

ORDINANCE NO. 2020-24

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE BROWARD COUNTY BIDDING PREFERENCE FOR LOCAL VENDORS; AMENDING SECTIONS 1-74 AND 1-75 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); PROVIDING FOR INCLUSION OF PRINCIPAL PLACE OF BUSINESS IN THE EVALUATION CRITERIA FOR CERTAIN PROCUREMENTS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, the Broward County Board of County Commissioners (the "Board") has historically encouraged and recognized the investment in the local economy by local businesses that, on a day-to-day basis, perform a substantial component of their business at a physical location in Broward County;

WHEREAS, the Board has further encouraged and recognized certain local businesses that are also locally based businesses in that they not only perform a substantial component of their day-to-day business at a physical location in Broward County, but also maintain their principal place of business in Broward County;

WHEREAS, Section 1-74, et seq., of the Broward County Code of Ordinances (the "Code") includes three distinct preferences for local businesses: first, a "best and final offer" opportunity for local businesses to match or beat the low bid under certain circumstances; second, for certain procurements, a local business ranked within five percent (5%) of the highest-ranked nonlocal business may proceed to negotiations ahead of the highest-ranked nonlocal business; and third, a tiebreaker mechanism that breaks ties in favor of local businesses;

1 WHEREAS, in 2014, pursuant to Board direction, the Broward County
2 Purchasing Division implemented a fourth local preference as a matter of policy, namely
3 allocating locally based businesses up to five (5) points per evaluator as part of the
4 evaluation criteria scoring for certain competitive solicitations;

5 WHEREAS, the determination of the "principal place of business" of a locally
6 based business for purposes of the fourth local preference has historically been made
7 based upon certain attestations by the vendor and the "principal address" listed for the
8 vendor in the Florida Secretary of State Division of Corporations (sunbiz.org) records;

9 WHEREAS, the Board has determined that a vendor's principal place of business
10 should be consistently determined based upon objective factors that accurately reflect
11 the actual "nerve center" of the vendor rather than utilizing the principal address listed in
12 sunbiz.org as a determinative factor;

13 WHEREAS, the Board has determined that a fair, objective, and efficient manner
14 of determining the principal place of business of a local business is consideration of the
15 vendor's lease or ownership of the applicable real property, the primary business office
16 of the vendor's employees, and certain attestations by the vendor regarding the local
17 management and principal place of the business; and

18 WHEREAS, the Board desires to codify the fourth local bidder preference, clarify
19 and codify the method of determining the vendor's principal place of business, and
20 further clarify the applicable Code sections as provided below,

21
22 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
23 BROWARD COUNTY, FLORIDA:

Section 1. Section 1-74 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 1-74. Definitions.

Bid posting date means the first date on which the competitive solicitation to be awarded was advertised and available for competitive bidding by vendors.

(a) *Construction services* means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to a County facility or real property.

(b) *General services* means support services performed by an independent contractor vendor requiring specialized knowledge, experience, or expertise that includes, but is not limited to, pest control, janitorial, laundry, catering, security, lawn maintenance, and maintenance of equipment.

(c) *Goods* means, but is not limited to, supplies, equipment, materials, and printed matter.

Joint venture means a vendor that is composed of two (2) or more separate legal entities, each of which will be responsible for some of the work if awarded to the vendor.

(d) *Local business* means the vendor has a valid business tax receipt issued by Broward County continuously maintained, for at least the one (1) year prior to period immediately preceding the bid or proposal opening and posting date, a physical business address located within the limits of Broward County, listed on the vendor's valid business tax receipt issued by Broward County (unless exempt from business tax receipt requirements), in an area zoned for the conduct of such business, that the vendor owns or has the legal right to use and from which the vendor operates or and performs on a day-to-day basis business that is a substantial component of the goods or services being offered to Broward County in connection with the applicable

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competitive solicitation ("Local Business Location"). Firms that provide goods or services that are exempt from Broward County business tax receipt requirements Vendors shall be required to submit documentation, including the Broward County business tax receipt (unless exempt), to the county's satisfaction of the Director of Purchasing, demonstrating the physical business presence of the firm within the limits of Broward County for at least one (1) year prior to bid or proposal submission Local Business Location for the required duration. A Ppost Ooffice Bboxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be eligible for local preference, the vendor must provide a copy of the business tax receipt for the covered period prior to recommendation for award does not qualify as a Local Business Location.

(e) ~~Locally-headquartered~~ Locally based business means a local business as defined in this section that has a, for at least the one (1) year period immediately preceding the bid posting date, continuously maintained its principal place of business in Broward County at the Local Business Location.

(f) *Principal place of business* means the nerve center or center of overall direction, control, and coordination of the activities of the bidder vendor, from which the vendor's officers or principals direct, control, and coordinate the entity's day-to-day activities. If the bidder has only one (1) business location, such business location shall be considered its principal place of business. A vendor may not have more than one (1) principal place of business at a time. The "principal address" or other location(s) on file with the Florida Department of State Division of Corporations shall not be determinative of the vendor's principal place of business. To qualify as a locally based business, the vendor must submit written evidence (as further specified below) that it meets the following three (3) criteria, as determined by the Director of Purchasing:

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1 (1) Local Employees: Attestation that the Local Business Location is the
2 primary business address of the majority of the vendor's employees as of
3 the bid posting date, or that the majority of the work under the competitive
4 solicitation, if awarded to the vendor, will be performed by employees of
5 the vendor whose primary business address is the Local Business
6 Location;

7 (2) Local Management: Attestation that the vendor's management directs all
8 or substantially all of the day-to-day activities of the entity (such as
9 marketing, finance, accounting, human resources, payroll, and operations)
10 from the Local Business Location; and

11 (3) Single Principal Place of Business: Attestation that the vendor has not
12 claimed any other location as its principal place of business within the one
13 (1) year period immediately preceding the bid posting date.

14 ~~(g)~~ *Professional services* means advice, instruction, or specialized work from an
15 individual, firm, or corporation specifically qualified in a particular area field.
16 "Professional services" does not include those services procured pursuant to Section
17 287.055, Florida Statutes.

18 Section 2. Section 1-75 of the Broward County Code of Ordinances is hereby
19 amended to read as follows:

20 **Sec. 1-75. Local preference; procedure.**

21 Except where otherwise provided or prohibited by federal or state law or other
22 funding source restrictions, purchases of goods, general services, construction services,
23 or professional services under the Procurement Code shall give preference to local
24 businesses in the following manner:

 (a) Under a competitive bid solicitation, the following shall apply:

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 underscoring type are additions.

- 1 (1) If the low responsive and responsible bidder is not a local business or a
2 ~~locally-headquartered locally based~~ business, then the low responsive and
3 responsible bidder, any and all responsive and responsible local
4 businesses submitting a price within ten percent (10%) of the low
5 responsive and responsible bid, ~~the low bidder~~, and any and all
6 responsive and responsible ~~locally-headquartered locally based~~
7 businesses submitting a price within fifteen percent (15%) of the low
8 responsive and responsible bid, shall have an opportunity to submit a best
9 and final ~~bid~~ offer equal to or lower than the low responsive and
10 responsible bid.
- 11 (2) If the low responsive and responsible bidder is a local business but not a
12 ~~locally-headquartered locally based~~ business, then the low responsive and
13 responsible bidder, and any and all responsive and responsible ~~locally-~~
14 ~~headquartered locally based~~ businesses submitting a price within five
15 percent (5%) of the low responsive and responsible bid, ~~and the low~~
16 ~~bidder~~, shall have an opportunity to submit a best and final ~~bid~~ offer equal
17 to or lower than the low responsive and responsible bid.
- 18 (3) Award, if any, shall be made to the responsive and responsible bidder
19 offering the lowest best and final ~~bid~~ offer.
- 20 (4) For purposes of Section 1-75(a), a joint venture shall be deemed a local
21 business if more than fifty percent (50%) of the equity interests of the joint
22 venture are owned by one or more local businesses, and a joint venture
23 shall be deemed a locally based business if more than fifty percent (50%)
24 of the equity interests of the joint venture are owned by one or more
locally based businesses.

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1 (b) For all competitive solicitations in which objective factors used to evaluate
2 the responses from vendors are assigned point totals;

3 (1) Five percent (5%) of the available points (for example, five points of a total
4 100 points) shall be awarded to locally based businesses as follows:

5 a. The maximum points shall be awarded to each locally based
6 business and to each joint venture that is composed solely of
7 locally based businesses; and

8 b. For any other joint venture, points shall be awarded based upon the
9 proportion of locally based businesses' equity interests in the joint
10 venture (for example, if five points are available, a joint venture in
11 which locally based businesses compose fifty percent (50%) of the
12 equity interest would receive two and one-half points, and a joint
13 venture in which locally based businesses compose twenty-five
14 percent (25%) of the equity interest would receive one and one-
15 quarter points). The joint venture must attest in its submittal to the
16 proportion of equity interest in the joint venture owned by locally
17 based businesses.

18 (2) if, upon the completion of final rankings (technical and price combined, if
19 applicable) by the evaluation committee, a ~~non-local business~~ nonlocal
20 vendor is the highest-ranked proposer vendor and the ranking of a one or
21 more local proposer is ~~businesses are~~ within five percent (5%) of the
22 ranking total points obtained by the ~~non-local proposer~~ nonlocal vendor,
23 the highest-ranked local proposer business shall have the opportunity to
24 be deemed to be the highest-ranked vendor overall, and the County shall
proceed to negotiations with the county that vendor. If impasse is

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1 reached, the County shall next proceed to negotiations with the next
2 highest-ranked local business that was within five percent (5%) of the total
3 points obtained by the nonlocal vendor, if any.

4 (c) Ties in the best and final bid shall be resolved in the following order:
5 ~~locally-headquartered~~ locally based business; ~~other~~ local business; other business. If
6 a tie still exists, then the tie may be broken using the tie ~~breaker~~ tiebreaker criteria in the
7 Procurement Code.

8 (d) A materially false representation or false attestation of a vendor regarding
9 its Local Business Location or principal place of business shall be good cause for
10 debarment or suspension by the Director of Purchasing under the Procurement Code.

11 Section 3. Severability.

12 If any portion of this Ordinance is determined by any court to be invalid, the
13 invalid portion will be stricken, and such striking will not affect the validity of the
14 remainder of this Ordinance. If any court determines that this Ordinance, in whole or in
15 part, cannot be legally applied to any individual, group, entity, property, or circumstance,
16 such determination will not affect the applicability of this Ordinance to any other
17 individual, group, entity, property, or circumstance.

18 Section 4. Inclusion in the Broward County Code of Ordinances.

19 It is the intention of the Board of County Commissioners that the provisions of
20 this Ordinance become part of the Broward County Code of Ordinances as of the
21 effective date. The sections of this Ordinance may be renumbered or relettered and the
22 word "ordinance" may be changed to "section," "article," or such other appropriate word
23 or phrase to the extent necessary in order to accomplish such intention.

24 Section 5. Effective Date.

 This Ordinance is effective as of the date provided by law.

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 underscoring type are additions.

1
2 ENACTED June 2, 2020

3 FILED WITH THE DEPARTMENT OF STATE June 4, 2020

4 EFFECTIVE June 4, 2020

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6 Approved as to form and legal sufficiency:
7 Andrew J. Meyers, County Attorney

8 By /s/ Fernando Amuchastegui 06/03/2020
9 Fernando Amuchastegui (date)
Assistant County Attorney

10 By /s/ René D. Harrod 06/03/2020
11 René D. Harrod (date)
Deputy County Attorney

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17 RDH/hb
18 Ordinance Amending Local Bidder Preference
06/03/2020
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