

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”);

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

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

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9 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
10 BROWARD COUNTY, FLORIDA:

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

14 **Sec. 1-74. Definitions.**

15 . . .

16 *Local business* means the vendor has continuously maintained, for at least the one
17 (1) year period immediately preceding the bid posting date, a physical business address
18 located within the limits of Broward County, listed on the vendor's valid business tax
19 receipt issued by Broward County (unless exempt from business tax receipt
20 requirements), in an area zoned for the conduct of such business, that the vendor owns
21 or has the legal right to use and from which the vendor operates and performs on a day-
22 to-day basis business that is a substantial component of the goods or services being
23 offered to Broward County in connection with the applicable competitive solicitation
24 ("Local Business Location"). Vendors shall be required to submit documentation,

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1 including the Broward County business tax receipt (unless exempt), to the satisfaction of
2 the Director of Purchasing, demonstrating the Local Business Location for the required
3 duration. A post office box does not qualify as a Local Business Location.

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

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

16 *Principal place of business* means the nerve center or center of overall direction,
17 control, and coordination of the activities of the vendor, from which the vendor's officers
18 or principals direct, control, and coordinate the entity's day-to-day activities. A vendor may
19 not have more than one (1) principal place of business at a time. The "principal address"
20 or other location(s) on file with the Florida Department of State Division of Corporations
21 shall not be determinative of the vendor's principal place of business. To qualify as a
22 locally based business or a locally based subsidiary, the vendor must submit written
23 evidence (as further specified below) that it meets the following three (3) criteria, as
24 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 the
5 vendor whose primary business address is the Local Business Location;
- 6 (2) Local Management: Attestation that the vendor's management directs,
7 controls, and coordinates all or substantially all of the day-to-day activities
8 of the entity (such as marketing, finance, accounting, human resources,
9 payroll, and operations) from the Local Business Location; and
- 10 (3) Single Principal Place of Business: Attestation that the vendor has not
11 claimed any other location as its principal place of business within the one
12 (1) year period immediately preceding the bid posting date.

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

20 . . .

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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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, a locally
8 based subsidiary, or a 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, and any and all responsive and responsible
12 locally based subsidiaries or locally based businesses submitting a price
13 within fifteen percent (15%) of the low responsive and responsible bid, shall
14 have an opportunity to submit a best and final offer equal to or lower than
15 the low responsive and responsible bid.

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

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

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

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

16 (1) Five percent (5%) of the available points (for example, five points of a total
17 100 points) shall be awarded to each locally based business and to each
18 joint venture composed solely of locally based businesses, ~~as follows:~~
19 applicable;

20 a. ~~(2)~~ ~~The maximum~~ Three percent (3%) of the available points shall be awarded
21 to each locally based ~~business~~ subsidiary and to each joint venture that is
22 composed solely of locally based ~~businesses~~ subsidiaries, as applicable;
23 and
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1 b. (3) For any other joint venture, points shall be awarded based upon the
2 respective proportion of locally based businesses' and locally based
3 subsidiaries' equity interests in the joint venture (~~for example, if five points~~
4 ~~are available, a joint venture in which locally based businesses compose~~
5 ~~fifty percent (50%) of the equity interest would receive two and one-half~~
6 ~~points, and a joint venture in which locally based businesses compose~~
7 ~~twenty-five percent (25%) of the equity interest would receive one and one-~~
8 ~~quarter points).~~ For example, if the equity interests in a joint venture are
9 owned twenty percent (20%) by a locally based business, fifty percent
10 (50%) by a locally based subsidiary, and thirty percent (30%) by a nonlocal
11 business, the entity would be entitled to receive two and one-half percent
12 (2.5%) of the available points (one percent for the locally based business
13 and one and one-half percent for the locally based subsidiary). The joint
14 venture must attest in its submittal to the proportion of equity interests in the
15 joint venture owned by locally based businesses and locally based
16 subsidiaries.

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

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1 (c) ~~Ties in the best and final bid shall be resolved in the following order: locally~~
2 ~~based business; other local business; other business. If a tie still exists, then the tie may~~
3 ~~be broken using the tiebreaker criteria in the Procurement Code.~~

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

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8 Section 3. Severability.

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

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

17 It is the intention of the Board of County Commissioners that the provisions of this
18 Ordinance become part of the Broward County Code of Ordinances as of the effective
19 date. The sections of this Ordinance may be renumbered or relettered and the word
20 “ordinance” may be changed to “section,” “article,” or such other appropriate word or
21 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.

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

RDH/FA/tb
Ordinance Amending Local Bidder Preference
09/03/2020
#527584.1

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