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 EVALUATION OF PRINCIPAL PLACE OF BUSINESS FOR SUBSIDIARIES OF NONLOCAL ENTITIES; MODIFYING TIEBREAKER REFERENCES; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Beam Furr)

WHEREAS, recognizing the significant benefit to the local economy provided by businesses operating out of Broward County, the Broward County Board of County Commissioners (the “Board”) enacted an ordinance, Section 1-74, et seq., of the Broward County Code of Ordinances (the “Local Preference Ordinance”), providing three distinct procurement preferences for local businesses;

WHEREAS, some of those preferences are available only to local businesses that also maintain their “principal place of business” in Broward County;

WHEREAS, on June 2, 2020, the Board amended the Local Business Ordinance to, among other things, establish revised criteria by which a business’s principal place of business is determined, including identification of the business’s nerve center, which is the location from which the business’s officers or principals direct, control, and coordinate the business’s day-to-day activities;

WHEREAS, determining a business’s nerve center is more difficult when a controlling interest in the business is owned by another corporation or business entity (the “parent entity”);

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WHEREAS, the Board finds there is reduced benefit to the local economy when such parent entity does not have its principal place of business in Broward County, and that the locally based subsidiary of a nonlocal parent entity should therefore be eligible only for a reduced procurement preference; and

WHEREAS, the Board also desires to consolidate currently existing tiebreaker provisions into a single location in the Broward County Procurement Code rather than in multiple separate locations as currently codified,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF 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.

... Local business means the vendor has continuously maintained, for at least the one (1) year period immediately preceding the bid 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 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 competitive solicitation (“Local Business Location”). Vendors shall be required to submit documentation,
including the Broward County business tax receipt (unless exempt), to the satisfaction of
the Director of Purchasing, demonstrating the Local Business Location for the required
duration. A post office box does not qualify as a Local Business Location.

Locally based business means a local business as defined in this section that has,
for at least the one (1) year period immediately preceding the bid posting date,
continuously maintained its principal place of business at the Local Business Location,
and less than fifty percent (50%) of the total equity interests in the business are owned,
directly or indirectly, by one or more entities with a principal place of business outside of
Broward County.

Locally based subsidiary means a local business as defined in this section that
has, for at least the one (1) year period immediately preceding the bid posting date,
continuously maintained its principal place of business at the Local Business Location,
and at least fifty percent (50%) of the total equity interests in the business are owned,
directly or indirectly, by one or more entities with a principal place of business located
outside of Broward County.

Principal place of business means the nerve center or center of overall direction,
control, and coordination of the activities of the vendor, from which the vendor’s officers
or principals direct, control, and coordinate the entity’s day-to-day activities. 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 or a locally based subsidiary, 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:
(1) Local Employees: Attestation that the Local Business Location is the primary business address of the majority of the vendor’s employees as of the bid posting date, or that the majority of the work under the competitive solicitation, if awarded to the vendor, will be performed by employees of the vendor whose primary business address is the Local Business Location;

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

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

Notwithstanding anything else in this section, if fifty percent (50%) or more of the total equity interests in the vendor are owned, directly or indirectly, by one or more entities with a principal place of business located outside of Broward County, it shall be presumed that the vendor does not have its principal place of business in Broward County. Such vendor may rebut the presumption only by submitting clear and convincing written evidence to the Director of Purchasing demonstrating that the vendor’s principal place of business is located in Broward County.

. . .

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

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Sec. 1-75. Local preference; procedure.

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

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

(1) If the low responsive and responsible bidder is not a local business, a locally based subsidiary, or a locally based business, then the low responsive and responsible bidder, any and all responsive and responsible local businesses submitting a price within ten percent (10%) of the low responsive and responsible bid, and any and all responsive and responsible locally based subsidiaries or locally based businesses submitting a price within fifteen percent (15%) of the low responsive and responsible bid, shall have an opportunity to submit a best and final offer equal to or lower than the low responsive and responsible bid.

(2) If the low responsive and responsible bidder is a local business but not a locally based subsidiary or a locally based business, then the low responsive and responsible bidder, and any and all responsive and responsible locally based subsidiaries and locally based businesses submitting a price within five percent (5%) of the low responsive and responsible bid, shall have an opportunity to submit a best and final offer equal to or lower than the low responsive and responsible bid.

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(3) Award, if any, shall be made to the responsive and responsible bidder offering the lowest best and final offer. Ties shall be broken using the tiebreaker criteria in the Procurement Code.

(4) For purposes of Section 1-75(a), a joint venture shall be deemed a local business if more than fifty percent (50%) of the equity interests of the joint venture are owned by one or more local businesses, and a joint venture shall be deemed, in order of priority: a locally based business if more than fifty percent (50%) of the equity interests of the joint venture are owned by one or more locally based businesses; a locally based subsidiary if more than fifty percent (50%) of the equity interests in the joint venture are owned by one or more locally based subsidiaries or locally based businesses; and a local business if more than fifty percent (50%) of the equity interests in the joint venture are owned by one or more local businesses.

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

(1) Five percent (5%) of the available points (for example, five points of a total 100 points) shall be awarded to each locally based business and to each joint venture composed solely of locally based businesses, as follows:

   a. (2) The maximum Three percent (3%) of the available points shall be awarded to each locally based business subsidiary and to each joint venture that is composed solely of locally based businesses subsidiaries, as applicable; and

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b. (3) For any other joint venture, points shall be awarded based upon the respective proportion of locally based businesses' and locally based subsidiaries' equity interests in the joint venture (for example, if five points are available, a joint venture in which locally based businesses compose fifty percent (50%) of the equity interest would receive two and one-half points, and a joint venture in which locally based businesses compose twenty-five percent (25%) of the equity interest would receive one and one-quarter points). For example, if the equity interests in a joint venture are owned twenty percent (20%) by a locally based business, fifty percent (50%) by a locally based subsidiary, and thirty percent (30%) by a nonlocal business, the entity would be entitled to receive two and one-half percent (2.5%) of the available points (one percent for the locally based business and one and one-half percent for the locally based subsidiary). The joint venture must attest in its submittal to the proportion of equity interests in the joint venture owned by locally based businesses and locally based subsidiaries.

(2) If, upon the completion of final rankings (technical and price combined, if applicable) by the evaluation committee, a nonlocal vendor is the highest-ranked vendor and one or more local businesses are within five percent (5%) of the total points obtained by the nonlocal vendor, the highest-ranked local business shall be deemed to be the highest-ranked vendor overall, and the County shall proceed to negotiations with that vendor. If impasse is reached, the County shall next proceed to negotiations with the next highest-ranked local business that was within five percent (5%) of the total points obtained by the nonlocal vendor, if any.
(c) Ties in the best and final bid shall be resolved in the following order: locally based business; other local business; other business. If a tie still exists, then the tie may be broken using the tiebreaker criteria in the Procurement Code.

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

Section 3. Severability.

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

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

It is the intention of the Board of County Commissioners that the provisions of this Ordinance become part of the Broward County Code of Ordinances as of the effective date. The sections of this Ordinance may be renumbered or relettered and the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase to the extent necessary in order to accomplish such intention.
Section 5. **Effective Date.**

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

**ENACTED**

**FILED WITH THE DEPARTMENT OF STATE**

**EFFECTIVE**

PROPOSED

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

By /s/ Fernando Amuchastegui 08/24/2020
Fernando Amuchastegui (date)
Assistant County Attorney

By /s/ René D. Harrod 08/24/2020
René D. Harrod (date)
Deputy County Attorney