

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 principal 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 principal 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 venture partners 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 principal 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 principal 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 (5%) 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 (3) 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 (5%) 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 (3) 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; Ord. No. 19-28, § 3, 9-17-2019)