

ORDINANCE NO. C-20-46

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING DIVISION 2 OF ARTICLE V OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA, TO WIT, THE CITY OF FORT LAUDERDALE PROCUREMENT ORDINANCE, BY CREATING DEFINITIONS OF "DISADVANTAGED BUSINESS ENTERPRISE" AND "SMALL BUSINESS," REVISING EXCLUSIONS FROM THE MANDATORY COMMISSION APPROVAL AMOUNT AND THE COMPETITIVE SOLICITATION AND SELECTION PROCESSES, REVISING THE CHIEF PROCUREMENT OFFICER'S DUTIES, RESPONSIBILITIES, AUTHORIZATIONS, AND ACCOUNTABILITIES, CREATING A DISADVANTAGED BUSINESS ENTERPRISE PREFERENCE PROGRAM, AND LIMITING THE COMBINATION OF DISADVANTAGED BUSINESS ENTERPRISE PREFERENCE AND LOCAL BUSINESS PREFERENCE TO 10%, AND PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING ORDINANCE PROVISIONS, AND AN EFFECTIVE DATE.

WHEREAS, the City Manager and the Chief Procurement Officer recommend amending the City of Fort Lauderdale Procurement Ordinance by creating definitions of "disadvantaged business enterprise" and "small business," revising exclusions from the mandatory commission approval amount and the competitive solicitation and selection processes, revising the chief procurement officer's duties, responsibilities, authorizations, and accountabilities, creating a disadvantaged business enterprise preference program, and limiting the combination of disadvantaged business enterprise preference and local business preference to 10%; and

WHEREAS, statistical and anecdotal analysis contained in the City of Fort Lauderdale's 2020 Disparity Study report supports the creation of a disadvantaged business preference program;

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

SECTION 1. That a definition of "Disadvantaged Business Enterprise" or "DBE" is added in alphabetical order in Section 2-173 of the Code of Ordinances of the City of Fort Lauderdale, Florida, as follows:

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Disadvantaged business enterprise or DBE. A for-profit small business where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations as certified by a public entity with a certification program. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, veterans, and women are presumed to be socially and economically disadvantaged.

SECTION 2. That a definition of "Small Business" is added in alphabetical order in Section 2-173 of the Code of Ordinances of the City of Fort Lauderdale, Florida, as follows:

Small business. A person or firm that is certified as a small business as set forth in the city's Procurement Manual.

SECTION 3. That Subsection 2-176(e)(16) of the Code of Ordinances of the City of Fort Lauderdale, Florida, is amended to provide as follows:

On-going maintenance and support of existing software/hardware and on-going maintenance, monitoring, and support of existing security software and hardware and alarm software and hardware.

SECTION 4. That Section 2-176 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to add subsection 2-176(e)(26) as follows:

Banking, financial custodial, merchant card, and other related services.

SECTION 5. That Section 2-176 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to add subsection 2-176(e)(27) as follows:

Cemetery merchandise including markers, temporary markers, granite base, inscriptions, vaults, urns, monuments, benches, vases, mausoleum light kits, cameos, and cemetery mausoleums.

SECTION 6. That Subsection 2-178(c) of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to provide as follows:

Duties, responsibilities, authorizations, and accountabilities. The chief procurement officer shall have the following duties, responsibilities, authorizations, and accountabilities:

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- (1) Administer the centralized procurement and contracting system for the city;
- (2) Determine conditions and procedures for delegations of procurement authority;
- (3) Determine the conditions and procedures for the use of source selection methods, including determination of sole source, proprietary and emergency procurements;
- (4) Maintain a Procurement Manual. Such procedures and processes shall be in compliance with this article, and may not conflict with the thresholds or approval requirements set forth in this article. The Procurement Manual shall define the minimum threshold amounts at which competitive quotes and other competitive solicitations under the mandatory commission approval amount shall be required by the city;
- (5) Award all competitive solicitations, and execute, on behalf of the city, all contractual agreements, purchase orders, task orders, ancillary documents, and change orders for the purchase of goods or services required by the city of less than the mandatory commission approval amount and as otherwise stipulated in this article;
- (6) If so delegated by the city manager, sign all contractual agreements, purchase orders, task orders, ancillary documents, and change orders, for the purchase of goods and/or services required on behalf of the city, exceeding the mandatory commission approval amount after award approval by the commission, and as otherwise stipulated in this article;
- (7) Determine the use and amount of bid security, payment bonds, performance bonds, and other securities in connection with all solicitation documents and contracts for supplies, services, and capital improvements and construction, in accordance with Florida Statutes;
- (8) For bids or proposals under the mandatory commission amount, reject bids or proposals which are nonresponsive or non-responsible, including those due to late submittal;
- (9) Negotiate reasonable prices, terms and conditions for any procurement where only one (1) responsive and responsible bid or proposal is received;

- (10) Standardize, to the extent possible, terms and conditions and contractual clauses of all solicitation documents, contracts, and purchase order;
- ~~(11) Take all necessary action to further the objectives of the city with regard to the promotion and encouragement of local, minority owned, and women owned firms' participation in the procurement process;~~
- (121) Make final determinations of the day to day activities and functions for procurement related matters not specifically addressed in this article;
- (132) Renew purchase orders and/or contracts with vendors/contractors originally selected with or without a competitive selection process, provided such renewal is within the scope of the original purchase order or contract;
- (143) In the event additional time is required to prepare and/or award a competitive solicitation, the chief procurement officer shall have the authority to extend an existing contract for the necessary time period with prorated dollar authorization, provided such extension in no event shall exceed ~~one hundred eighty (180)~~ two hundred seventy (270) days following the expiration of the contract; and
- (154) To evaluate responses to solicitations and establish evaluation teams as set forth in the Procurement Manual.
- (15) Take all necessary action to further the objectives of the city with regard to the promotion and encouragement of participation in the procurement process by disadvantaged business enterprises.
- (16) Administer the city's DBE program, which includes determining the appropriateness of set-aside solicitations and DBE goals, and promulgating policies and procedures consistent with the provisions of this Division, applicable federal and state laws and regulations, and applicable grant requirements.

SECTION 7. That Subsection 2-181(c) of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to provide as follows:

Request for qualifications (RFQ) process.

- (1) *Consultants' Competitive Negotiation Act*

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~~(1a.)~~ The services of professional architects, engineers, landscape architect, surveyors, and mapping services shall be acquired in accordance with F.S. § 287.055, and as further delineated in the Procurement Manual.

~~(2b.)~~ Continuing contracts for these services may be solicited and entered into on a rotational basis between at least three (3) firms, in accordance with F.S. § 287.055(2)(g), as may be amended, and as further delineated in the Procurement Manual.

(2) Competition among qualified proposers

When it is in the city's best interest to choose a qualified provider of professional services other than those encompassed by the Consultants' Competitive Negotiation Act, the City may issue a request for qualifications and thereby attain a pool of qualified providers. Fees are established via a competitive sealed bid process among the qualified providers.

SECTION 8. That Section 2-185 of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to provide as follows:

Sec. 2-185. - Equal opportunity for minority and women-owned disadvantaged business enterprises.

- (a) The city shall use its best efforts to ensure that ~~minority and women-owned businesses shall disadvantaged business enterprises~~ have an equitable opportunity to participate in the city's procurement process, and that no firm shall be excluded from participation in, denied benefits of, or otherwise discriminated against in connection with the award and performance of any contracts with the city on the grounds of race, color, national origin, gender, gender identity or expression, disability, religion, or sexual orientation.
- (b) The city, in accordance with the provisions of Title VII of the Civil rights Act of 1964, as amended, the Florida Civil Rights Act of 1992, as amended, and other federal, state, and county discrimination statutes, prohibits discrimination on the basis of race, color, gender, gender identity or expression, age, national origin, religion, disability or sexual orientation.

- (c) The city strongly supports disadvantaged, ~~small, minority and woman owned~~ firms having full opportunity to submit bids and proposals in response to solicitation documents issued by the city and commits that bidders and proposers will not be discriminated against on the basis of gender, gender identity or expression, race, color, national origin, religion, disability, sexual orientation or other protected status.

(d) Disadvantaged business enterprise preference program

(1) Definitions

- a. The term "disadvantaged class 1 enterprise" shall mean any disadvantaged business enterprise 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 provides supporting documentation of its City of Fort Lauderdale business tax and disadvantaged certification as established in the city's Procurement Manual.
- b. The term "disadvantaged class 2 enterprise" shall mean any disadvantaged business enterprise that has established and agrees to maintain a permanent place of business within the limits of the city with a full-time employees and provides supporting documentation of its City of Fort Lauderdale business tax and disadvantaged certification as established in the city's Procurement Manual.
- c. The term "disadvantaged class 3 enterprise" shall mean any disadvantaged business enterprise 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 Tri-County area and provides supporting documentation of its City of Fort Lauderdale business tax and disadvantaged certification as established in the City's Procurement Manual.
- d. The term "disadvantaged class 4 enterprise" shall mean any disadvantaged business enterprise that does not qualify as a Class A, Class B, or Class C business, but is located in the State

of Florida and provides supporting documentation of its disadvantaged certification as established in the City's Procurement Manual.

(2) Conditions.

Notwithstanding subsection (1) above:

- a. A business can only qualify for one class preference level.
- b. A business with outstanding liens, fines or violations with the city shall not be eligible to qualify for disadvantaged class 1, 2, 3, or 4 enterprise status.
- c. 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 disadvantaged class 1 enterprise, with respect to the business's location.
- d. A business may receive a conditional classification as a disadvantaged class 1 or class 2 enterprise 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.

(3) 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 preferences:

- a. Disadvantaged class 1 enterprise: ten percent (10%) preference;
- b. Disadvantaged class 2 enterprise: seven and one-half percent (7.5%) preference;
- c. Disadvantaged class 3 enterprise: five percent (5%) preference;
- d. Disadvantaged class 4 enterprise: two percent (2%) preference;

(4) Exceptions.

- a. Notwithstanding anything contained in this section to the contrary, the disadvantaged business enterprise preference provided for in this section shall not be applied in any one (1) or more of the following circumstances:
- i. The business submits a proposal that exceeds the projected budget cost;
 - ii. The price proposed or bid is in excess of one million dollars (\$1,000,000);
 - iii. State or federal law or applicable county ordinance prohibits the use of local preferences;
 - iv. 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;
 - v. Emergency purchases;
 - vi. Sole source purchases;
 - vii. Cooperative purchasing agreements or use of other agency contracts;
 - viii. The city's chief procurement officer or commission has determined that the business is unqualified to perform the work.
- b. Notwithstanding anything contained in this section to the contrary, DBE preference, when combined with local business preference, shall not exceed 10%.

SECTION 9. That Subsection 2-186(d) of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to provide as follows:

(d) Exceptions.

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- (1) 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:
- (4a) The business submits a proposal that exceeds the projected budget cost;
 - (2b) The price proposed or bid is in excess of one million dollars (\$1,000,000.00);
 - (3c) State or federal law or applicable county ordinance prohibits the use of local preferences;
 - (4d) 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;
 - (5e) Emergency purchases;
 - (6f) Sole source purchases;
 - (7g) Cooperative purchasing agreements or use of other agency contracts;
 - (8h) The city's chief procurement officer or commission has determined that the business is unqualified to perform the work.
- (2) Notwithstanding anything contained in this section to the contrary, local preference when combined with DBE preference, shall not exceed 10%.

SECTION 10. 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 11. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

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SECTION 12. That this ordinance shall be in full force and effect upon final passage.

PASSED FIRST READING this 15th day of December, 2020.

PASSED SECOND READING this 5th day of January, 2021.



Mayor
DEAN J. TRANTALIS

ATTEST:



City Clerk
JEFFREY A. MODARELLI