

ORDINANCE NO. 2023-019

AN ORDINANCE OF THE TOWN OF PEMBROKE PARK, FLORIDA AMENDING CHAPTER 2 ENTITLED “ADMINISTRATION,” ARTICLE V “PROCUREMENT,” BY CREATING SECTION 2-138 OF THE TOWN’S CODE OF ORDINANCES, ENTITLED “LOCAL BUSINESS PREFERENCE”; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission of the Town of Pembroke Park, in response to the recent report by the Office of the Inspector General, adopted new Procurement procedures to address form, functionality and operational best practices for procurement in the Town; and

WHEREAS, the Town has a significant base of businesses within the corporate/Town Limits of the Town of Pembroke Park that employ many residents of the Town and surrounding sister cities in the Broward County metropolitan area; and

WHEREAS, the Town annually spends significant amounts on purchasing personal property, materials, and contractual services and in constructing improvements to real property or to existing structures; and

WHEREAS, the dollars used in making those purchases are derived, in large part, from taxes, fees, and utility revenues derived from local businesses in the corporate/Town Limits of the Town of Pembroke Park, and the Town Commission has determined that funds generated in and from the Pembroke Park community and from those businesses in our sister cities in the Broward County metropolitan area should, to the extent possible, be placed back into the local Pembroke Park economy; and

WHEREAS, the Town Commission is supportive of business with specific ties to the Town of Pembroke Park and the greater Broward County metropolitan area; and

WHEREAS, The Town Commission of the Town of Pembroke Park, Florida, has determined that amending the Pembroke Park Procurement Code to include a local business preference is in the best interests of the individual and corporate citizens of the Town of Pembroke Park.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

Section 2. Chapter 2, Section 2-138 of the Town's Code of Ordinances, is created as follows:

ARTICLE XII. – LOCAL BIDDING PREFERENCE AND PROCEDURES

Sec. 2-138. Local Business Preference.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BROWARD COUNTY CERTIFIED SMALL DISADVANTAGE BUSINESS ENTERPRISE. A Broward County Certified Small Business entity must be certified by the Broward County Office of Economic and Small Business Development, and provide proof of such certification to the town as part of any solicitation response. The entity must show that it has maintained a permanent place of business with full-time employees within the Broward County limits for a minimum of one year prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from the Broward County or the city within Broward County where the business resides.

LOCAL PEMBROKE PARK VENDOR. A business entity which has maintained a permanent place of business with full-time employees within the town limits for a minimum of one year prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from the Town of Pembroke Park.

(B) Process.

- (1) Competitive sealed bid. For bid evaluation purposes, vendors that meet the definition of local Pembroke Park vendor, as defined herein, shall be given a 15% evaluation credit. This shall mean that if a responsive and responsible local Pembroke Park vendor submits a bid/quote that is within 15% of the lowest price submitted by any responsive and responsible vendor, the local Pembroke Park vendor shall have an option to submit a best and final offer (BAFO) which is at least 1% lower than the lowest bid/quote. If the local Pembroke Park vendor submits a bid which is at least 1% lower than that lowest responsive bid/quote, then the award will go to the local Pembroke Park vendor. If not, the award will be made to the responsible vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a local Pembroke Park vendor, the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.
- (2) For bid evaluation purposes, vendors that meet the definition of Broward County Certified Small Disadvantage Business Enterprise, as detailed herein, shall be given a 5% evaluation credit. This shall mean that if a responsive and responsible Broward County Certified Small Disadvantage Business Enterprise submits a bid/quote that is within 5% of the lowest price submitted by any responsive and responsible vendor, the Broward County Certified Small Disadvantage Business Enterprise shall have an option to submit a BAFO which is at least 1% lower than the lowest bid/quote. If the Broward County Certified Small Disadvantage Business Enterprise submits a bid which is at least 1% lower than that lowest responsive bid/quote, then the award will go to the Broward County Certified Small Disadvantage Business Enterprise. If not, the award will be made to the responsible vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a local Pembroke Park vendor, the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.
- (3) If there is a local Pembroke Park vendor and a Broward County Certified Small Disadvantage Business Enterprise participating in the same bid solicitation and both vendors qualify to submit a second bid as detailed above, the local Pembroke Park vendor will be given first option. If the local Pembroke Park vendor cannot beat the pricing for the lowest, responsive bid received by at least 1%, an opportunity will be given to the Broward County Certified Small Disadvantage Business Enterprise. If the

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Broward County Certified Small Disadvantage Business Enterprise cannot beat the pricing for the lowest, responsive bid by at least 1%, then the bid will be awarded to the lowest, responsive and responsible bidder regardless of geographic location of the business.

(4) If multiple local Pembroke Park vendors submit bids/quotes which are within 5% of the lowest, responsive bid/quote, then all responsible, responsive vendors will be asked to submit a BAFO. The award will be made to the local Pembroke Park vendor submitting the lowest BAFO providing that that BAFO is at least 1% lower than the lowest bid/quote received in the original solicitation. If no local Pembroke Park vendor can beat the pricing for the lowest, responsive bid/quote by at least 1%, then the process will be repeated with all responsible Broward County Certified Small Disadvantage Business Enterprise who have submitted a responsive bid/quote which is within 5% of the lowest bid/quote. If no local Pembroke Park vendor and no Broward County Certified Small Disadvantage Business Enterprise can submit a BAFO that is at least 1% lower than the lowest bid/quote submitted in the original solicitation, the award will be made to the lowest, responsive and responsible bidder regardless of geographic location of the business.

(C) Competitive sealed proposals (request for proposals). For evaluation purposes, local Pembroke Park and Broward County Certified Small Disadvantage Business Enterprise shall be a criterion for award in any Request for Proposal unless specifically exempted by the Town Manager or the Town Commission. A vendor located outside of the Town of Pembroke Park limits is considered equivalent to a Pembroke Park vendor and accorded the same preference if its proposal includes the utilization of subcontracts of at least fifty percent of the scope of work provided for in the proposal for identifiable and verifiable local Pembroke Park Vendor(s) as defined herein.

(D) The vendor seeking the local business preference has the burden to show that it qualifies for the preference, to the satisfaction of the Town. Any vendor that qualifies or fails to qualify as a Local Pembroke Park Vendor or a Broward County Certified Small Disadvantage Business Enterprise may not protest any competitive solicitation solely on the basis of qualifying or failing to qualify as a Local Pembroke Park Vendor or a Broward County Certified Small Disadvantage Business Enterprise.

(E) Exceptions.

(1) No local vendor preference will be included in any competitive solicitation where the town is the lead agency for the Southeast Florida Cooperative Purchasing Group or other recognized consortium or cooperative group to which the town may be a member;

(2) Utilization of a state or other agency contract;

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- (3) State or federal law prohibits the use of local preference;
- (4) The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies prohibit the use of local preferences;
- (5) Sole source or single source purchases;
- (6) The local vendor is either non-responsive or non-responsible;
- (7) All bids submitted exceed the budget amount for the project;
- (8) Emergency purchases;
- (9) The Town Manager and/or the Town Commission may exempt any competitive solicitation from the local vendor preference at any point prior to award of contract by the Town Commission.

Section 3. It is the intention of the Town Commission of the Town of Pembroke Park that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Pembroke Park, Florida, and that the Sections of this ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

Section 4. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5. If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the remaining portions or applications remaining in full force and effect.

Section 6. This Ordinance shall become effective upon passage and adoption.

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**PASSED AND ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF
PEMBROKE PARK, FLORIDA, ON THE FIRST READING, THIS ____ DAY OF
_____, 2023.**

**PASSED ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF PEMBROKE
PARK, FLORIDA, ON THE SECOND AND FINAL READING, THIS ____ DAY OF
_____, 2023.**

ATTEST:

MAYOR ASHIRA MOHAMMED

MARLEN D. MARTELL
Town Clerk

Approved as to form and legal sufficiency:

Jacob G. Horowitz
Interim Town Attorney

VOTE

ASHIRA MOHAMMED	_____
GEOFFREY JACOBS	_____
MUSFIKA KASHEM	_____
WILLIAM R. HODGKINS	_____
ERIK MORRISSETTE	_____