CITY OF SANIBEL

ORDINANCE NO. 13-011

AN ORDINANCE PERTAINING TO CHAPTER 2 OF THE SANIBEL CODE ENTITLED "ADMINISTRATION"; AMENDING ARTICLE VI, FINANCE, DIVISION 4 "CONTRACTS AND PURCHASES", SECTION 2-330, COMPETITIVE SEALED BIDS; ADDING A NEW SUBSECTION "K" ENTITLED "LOCAL VENDOR PREFERENCE"; DELETING SUBSECTION L(3) RELATING TO BID DISPUTES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, many cities and counties in the State of Florida provide a local vendor preference as part of governmental procurement regulations for the purchase of commodities and general services; and

WHEREAS, the City Council recognizes that, all other factors being equal, there is an economic advantage to our local community in having local Sanibel and Lee County businesses provide goods and services to local governmental entities in that such local Sanibel and Lee County businesses employ local citizens and pay state and local taxes, all of which accrue to the benefit of the local community at-large; and

WHEREAS, the City Council finds it appropriate to balance (1) the need of the City's taxpayers to obtain goods and services from responsive and responsible bidders at the lowest possible price and (2) the community benefits provided by goods and services that are provided by local City and Lee County businesses; and

WHEREAS, the City Council finds it appropriate and in the best interest of the citizens of the City of Sanibel to establish a local vendor preference as part of the City's procurement policy when soliciting goods and services through competitive sealed bids;

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Sanibel, Florida:

SECTION 1. Chapter 2 of the Sanibel Code entitled "Administration", Article VI, Finance, Division 4, "Contracts and Purchases", Section 2-330, "Competitive Sealed Bids" shall be amended by adding a new Subsection K, entitled Local Vendor Preference, with additions indicated by underlining and deletions indicated by strikeout:

Sec. 2-330. Competitive sealed bids.

(k) *Local vendor preference.*

(1) The following words, terms and phrases, when used in this subsection (k), shall have the meanings set forth below, except where the context clearly indicates a different meaning:

a. *Local city business* means the business or vendor has (i) a valid local business tax receipt, issued by the City of Sanibel at last 6 months prior to a bid submission, to do business within the City of Sanibel and that authorizes the business to sell goods or services or to engage in construction, and (ii) a physical non-residential business address located within the City of Sanibel from which the vendor is operating or performing its business, and at which it maintains full-time employees who receive from the local business a regular paycheck from which deductions are made for employment related payroll taxes including, but not necessarily limited to, social security and medicare.

b. *Local county business* means the business or vendor has (i) a valid local business tax receipt, issued by Lee County, or a municipality within Lee County other than the City of Sanibel, at last 6 months prior to a bid submission, to do business within unincorporated Lee County, or a municipality within Lee County other than the City of Sanibel, and that authorizes the business to sell goods or services or to engage in construction, and (ii) a physical non-residential business address located within unincorporated Lee County, or within a municipality within Lee County other than the City of Sanibel, from which the vendor is operating or performing its business, and at which it maintains full-time employees who receive from the local business a regular paycheck from which deductions are made for employment related payroll taxes including, but not necessarily limited to, social security and medicare.

c. *Non-local business* means any business or vendor that does not meet either the definition of local city business or local county business as set forth in subsections (a) and (b) above.

d. The final decision as to whether a business or vendor is a local city business, a local county business or a non-local business shall be at the sole determination of the City of Sanibel and, if necessary, shall be determined by the Sanibel City Council as part of the final bid award.

(2) *Establishment as local city business or local county business.* To establish that a vendor is either a local city business or local county business, as defined herein, a vendor shall provide written confirmation of compliance with the definitions for each such local business, as defined in subsection (1) above, at the time of submitting a bid. Post office boxes are not verifiable and shall not be used for purposes of establishing the required physical business address. A vendor who misrepresents the local preference status of a firm in a bid submitted to the city will lose the privilege to claim local preference status for a period of 3 years.

(3) *Local preference in purchasing and contracting with competitive sealed bids.* The City of Sanibel shall grant a 5% local vendor preference to any local city business or local county business which responds to an invitation to submit competitive sealed bids for the procurement of commodities, personal property, general services, professional services or the purchase of or contract for construction or renovation of public works or improvements, except where federal or state law prohibits or mandates to the contrary. Each formal competitive bid solicitation shall clearly identify how the bids will be received and evaluated. When a responsible and responsive non-local business submits the lowest price bid, and the lowest bid submitted by a responsible and responsive local city business or local county business is within 5% of the lowest bid, then the lowest bidding local city business or local county business shall be awarded the bid. In the event that a local city business and a local county business are scored as an exact tie as the low bids for the award of a competitive sealed bid, the local city business shall be deemed the successful bidder. No business shall be qualified to receive a preference amount that exceeds 5%.

(a) The city reserves the right to compare, contrast and otherwise evaluate the quality of materials, qualifications, character, responsibility and fitness of all persons, firms, partnerships, companies, corporations or other entities submitting competitive sealed bids for the procurement of goods or services when making an award in the best interest of the city.

(b) Local vendor preference awards will be made only to a responsible and responsive local city business or local county business. The local vendor preference may be waived by City Council if, after the bids are evaluated and ranked, it is determined that the cost of the bid award would exceed the budget of the city for the services and/or goods solicited by the city.

(c) The local preference policy set forth herein shall not apply to any of the following purchases or contracts:

(1) Goods or services provided under a cooperative purchasing agreement or piggyback agreement; or

(2) Contracts for professional services the procurement of which is subject to the Consultants' Competitive Negotiation Act (F.S. § 287.055) or subject to any competitive consultant selection policy or procedure adopted or utilized by the city; or

(3) Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of the local vendor preference; or

(4) Purchases made or contracts let under emergency situations or otherwise exempted from competitive bidding or competitive selection as described in the city's purchasing regulations.

(d) The City Council reserves the right, at its sole discretion, to exempt or exclude any specific competitive sealed bid for any procurement from the local vendor preference provisions. Any request for the waiver of local vendor preference to any particular purchase or contract must be heard by the city council prior to advertising the invitation to submit competitive sealed bids. The city council, as the awarding authority, may approve the waiver of local vendor preference upon review and at its sole discretion.

~~(k)~~(l) Rejection of bids. The city reserves the right to reject any bids or portions of them, as best serves the interest of the city. By way of example and not limitation, bids may be rejected if:

(1) They are nonresponsive.

(2) They are materially higher than expected.

(3) Errors in specifications may have caused confusion.

(4) Sufficient funds are not available.

(5) The item or service is no longer needed.

(6) There is a lack of adequate competition.

(7) The item or service can be provided in-house.

(8) The bidder does not qualify under state or federal law.

(9) The bidder is not in compliance with city ordinances. This requirement may be waived if the city finds that the noncompliance is inadvertent, minor and curable as a condition of the award.

(10) The bidder does not appear to have the expertise, financial capability or other ability to meet the requirements of the contract to be awarded, or is otherwise shown not to be responsible.

(11) The bidder is debarred.

~~(l)~~(m) *Resolution of bid disputes.*

(1) Any person adversely affected by a proposed decision concerning a bid or award may protest the proposed decision by filing a written notice of protest with the city representative prior to the award of the contract, or by presenting the protest to city council prior to the award.

(2) The city council may refer the matter to a hearing officer for an informal hearing and recommendation to council prior to awarding a contract or may determine the protest on its own. The decision of the city council constitutes final action by the city.

~~(3) If a bid is for a public construction work as defined in state law (F.S. § 255.20), protest may be made pursuant to F.S. ch. 120.~~

SECTION 2. CODIFICATION. This Ordinance shall be deemed to be an amendment to the Code of Ordinances of the City of Sanibel.

SECTION 3. CONFLICT. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed to effectuate the purpose and intent of the City Council.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

SECTION 5. Effective Date.

This Ordinance shall be effective immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this _____ day of _____, 2013.

AUTHENTICATION:

_____ _____

Kevin Ruane, Mayor Pamela Smith, City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler 9/26/13

Kenneth B. Cuyler, City Attorney Date

Vote of Council Members:

Ruane _____
Congress _____
Denham _____
Jennings _____
Harrity _____

Date Filed with City Clerk: _____