

Key West, Florida, Code of Ordinances >> SUBPART A - GENERAL ORDINANCES >> Chapter 2 - ADMINISTRATION >> ARTICLE VII. - FINANCIAL MATTERS >> DIVISION 3. - PERSONAL PROPERTY PURCHASING AND PROCUREMENT >> Subdivision II. - Competitive Bidding >>

Subdivision II. - Competitive Bidding

Sec. 2-796. - Required.

Sec. 2-797. - Exemptions.

Sec. 2-798. - Local business enterprise preference.

Secs. 2-799—2-825. - Reserved.

Sec. 2-796. - Required.

All purchases of commodities and contractual services when the estimated total cost thereof shall exceed \$20,000.00 shall be awarded by the city commission through the process of competitive, sealed bidding or competitive request for proposals except as otherwise provided in this division.

(Code 1986, § 1.266(a))

Sec. 2-797. - Exemptions.

The following are exempt from the requirements of formal competitive procurement:

- (1) *Sole source procurement.* Sole source procurement in accordance with the following:
 - a. All specifications shall be drafted so as to promote overall economy for the purposes intended, to encourage competition in satisfying the city's need, and shall not be unduly restrictive. Brand name specifications are restrictive of competition and shall be used only as specifically provided in section 2-844
 - b. A contract may be awarded without competition when the department head makes a written determination and the purchasing agent verifies that, after conducting a good faith review of available sources, there is only one source for the required commodity or contractual service. The city manager shall conduct negotiations as appropriate as to price, delivery and terms. A record of sole source procurement shall be maintained as a public record and shall list each contractor's name, amount and type of each contract; a list of the commodity or contractual service procured under each contract; and the identification number of each contract file.
 - c. All sole source procurement where the cost of the commodities or contractual services exceeds \$20,000.00 shall be authorized by the city commission.
- (2) *Emergency procurement.* The city manager may make emergency procurement of commodities or contractual services where the cost exceeds \$20,000.00 when there exists a clear and present threat to public health, property, welfare, safety or other substantial loss to the city, including cases where a natural disaster has occurred, is occurring, or is imminently threatening. However, such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of the emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the commodity or contractual service procured under the contract, and the number of the purchase order, if any. All emergency procurement in excess of \$20,000.00 shall be ratified by the city commission at the next scheduled city commission meeting.
- (3) *Purchases and acquisitions under contracts of federal government and the state or its political subdivisions.* All purchases of commodities or contractual services under the provisions of local, state and federal purchasing contracts shall be exempt from the competitive procurement requirements, provided that the following criteria are all satisfied:
 - a. The terms and conditions of the original contract by the federal, state or local government, other than the city, are satisfactory to the city and such terms and conditions are expressly extended to other municipalities pursuant to the bid documents or by the original successful bidder.
 - b.

The purchasing agent has performed an informal solicitation to determine if the prices of the original contract are fair and reasonable and to ensure local vendors have an opportunity to compete.

- c. The city commission authorizes such procurement when the cost of the commodities or contractual services exceeds \$20,000.00.
- (4) *Exempt contractual services.* Exempt contractual services not subject to the competitive procurement requirement are as follows:
- a. Legal services including paralegal, expert witnesses, appraisal services and court reporters. Prior to engaging legal services estimated to have a cost in excess of \$20,000.00, the city attorney shall notify the city manager and the city commission.
 - b. If in the opinion of the city manager exceptional circumstances exist to exempt a purchase from the competitive bid requirements of this subdivision for the best interests of the city, he shall place a resolution before the city commission for approval of such exemption.

(Code 1986, § 1.266(b))

Sec. 2-798. - Local business enterprise preference.

- (a) *Definition.* A business shall be considered a local business enterprise if it meets all of the following requirements: a business with its principle address as registered with the Florida Department of State located within 30 miles of the boundaries of the city, listed with the chief licensing official as having a business tax receipt with its principle address within 30 miles of the boundaries of the city for at least one year immediately prior to the issuance of the solicitation; maintains a workforce of at least 50 percent of its employees from the city or within 30 miles of its boundaries, and having paid all current license taxes, and any other fees due the city at least 24 hours prior to the publication (construed as 7:00 a.m. of the date of publication in the relevant newspaper) of the call for bids or request for proposals. Post office box numbers may not be used to establish status as a local business enterprise. If a business is a joint venture, it is sufficient for qualification as a local business enterprise if at least one of the joint venturers meets the test set forth in this subsection, and the combined local workforce of the joint venture is maintained at a level of at least 50 percent of the total number of employees engaged in the venture. At least one member, director or principle of the entity desiring to qualify as a local business enterprise shall reside within 30 miles of the boundaries of the City of Key West as indicated by a Florida driver's license or Florida identification card. In the event a business meets all the requirements enumerated above with the exception of having its principle address as registered with the Florida Department of State located within 30 miles of the boundaries of the city, it shall be sufficient to qualify as a local business enterprise if it has maintained an office within 30 miles of the boundaries of the City of Key West for the past five years, during which period of time it has regularly and continuously conducted business from such location.
- (b) *Preference.* In the purchase of or the contract for goods, services, or construction of capital improvements, the city commission or, in the case of purchases and contracts which are not required to be approved by the city commission, the city finance department may give a preference to a responsive and responsible local business enterprise as specified herein. Any required notice of bid or request for proposals for matters subject to the local preference provided for in this section shall contain a provision notifying prospective bidders or responders of the applicability of the local preference.

Except where otherwise provided by this Code, federal or state law or other funding source restrictions, purchases of goods, general services, or professional services by the city may give preference to local businesses in the following manner:

- (1) Under a competitive bid solicitation, when a responsive, responsible nonlocal business submits the lowest price bid, and the bid submitted by one or more responsive, responsible local businesses is within five percent of the price submitted by the nonlocal business, then the local business with the apparent lowest bid offer (i.e., lowest local bidder) may have the opportunity to submit an offer to match the price(s) offered by the lowest, qualified and responsive nonlocal bidder within three working days of a notice of intent to award. If the lowest local bidder submits a bid that fully matches the lowest bid from the lowest nonlocal bidder tendered previously, then the award shall be made to such local bidder. If the lowest local bidder declines or is unable to match the lowest nonlocal bid price(s), then the award shall be made to the nonlocal business.
- (2) For requests for proposals in which objective factors are used to evaluate the responses from vendors and are assigned point totals, if, upon the completion of final rankings (technical and price combined, if applicable) by a selection committee or the city commission, a qualified and responsive nonlocal business is the highest ranked proposer and the ranking of a qualified and responsive local business is within five percent of the ranking obtained by the qualified and responsive nonlocal business, the highest ranked qualified and responsive local business shall have the opportunity to submit an offer to match the price offered by the highest ranked qualified and responsive nonlocal business within three working days of a notice of intent to award. If such highest ranked local business submits a price that fully matches the price of such highest ranked qualified and responsive nonlocal business, or the original price of the highest ranked local

business is equal to or less than that of such highest ranked nonlocal business, then such local business shall proceed to negotiations with the city. If the highest ranked qualified and responsive local business declines or is unable to match the price of the highest ranked qualified and responsive nonlocal business, then the city shall proceed to negotiate with such highest ranked nonlocal business.

- (c) *Exceptions.* The local business enterprise preference provided for by this section shall not be applied where the application of the preference would conflict with a statute, administrative rule, or the terms of any grant funding the purchase or contract; or in the procurement of services described in section 2-797 (4).
- (d) *Certification of eligibility.* Under any such applicable solicitation, bidders/proposers desiring to receive local preference will be invited and required to affirmatively state and provide documentation as set forth in the solicitation in support of their status as a local business. Any bidder who fails to submit sufficient documentation with their bid or proposal, or who is not prequalified as a local business enterprise pursuant to procedures to be implemented by the city manager, shall not be granted local preference consideration for the purposes of that specific award.
- (e) *Waiver of the application of local preference.* The application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written recommendation of the city manager and approval of the city commission.
- (f) *Comparison of qualifications.* The preferences established herein in no way prohibit the right of the city 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 city from giving any further preference permitted by law instead of or in addition to the preferences granted herein.
- (g) *Change orders.* Notwithstanding the provisions of section 2-845, in the event a local bidder is awarded a contract pursuant to this section, all requests for change orders increasing the cost of the project must be approved by the city commission.

(Code 1986, § 1.266(c); Res. No. 06-292, § 1, 9-6-2006; Ord. No. 09-22, § 1, 12-3-2009)

Secs. 2-799—2-825. - Reserved.