

PROPOSED

ORDINANCE NO. 2020-

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 bid" 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 Purchasing
2 Division implemented a fourth local preference as a matter of policy, namely allocating
3 locally based businesses up to five (5) points per evaluator as part of the evaluation
4 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 the
11 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 further
20 clarify the applicable Code sections as provided below,
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22 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
23 BROWARD COUNTY, FLORIDA:
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Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

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

3 **Sec. 1-74. Definitions.**

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

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

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

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

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

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

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

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

15 (f) ~~Principal place of business~~ means the nerve center or center of overall direction,
16 control, and coordination of the activities of the ~~bidder~~ vendor, from which the vendor's
17 officers or principals direct, control, and coordinate the entity's day-to-day activities. If the
18 ~~bidder has only one (1) business location, such business location shall be considered its~~
19 ~~principal place of business. A vendor may not have more than one (1) principal place of~~
20 business at a time. The "principal address" or other location(s) on file with the Florida
21 Department of State Division of Corporations shall not be determinative of the vendor's
22 principal place of business. To qualify as a locally based business, the vendor must
23 submit written evidence (as further specified below) that it meets the following four (4)
24 criteria, as determined by the Director of Purchasing:

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1 (1) Local Property: Vendor's ownership of or right to use the real property at
2 the Local Business Location as of the bid submittal date and for at least the
3 one (1) year period immediately preceding the bid posting date;

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

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

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

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

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

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 underscored type are additions.

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

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

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

7 (1) If the low responsive and responsible bidder is not a local business or a
8 ~~locally-headquartered~~ locally based business, then the low responsive and
9 responsible bidder, any and all responsive and responsible local
10 businesses submitting a price within ten percent (10%) of the low
11 responsive and responsible bid, ~~the low bidder~~, and any and all responsive
12 and responsible ~~locally-headquartered~~ locally based businesses submitting
13 a price within fifteen percent (15%) of the low responsive and responsible
14 bid, shall have an opportunity to submit a best and final bid equal to or lower
15 than the low responsive and responsible bid.

16 (2) If the low responsive and responsible bidder is a local business but not a
17 ~~locally-headquartered~~ locally based business, then the low responsive and
18 responsible bidder, and any and all responsive and responsible ~~locally-~~
19 ~~headquartered~~ locally based businesses submitting a price within five
20 percent (5%) of the low responsive and responsible bid, ~~and the low bidder~~,
21 shall have an opportunity to submit a best and final bid equal to or lower
22 than the low responsive and responsible bid.

23 (3) Award, if any, shall be made to the responsive and responsible bidder
24 offering the lowest best and final bid.

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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 locally
7 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 businesses are within five percent (5%) of the
22 ranking total points obtained by the ~~non-local proposer~~ nonlocal vendor, the
23 highest-ranked local proposer business shall have the opportunity to be
24 deemed to be the highest-ranked vendor overall, and the County shall

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

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

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

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13 Section 3. Severability.

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

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

22 It is the intention of the Board of County Commissioners that the provisions of this
23 Ordinance become part of the Broward County Code of Ordinances as of the effective
24 date. The sections of this Ordinance may be renumbered or relettered and the word

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1 "ordinance" may be changed to "section," "article," or such other appropriate word or
2 phrase to the extent necessary in order to accomplish such intention.

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Section 5. Effective Date.

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

PROPOSED

ENACTED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

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

By /s/ Fernando Amuchastegui 02/27/2020
Fernando Amuchastegui (date)
Assistant County Attorney

By /s/ René D. Harrod 02/27/2020
René D. Harrod (date)
Deputy County Attorney

RDH/hb
Ordinance Amending Local Bidder Preference
02/27/2020
#482488.13

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