

BOARD OF COUNTY COMMISSIONERS

DATE: July 21, 2009
AGENDA ITEM NO. 41

Consent Agenda

Regular Agenda

Public Hearing

County Administrator's Signature:

Subject:

Ordinance Creating Section 2-166 of Pinellas County Code Relating to Local Preference for Procurement

Department:

Purchasing / County Attorney

Staff Member Responsible:

Joe Lauro / Jim Bennett

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) ADOPT THE PROPOSED ORDINANCE CREATING SECTION 2-166 OF PINELLAS COUNTY CODE RELATED TO LOCAL PREFERENCE FOR PROCUREMENT.

Summary Explanation/Background:

At the July 7th meeting, a draft ordinance was presented creating Section 2-166 of Pinellas County Code. This section provided for Local and Regional Preference for professional services (Consultant Competitive Negotiation Act - CCNA) as defined by Florida Statute 287-055(1)(a). Professional services as defined in the Statute include the practice of architecture, professional engineering, landscape architecture, construction management, registered surveying and mapping.

Based upon the Board's discussion, the revised ordinance expands upon that previously presented to provide for Local and Regional preference for other procurement processes utilizing a competitive proposal (Request For Proposal - RFP) where factors other than price are used in the evaluation process including Design-Build and Construction Management procurements. Further, the proposed ordinance also provides for Local and Regional Preference as a means to determine award in the event of a tie from two or more proposals or bids of equal price and quality. This preference would apply to CCNA and RFP procurements and to Invitation to Bids (ITB's) where price is the only factor utilized for award.

As before, the proposed ordinance provides for a tiered preference for qualified firms deemed as either "Local" or "Regional". The ordinance provides a definition of Local as being a sole proprietorship, firm, corporation or other business that has its headquarters in geographical Pinellas County. Regional is defined as a sole proprietorship, firm, corporation or other business entity that at the time of proposal submission has its headquarters in Hillsborough, Manatee or Pasco counties. The proposed ordinance provides for bonus points to be awarded of ten percent (10%) of the overall points received for Local and five percent (5%) for Regional during a CCNA and/or RFP process.

This ordinance will provide an advantage to Local and Regional firms for CCNA and RFP processes which presently encompass approximately forty percent (40%) of the value of all county procurement transactions valued

at approximately \$103 million based on FY08 procurement figures.

Currently, the only surrounding county providing advantage to local firms through local preference policy is Manatee. Their local preference is limited to tie bids. Hillsborough, Pasco, Sarasota and Hernando Counties do not currently have local preference laws, but are considering the possibility based upon the actions of peer jurisdictions. Unfortunately, local preference in surrounding counties may ultimately create a balkanization of the procurement process reducing competition resulting in higher prices to taxpayers. For this reason staff suggests limiting local preference to RFP type contracts where price is only one criterion in the overall evaluation process and where qualifications and experience of the firm is more important than price in the overall award process. In an Invitation to Bid (ITB) process there is not a subjective evaluation process; award is made to the lowest responsive, responsible bidder meeting specification. ITB's are commonly used to procure commodities and for capital construction projects. As an example, applying a price differential of three percent (3%) to a large ITB purchase such as a ten million dollar capital improvement construction project means that a local firm could theoretically charge up to three hundred thousand dollars (\$300,000.00) above the non-local low bidder and still receive award. It has been proven over time that competition is the primary factor for keeping pricing competitive. If non-local bidders limit their bidding in this market due to local preference laws, ultimately pricing will increase. While local preference policies are intended to improve a local vendor's chance of securing work, they may actually disadvantage local vendors. If surrounding jurisdictions engage in protectionism by enacting their own local preference policies, all vendors in the region may ultimately lose. This reduction in opportunities for work may be an unintended consequence of local preference.

In addition, incorporating a preference based on the percentage of a firm's employees residing in Pinellas County will not only be difficult to administer and time consuming to substantiate but will be prone for protest since the County will have to take a firm's affidavit at "face value". A firm could easily falsify such an affidavit creating a difficult and time consuming scenario should a challenge/protest arise. Due diligence in a protest situation would require substantiation of each employees' home address, probably in a notarized form with proof of domicile.

Subsequently, applying this ordinance to all methods of procurement (beyond CCNA/RFP's) will create a substantial due diligence process above and beyond current processes for every transaction initiated by the Purchasing Department. A qualification and validation process must be established to control bid protests and ensure due process in regards to this ordinance.

An effective date of August 1, 2009 is being recommended by staff for implementation of local preference as per the attached ordinance. Local preference would not be applied to selection processes that have been released prior to the effective date. If the Board desires to expand local preference beyond what is recommended, the effective date for implementation will be September 1, 2009 to allow for development and legal review of the required administrative process and forms.

Fiscal Impact/Cost/Revenue Summary:

N/A

Exhibits/Attachments Attached:

Ordinance 2-166

ORDINANCE NO. 09-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, CREATING SECTION 2-166 OF THE PINELLAS COUNTY CODE RELATING TO LOCAL PREFERENCES FOR PROCUREMENTS; PROVIDING FOR DEFINITIONS, LOCAL PREFERENCES FOR LOCAL AND REGIONAL BUSINESSES, CERTIFICATION BY BIDDERS/PROPOSERS, AND EXCEPTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE PINELLAS COUNTY CODE; PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THE ORDINANCE AT THE PUBLIC HEARING AND WITH RESPONSIBLE AUTHORITIES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Pinellas County annually spends significant amounts in purchasing goods and services utilizing taxes and fees generated in large part from residents and businesses in Pinellas County; and

WHEREAS, the Board of County Commissioners determines that it is in the best economic interests of the County's residents and businesses to return funds to the local economy, while ensuring fair competition and securing competitive pricing for professional services; and

WHEREAS, providing for a local preference in procurements as provided herein will support these economic and competitive procurement goals.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS of Pinellas County, Florida

Section 1. Section 2-166 of the Pinellas County Code is hereby created to read as follows:

Section 2-166. Local Preference.

(a) Definitions. As used in this section, the following terms shall have the meaning ascribed to them herein, except where the context clearly indicates a different meaning:

"Competitive Bids" shall mean those bids for the procurement of goods or services governed by Section 2-176 of this division.

"Competitive Proposals" shall mean those proposals for the procurement of goods or services governed by Section 2-177 of this division.

"Construction Management Firm" is a business entity procured to provide construction management services in accordance with Section 255.103, Florida Statutes and Section 2-183 of this division.

“Design-Build Firm” shall have the same definition as set out in Section 287.055(2)(h), Florida Statutes, and Article II, Division 3, Sections 2-196, et seq. of this code.

“Headquarters” shall mean the office location that serves as the administrative center and principal place of business of a Local or Regional Business, as determined in the sole opinion of the purchasing official. A regional headquarters or office does not constitute the headquarters of a business entity that qualifies the business entity for a local preference as provided herein.

“Local Business” shall mean a person, sole proprietorship, firm, corporation, limited liability company, partnership, or other business entity, that at the time of the bid or proposal submittal has its Headquarters within the geographical boundaries of Pinellas County. Post office box numbers or residential addresses alone may not be used to establish status as a Headquarters for a Local Business. If a business is a joint venture, it is sufficient for qualification as a Local Business if at least one of the joint venture parties meets the requirements set forth herein.

“Professional Services” shall have the same definition as set out in Section 287.055(2)(a), Florida Statutes, the “Consultants Competitive Negotiation Act,” and Section 2-178(a) of this division.

“Regional Business” shall mean a person, sole proprietorship, firm, corporation, limited liability company, partnership, or other business entity, that at the time of proposal submittal has its Headquarters within Hillsborough, Manatee, or Pasco counties. Post office box numbers or residential addresses alone may not be used to establish status as a Headquarters for a Regional Business. If a business is a joint venture, it is sufficient for qualification as a Regional Business if at least one of the joint venture parties meets the requirements set forth herein.

(b) Local Preference for Tie Competitive Bids. Whenever two (2) or more Competitive Bids which are equal with respect to price and quality are received, the bid received from the Local Business shall be given preference in the award. Whenever two (2) or more Competitive Bids are equal with respect to price and quality, and none of the bids are received from a Local Business, the award shall be determined by a chance drawing conducted by the purchasing official, or designee.

(c) Local Preference for Professional Services, Design-Build Firms, and Construction Management Firms. A local preference as authorized herein shall be granted in competitive selections for Professional Services and Design-Build Firms selected pursuant to Section 287.055, Florida Statutes, and Construction Management Firms selected pursuant to Section 255.103, Florida Statutes. When establishing the short list of three (3) or more firms deemed to be the most highly qualified:

- (1) Any Local Business that submits a proposal shall receive a preference bonus of ten percent (10%) of the overall points received by such Local Business as part of the evaluation and scoring process.
 - (2) Any Regional Business that submits a proposal shall receive a preference bonus of five percent (5%) of the overall points received by such Regional Business as part of the evaluation and scoring process.
- (d) Local Preference for Competitive Proposals. A local preference as authorized herein shall be granted for Competitive Proposals as follows:
- (1) Any Local Business that submits a proposal shall receive a preference bonus of ten percent (10%) of the overall points received by such Local Business as part of the evaluation and scoring process.
 - (2) Any Regional Business that submits a proposal shall receive a preference bonus of five percent (5%) of the overall points received by such Regional Business as part of the evaluation and scoring process.
- (e) Certification of Proposer. In order to be considered for a preference as a Local Business or Regional Business as provided in this section, the responsive responsible proposer shall provide such information and certify its eligibility in the form required by the Purchasing Department.
- (f) Exceptions. The local preference provided for herein shall not apply to:
- (1) Procurements funded in whole or in part from federal, state, or other sources that disallow local preference.
 - (2) Procurements when waived by the Board of County Commissioners as provided in Section 2-160 of this division.
 - (3) Procurements made through cooperative agreements involving one or more agencies in order to benefit from volume discounts, such as State contracts, or made from another agency's agreements, including "piggy-backing," pursuant to Sections 2-164 or 2-185 of this division.
 - (4) Procurements made from small and disadvantaged businesses pursuant to Section 2-165 of this division.
 - (5) Sole source and noncompetitive procurements pursuant to Section 2-180 of this division.
 - (6) Emergency procurements pursuant to Section 2-181 of this division.

- (7) Any other procurement of goods or services authorized by this division that is not subject to a local preference as provided in subsections (b), (c) and (d) herein.

Section 2. Severability.

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of the Ordinance invalid or unconstitutional.

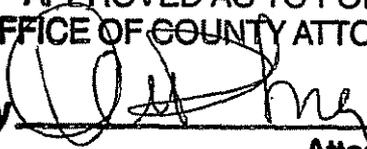
Section 3. Inclusion in the Pinellas County Code.

The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Code.

Section 4. Filing of Ordinance; Effective Date.

Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after the enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the Ordinance with the Department of State, and shall apply to all procurements initiated after this date.

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By 
Attorney