

MEMORANDUM

IMFR
Agenda Item No. 1(E)2

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 10, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance relating to local preference in the purchase of goods and services, creating additional preference for locally-headquartered businesses; providing definitions; amending Sec. 2-8.5 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Jean Monestime and Commissioner Lynda Bell, and Co-Sponsors Commissioner Esteban L. Bovo, Jr., Vice Chairwoman Audrey M. Edmonson, Commissioner Barbara J. Jordan, Commissioner Dennis C. Moss and Commissioner Rebeca Sosa.



R. A. Cuevas, Jr.
County Attorney

RAC/jls



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: June 5, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 4(B)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(B)

6-5-12

ORDINANCE NO. _____

ORDINANCE RELATED TO LOCAL PREFERENCE IN THE PURCHASE OF GOODS AND SERVICES, CREATING ADDITIONAL PREFERENCE FOR LOCALLY-HEADQUARTERED BUSINESSES; PROVIDING DEFINITIONS; AMENDING SECTION 2-8.5 OF THE CODE OF MIAMI-DADE COUNTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-8.5 of the Code of Miami-Dade County, Florida is hereby amended as follows:¹

Sec. 2-8.5. Procedure to provide preference to local business in county contracts.

(1) ***Definitions.***

- (a) *General services* means support services performed by an independent contractor 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.
- (b) *Goods* includes, but is not limited to, supplies, equipment, materials and printed matter.
- (c) *Local business* means the vendor has a valid >>business tax receipt<<~~[[occupational license]]~~ issued by Miami-Dade County at least one year prior to bid or proposal submission~~[[to do business within Miami-Dade County that authorizes the~~

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

~~business to provide the goods, services or construction to be purchased]], and a physical business address located within the limits of Miami-Dade County from which the vendor operates or performs business. >>Firms who provide goods or services which are exempt from Miami-Dade Business Tax Receipt requirements shall be required to submit documentation, to the County's satisfaction, demonstrating the physical business presence of the firm within the limits of Miami-Dade County for at least one year prior to bid or proposal submission. <<Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In addition to the foregoing, a vendor shall not be considered a "local business" unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base. Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid or proposal to be eligible for consideration as a "local business" under this section. A vendor who misrepresents the ~~Local Preference~~ status of its firm >>under this Section<< in a proposal or bid submitted to the County will lose the privilege to claim ~~local preference status~~ >>any preference under this Section<< for a period of up to one year. The County Manager, in his discretion, may also recommend that the firm be referred for debarment in accordance with Section 2-8.4.1 of the Code of Miami-Dade County.~~

>>(d) Locally-Headquartered Business means a Local Business as defined in this Section which has a Principal Place of Business in Miami Dade County.

(e) Principal Place of Business means the nerve center or the center of overall direction, control, and coordination of the activities of the bidder. If the bidder has only one business location, such business location shall be its principal place of business.<<

>>(f)<<[[~~(d)~~]] *Professional services* includes any services where the County is obtaining advice, instruction, or specialized work from an individual, firm, or corporation specifically qualified in a particular area.

- (2) ***Preference in purchase of personal property, general services, professional services, the purchase of or contract for construction or renovation of public works or improvements, and in the purchase of personal property, general services or professional services by means of competitive bid, request for proposals, qualifications or other submittals and competitive negotiation and selection.***

Except where federal or state law, or any other funding source, mandates to the contrary, Miami-Dade County and its agencies and instrumentalities, including the Public Health Trust, [shall give] preference to local businesses in the following manner:

- (a) *Competitive bid.* ~~[[When a responsive, responsible non-local business submits the lowest price bid, and the bid submitted by one or more responsive, responsible local businesses is within ten percent of the price submitted by the non-local business, then that non-local business and each of the aforementioned local businesses shall have the opportunity to submit, a best and final bid equal to or lower than the amount of the low bid previously submitted by the non-local business. Contract award shall be made to the responsive, responsible business submitting the lowest best and final bid. In the case of a tie in the best and final bid between a local business and a non-local business, contract award shall be made to the local business.]]~~ >>In any competitive bid process where award, if any, is to be made to the responsive and responsible bidder offering the lowest bid (the “Low Bidder” and “Low Bid” respectively), the following shall apply:

1. If the Low Bidder is a not a Local Business, then any and all responsive and responsible Local Businesses submitting a price within

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ten percent of the Low Bid, the Low Bidder, and any and all responsive and responsible Locally-Headquartered Businesses submitting a price within fifteen percent of the Low Bid, shall have an opportunity to submit a best and final bid equal to or lower than the Low Bid.

2. If the Low Bidder is a Local Business which is not a Locally-Headquartered Business, then any and all responsive and responsible Locally Headquartered Businesses submitting a price within five percent of the Low Bid, and the Low Bidder shall have an opportunity to submit a best and final bid equal to or lower than the Low Bid.
3. Award, if any, shall be made to the responsive and responsible bidder offering the lowest best and final bid.
4. Ties in best and final bid shall be resolved in the following order of priority: Locally Headquartered Business, Local Business, other business.
5. If no best and final bid is required in accordance with the provisions above, award, if any, shall be made to the Low Bidder.

In revenue producing contracts, where award, if any, is to be made to the bidder returning the highest amount to the County, the same preferences set forth above shall be applied by reference to the highest bid.<<

- (b) Request for proposals, qualifications or other >>qualitative<< submittals and competitive negotiation and selection. If, following the completion of final rankings (technical and price combined, if applicable) by the selection committee, a non-local business is the highest ranked proposer, and the ranking of a local proposer is within five percent of the ranking obtained by the non-local proposer, then the highest ranked local proposer

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shall have the opportunity to proceed to negotiations >>or advance to the next step in the solicitation process<< with the County under the applicable sections of this Code.

- (c) Professional services procured pursuant to Section 287.055, Florida Statutes. The application of local preference to professional services procured pursuant to Section 287.055, Florida Statutes shall be in accordance with the process outlined in Section 2-10.4 of the Code of Miami-Dade County.

If >>following the application of the rules above<<, a tie occurs between two (2) or more ~~[[local]]~~ businesses, then contract award on the basis of best and final bids (paragraph (a) above), or the opportunity to proceed to negotiations >>or advance to the next step in the solicitation process<< (paragraph (b) above), shall be made to such local business having the greatest number of its employees that are Miami-Dade County residents.

(3) ***Waiver of the application of local preference***

The application of Local Preference to a particular purchase or contract for which the Board of County Commissioners is the awarding authority may be waived upon approval of the Board of County Commissioners. The application of Local Preference to a particular purchase or contract for which the County >>Mayor<<~~[[Manager]]~~ is the awarding authority may be waived upon written recommendation of the Director of Procurement Management or successor and approval of the County >>Mayor<<~~[[Manager]]~~.

(4) ***Reserved.***

(5) ***Comparison of qualifications.***

The preferences established herein in no way prohibit the right of the Board of County Commissioners to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the County Commission from giving any other preference permitted by law instead of the preferences granted herein.

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(6) ***Reciprocity.***

In the event Broward, Palm Beach or Monroe County extends preferences to local businesses, Miami-Dade County may enter into an interlocal agreement with such County wherein the preferences of this section may be extended and made available to vendors that have a valid occupational license issued by Broward, Palm Beach or Monroe County to do business in that County that authorizes the vendor to provide the goods, services, or construction to be purchased, and a physical business address located within the limits of that County. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In addition to the foregoing, a vendor shall not be considered a "local business" unless it contributes to the economic development and well-being of Broward, Palm Beach or Monroe County, whichever is applicable, in a verifiable and measurable way. This may include, but not be limited to, the retention and expansion of employment opportunities and the support and increase to that County's tax base. Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid or proposal to be eligible for consideration as a "local business" under this section. In no event shall the amount of the preference accorded Broward, Palm Beach or Monroe County firms exceed the amount of preference that such County extends to Miami-Dade County firms competing for its contracts.

(7) ***Exemption of certain contracts.***

The provisions of this section shall not apply, and no local preference shall be accorded hereunder, to prime County or Public Health Trust construction contracts whose estimated cost is five million dollars (\$5,000,000.00) or less which have been set aside for competition solely for CSBEs (Community Small Business Enterprises) under Section 10-33.02 of this Code.

(8) *Implementation by certain County agencies.*

Miami-Dade County agencies and instrumentalities with the independent power to contract, such as the Public Health Trust, shall adopt rules and procedures implementing this Section. For the purposes of such rules and procedures, where this section provides the Board of County Commissioners with implementing authority, the Board of Trustees shall exercise such authority, and where this section provides the County Manager with authority, the President or Executive Director shall exercise such authority.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any Sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

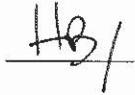
Section 4. This ordinance shall become effective within ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Hugo Benitez

Co-Prime Sponsors: Commissioner Jean Monestime
Commissioner Lynda Bell
Co-Sponsors: Commissioner Esteban L. Bovo, Jr.
Vice Chairwoman Audrey M. Edmonson
Commissioner Barbara J. Jordan
Commissioner Dennis C. Moss
Commissioner Rebeca Sosa