

ORDINANCE NO. 2018-_____

**CITY OF POMPANO BEACH
Broward County, Florida**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 32, "DEPARTMENTS," OF THE POMPANO BEACH CODE OF ORDINANCES BY CREATING A NEW SECTION 32.40, "LOCAL BUSINESS PROGRAM," TO PROVIDE FOR AMENDMENT TO THE CITY'S PROCUREMENT PROCEDURES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pompano Beach established a Local Business Program in 2010 to encourage and enhance competitive opportunities for businesses located in the City of Pompano Beach; and

WHEREAS, the City of Pompano Beach, through its contracting function, has a significant impact on local economic activity and business development; and

WHEREAS, the City of Pompano Beach is strongly committed to ensuring the participation of local businesses and residents as contractors and subcontractors for procurement of goods and services; and

WHEREAS, the City of Pompano Beach desires to expand its Local Business Program and establish a Local Business Preference in order to maximize the sustainable community impact of development and provide community benefits by ensuring the utilization of local businesses and residents in every phase of a project; and

WHEREAS, the City of Pompano Beach will continue to use its purchasing functions to ensure competitive opportunities for local businesses; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the city, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach, Florida; and

WHEREAS, a public hearing before the City Commission was held pursuant to the aforesaid notice at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were in fact heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 32.40, “Local Business Program,” of Chapter 32, “Departments,” of the City of Pompano Beach Code of Ordinances is hereby created to read as follows:

§ 32.40 LOCAL BUSINESS PROGRAM.

(A) Definitions.

For the purposes of the section, the following definitions shall apply unless the context clearly indicates otherwise.

(1) **GOAL.** The minimum percentage of Local Vendor participation required by the City of Pompano Beach.

(2) **LOCAL VENDOR.**

(a) **TIER 1 LOCAL VENDOR. POMPANO BEACH BUSINESS EMPLOYING POMPANO BEACH RESIDENTS.** A business entity which has maintained a permanent place of business within the city limits and maintains a staffing level, within this local office, of at least ten percent who are residents of the City of Pompano Beach or includes subcontracting commitments to Local Vendors Subcontractors for at least ten percent of the contract value. The permanent place of business may not be a post office box. The business must be located in a non-residential zone, and must actually distribute goods or services from that location. The business must be staffed with full-time employees within the limits of the city. In addition, the business must have a current business tax receipt from the City of Pompano Beach for a minimum of one year prior to the date of issuance of a bid or proposal solicitation.

(b) **TIER 2 LOCAL VENDOR. BROWARD COUNTY BUSINESS EMPLOYING POMPANO BEACH RESIDENTS OR UTILIZING LOCAL VENDOR SUBCONTRACTORS.** A business entity which

has maintained a permanent place of business within Broward County and maintains a staffing level, within this local office, of at least 15% who are residents of the City of Pompano Beach or includes subcontracting commitments to Local Vendors Subcontractors for at least 20% of the contract value. The permanent place of business may not be a post office box. The business must be located in a non-residential zone, and must actually distribute goods or services from that location. The business must be staffed with full-time employees within the limits of the city. In addition, the business must have a current business tax receipt from the respective Broward County municipality for a minimum of one year prior to the date of issuance of a bid or proposal solicitation.

(c) **LOCAL VENDOR SUBCONTRACTOR.**
POMPANO BEACH BUSINESS. A business entity which has maintained a permanent place of business within the city limits of the City of Pompano Beach. The permanent place of business may not be a post office box. The business must be located in a non-residential zone, and must actually distribute goods or services from that location. The business must be staffed with full-time employees within the limits of the city. In addition, the business must have a current business tax receipt from the City of Pompano Beach for a minimum of one year prior to the date of issuance of a bid or proposal solicitation.

(B) **GOALS.**

(1) The attainment goal of the Local Business Program is to increase the annual level of Local Vendor participation in the City of Pompano Beach contracting to the average level of ten percent of the total annual expenditures for goods and services of the city.

(2) Department-specific goals expressed as a percentage of aggregate department expenditures, will be specifically included in each of the following contracting categories, or in limited circumstances due to administrative necessity, other such categories established by the General Services Director:

- (a) construction;
- (b) construction related services;
- (c) non-construction related services; and
- (d) commodities.

(3) When utilized, individual established contract goals, equal to or in excess of the Annual Local Business Program Goal, shall be based on estimates made by Purchasing prior to bid advertisement of the quantity and type of subcontracting opportunities provided by the contract, and on the availability and capability of Local Vendors and Local Vendor Subcontractors to do such work. However, if after consideration of all relevant factors, such goals are not practical

or reasonably attainable, lesser goals may be established on a contract-by-contract basis, if approved by the City Manager.

(4) Prospective construction contracts equal to or above \$100,000 in total contract value; or other goods and services contracts equal to or above \$50,000 in total contract value will be required to provide Local Vendor Goal attainment information to facilitate the collection of information to assist in monitoring the city's goal attainment efforts.

(5) Attainment goal percentages shall be based on the availability of Local Vendors on a contract-by-contract basis and shall be included in bid specifications and bid advertisements for all city construction and other goods and services contracts meeting the above-mentioned dollar thresholds (\$100,000/\$50,000) and not subject to federal Disadvantage Business Enterprise (DBE) program. All contractors bidding on a construction, professional services or goods and services contracts will be required to subcontract the designated percentage of work, including the cost of materials, goods, and supplies to Local Vendor Subcontractors; or demonstrate and document good faith efforts to meet the goals. Upon award of a contract, the prime contractor shall be responsible for achieving and maintaining their goals of attainment for the duration of an awarded contract.

(6) In those contracts in which no Local Vendor goal is set, or, for reasons stated herein, the goal is set below the Annual Local Business Program Goal, the contract shall contain language stating that, the city encourages contractors to give full consideration to the use of Local Vendors to perform work or services under the contract.

(C) LOCAL VENDOR PREFERENCE PROCEDURE.

For the purposes of this section, the following preferences shall apply to all Bids and Proposals deemed responsive.

(1) ***Award of Bids.*** Purchasing will include Local Vendor preference in bids for commodities with an estimated contract value of \$75,000 or greater and in bids for construction with an estimated contract value of \$150,000 or greater. The city shall award a Local Vendor preference based upon vendors, contractors, or subcontractors who are local with a preferences follows:

(a) For bid evaluation purposes, Tier 1 business as defined by this subsection shall be granted a preference in the amount of five percent of any bid or five points of any proposal score. If the Tier 1 business submits a second bid which is at least one percent lower than that lowest responsive bid/quote, then the award will go to the Tier 1 business. If not, the award will be made to the business that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is also a Tier 1 business, the award will be made to that business and no other bidders will be given an opportunity to submit additional bids as described herein.

(b) For bid evaluation purposes, Tier 2 business as defined by this subsection shall be granted a preference in the amount of two and one-half percent of any bid or two and one-half points of any proposal score. If the Tier 2 business submits a second bid, which is at least one percent lower than that lowest responsive bid/quote, then the award will go to the Tier 2 business. If not, the award will be made to the business that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is also a Tier 1 business, the award will be made to that business and no other bidders will be given an opportunity to submit additional bids as described herein.

(c) If there is a Tier 1 business and/or Tier 2 business participating in the same bid solicitation and all businesses qualify to submit a second bid as detailed above, the Tier 1 business will be given first option, the Tier 2 business will be given second option. If the Tier 1 business is not the lowest bid received by at least one percent, then an opportunity will be given to the Tier 2 business. If the Tier 2 business is not the lowest bid by at least one percent, then the bid will be awarded to the lowest bidder regardless of geographic location of the business.

(2) ***Proposals.***

(a) For evaluation purposes, the Tier 1 and Tier 2 businesses shall be a criterion for award in any Request for Proposal (RFP), Request for Qualifications (RFQ), Request for Letter of Interest (RLI), or other competitive process, unless specifically exempted by the City Manager. No business may qualify for more than one tier level.

(b) For evaluation purposes, after completion of the final ranking, local vendors shall receive the following preferences:

1. Tier 1 business as defined by this subsection shall be granted a preference in the amount of five percent of total score.

2. Tier 2 business as defined by this subsection shall be granted a preference in the amount of two and one-half percent of total score.

(3) ***Request for Quotations.*** The city shall, whenever possible, utilize Local Vendors for informal and competitive quotations. All departments are encouraged to request price quotes from Local Vendors. Purchasing shall assist with vendor research, including identifying relevant local businesses to contact for pricing.

(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 or more of the following circumstances:

(1) State, Federal law or applicable County Ordinance prohibits the use of local preferences or the work is funded in whole or in part by a governmental entity, and laws, rules, regulations, or policies prohibit the use of local preferences;

(2) Professional services procured pursuant to the State of Florida Consultants Competitive Negotiations Act (CCNA);

(3) Any competitive solicitation where the city is the lead agency for the Southeast Florida Purchasing Cooperative (Co-op);

(4) Emergency purchases;

(5) Sole Source/Brand purchases;

(6) Co-op purchasing agreements or utilization of other agencies' contracts;

(7) The local business is either nonresponsive or non-responsible;

(8) All bids/proposals submitted exceed the budget amount for the project;

(9) The city's General Services Director has determined that the business is unqualified to perform the work;

(10) Utilization of local business preference is unfeasible due to the nature and scope of the work as determined by the City Manager; or

(11) The business has outstanding city liens, fines or violations.

(E) **REGULATIONS.**

(1) Goals for participation of Local Business Program in city contracts shall be mandates for complete attainment. These goals should be established in order to increase the percentage of participation of local vendors to a level that is reasonably proportionate to their availability and capability in the City of Pompano Beach and Broward County marketplace. The Local Vendor goals for direct awards and subcontract awards shall be based against the aggregate dollar value of all contracts awarded over the previous fiscal year.

(2) Responsive Bidder means a person who has submitted a bid or proposal, which conforms in all material respects to a solicitation. Failure to provide a bid/response that meets or exceeds the Local Vendor Goals established for a contract will deem the bid/response Non-responsive by the General Services Director and be summarily rejected.

(3) The city shall review each proposed contract modification and/or change order request that, by itself or aggregated with previous modification requests, increases the contract value by more than \$50,000 of the initial contract value for opportunities to include or increase participation of Local Vendors. The contractor shall demonstrate that it makes good faith efforts to include Local Vendor participation in change order work.

(4) The following language must be included in all eligible bid or proposal notices as it pertains to the contract/project "attainment goals":

The City of Pompano Beach is strongly committed to insuring the participation of Local Vendors as contractors and subcontractors for the procurement of goods and services. Bidders are required to participate in the City of Pompano Beach's Local Business Program by including, as part of their bid package, the Local Vendor Participation Form (Exhibit "A") and the Letter of Intent Form (Exhibit "B"). Bidders who are unable to meet the required goals should also provide the Local Vendor Unavailability Form and Good Faith Effort Report (Exhibits "C" and "D").

The required goal for this bid is ____% for Local Vendor.

(5) If a Prime Contractor/Vendor is not able to achieve the level of goal attainment of the contract, the Prime Vendor will be requested to demonstrate and document that good faith efforts were made to achieve the goal. This documentation shall be provided to the City Commission for acceptance.

(6) Failure to meet Local Vendor Goal commitments will result in "unsatisfactory" compliance rating. Unsatisfactory ratings may impact award of future projects if a sanction is imposed by the City Commission.

(7) The city shall promulgate administrative rules and procedures implementing this Resolution.

(F) MONITORING AND REPORTING.

(1) The City Manager shall charge at least one employee with the responsibility of monitoring applicable city contracts for compliance with the provisions of this Section and for review of the city's procurement activities to insure reasonable efforts are being made to encourage and foster the participation of the City of Pompano Beach businesses in the central procurement activities. One such measure shall be the implementation and monitoring the achievement of contract goals for local businesses inclusion.

(2) If it is determined by the Contract Manager that any Prime Contractor/Vendor is substantially failing to meet the agency-specific Local Vendor Goals prescribed in the contract, the Prime Contractor/Vendor shall be

required to submit a remedial action plan to the Contract Manager to remedy such failure. The director shall provide written notice of such a finding, which shall be publicly available and direct implementation of affirmative corrective measures, as appropriate. This documentation shall be provided to the City Commission for acceptance.

(3) A status report will be developed annually and should indicate the number of Local Businesses used, the total dollar amount spent with Local Businesses in both prime and subcontracting roles, as well as comparative percentages with overall city expenses in order to determine the efficiency of this Section.

SECTION 2. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 3. That any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2018.

PASSED SECOND READING this _____ day of _____, 2018.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB/jrm
2/21/18
l:ord/ch32/2018-112