

Agenda Item #: **4G-2**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: **October 2, 2018** ☐ **Consent** ☒ **Regular**
 ☐ **Public Hearing**

Submitted By: Purchasing Department
Submitted For: Purchasing Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on October 16, 2018 at 9:30 a.m.: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Section 2-80.47 Limitations of the Palm Beach County Code, the Local Preference in Purchasing Code; Providing for Repeal of Laws in Conflict; Providing for Severability; Providing for a Savings Clause; Providing for Inclusion in the Code of Laws and Ordinances; and Providing for an Effective Date.

Summary: The current Local Preference Code (Ordinance No. 2002-065), as amended by Ordinance Nos. 2009-095, 2010-011 and 2015-002, provides a local preference to Palm Beach County vendors offering their goods or services to Palm Beach County. This Amendment to the Local Preference Code includes necessary references to the Equal Business Opportunity Program and the Equal Business Opportunity Policies and Procedures. Countywide (DW)

Background and Policy Issues: Due to the results of the Disparity Study conducted by Mason Tillman and Associates, the Office of Small Business Assistance spearheaded the drafting of the Equal Business Opportunity Program and the Equal Business Opportunity Policies and Procedures (collectively “EBO Program and PPM”) by the County’s consultant, Franklin Lee. Input was provided in the drafting of the EBO Program and PPM from both internal (County Departments) and external stakeholders. In order to provide consistent implementation of the EBO Program and PPM, it is necessary to amend the Local Preference Code to include references to the EBO Program and PPM.

Attachments:

1. Proposed Local Preference Ordinance Amendment: Strike-through/clean versions
2. Current Local Preference Code

Recommended by: Kathy Scarlett 9/25/18
Department Director Date

Approved by: Nancy L. Bolger Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income(County)					
In-Kind Match(County)					
NET FISCAL IMPACT					
#ADDITIONAL FTE					
POSITIONS (CUMULATIVE					

Is Item Included in Current Budget?

Yes

No

Does this item include the use of federal funds?

Yes

No

X

Budget Account No:

Fund

Agency

Organization

Object

B. Recommended Sources of Funds/Summary of Fiscal Impact:

NO FISCAL IMPACT ASSOCIATED WITH THIS ITEM

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

OFMB

9/25/18

9/25

Contract Dev. & Control

9/26/18

B. Legal Sufficiency

Assistant County Attorney

9/27/18

C. Other Department Review

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

ORDINANCE NO. 2018-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING SECTION 2-80.47 LIMITATIONS OF THE PALM BEACH COUNTY CODE, THE LOCAL PREFERENCE IN PURCHASING CODE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida (“Board”) enacted Ordinance No. 2002-065, “The Local Preference in Purchasing Code” (the “Local Preference Code”), which established a local preference for the procurement of goods, services, and the construction of public works projects; and

WHEREAS, the Board enacted Ordinance Nos. 2009-095, 2010-011 and 2015-002, thereby amending the Local Preference Code to best serve Palm Beach County businesses; and

WHEREAS, the Board has deemed it necessary to further amend the Local Preference Code to ensure proper reference to the Equal Business Opportunity Program and the Equal Business Opportunity Policies and Procedures Manual.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

SECTION 1. Sec. 2-80.47 of the Palm Beach County Code is hereby amended as follows:

LIMITATIONS:

(e) A local business or a Glades business or a local business utilizing Glades subcontractors receiving a preference under the Palm Beach County ~~Small Business Enterprise Ordinance~~ Equal Business Opportunity Program and the Equal Business Opportunity Policies and Procedures (“EBO Program and EBO PPM”) for a particular purchase shall not be eligible to receive a local preference as established under this Local Preference Code for that same purchase.

In case of any inconsistency between the provisions of the Local Preference Code and the ~~Small Business Enterprise Ordinance~~ Equal Business Opportunity Program and the Equal Business Opportunity Policies and Procedures (“EBO Program and EBO PPM”), the Equal Business Opportunity Program and the Equal Business Opportunity Policies and Procedures shall take precedence.

SECTION 2. REPEAL OF LAWS IN CONFLICT:

1 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
2 repealed to the extent of such conflict.

3 **SECTION 3. SEVERABILITY:**

4 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
5 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
6 holding shall not affect the remainder of this Ordinance.

7 **SECTION 4. SAVINGS CLAUSE:**

8 Notwithstanding anything to the contrary, all provisions of the Local Preference Code
9 (Ordinance No. 2002-065), as amended by Ordinance Nos. 2009-095, 2010-011 and 2015-002, which are
10 codified in Sections 2-80.41 through 2-80.48 of the Palm Beach County Code, are specifically
11 preserved and remain in full force and effect for the limited purpose of enforcing any alleged
12 violations of said Code which occurred prior to its repeal or amendment.

13 **SECTION 5. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

14 The provisions of this Ordinance shall become and be made a part of the Palm Beach
15 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such,
16 and the word "ordinance" may be changed to "section", "article", or other appropriate word.

17 **SECTION 6. EFFECTIVE DATE:**

18 The provisions of this Ordinance shall become effective upon filing with the Department of
19 State.

20 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach
21 County, Florida, on this the ____ day of _____, 2018.

22
23 **SHARON R. BOCK, CLERK &**
24 **COMPTROLLER**

25
26 By: _____
27 Deputy Clerk

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____
Melissa McKinlay, Mayor

28
29
30 **APPROVED AS TO FORM AND**
31 **LEGAL SUFFICIENCY**

32
33 By: _____
34 County Attorney
35

36 **EFFECTIVE DATE:** Filed with the Department of State on the ____ day of
37 _____, 2018.
38

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WHEREAS, the Board enacted Ordinance Nos. 2009-095, 2010-011 and 2015-002, thereby amending the Local Preference Code to best serve Palm Beach County businesses; and

WHEREAS, the Board has deemed it necessary to further amend the Local Preference Code to ensure proper reference to the Equal Business Opportunity Program and the Equal Business Opportunity Policies and Procedures Manual.

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LIMITATIONS:

(e) A local business or a Glades business or a local business utilizing Glades subcontractors receiving a preference under the Palm Beach County Equal Business Opportunity Program and the Equal Business Opportunity Policies and Procedures (“EBO Program and EBO PPM”) for a particular purchase shall not be eligible to receive a local preference as established under this Local Preference Code for that same purchase. In case of any inconsistency between the provisions of the Local Preference Code and the (“EBO Program and EBO PPM”), the (“EBO Program and EBO PPM”) shall take precedence.

SECTION 2. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

1 **SECTION 3. SEVERABILITY:**

2 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
3 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
4 holding shall not affect the remainder of this Ordinance.

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6 Notwithstanding anything to the contrary, all provisions of the Local Preference Code
7 (Ordinance No. 2002-065), as amended by Ordinance Nos. 2009-095, 2010-011 and 2015-002, which are
8 codified in Sections 2-80.41 through 2-80.48 of the Palm Beach County Code, are specifically
9 preserved and remain in full force and effect for the limited purpose of enforcing any alleged
10 violations of said Code which occurred prior to its repeal or amendment.

11 **SECTION 5. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

12 The provisions of this Ordinance shall become and be made a part of the Palm Beach
13 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such,
14 and the word “ordinance” may be changed to “section”, “article”, or other appropriate word.

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18 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach
19 County, Florida, on this the ____ day of _____, 2018.

20
21 **SHARON R. BOCK, CLERK &**
22 **COMPTROLLER**

PALM BEACH COUNTY, FLORIDA, BY ITS
 BOARD OF COUNTY COMMISSIONERS

23
24 By: _____
25 Deputy Clerk

 By: _____
 Melissa McKinlay, Mayor

26
27
28 **APPROVED AS TO FORM AND**
29 **LEGAL SUFFICIENCY**

30
31 By: _____
32 County Attorney

33
34 **EFFECTIVE DATE:** Filed with the Department of State on the ____ day of
35 _____, 2018.

36

entirety. Former § 2-80.35 pertained to referral for suspension or debarment, and derived from Ord. No. 05-048, adopted November 15, 2005.

Part D. Local Preference Code

Sec. 2-80.41. Title.

This part shall be entitled the Palm Beach County Local Preference Code.
(Ord. No. 02-065, § 1, 9-10-02; Ord. No. 2015-002, § 1, 1-13-15)

Sec. 2-80.42. Definitions.

(a) "Glades business" means a bidder or quoter which has a permanent place of business within the Glades and which holds a business tax receipt issued by Palm Beach County that authorizes the bidder or quoter to provide the solicited construction or non-construction related goods or services, and which is issued prior to the issuance of the invitation for bids/request for quotes for which a preference is sought. If the business is a joint venture/partnership, it is sufficient for qualification as a Glades business if at least one (1) of the joint venturers/partners meets the requirements set forth in this subsection.

(b) "Glades subcontractor" means a subcontractor participating in a bid or quote for construction or non-construction related goods or services, which has a permanent place of business within the Glades and which holds a business tax receipt issued by Palm Beach County that authorizes the Glades subcontractor to provide the construction or non-construction related goods or services and which is issued prior to the issuance of the invitation for bids/request for quotes for which a preference is sought. If the subcontractor is a joint venture/partnership, it is sufficient for qualification as a Glades subcontractor if at least one (1) of the joint venturers/partners meets the requirements set forth in this subsection.

(c) "Local business" means a bidder or quoter which has a permanent place of business within Palm Beach County and which holds a business tax receipt issued by Palm Beach County that authorizes the bidder or quoter to provide the solicited construction or non-construction related goods or services to be purchased and which is

issued prior to the issuance of the invitation for bids/request for quotes for which a preference is sought. If the business is a joint venture/partnership, it is sufficient for qualification as a local business if at least one (1) of the joint venturers/partners meets the test set forth in this subsection.

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

(e) "Permanent place of business" means headquarters which are located within Palm Beach County or within the Glades for Glades businesses, or a permanent office or other site located within Palm Beach County or within the Glades for Glades businesses, from which a bidder or quoter will produce a substantial portion of the goods or perform a substantial portion of the services to be purchased and which was in existence prior to the issuance of the invitation for bids/request for quotes. A post office box or location at a postal service center shall not constitute a permanent place of business.

All other terms and definitions used herein shall have the same meaning as set forth in the Palm Beach County Purchasing Code ("Purchasing Code"), as it may be amended.
(Ord. No. 02-065, § 2, 9-10-02; Ord. No. 2009-025, §§ 2-4, 8-18-09; Ord. No. 2010-011, § 2, 4-20-10; Ord. No. 2015-002, § 2, 1-13-15)

Sec. 2-80.43. Applicability of local preference.

Unless otherwise stated below, the provisions of this part shall apply to the solicitation of construction and non-construction related goods and services by the County which are governed by the Purchasing Code (Sections 2-51 through 2-58 of the County Code as may be amended). Additionally, the County should utilize a solicitation process which encourages the use of local vendors for those items which are exempt from the requirements of the Purchasing Code and those which are designated as an alternate source selection as provided for therein.
(Ord. No. 2015-002, § 3, 1-13-15)

Editor's note—Prior to the reenactment of § 2-80.43 by Ord. No. 2015-002, § 3, adopted Jan. 13, 2015, said section was repealed by Ord. No. 2010-011, § 3, adopted April 20, 2010. The former § 2-80.43 pertained to reciprocal preference for

local businesses and derived from Ord. No. 02-065, § 3, adopted Sept. 10, 2002, and Ord. No. 2009-025, § 3, adopted Aug. 18, 2009.

Sec. 2-80.44. Preference for local businesses.

In the event the lowest responsive, responsible bidder or quoter in the procurement of construction or non-construction related goods and services is a non-local business, the bid or quote of the next lowest responsive, responsible bidder or quoter who is a local business may be adjusted downward by five (5) percent, solely for the purpose of determining award. This five (5) percent downward adjustment to the bid or quote is made solely for the purpose of ranking. In no event shall the application of this adjustment change the actual bid or quote amount.

The determination as to whether a bidder or quoter is a local business shall be made by County staff based upon documentation submitted by the bidder or quoter at the time of bid or quote submission and pursuant to this Local Preference Code and to any rules and regulations promulgated by the Purchasing Department. County staff may require a bidder or quoter to provide additional information at any time prior to the award of the contract.

(Ord. No. 02-065, § 4, 9-10-02; Ord. No. 2009-025, § 4, 8-18-09; Ord. No. 2010-011, § 4, 4-20-10; Ord. No. 2015-002, § 4, 1-13-15)

Sec. 2-80.44.1. Preference for Glades businesses.

For any good or service to be utilized in the Glades and for any construction project located in the Glades, the preference described in this Section shall apply and take precedence over the Preference For Local Businesses in Section 2-80.44 herein. In the event the lowest responsive, responsible bidder or quoter in the procurement of any good or service to be utilized in the Glades, or for any construction project located in the Glades, is a non-Glades business, the bid or quote of the next lowest responsive, responsible bidder or quoter who is a Glades business may be adjusted downward by five (5) percent, solely for the purpose of determining award. This five (5) percent downward adjustment to the bid or quote for a Glades bidder or quoter is made solely for the purpose of

ranking. In no event shall the application of this adjustment change the actual bid or quote amount. A local business which is not a Glades business, but which utilizes Glades subcontractors may be eligible for the preference set forth in Section 2-80.44.2 herein.

The determination as to whether a bidder or quoter is a Glades business shall be made by County staff based upon documentation submitted by the bidder or quoter at the time of bid or quote submission and pursuant to the Local Preference Code and to any rules and regulations promulgated by the Purchasing Department. County staff may require a bidder or quoter to provide additional information at any time prior to the award of the contract.

(Ord. No. 2009-025, § 5, 8-18-09; Ord. No. 2010-011, § 5, 4-20-10; Ord. No. 2015-002, § 5, 1-13-15)

Sec. 2-80.44.2. Preference for use of Glades subcontractors by local businesses.

For any construction project located in the Glades, the preference described in this Section shall apply and take precedence over the Preference for Local Businesses in Section 2-80.44 herein. A bidder or quoter in the procurement of construction of public works projects who is a local business, but not a Glades business and who utilizes Glades subcontractors for a minimum of fifteen (15) percent of the work may receive a local preference of three (3) percent, solely for the purpose of determining award. The bid or quote of local businesses utilizing Glades subcontractors for a minimum of fifteen (15) percent of the work may be adjusted downward by three (3) percent for purposes of ranking bidders. In no event shall the application of this adjustment change the actual bid or quote amount.

A bidder or quoter in the procurement of construction of public works projects who is a local business and who utilizes Glades subcontractors for a minimum of thirty (30) percent of the work may receive a local preference of four (4) percent, solely for the purpose of determining award. The bid or quote of local businesses utilizing Glades subcontractors for a minimum of thirty (30) percent of the work may be adjusted downward by

four (4) percent for purposes of ranking bidders. In no event shall the application of this adjustment change the actual bid or quote amount.

For the purposes of determining Glades subcontractor participation under this Section, the total of Glades subcontractor participation described below will apply:

- (a) the local business may count towards its preference only that portion of the total dollar value of a contract performed by a Glades subcontractor;
- (b) the local business may count towards its preference the entire expenditures for materials and equipment purchased by a Glades subcontractor provided that the Glades subcontractor has the responsibility for the installation of the purchased materials and equipment;
- (c) the local business may count towards its preference the entire expenditure to a Glades subcontractor who is a manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters the goods before resale);
- (d) the local business may count towards its preference sixty (60) percent of its expenditures to Glades subcontractors that supply the material but do not manufacture or substantially alter the material; and
- (e) the local business may count towards its preference second and third tier Glades subcontractors, provided that the local business identifies the Glades subcontractors as second and third tier subcontractors in its bid or quote.

The determination as to whether a subcontractor is a Glades subcontractor shall be made by County staff based upon documentation submitted by the local bidder or quoter at the time of bid or quote submission and pursuant to this Local Preference Code and any rules and regulations promulgated by the Purchasing Department. County staff may require a bidder or quoter to provide additional information at any time prior to the award of the contract.

(Ord. No. 2009-025, § 6, 8-18-09; Ord. No. 2010-011, § 6, 4-20-10; Ord. No. 2015-002, § 6, 1-13-15)

Sec. 2-80.45. Reciprocity.

Should Miami-Dade, Broward, Martin, or Hendry counties extend their local preferences to Palm Beach County businesses, the preference for local businesses set forth herein may be made available to those businesses whose permanent place of business are within said counties. However, the bid or quote received from the lowest responsive, responsible local business within Palm Beach County shall not be supplanted by a Miami-Dade, Broward, Martin, or Hendry County business utilizing the Palm Beach County local preference.

(Ord. No. 2010-011, § 9, 4-20-10; Ord. No. 2015-002, § 7, 1-13-15)

Editor's note—Ord. No. 2010-011, § 7, adopted April 20, 2010, repealed the former § 2-80.45, which pertained to interlocal agreements and derived from Ord. No. 02-065, § 5, adopted Sept. 10, 2002. Section 9 of Ord. No. 2010-011 was added as a new § 2-80.45 at the discretion of the editor.

Sec. 2-80.46. Waiver.

The application of this part to any particular purchase may be waived by the Board of County Commissioners where such waiver would be in the best interests of the County.

(Ord. No. 02-065, § 6, 9-10-02)

Sec. 2-80.47. Limitations.

(a) The provisions of this Local Preference Code shall not apply where prohibited by federal, state or Florida law or where prohibited under the conditions of any grant.

(b) Unless prohibited by federal, state or local law or where prohibited under the conditions of any grant, the location of a business shall be addressed through the evaluation criteria set forth in the Request for Proposal or the Request for Submittal solicitations.

(c) The provisions of this Local Preference Code shall in no way limit the right of the Board of County Commissioners to compare the qualifications, character, responsibility and fitness of any person or entity submitting bids or quotes or to make an award it deems to be in the best interest of the County.

(d) The provisions of this Local Preference Code shall not be applied where its application would result in an award which exceeds the otherwise lowest responsive, responsible bid by one hundred thousand dollars (\$100,000.00).

(e) A local business or a Glades business or a local business utilizing Glades subcontractors receiving a preference under the Palm Beach County Small Business Enterprise Ordinance for a particular purchase shall not be eligible to receive a local preference as established under this Local Preference Code for that same purchase. In case of any inconsistency between the provisions of the Local Preference Code and the Small Business Enterprise Ordinance, the Small Business Enterprise Ordinance shall take precedence. (Ord. No. 02-065, § 7, 9-10-02; Ord. No. 2009-025, § 7, 8-18-09; Ord. No. 2010-011, § 10, 4-20-10; Ord. No. 2015-002, § 8, 1-13-15)

Sec. 2-80.48. Rules and regulations.

The County Administrator or his/her designee shall develop and promulgate rules and regulations which shall govern the application and administration of this part.

(Ord. No. 02-065, § 8, 9-10-02)

DIVISION 3. ACQUISITION OR IMPROVEMENT OF COUNTY PROPERTY*

Part A. General Provisions

Secs. 2-81—2-90. Reserved.

Part B. Funding From Ad Valorem Tax Revenues

Sec. 2-91. Definitions.

As used in this part, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

Bonds means the obligations issued by the county under the provisions of this part to pay the cost of the project and payable from ad valorem taxation levied and collected within the county.

***Cross references**—Revenue certificates for equipment purchases for sheriff's office, § 16-1; bonds, etc., for road and bridge work, § 23-76 et seq.

State law references—Home rule powers of chartered counties, Fla. Const., art. VIII, § 1(g); county bonds, F.S. chs. 130—132.

Cost of a project means the cost of acquiring or constructing such project, and the cost of improvements, and shall include the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for such construction or acquisition the cost of all machinery and equipment, financing charges, capitalization of interest, engineering and legal expenses, cost of plans, specifications, surveys, estimates of construction costs and of revenues, other expenses necessary or incident to determining the feasibility or practicability of such construction or acquisition, administrative expenses, and such other expenses as may be necessary or incidental to the financing herein authorized and to such construction or acquisition and the placing of the project in operation.

Project means the construction, acquisition, reconstruction, renovation and improvement of county buildings, including all lands or interest therein, equipment and all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therewith. (Ord. No. 83-2, § 1, 3-15-83)

Sec. 2-92. General powers.

The county is hereby authorized and empowered:

- (1) To acquire by purchase or to construct, or partly acquire and partly construct, and to improve, repair, reconstruct, own, operate and maintain a project.
- (2) To issue bonds payable from ad valorem taxation to pay the cost of a project and/or to pay and refund any bonds or bond anticipation notes heretofore or hereafter issued by the county to pay the cost of a project, which bonds or bond anticipation notes are payable from ad valorem taxation or from any other source.
- (3) To fix and collect rentals or other charges for the services and facilities furnished by the project to the extent applicable.
- (4) To acquire in the name of the county, either by purchase or the exercise of the right to eminent domain, such lands and