

ORDINANCE NO. 09-005

AN ORDINANCE AMENDING CHAPTER 1-2 "ADMINISTRATION" OF THE CODE OF ORDINANCES OF ST. LUCIE COUNTY, FLORIDA; AMENDING SECTION 1-2-28 "CREATION OF PURCHASING DEPARTMENT; HEADED BY PURCHASING AGENT" AND SECTION 1-2-29 "PURCHASING DEPARTMENT POWERS, DUTIES AND FUNCTIONS" TO PROVIDE FOR A PURCHASING DIVISION HEADED BY THE MANAGEMENT AND BUDGET DIRECTOR; CREATING SECTION 1-2-51 TO INCLUDE A LOCAL PREFERENCE POLICY AND PROCEDURE FOR LOCAL BUSINESSES IN COUNTY CONTRACTS; PROVIDING FOR FILING, CODIFICATION, ADOPTION AND AN EFFECTIVE DATE

WHEREAS, on September 24, 1985, the Board of County Commissioners For St. Lucie County, (the "Board") adopted Ordinance No. 85-06 which created a purchasing department and established the purchasing regulations and procedures for St. Lucie County, Florida, as set forth in the St. Lucie County Manual of Purchasing Regulations and Procedures (the "Purchasing Manual"); and

WHEREAS, the Board of County Commissioners desires to amend the Ordinance to conform the organizational structure of the purchasing division to the recent reorganization approved by the Board; and

WHEREAS, the Board of County Commissioners desires to amend the purchasing policy to include a local preference policy and procedure for local businesses; and

WHEREAS, St. Lucie County is home to many great locally owned companies, large and small, and these local companies employ many local citizens; and

WHEREAS, diversification and expansion of the County's economy is essential to its economic and fiscal stability; and

WHEREAS, numerous other local governments in Florida offer their local firms similar local preferences, limiting opportunities for St. Lucie County local businesses; and

WHEREAS, in an effort to provide a positive impact on our local economy and expand the capabilities and capacities of our local companies, the Board of County Commissioners

desires to provide locally owned and operated companies preference in the purchasing policy system within St. Lucie County Government; and

**WHEREAS**, County government and county residents will benefit from local business retention as these companies pay local real estate taxes and are more likely to employ local residents who live in our County and spend in our local economy; and

**WHEREAS**, local businesses contribute to the local tax base and reinvest their dollars back to local communities through jobs and the support of local not-for-profit organizations; and

**WHEREAS**, the Board feels this is an important public policy to show loyalty and respect to the owners and employees of local companies; and

**WHEREAS**, it is the Board's intent to promote the expansion of St. Lucie County's local business capabilities and capacity.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of St. Lucie County, Florida:

**ARTICLE IV. PURCHASING  
DIVISION 1. GENERALLY**

**PART A. SECTIONS 1-2-28 AND 1-2-29 OF ARTICLE IV "PURCHASING" ARE HEREBY AMENDED AS FOLLOWS:**

**Section 1-2-28. Creation of purchasing department division; headed by purchasing agent management and budget director.**

There shall be a county department division known as the purchasing department division which shall be headed by the ~~purchasing agent~~ management and budget director.

**Section 1-2-29. Purchasing department division powers, duties and functions.**

The purchasing ~~department~~ division shall have the following powers, duties and functions pertaining to the purchasing or procurement of all supplies, materials and services:

(1) To canvass all sources of supply and contract for the purchasing or acquisition of all supplies or services required by all county departments, divisions, and agencies, under competitive bidding or by contractual negotiation;

- (2) To plan and coordinate purchases in volume and to coordinate purchasing agreements and contracts from which all county departments as described in the first paragraph shall receive supplies, materials and services;
- (3) To implement the procedures for securing bids or negotiating and awarding contracts;
- (4) To determine items and quantities to be purchased locally;
- (5) To regulate the purchase by any department of any commodity; to establish standards and specifications for any commodity; and to set fair prices that may be paid for any commodity;
- (6) To furnish copies of any purchasing regulation to all county departments;
- (7) To require that every department and office furnish information relative to a proposed purchase to the Management and Budget Director;
- (8) To arrange for a disposal of surplus materials and equipment for public sale;
- (9) To act as agent for the clerk, sheriff, tax collector, property appraiser or supervisor of elections from time to time upon request of such officer or officers.

#### DIVISION 4. LOCAL PREFERENCE

PART B. SECTION 1-2-51 "LOCAL PREFERENCE IN PURCHASING OR CONTRACTING" AND "DIVISION 4 LOCAL PREFERENCE" IN ARTICLE IV "PURCHASING" OF CHAPTER 1-2 "ADMINISTRATION" IS CREATED AS FOLLOWS:

##### Section 1-2-51 LOCAL PREFERENCE IN PURCHASING OR CONTRACTING

Except where otherwise provided by federal or state law or other funding source restrictions or as otherwise set forth in the purchasing policy, St. Lucie County shall give preference to local businesses in the following manner:

- (a) "Local Business" defined:  
"Local business." For purposes of this section, "local business" shall mean a business which meets all of the following criteria:

(1) Has had a fixed office or distribution point located in and having a street address within St. Lucie, Indian River, Martin or Okeechobee County for at least one year immediately prior to the issuance of the request for competitive bids or request for proposals by the county. The fixed office or distribution point must be staffed. Post office boxes are not verifiable and shall not be used for the purpose of establishing a physical address; and

(2) Holds any business license required by St. Lucie County; and

(3) Is the principal offeror who is a single offeror; a business which is the prime contractor and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.

(b) Certification. Any vendor claiming to be a local business as defined by subsection 1-2-51(a) above, shall so certify in writing to the Purchasing Division. The certification shall provide all necessary information to meet the requirements of subsection 1-2-51(a) above. The purchasing agent shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "local business."

(c) The bidder/proposer and all lower tiered subcontractors under the bidder/proposer must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and income tax withholding.

(d) "Non-local business" means a bidder which is not a local business.

(e) Preference in purchase of commodities and services by means of competitive bid. 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 offer shall not be granted local preference consideration for the purposes of that specific contract award. Except where federal or state law, or any other funding source, mandates to the contrary, St. Lucie County and its agencies and instrumentalities, will give preference to local businesses in the following manner:

Competitive bid (local price match option). Each formal competitive bid solicitation (i.e. sealed bids) shall clearly identify how the price order of the bids received will be evaluated and determined. When a qualified and responsive, non-local business submits the lowest price bid, and the bid submitted by one or more qualified and responsive local businesses is within five percent of the price submitted by the non-local business, then the local business with the apparent lowest bid offer (i.e.; the lowest local bidder) shall have the opportunity to

submit an offer to match the price(s) offered by the overall lowest, qualified and responsive non-local bidder. In such instances, staff shall first verify if the lowest non-local bidder and the lowest local bidder are in fact qualified and responsive bidders. Next, the Purchasing Division shall determine if the lowest local bidder meets the requirements of Section 287.087, Florida Statutes. If the lowest local bidder meets the requirements of 287.087, Florida Statutes, the Purchasing Division shall invite the lowest local bidder in writing to submit a matching offer to the Purchasing Division which shall be submitted in writing to the Purchasing Division within five (5) business days thereafter. If the lowest local bidder submits a written offer that does not fully match the lowest bid from the lowest non-local bidder tendered previously, the next lowest fully qualified local bidder will be given the opportunity to match if they are within 5%. This cycle shall be repeated until there are no remaining local bidders within 5%, then award shall be made to the non-local bidder. If the lowest local bidder does not respond, declines or is unable to match the lowest non-local bid price(s), then award will be made to the lowest overall qualified and responsive bidder. If the lowest local bidder does not meet the requirement of Section 287.087, Florida Statutes, and the lowest non-local bidder does, the lowest local bidder will be disqualified and the next lowest local bidder will be considered if they are within 5%, award will be made to the bidder that meets the requirements of the referenced state law. 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 Board of County Commissioners.

(f) Preference in requests for proposals. In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of the total score may be assigned for a local preference, as follows:

Local businesses which meet all of the criteria for a local business as set forth in this article, shall be given a preference in the amount of five percent of the total score of the local business.

Based upon analysis of the marketplace for each project, staff shall make a recommendation for or against inclusion of a local preference in the criteria for consideration by the Board as a part of the pre-publication process for each request for proposal or bid.

(g) Notice. Both bid documents and request for proposal documents shall include notice to vendors of the local preference policy.

(h) *Waiver of the application of local preference.* The application of Local Preference to a particular purchase or contract for which the Board of County Commissioners is the awarding authority may be waived upon approval of the Board of County Commissioners.

(i) *Comparison of qualifications.* The preferences established herein in no way prohibit the right of the Board of County Commissioners to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids. Further, the preferences established herein in no way prohibit the right of the board from giving any further preference permitted by law instead of the preferences granted herein.

(j) *Reciprocity.* In the event any other Florida county or municipality ("local government") deemed appropriate by the St. Lucie County Board of County Commissioners, extends preferences to local businesses, St. Lucie County may enter into an interlocal agreement with such local government wherein the preferences of this section may be extended and made available to vendors that have a valid occupational license issued by that specific local government to do business in that local government that authorizes the vendor to provide the commodities and services to be purchased, and a physical business address located within the limits of that local government. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Vendors must also be authorized to do business in St. Lucie County. Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid to be eligible for consideration as a "local business" under this section. In no event shall the amount of the preference accorded other local government firms exceed the amount of preference that such local government extends to St. Lucie County firms competing for its contracts.

(k) *Purview and administration of this policy.* This policy shall apply to all departments and units under the direct purview of the Board of County Commissioners. The Management and Budget Department shall be responsible for developing, implementing and maintaining administrative procedures in support of this policy.

(l) *Subsequent Review and Sunset Provision.* Pursuant to this ordinance, this local preference section is being added to the purchasing policy in support of the local economy during difficult economic times in St. Lucie County. On or about six months after the effective date, the Management and Budget Department will provide the Board with an update of the results and impacts to date of this local preference policy as well as the status of regional reciprocity for St. Lucie County businesses in Indian River County, Martin County and Okeechobee County. Within one year of the first bid award under this policy is awarded, the Board shall receive a similar report from the Management and Budget Department and shall

determine whether to continue or modify this policy. Nothing in this section shall prevent the Board from taking action sooner to revise or remove this local preference policy.

(m) Limitations.

(1) The provisions of this Ordinance shall apply only to procurements which are above the formal bid threshold as set forth in the St. Lucie County Purchasing Manual.

(2) The provisions of this Ordinance shall not apply where prohibited by federal or Florida law or where prohibited under the conditions of any grant.

(3) The provisions of this Ordinance shall not apply to any purchase exempted from the provisions of the St. Lucie County Purchasing Manual.

(4) The provisions of this Ordinance shall not apply to contracts made under the Consultants Competitive Negotiation Act (CCNA), Section 287.055, Florida Statutes.

(5) The provisions of this Ordinance shall not be applied to any procurement where the local nature of a business has been addressed through the scoring criteria.

(n) Incorporation into Purchasing Manual. Upon adoption, the provisions of the local preference policy and procedures shall be incorporated into the Purchasing Manual.

**PART C. FILING WITH THE DEPARTMENT OF STATE.**

The Clerk be and is hereby directed forthwith to send a certified copy of this ordinance to the Bureau of Administrative Code and Laws, Department of State, The Capitol, Tallahassee, Florida 32304.

**PART D. EFFECTIVE DATE.**

This ordinance shall take effect upon filing with the Department of State. The ordinance shall not affect Request for Bids or Requests for Proposals that were issued before the effective date.

**PART E. ADOPTION.**

After motion and second, the vote on this ordinance was as follows:

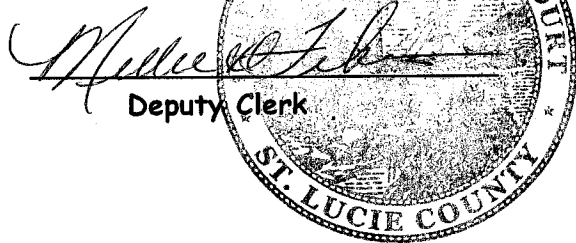
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|------------------------------|-----|
| Paula A. Lewis, Chair        | AYE |
| Charles Grande, Vice Chair   | AYE |
| Commissioner Chris Craft     | AYE |
| Commissioner Doug Coward     | AYE |
| Commissioner Chris Dzadovsky | AYE |

**PART F. CODIFICATION.**

Provisions of this ordinance shall be incorporated in the St. Lucie County Code and Compiled Laws, and the word "ordinance" may be changed to "section", "article", or other appropriate word, and the sections of this ordinance may be renumbered or relettered to accomplish such intention; provided, however, that parts B through F shall not be codified.

**PASSED AND DULY ADOPTED** this 21st day of April, 2009.

ATTEST:



Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS  
ST. LUCIE COUNTY, FLORIDA**

BY:

*Paula A. Lewis*  
Chair

**APPROVED AS TO FORM AND  
CORRECTNESS:**

BY:

*[Signature]*  
County Attorney