

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NUMBER _____

AN ORDINANCE OF MARTIN COUNTY, FLORIDA, AMENDING SECTION 135.7, GENERAL ORDINANCES, MARTIN COUNTY CODE REGARDING LOCAL PREFERENCE IN PURCHASING OR CONTRACTING; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, APPLICABILITY, FILING WITH THE DEPARTMENT OF STATE, EFFECTIVE DATE, AND CODIFICATION.

WHEREAS, on September 25, 2001, the Board of County Commissioners of Martin County (the “Board”) adopted Ordinance No. 600, known as the Martin County Procurement ordinance, which placed the County’s purchasing function under a centralized system and authorized the development and implementation of a purchasing manual establishing the purchasing regulations and procedures for Martin County, Florida, as set forth in the Martin County Purchasing Manual (the “Purchasing Manual”); and

WHEREAS, the Board amended the purchasing policy to include a local preference policy and procedure for local businesses; and

WHEREAS, local businesses is defined by the County’s local preference ordinance to include surrounding counties; and

WHEREAS, those surrounding counties have not included Martin County in their local preference policies; and

WHEREAS, in order to maintain an equitable local preference policy, the Board has determined that the specific references to the surrounding counties should be removed from the definition of local business.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF MARTIN COUNTY, FLORIDA, THAT:**

PART I. Section 135.7, Local preference in purchasing or contracting, Chapter 135, Procurement, General Ordinances, Martin County Code is hereby amended as follows:

Sec. 135.7. - Local preference in purchasing or contracting.

Added language is underlined; deleted language is ~~struckthrough~~

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

135.7.A. *Definitions.*

Apparent low bidder means a responsible and responsive nonlocal business that submits the lowest price bid.

County means Martin County, a political subdivision of the State of Florida.

Invitation means an offer in writing, by e-mail, fax, or certified mail from the Purchasing Division to the lowest local bidder for the lowest local bidder to submit a written matching offer to the Purchasing Division.

Local business ~~shall~~ means a business which meets all of the following criteria:

- (a) Has had a fixed office or distribution point located in and having a street address within Martin, ~~St. Lucie, Indian River or Okeechobee~~ County for at least one year immediately prior to the issuance of the request for competitive bids by the County. The fixed office or distribution point must be staffed. Post office boxes shall not be used or considered for the purpose of establishing a physical address; and
- (b) Has had, for at least one year immediately prior to the date of the issuance of the request for competitive bids by the County, a current local Business Tax Receipt issued by Martin, ~~Indian River, Okeechobee or St. Lucie~~ County, if applicable.
- (c) Holds any license or competency card required by Martin County; and
- (d) If the contract is awarded, will be the person or entity in direct privity of contract with the County and not as a subcontractor, other lower tier subcontractor, materialman or supplier.

Local government means a county or municipality within the State of Florida deemed appropriate by the Martin County Board of County Commissioners, which extends local preference in purchasing or contracting to Martin County businesses.

Lowest local bidder means the local business with the next-lowest qualified and responsive bid offer when an apparent low bidder has been identified.

Nonlocal business means a bidder which is not a local business as defined herein.

- 135.7.B. *Certification.* Any person or entity claiming to be a local business, as defined herein, and desiring to receive local preference, shall complete and submit, together with all required attachments, the "local business certification form" provided by the County and contained within the bid package accompanying a public notice/advertisement. Any bidder who fails to complete and submit the "local business certification form" together with all required attachments with their bid shall not be granted local preference consideration for the purposes of that specific contract award. The County Administrator or designee shall have the sole discretion to determine if a person or entity meets the definition of a "local business."

135.7.C. *Local preference in purchases by means of competitive bid.* In connection with any solicitation to which this ordinance applies, ~~Martin~~the County will give preference to local businesses in the following manner:

1. When ~~there is an responsible and responsive nonlocal business submits the lowest price bid (herein, "apparent low bidder")~~, and the bid submitted by one or more qualified and responsive local businesses is equal to or within five percent of the price submitted by the apparent low bidder, then the ~~local business with the apparent next lowest qualified and responsive bid offer (herein, the "lowest local bidder")~~ shall have the opportunity to submit an offer that matches the price(s) offered by the apparent low bidder as follows:
 - (a) The Purchasing Division shall verify that the nonlocal apparent low bidder and the lowest local bidder are, in fact, qualified and responsive bidders.
 - (b) The Purchasing Division shall determine if the ~~nonlocal~~ apparent low bidder and the lowest local bidder meet the requirements of F.S. § 287.087, if the bid is subject to its provisions. If F.S. § 287.087 is inapplicable to the subject bid, the process shall proceed to subsection (c) below.
 - (1) If the lowest local bidder meets the requirements of F.S. § 287.087, or the ~~nonlocal~~ apparent low bidder does not meet the requirements of F.S. § 287.087, the process shall proceed to subsection (c) below.
 - (2) If the lowest local bidder does not meet the requirements of F.S. § 287.087, and the ~~nonlocal~~ apparent low bidder does meet the requirements of F.S. § 287.087, the lowest local bidder will be disqualified and, if and only if their bid is less than or within five percent of the apparent low bidder, the next successive lowest local bidder will begin the process under subsection (a) above.
 - (c) The Purchasing Division shall issue an invite, in writing, by e-mail, fax, or certified mail, the lowest local bidder to submit a written matching offer to the Purchasing Division (herein "invitation");
 - (d) The lowest local bidder may, but shall not be obligated to, submit a written matching offer to the Purchasing Division within five business days after receipt of the Invitation;
 - (e) If the lowest local bidder submits a written offer that matches the bid from the apparent low bidder, such written offer shall be accepted and the lowest local bidder shall be awarded the contract;
 - (f) If the lowest local bidder submits a written offer that does not fully match the bid from the apparent low bidder, such written offer shall be rejected; and
 - (g) Thereupon, the next successive lowest qualified and responsive local bidder, if and only if their bid is less than or within five percent of the apparent low bidder will begin the cycle under subsection (a) above.

- (h) This process shall be repeated until there are no remaining qualified and responsive local bidders less than or within five percent of the apparent low bidder.
2. If the lowest local bidder and successive next lowest local bidders do not respond, decline, or are unable to match the apparent low bidder bid price(s), then award will be made to the apparent low bidder.
- 135.7.D. *Waiver of the application of local preference.* The application of Local Preference to a particular purchase or contract may be waived upon approval of the Board of County Commissioners.
- 135.7.E. *Comparison of qualifications.* The preferences established herein in no way prohibit the right of the County 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~~ Board of County Commissioners from giving any further preference permitted by law instead of the preferences granted herein.
- 135.7.F. *Reciprocity.* In the event any other ~~Florida county or municipality~~ ("local government") ~~deemed appropriate by the Martin County Board of County Commissioners, extends preferences to local businesses as defined herein,~~ Martin 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 local business tax receipt 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. Such interlocal agreement shall require vendor compliance with all requirements of this ordinance.
- 135.7.G. *Purview and administration of this policy.* This policy shall apply to all departments under the direct purview of the Board of County Commissioners. The County Administrator designee shall be responsible for developing, implementing and maintaining administrative procedures in support of this policy.
- 135.7.H. *~~Subsequent review and sunset provision.~~* ~~On or about one year after the effective date of this ordinance, the County Administrator or designee will provide the Board with the results to date of this local preference policy as well as the status of regional reciprocity for Martin County businesses in Indian River County, St. Lucie County and Okeechobee County. Within 18 months after the first bid is awarded under this policy, the Board shall receive a similar report from the County Administrator or designee 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.~~
- ~~135.7.I.~~ *Limitations.*
1. The provisions of this ordinance shall apply only to procurements which are above the formal bid threshold as set forth in the Martin County Purchasing Manual.

Added language is underlined; deleted language is ~~struckthrough~~

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 or other funding source.
3. The provisions of this ordinance shall not apply to any purchase exempted from the provisions of the Martin County Purchasing Manual.
4. The provisions of this ordinance shall not apply to contracts made under the Consultants Competitive Negotiation Act (CCNA), F.S. § 287.055.
5. The provisions of this ordinance shall not be applied to requests for proposals, requests for qualifications or any procurement where the local nature of a business has been addressed through the scoring criteria.

135.7.H. *Incorporation into purchasing manual.* Upon adoption, the provisions of the local preference policy and procedures shall be incorporated into the Purchasing Manual.

PART II. CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, Martin County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict except for ordinances concerning either adoption or amendment of the Comprehensive Plan.

PART III. SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall not affect the remaining portions of this ordinance. If the ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstance by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstance.

PART IV. APPLICABILITY OF ORDINANCE.

This Ordinance shall be applicable throughout the unincorporated area of Martin County.

PART V. FILING WITH DEPARTMENT OF STATE.

The Clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART VI. EFFECTIVE DATE.

This ordinance shall take effect upon filing with the Office of Secretary of State.

PART VII. CODIFICATION.

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Provisions of this ordinance shall be incorporated into the Martin County Code of Ordinances, except that Parts 2 through 7 shall not be codified. The word “ordinance” may be changed to “article,” “section,” or other word, and the sections of this ordinance may be renumbered or re-lettered.

DULY PASSED AND ADOPTED THIS ____ DAY OF _____, 20____.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

**BY: _____
CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER**

**BY: _____
EDWARD V. CIAMPI, CHAIRMAN**

**APPROVED AS TO FORM
& LEGAL SUFFICIENCY:**

BY: _____

COUNTY ATTORNEY

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