

ORDINANCE NO. C-19-

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING THE CITY OF FORT LAUDERDALE PROCUREMENT ORDINANCE BY AMENDING THE DEFINITIONS OF "CHIEF PROCUREMENT OFFICER" AND "REQUEST FOR PROPOSALS," AMENDING CERTAIN EXCLUSIONS FROM THE MANDATORY COMMISSION APPROVAL AMOUNT AND THE COMPETITIVE SOLICITATION AND SELECTION PROCESSES, DELEGATING TO THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE THE AUTHORITY TO EXECUTE CERTAIN CONTRACTS, EXPANDING THE BID PROTEST PROCEDURE, AND CLARIFYING THE LOCAL BUSINESS PREFERENCE PROVISION, AND PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING ORDINANCE PROVISIONS, AND AN EFFECTIVE DATE.

WHEREAS, the City Manager and the Chief Procurement Officer recommend certain amendments to the City of Fort Lauderdale Procurement Ordinance, including amending the definitions of "chief procurement officer" and "request for proposals," delegating to the city manager or the city manager's designee the authority to execute certain contracts, expanding the veterinarian exclusion from the competitive solicitation and selection processes, expanding the bid protest procedure, and clarifying the local business preference provision; and

WHEREAS, Subsection 4.01(b) of the Charter of the City of Fort Lauderdale, Florida, provides:

All contracts, agreements, leases or other instruments to which the city is a party and under which the city assumes any liability, shall be executed in the name of the city by the mayor and city manager, attested by the city clerk, and the form of any such instrument shall be previously approved by the city attorney or assistant city attorney, provided, however, that where by ordinance or resolution, the execution of short-term leases or other instruments is delegated to another person, such instrument may be executed in the manner provided by such ordinance or resolution,

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NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the definition of “chief procurement officer,” contained in Section 2-173 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended as follows:

Chief procurement officer (CPO). The ~~finance director~~ procurement and contracts manager, or their designee, and who is the individual in charge of and responsible for centralized procurement for the city, or the procurement and contracts manager’s designee.

SECTION 2. That the definition of “request for proposals,” contained in Section 2-173 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended as follows:

Request for proposals (RFP). A solicitation method used for soliciting competitive sealed proposals to determine the best value among proposals for goods or services for which price may or may not be the prevailing factor in award of the contract, or the scope of work, specifications or contract terms and conditions may be difficult to define. Such solicitation will consider the qualifications of the proposers along with evaluation of each proposal using identified and generally weighted evaluation criteria. RFPs ~~may~~ shall include price criteria ~~whenever feasible, at the discretion of the city.~~

SECTION 3. That Subsection 2-176(d) of the Code of Ordinances of the City of Fort Lauderdale, Florida, is amended to provide as follows:

Competitive solicitation and selection. The competitive solicitation and selection process provisions of this article shall apply to every purchase by the city commission and the departments that are under the control of the city commission, irrespective of their fund source, including state and federal assistance monies and grants, except as otherwise specified in this article, or by federal, state or local laws or grant terms and conditions, or as follows:

- (1) Emergency procurements as defined herein.
- (2) Sole source and proprietary procurements as defined herein.
- (3) Real property (land or buildings) purchase, lease or rental.

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- (4) Insurance and insurance-related products.
- (5) Works of art for public places.
- (6) Goods and/or services accepted by the city via grant, gift, or bequest.

SECTION 4. That Subsection 2-176(e) of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to provide as follows:

Exclusions. The mandatory commission approval amount and the competitive solicitation and selection processes stipulated set forth in this article shall not apply to the following:

- ~~(1) Emergency procurements as defined herein.~~
- ~~(2) Sole source and proprietary procurements as defined herein.~~
- (31) Contracts with, and purchases from, other public entities, i.e.: public state colleges, public state universities, federal government agencies, state governments, county governments, city governments, government school boards, county sheriff's offices, and other government entities.
- (42) Utilities, including water, wastewater, sewer, gas, electric, or other utilities as defined by law.
- (53) Cable and satellite television services.
- (64) Magazine subscriptions, periodicals, and publications.
- (75) Membership dues for trade or professional organizations.
- (86) Travel and training expenses for employees.
- (97) Items purchased for resale.
- (108) Advertising: radio, newspapers, magazines, professional organizations, trade shows, television, and any other related media.
- (119) Shipping services, including postage, overnight delivery, and courier services.
- (120) Copyrighted materials or patented works, including books, maps, periodicals, testing or instructional materials.
- (131) Governmental fees.
- (142) Regulatory or government licenses and permits.

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- (153) Real estate transaction-related costs, including:
- a. ~~Real property (land or buildings) purchase, lease or rental.~~
 - ba. Closing/processing fees.
 - eb. Abstracts of titles.
 - ec. Title insurance.
- (164) Durable medical equipment (DME).
- (175) Professional services, including:
- a. Court reporter services.
 - b. Medical services, including wellness activities and pharmacy services.
 - c. Veterinarian/Animal services, including veterinary services and the acquisition or training of animals.
 - d. Legal services.
 - e. Expert witnesses.
 - f. Entertainers.
 - g. Teaching, training and specialized services.
 - h. Recreational program instructors.
 - i. Professional services when used by the city in the settlement and administration of workers' compensation and liability claims, such as:
 - 1. Private investigators and workplace investigators.
 - 2. Claim adjusting services.
- (186) On-going maintenance and support of existing software/hardware, ~~equipment, machinery, vehicles, and other city-owned items.~~
- (197) Purchases of goods or services for which the provisions of this article are waived by the city commission by resolution.
- (2018) Direct material purchases. Purchases of materials, equipment, prefabricated elements and components, appliances, fixtures, and other goods, pursuant to a program contained in a construction contract that has been awarded in accordance with any provision of this article, whereby the city makes such purchases directly.

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- (~~219~~) Services provided by, or in partnership with, institutions of higher learning, not-for-profit organizations, state sponsored institutions, and other governmental and public agencies.
- (~~220~~) Purchases from contracts established by local, state, or national cooperative procurement organizations, Federal General Services Administration, and the State of Florida contracts.
- ~~(23) Insurance and insurance-related services including, but not limited to insurance consulting, self-funding, and claims administration.~~
- ~~(24) Works of art for public places.~~
- (~~251~~) Purchase for services and facilities at hotels, motels, restaurants and similar facilities for city sponsored events.
- (~~262~~) Products purchased from the blind, and other severely impaired persons (RESPECT) in accordance with F.S. §§ 413.032, 413.033 and 413.036.
- (~~273~~) Products purchased from the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE), in accordance with F.S. § 946.515.
- ~~(28) Goods and/or services accepted by the city via grant, gift, or bequest.~~
- (~~294~~) Publications from publishers or exclusive distributors of such publications.
- (~~3025~~) Media such as movies, slides, videos, and similar forms of media.

SECTION 5. That Section 2-180 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is amended to provide as follows:

Sec. 2-180. - Purchasing and related transactions.

- (a) Except as otherwise exempted or provided herein, or by state or federal law, the procurement of all goods, supplies, material, equipment, services and combinations of goods and services by or on behalf of the city, including those transactions through which the city shall receive revenue, in an amount equal to or in excess of the mandatory commission approval amount, shall be solicited by a competitive selection process, such as: the competitive sealed bidding (ITB) process, competitive sealed proposal (RFP)

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process, the request for qualifications (RFQ) process, or the competitive negotiations (ITN) process, or other methods, as determined by the chief procurement officer.

- (b) The use of electronic media, including acceptance of electronic signatures, is authorized consistent with F.S. Ch. 668, as may be amended, for use of such media, when practical or appropriate.
- (c) Evaluation and negotiation teams shall be considered dissolved upon award or rejection by the city for any specific competitive solicitation.
- (d) The city manager is delegated the authority to execute contracts for purchases, which contracts have been approved by the city commission.
- (e) The city manager or any of the following city manager's designees, to wit, deputy city manager, assistant city manager, director of finance, or procurement and contracts manager, is delegated the authority to execute contracts for purchases described in subsections 2-176(e) and 2-181(f), containing terms acceptable to the city manager or the city manager's designee, subject to the city attorney's or an assistant city attorney's approval as to form.

SECTION 6. That Section 2-182 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to provide as follows:

Sec. 2-182. - Dispute resolution and protests of awards and intents to award.

- (a) *Applicability.* This section shall apply to protests by bidders and proposers when the city manager or a designee recommends a purchase of goods, supplies, equipment, or services valued at or above the minimum competitive selection threshold as defined in the Procurement Manual.
- (b) *Procedure.*
 - (1) Any proposer or bidder who is not recommended for award of a contract and who alleges a failure by the city to follow

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the city's procurement ordinance or any applicable law may protest to the ~~chief procurement officer (CPO)~~ by delivering a letter of protest to the ~~director~~CPO within five (5) days after a notice of intent to award is posted on the City of Fort Lauderdale's world wide web site. The date the letter of protest is received in the procurement office shall constitute the date of delivery.

- (2) The calculation of days shall exclude Saturdays, Sundays, federal holidays, and holidays observed by the city.
- (3) Service of a protest by mail or courier shall not expand the time period allowed for delivery of a protest. In computing any time period prescribed or allowed by this protest policy, the day of the act or event from which the designated time period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, federal holiday, or holiday observed by the city, in which event the period shall run until the end of the next business day which is neither a Saturday, Sunday, federal holiday, nor a holiday observed by the city.
- (4) The written protest shall state the specific facts and law or ordinance upon which the protest of the proposed award is based, and shall include all relevant documents and evidence.
- (5) A written protest may not challenge the relative weight of evaluation criteria or a formula for assigning points.
- (6) The letter of protest must be accompanied by a non-refundable protest application fee in an amount equal to one percent (1%) of the protestor's bid or five thousand dollars (\$5,000.00), whichever is less.
- (7) The protest application fee must be a cashier's check, a certified check, or an attorney's trust account check payable to the City of Fort Lauderdale.

(c) *Authority to resolve protests.*

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- (1) The CPO shall first have the authority to settle and resolve any written protest. Within seven (7) days from receipt of a timely written protest the CPO shall send a written decision to the protesting party via U.S. certified mail upholding or denying the protest or staying the award process for further investigation.
 - (2) The protesting party may appeal to the city commission a decision by the CPO denying the protest by delivering a notice of appeal to the CPO within three (3) days from the protesting party's receipt of the CPO's decision. Upon receipt of a timely notice of appeal the CPO will schedule the protest for consideration by the city commission, which may affirm, reverse, or modify the CPO's decision.
 - (3) The city's consideration of a timely written protest shall not necessarily stay the award process, as may be in the best interest of the City of Fort Lauderdale. The CPO may recommend to the city commission to render moot any written protest that is overtaken by events, in which case the city commission may abate or dismiss such protest.
- (d) *Timely submittal of a protest or appeal required.* Failure of a party to submit timely a written protest to the CPO within the time provided in this section shall constitute a waiver of such party's right to protest pursuant to this section.
 - (e) *Costs.* Any and all costs incurred by a protesting party in connection with a protest pursuant to this section shall be the sole responsibility of the protesting party.

SECTION 7. That Section 2-182.1 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby created to provide as follows:

Sec. 2-182.1. – Protests of Solicitations

- (a) *Applicability.* This section shall apply to protests of specifications contained in solicitations for the purchase of goods, supplies,

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equipment, or services.

(b) Procedure.

- (1) Any person may protest the specifications contained in a solicitation issued by the city by delivering a letter of specification protest to the CPO between the date of the electronic release of the solicitation and five (5) days prior to the date the bids or proposals are due, excluding Saturdays, Sundays, and holidays observed by the city. The date on which the letter of protest is received in the office of the CPO shall constitute the date of delivery.
- (2) The written protest shall state with particularity the specific facts and any law or ordinance on which it is based, and shall include any and all pertinent documents and evidence.

(c) Authority to resolve protests.

- (1) The CPO shall first have the authority to settle and resolve any written protest within seven (7) days from receipt of a timely written protest by sending a written decision to the protesting party via U.S. certified mail upholding or denying the protest or staying the award process for further investigation.
- (2) The protesting party may appeal to the city manager a decision by the CPO denying the protest by delivering a notice of appeal to the CPO within three (3) days from the protesting party's receipt of the CPO's decision. Upon receipt of a timely notice of appeal the CPO will forward the protest to the city manager for consideration. The city manager may affirm, reverse, or modify the CPO's decision.
- (3) The city's consideration of a timely written protest shall not necessarily stay the solicitation process, as may be in the best interest of the city. The CPO may recommend to the city manager to render moot any written protest that is overtaken by events, in which case such protest may be abated and dismissed as determined by the city manager.

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- (d) Timely submittal of a protest or appeal required. Failure of a person to submit timely a written protest or a notice of appeal to the CPO within the time provided in this section shall constitute a waiver of such person's right to do so.
- (e) Computation of days. In computing any period of time prescribed or allowed by this protest policy, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or holiday observed by the City, in which event the period shall run until the end of the next business day which is neither a Saturday nor Sunday, nor a holiday observed by the City. Service of a protest or a notice of appeal by mail or courier shall not expand the time period allowed for delivery.
- (f) Costs. Any and all costs incurred by a protesting party in connection with a protest pursuant to this Section shall be the sole responsibility of the protesting party.

SECTION 8. That Section 2-186 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to provide as follows:

Sec. 2-186. - Local business ~~price~~ preference.

- (a) *Definitions.*
 - (1) The term "Class A business" shall mean any business that has established and agrees to maintain a permanent place of business located in a non-residential zone, staffed with full-time employees within the limits of the city, and shall maintain a staffing level for the proposed work of at least fifty percent (50%) who are residents of the City of Fort Lauderdale.
 - (2) The term "Class B business" shall mean any business that has established and agrees to maintain a permanent place of business located in a non-residential zone,

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staffed with full-time employees within the limits of the city, or shall maintain a staffing level for the proposed work of at least fifty percent (50%) who are residents of the City of Fort Lauderdale.

(3) The term "Class C business" shall mean any business that has established and agrees to maintain a permanent place of business located in a non-residential zone, staffed with full-time employees within the limits of Broward County.

(4) The term "Class D business" shall mean any business that does not qualify as a Class A, Class B, or Class C business.

(b) *Conditions.* Notwithstanding subsection (a) above:

(1) A business can only qualify for one (1) class preference level.

(2) A business with outstanding liens, fines or violations with the city shall not be eligible to qualify for Class A, Class B, or Class C status.

(3) A business that operates through the use of a post office box, mail house or a residential/home address shall not be eligible to qualify as either a Class A or Class B business, with respect to the business's location.

(4) A business may receive a conditional classification as a Class A or Class B business if that business certifies in writing to the city that it will meet the requirements of the specific class within three (3) months of entering into a contract with the city.

(c) *Price preference.* For those purchases of goods and services in excess of the mandatory commission approval amount via competitive solicitation, after completion of the final ranking, local vendors shall receive the following ~~price~~ preferences:

(1) Class A business. Ten percent (10%) ~~price~~ preference;

- (2) Class B business. Seven and one-half percent (7.5%) ~~price~~ preference;
- (3) Class C business. Five percent (5%) ~~price~~ preference.
- (d) *Exceptions.* Notwithstanding anything contained in this section to the contrary, the local preference provided for in this section shall not be applied in any one (1) or more of the following circumstances:
 - (1) The business submits a proposal that exceeds the projected budget cost;
 - (2) The price proposed or bid is in excess of one million dollars (\$1,000,000.00);
 - (3) State or federal law or applicable county ordinance prohibits the use of local preferences;
 - (4) The work is funded in whole or in part by a governmental entity, and laws, rules, regulations, grant, or policies prohibit the use of local preferences;
 - (5) Emergency purchases;
 - (6) Sole source purchases;
 - (7) Cooperative purchasing agreements or use of other agency contracts;
 - (8) The city's chief procurement officer or commission has determined that the business is unqualified to perform the work.

SECTION 9. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 10. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 11. That this ordinance shall be in full force and effect upon final passage.

PASSED FIRST READING this the ____ day of _____, 2019.

PASSED SECOND READING this the ____ day of _____, 2019.

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Mayor
DEAN J. TRANTALIS

ATTEST:

City Clerk
JEFFREY A. MODARELLI

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