type of work or services as those sought by the city, or the experience, expertise, and quality of services demonstrated by the respondent for professional, consulting and other services;
- (2) Ability to meet the minimum qualifications or requirements of the procurement solicitation;
- (3) Adherence to specifications, the design, or the approach to the project or study, as applicable;
- (4) Respondent's capacity to perform in terms of personnel, equipment, facilities, licensing, and ability to meet time requirements and schedules;
- (5) Respondent's capacity to perform in terms of financial viability, ability to provide required insurance and business tax receipts, and bonding capacity, if applicable;
- (6) Prices, costs, or rates in relation to the goods, services, or construction sought to be procured, except as provided by CCNA and in compliance with the living wage program, as applicable; lowest price is not the determining factor for best value;
- (7) Life cycle costs of the goods, products, or equipment to be procured;
- (8) Respondent's past performance with the city and others;

- (9) Ability of respondent to efficiently and cooperatively work with city staff based on respondent's conduct;
- (10) Any other factor specific to the particular solicitation that is specifically described in the procurement solicitation document;
- (11) Compliance with the small business ordinance;
- (12) Any prior conviction for bribery, theft, forgery, embezzlement, falsification, or destruction of records, antitrust violations, honest services fraud or other offense indicating a lack of business integrity or honesty; any prior violation of the city's ethical standards; suspension or debarment by the city or another government entity; and
- (13) Impact to the local economy in comparison to other respondents; including compliance with sec. 66-76 regarding use of local workforce.
- (14) Compliance with the equal opportunity provisions of the procurement code.

SECTION 4: The Code of Ordinance of the City of West Palm Beach is hereby amended at Chapter 66, Procurement, Article IV, Procurement Methods, at Section 66-62, Invitation to Bid, subsection (n), Tie Bids, which shall not read as follows. The remainder of this section shall be unchanged.

Sec. 66-62. – Invitation to bid.

(n) *Tie bids.* In the event two or more bids tie for the determination of best value to the city, the procurement official will determine the best value by considering the following factors in the order below:

- (1) Service-disabled veteran business enterprise, pursuant to F.S. § 295.187;
- (2) Commitment to comply with the living wage program, if applicable;
- (3) Commitment to comply with the sec. 66-76 regarding use of local workforce, if applicable;
- (4) Certified small business;
- (5) Coin toss.

ORDINANCE NO. 4762-18

SECTION 5: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: Should any section or provision of this Ordinance or any portion, paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

SECTION 7: Authority is hereby granted to codify the text amendments set forth in Sections 2, 3 and 4 of this Ordinance.

SECTION 8: This Ordinance shall be effective for applicable procurement solicitations issued as of May 1, 2018.

FIRST READING THIS 29TH DAY OF JANUARY 2018.

SECOND READING AND PASSAGE THIS 12TH DAY OF FEBRUARY 2018.



ATTEST:

X *Hazeline F. Carson*
CITY CLERK
Signed by: Hazeline F Carson

**CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:**

X *Geraldine Muoio*
PRESIDING OFFICER
Signed by: Geraldine Muoio

**APPROVED AS TO FORM AND
LEGALITY:**

2/10/2018
X *Nancy Urcheck*
CITY ATTORNEY
Signed by: Nancy DeSimone Urcheck

