



MEMORANDUM

Date: January 6, 2026

To: Honorable Mayor and Commissioners

Via: Brian L. Barroso
City Manager

CC: Christina Bernaldi
Director of Finance

From: Lucas Torres-Bull
Procurement Manager

Subject: **File ID 25-4883 An Ordinance of the City Commission of the City of Key West, Florida, amending Section 2-798, Local Business Enterprise Preference, of the Code of Ordinances of the City of Key West, Florida, by repealing subsection (2) thereof; providing for severability; providing for repeal of inconsistent provisions; and providing for an effective date.**

Introduction

The purpose of this memorandum is to recommend a formal amendment to Sec. 2-798 of the City Code to remove the application of the Local Business Enterprise (LBE) preference from the Request for Proposals (RFP) process. This recommendation is based on operational challenges, legal risks, compliance constraints, and conflicts between the current ordinance language and the best-value evaluation structure of an RFP.

Background

Sec. 2-798 establishes a local business enterprise preference that may be applied to competitive bids, general services, professional services, and RFPs. Specifically, subsection (b)(2) requires

Procurement to allow a qualifying local proposer the opportunity to match the price of the highest-ranked proposer if their evaluation score is within five percent of the top score.

While this provision may function appropriately within price-driven solicitations such as invitations to bid, its application within an RFP—where award is based on weighted evaluation criteria—creates significant procedural conflicts and risks. For these reasons, Procurement recommends amending the ordinance to **exclude RFPs** from the local preference mechanism.

Issues and Conflicts Requiring Ordinance Amendment

1. The Local Preference Overrides Best-Value Evaluation and Final Scoring

RFPs rely on a transparent, published methodology where technical qualifications, experience, methodology, and approach are evaluated alongside price. Sec. 2-798(b)(2) allows a lower-ranked local proposer to supersede the top-ranked proposer after final scoring, based solely on price matching. This:

- invalidates evaluation committee scoring,
- contradicts published evaluation criteria, and
- undermines the integrity of the best-value procurement model.

Removing the local preference from RFPs restores the integrity of the evaluation process.

2. Post-Evaluation Re-Ranking Creates Transparency and Fairness Concerns

RFP procedures are designed so that award decisions are based strictly on published criteria and committee scoring. Introducing a preference after the evaluation:

- changes rankings after the fact,
- alters the competitive landscape,
- provides an advantage not tied to merit or evaluation factors, and
- increases the likelihood of bid protests.

Amending the ordinance avoids post-evaluation modifications and maintains consistent and defensible procurement outcomes.

3. The Preference Forces Price to Dominate an Evaluation That May Not Be Price-Driven

Many RFPs for professional services emphasize technical excellence and qualifications, with price being weighted minimally or provided separately. Under the current ordinance:

- price becomes the deciding factor once triggered,
- technical superiority is disregarded, and
- the City may be required to award based on price rather than best value.

This is inconsistent with the purpose and structure of an RFP, warranting removal of the preference from RFP processes.

4. Significant Legal and Compliance Risks in Federally Funded Projects

Federal procurement regulations (2 CFR 200.319) **prohibit geographic preference** in RFPs except in specific architect/engineer selections under the Brooks Act.

Applying Sec. 2-798 to any RFP involving federal or pass-through funding creates:

- noncompliance risks,
- potential disallowance of expenditures,
- exposure to audit findings, and
- jeopardized grant reimbursements.

Removing the preference from RFPs eliminates these conflicts automatically, rather than relying on case-by-case analysis.

5. The Preference Compromises Competitive Negotiations

RFP award recommendations are followed by negotiations with the highest-ranked proposer. The current ordinance forces the City to negotiate first with a proposer whose technical ranking may not merit award, thereby:

- reducing flexibility,
- delaying negotiations, and
- potentially compromising project outcomes.

An ordinance amendment eliminates these structural issues.

6. Cleaner, More Predictable Procurement Processes

Removing the LBP from RFPs will:

- simplify the evaluation process,
- reduce administrative burdens,
- eliminate confusion among evaluation committee members,
- provide clearer guidance to proposers, and
- strengthen the defensibility of award decisions.

The preference can still be preserved and applied appropriately in competitive bids (ITBs) where price is the dominant factor.

Recommendation

The Office of Procurement recommends the following ordinance amendment:

Revise Sec. 2-798 to expressly exclude Requests for Proposals (RFPs) from eligibility for the Local Business Enterprise Preference and limit the preference to competitive bid solicitations where award is based solely on lowest responsive and responsible pricing.

This amendment preserves the City's commitment to supporting local businesses while ensuring RFPs remain compliant, transparent, fair, and aligned with best-practice procurement standards.