

ORDINANCE NUMBER 2013- 43

**AN ORDINANCE OF ESCAMBIA COUNTY, FLORIDA CREATING VOLUME 1, CHAPTER 46, ARTICLE II, DIVISION 3, SECTION 46-110 OF THE ESCAMBIA COUNTY CODE OF ORDINANCES RELATING TO LOCAL PREFERENCE IN BIDDING; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, local businesses are often at a disadvantage when competing with other non-local businesses in that the cost of doing business in Escambia County is higher than other areas of the state; and

**WHEREAS**, providing local businesses a preference in the procurement of goods and services encourages local industry, employment opportunities, and increases the county's overall tax base; and

**WHEREAS**, the Board of County Commissioners finds that the proposed Ordinance providing local businesses a preference in the procurement of goods and services serves a compelling public purpose for the benefit of the taxpayers and residents of Escambia County.

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

**Section 1. Recitals.**

That the foregoing recitals are true and correct and incorporated herein by reference.

**Section 2. Creation.**

That Volume I, Chapter 46, Article II, Division 3, Section 46-110 of the Escambia County Code of Ordinances is hereby created to read as follows:

**Sec. 46-110. Local Preference in Bidding.**

(a) Legislative intent. The Escambia County Board of County Commissioners finds that local businesses are often at a disadvantage when competing with other non-local businesses in that the cost of doing business in Escambia County is higher than other areas of the state and giving local businesses a preference in the procurement of goods and services serves a compelling public purpose for the benefit of the taxpayer and residents of Escambia County as such preference encourages local industry, employment opportunities, and increases the county's overall tax base.

Date: 9/17/2013 Verified By: Ottavia

(b) **"Local business" defined:**

"Local business." For purposes of this section, "local business" shall mean a business which meets all of the following criteria:

(1) Has had a fixed office or distribution point located in and having a street address within Escambia County or Santa Rosa County for at least one (1) year immediately prior to the issuance of the request for competitive bids by the county. The fixed office or distribution point must be staffed by at least one employee. Post office boxes are not verifiable and shall not be used for the purpose of establishing a physical address; and

(2) Holds any business license required by Escambia County or Santa Rosa County; and

(3) Is the principal offeror who is a single offeror; a business which is the prime contractor and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.

(c) **Certification.** Any vendor claiming to be a local business as defined above, shall so certify in writing to the office of purchasing. The certification shall provide all necessary information to meet the requirements provided herein. The purchasing agent shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "local business."

(d) **Preference in purchase of commodities and services by means of competitive bid.**

Except where federal or state law, or any other funding source, mandates to the contrary, Escambia County may give preference to local businesses in the following manner:

**Competitive bid (local price match option).** Each formal competitive bid solicitation (i.e. sealed bids) shall clearly identify how the price order of the bids received will be evaluated and determined.

When a qualified and responsive, non-local business submits the lowest price bid amount between \$50,000 and \$249,999, and the bid submitted by one or more qualified and responsive local businesses is within **five percent (5%)** of the price submitted by the non-local business, then the local business with the apparent lowest bid offer (i.e. the lowest local bidder) shall have the opportunity to submit an offer to match the price(s) offered by the overall lowest, qualified and responsive non-local bidder.

When a qualified and responsive, non-local business submits the lowest price bid amount between \$250,000 and \$999,999, and the bid submitted by one or more qualified and responsive local businesses is within **three percent (3%)** of the price

submitted by the non-local business, then the local business with the apparent lowest bid offer (i.e. the lowest local bidder) shall have the opportunity to submit an offer to match the price(s) offered by the overall lowest, qualified and responsive non-local bidder.

When a qualified and responsive, non-local business submits the lowest price bid amount in excess of \$1,000,000, and the bid submitted by one or more qualified and responsive local businesses is within **two percent (2%)** of the price submitted by the non-local business, then the local business with the apparent lowest bid offer (i.e. the lowest local bidder) shall have the opportunity to submit an offer to match the price(s) offered by the overall lowest, qualified and responsive non-local bidder.

In such instances, staff shall first verify whether the lowest non-local bidder and the lowest local bidder are in fact qualified and responsive bidders. Next, the purchasing department shall invite the lowest local bidder in writing to submit a matching offer which shall be submitted in writing to the office of purchasing within five (5) business days thereafter.

If the lowest local bidder does not respond or otherwise submits a written offer that does not fully match the lowest bid from the lowest non-local bidder tendered previously then award shall be made to the lowest overall qualified and responsive non-local bidder.

In the event a local bidder is awarded a contract pursuant to this section, any requests for change orders increasing the cost of the project must be approved by the board of county commissioners.

(e) **Notice.** All bid solicitation documents shall include notice to vendors of the local preference policy.

(f) **Waiver of the application of local preference.** The application of local preference to a particular purchase or contract for which the board of county commissioners is the awarding authority may be waived upon approval of the board of county commissioners.

(g) **Limitations.**

(1) The provisions of this division shall apply only to procurements which are above the formal bid threshold as set forth in the Escambia County Purchasing Code.

(2) The provisions of this division shall not apply where prohibited by federal or Florida law or where prohibited under the conditions of any grant.

(3) The provisions of this division shall not apply to any purchase exempted from the provisions of the Escambia County Purchasing Code.

(4) The provisions of this division shall not apply to contracts made under the Consultants Competitive Negotiation Act (CCNA), F.S. § 287.055.

(h) **Penalties.**

(1) **Misrepresentation.** A vendor who misrepresents the local preference status of its firm in a bid or proposal submitted to the county will lose the privilege to claim local preference status for a period of up to one year from the date of the award of the contract or upon completion of the contract whichever is greater. The county administrator, in his discretion, may also recommend that the firm be referred for suspension of eligibility to claim the privilege of local preference.

(2) **Failure to maintain local business preference qualifications.** Any vendor that does not maintain its local preference status resulted in the awarded contract shall be in breach of contract and will be subject to termination of the contract, suspension of payments under the contract, and loss of the local preference status on the contract awarded.

(3) **Lack of good faith.** The contractor or firm may show that it attempted through reasonable and objective means and in good faith to comply with the terms of the contract relating to local businesses but was unable to comply. If the county determines that the contractor or firm did not act in good faith, all amounts paid to the contractor or firm under the county contract intended for expenditure with the local business shall be forfeited and recoverable by the county. In addition, the contract may be rescinded and the county may return all or a portion of the goods received and recover all amounts paid under the contract for the goods which were returned.

**Section 3. Severability.**

That if any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**Section 4. Inclusion in the Code.**

It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Escambia County Code; and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

**Section 5. Effective Date.**

This Ordinance shall become effective upon filing with the Department of State.

DONE AND ENACTED THIS 16th DAY OF September, 2013.

BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA

BY: *Gene M. Valentino*  
Gene M. Valentino, Chairman

ATTEST: PAM CHILDERS  
Clerk to the Circuit Court

Date Executed

September 17 2013

*Deborah Carow*  
Deputy Clerk



Enacted: September 16, 2013

Filed with Department of State: September 19, 2013

Effective: September 19, 2013

This document approved as to form and legal sufficiency.

By: *[Signature]*  
Title: *[Signature]*  
Date: 9/15/13