

ORDINANCE NO. 09-22

AN ORDINANCE OF THE CITY OF KEY WEST,
FLORIDA, AMENDING CHAPTER 2 OF THE CODE
OF ORDINANCES ENTITLED "ADMINISTRATION,"
BY AMENDING SECTION 2-798 PERTAINING TO
LOCAL BUSINESS ENTERPRISE PREFERENCE;
PROVIDING FOR SEVERABILITY; PROVIDING FOR
REPEAL OF INCONSISTENT PROVISIONS;
PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds that the revision
of its local business enterprise preference ordinance would
aid the local economy and expand local business
capabilities.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY
WEST, FLORIDA:

Section 1: That section 2-798 of the Code of
Ordinances is hereby amended as follows*:

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 ~~test~~: a business with its principle address as
registered with the Florida Department of State ~~fixed~~
~~offices or distribution points~~ located within 30 miles of

*(Coding: Added language to original code section
is underlined; deleted language is ~~struck~~
through.)

the boundaries of the city, listed with the chief licensing official as having a business tax receipt with its principle a business address within 30 miles of the boundaries of the city for at least one (1) year immediately prior to the issuance of the solicitation; maintains a workforce of at least fifty 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 ~~or residential addresses alone~~ 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 fifty percent (50%) 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 drivers 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 5 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 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. ~~in an amount not to exceed five percent of the bid of the lowest nonlocal responsive and responsible bidder. In no case shall the local preference granted exceed five percent of the bid threshold. The preference shall be~~

~~applied by calculating the procurement price, which shall include all shipping, handling, installation, and other associated costs, of the lowest nonlocal responsive and responsible bidder adding five percent, and comparing that figure with the bid of the lowest responsive and responsible local business enterprise. If the bid of the local business enterprise, including all shipping, handling, installation, and other associated costs, is equal to or lower than such figure, the purchase or contract shall be offered to the local business enterprise at the price bid by the local business enterprise. This section shall not be construed to require the city to offer a purchase or contract to a local business enterprise for an amount higher than the bid of the lowest nonlocal responsive and responsible bidder plus five percent. Where more than one local business enterprise bids on or responds to a solicitation, the preference shall be applied only to the lowest of the local bidders or responders. 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 non-local 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 non-local 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 non-local 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 non-local 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 non-local bid price(s), then the award shall be made to the non-local 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 non-local 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 non-local 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 non-local 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 non-local business, or the original price of the highest ranked local business is equal to or less than that of such highest ranked non-local 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 non-local business, then the City shall proceed to negotiate with such highest ranked non-local business.

(c) *Exceptions.* The local business enterprise preference provided for by this section shall not be applied where the ~~additional amount to be paid by applying the preference exceeds five percent of the threshold amount~~

~~for the use of bid procedures under subdivision I of this division;~~ 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.

Section 2. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

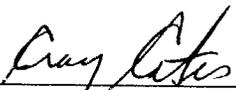
Section 4. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission. This Ordinance shall not affect invitations to bid or requests for proposals issued prior to the effective date.

Read and passed on first reading at a regular meeting held this 4th day of November, 2009.

Read and passed on final reading at a regular meeting held this 3rd day of December, 2009.

Authenticated by the presiding officer and Clerk of the Commission on 10th day of February, 2010.

Filed with the Clerk February 10, 2010.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK