

TOWN OF FORT MYERS BEACH  
ORDINANCE NO. 08-14

AN ORDINANCE TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH LOCAL BIDDER PREFERENCE ORDINANCE; PROVIDING DEFINITIONS, PROCEDURES, EXCEPTIONS, CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town previously passed Ordinance 07-10, known as the Town of Fort Myers Beach Finance Ordinance and is amending it to include provisions for local vendor preference as well as disadvantaged business enterprise/minority business enterprise provisions for governmental grant compliance; and

WHEREAS, the Town has determined that funds generated in and from the Town of Fort Myers Beach should, to the extent reasonable and possible, be placed back into the local Fort Myers Beach economy and therefore it is in the best interest of the Town of Fort Myers Beach to give a preference to businesses primarily located within the corporate Town limits whenever the application of such a preference is reasonable in light of the dollar-value of procurement offers received in relation to such expenditures; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety, and welfare and to preserve the lives and property of the people of the Town.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

**Section 1. Definition of "Local Vendor/Contractor".** Section 4, Definitions, of Exhibit A, Ordinance 07-01, Purchasing Policies and Procedures Manual is hereby amended to add the following definition:

V. "Local Vendor/Contractor" means any person, firm, partnership, company or corporation whose principal place of business, in the sole opinion of the Town, is physically located within the corporate boundaries of the Town of Fort Myers Beach in an area zoned for conduct of such business and who does business on a day-to-day basis by providing goods, services or construction within the Town. Post office boxes must not be used for the purpose of establishing such physical address. In order to be considered for this status, such person or entity must provide current documentation of its status to the Town at the time of its response to specific Town procurement request(s).

**Section 2. Modification of Local Vendor Preference Bid Provisions.** Section 5 (A) (11), Tie Bids, is hereby deleted in its entirety, and the following underlined language is substituted therefor:

11. Local Vendor/Contractor Preference: The Town may give preference to a Local Vendor's bid/quote as follows:

- (a) The Town reserves the exclusive right whether or not to apply the Local Vendor/ Contractor preference to any procurement over \$10,000 in the aggregate and will state in the Request for Bids or Request for Quotes documents whether or not this preference will apply to the individual procurement. As to any bid item or service of \$10,000 or less, the local vendor/ contractor preference shall automatically be afforded to bidders.
- (b) The "total bid price" for purposes of application of this preference shall include not only the base bid price, but also all shipping, handling, installation and other associated costs as well as alterations to the base bid price resulting from alternates which were part of the bid and actually to be purchased or awarded by the Town.
- (c) Such preference shall be given only if the Local Vendor/Contractor is determined to be a responsive, responsible bidder and if the Local Vendor's bid is determined to be within 5% percent or five thousand (\$5,000.00) dollars, whichever is less, of the total bid price of the lowest responsive, responsive bidder.
- (d) The preference will be applied by calculating the total bid price of the lowest nonlocal responsive and responsible bidder, adding five percent, and comparing that figure with the bid of the lowest responsive and responsible Local Vendor/Contractor. If the bid of the Local Vendor/Contractor is equal to or lower than such figure, the purchase or contract shall be offered to the Local Vendor/Contractor at the price bid by such local entity.
- (e) Such preference shall not be construed as affecting the Town's exclusive right to compare, contrast and otherwise evaluate the qualifications, character, responsibility and fitness of all persons, firms, partnerships, companies or corporations submitting bids or quotes in any procurement for goods or services, when making an award in the best interests of the Town.

**Section 3. Modification of Local Vendor Preference Proposal Provisions.** Section 5(l)(4), Contracting for Goods and/or Services through a Request for Proposals is hereby modified as follows:

- (4) Public Announcement and Request for Proposals. The Town shall provide reasonable notice of the need for such goods and/or services through a Request for Proposals (RFP). The RFP shall describe the goods and/or services required, list the types of information and data required of each offeror, and state the relative importance of particular specifications or qualifications. The Town reserves the exclusive right whether or not to apply the Local Vendor/ Contractor preference to any procurement and will state in the RFP whether or not this preference will apply to the individual procurement. Such preference shall be given only if the Local Vendor/Contractor is determined to be a responsive, responsible proposer. Such preference shall not be construed as affecting the Town's exclusive right to compare, contrast and otherwise evaluate the qualifications, character, responsibility and fitness of all persons, firms, partnerships, companies or corporations submitting proposals in any procurement for goods or services, when making an award in the best interests of the Town.

**Section 4. Exceptions to Local Vendor/Contractor Preference.** The provisions of this ordinance shall not apply to purchases from other governmental entities, purchase of goods

from contracts awarded by other governmental entities by competitive bid, cooperative purchasing, competitive negotiations for professional services to be acquired in accordance with Section 287.055, Florida Statutes (the Consultant's Competitive Negotiation Act or CCNA), 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 or disfavor application of that preference; purchases made or contracts let under emergency or other noncompetitive situations; or purchases in excess of one hundred thousand (\$100,000.00) dollars. The procurement preference established in this ordinance does not prohibit the Town from giving any other preference permitted by law in addition to the preference authorized in this Ordinance.

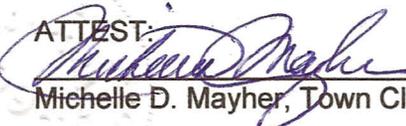
**Section 5. Implementation of Disadvantaged Business Enterprise/Minority Business Enterprise If Required by Federal or State Funding.** The Town will implement federal and/or state Disadvantaged Business Enterprise/Minority Business Enterprise requirements on a case-by-case basis if required by a purchase or contract which is funded, in whole or in part, by another governmental entity and the laws, regulations, or policies governing such funding require such provision(s).

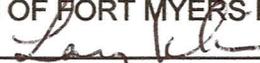
**Section 6. Repeal of Prior Ordinances, Application of Ordinance, Conflict and Severability.** All sections of any other Ordinance(s) and/or Resolution(s) of the Town in conflict herewith are hereby repealed to the extent of such conflict. The preference established in this ordinance will apply to new contracts and procurements solicited after the effective date hereof. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity will not affect the remaining provisions that can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 6. Effective Date.** This Ordinance shall take effect immediately upon adoption. The foregoing ordinance was enacted by the Town Council upon a motion by Council Member List and seconded by Council Member Raymond and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	<u>aye</u>	Herb Acken, Vice Mayor	<u>no</u>
Tom Babcock	<u>aye</u>	Jo List	<u>aye</u>
Bob Raymond	<u>aye</u>		

DULY PASSED AND ENACTED this 20<sup>th</sup> day of October, 2008.

ATTEST:  
  
Michelle D. Mayher, Town Clerk

TOWN OF FORT MYERS BEACH  
BY:   
Larry Kiker, Mayor

Approved as to legal sufficiency by:

  
\_\_\_\_\_

Anne Dalton, Esquire, Town Attorney