

ORDINANCE NO. O-2020-_____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, AMENDING CHAPTER 6 OF THE CITY'S CODE OF ORDINANCES, ENTITLED "FINANCE AND TAXATION", SPECIFICALLY AMENDING ARTICLE V, ENTITLED "TAMARAC PROCUREMENT CODE", BY UPDATING AND MODERNIZING EXISTING PROCUREMENT MEANS AND METHODS; CREATING A VETERANS PREFERENCE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Tamarac, in response to the November 2010 amendment to the City Charter, adopted a new Procurement Code in 2012 to address form, functionality and operational best practices for procurement in the City; and

WHEREAS, the City continues to seek to ensure that all goods and services utilized by the City are procured through an open, fair and competitive process; and

WHEREAS, the City's professional staff has reviewed the best practices related to local government procurement and has recommended updates to the Procurement Code to update and modernize procurement means and methods to be utilized for the competitive procurement of goods and services; and

WHEREAS, the City also recognizes the significant positive impact armed forces veterans have on the local community and as such the City Commission has determined that a veterans business preference will incentivize continued investment by veterans into the Tamarac community; and

WHEREAS, the City Commission of the City of Tamarac has determined that amending the Tamarac Procurement Code to update and modernize procurement means and methods to be

utilized for the competitive procurement of goods and services and to include a veterans business preference is in the best interests of the individual and corporate citizens of the City of Tamarac.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, THAT:

Section 1: The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2: The City Commission of the City of Tamarac hereby amends Chapter 6 of the City's Code of Ordinances, entitled "Finance and Taxation", specifically amending portions of Article V, entitled "Tamarac Procurement Code":

Section 3: Section 6-146 entitled, "Methods of source selection" is hereby amended by amending subsection 6-146(b) which shall read as follows:

(b) *Selection advisory committee.* There is hereby established a selection advisory committee (SAC) for the purpose of evaluating firms who express interest in contracting with the city for professional services for projects subject to the requirements of the Consultants' Competitive Negotiations Act, F.S. § 287.055, as may be amended from time to time.

(1) The SAC members shall be comprised of:

- a. the purchasing and contracts manager or their designee, who shall facilitate the committee process, and be a non-voting member;
- b. two (2) members shall be appointed by the City Manager or their designee from a list of recommendations to the purchasing and contracts manager received from the director of using department;
- c. two (2) members shall be appointed by the City Manager or their designee from a list of recommendations to the purchasing and contracts manager received from the director of public services;
- d. one (1) member shall be appointed by the City Manager or their designee from a list of recommendations to the purchasing and contracts manager received from the director of financial services;

Should the using department be the public services or financial services, then the the City Manager or their designee shall make the appointment of the two (2) members for the using department in addition to the regular department appointment(s) from a list of

recommendations to the purchasing and contracts manager received from using department. Should there be no using department, as defined in section 6-143 of the City Code, then there will be no using department SAC members for the evaluation process and the SAC will consist of three (3) voting members and one (1) non voting member.

(2) All meetings of the SAC shall be subject to and held in conformity with the requirements of the Florida Sunshine law, as may be amended.

(3) All minutes of the meetings of the SAC shall be promptly recorded and the records shall be open to public inspection in accordance with the provisions of Florida's Public Records laws, as may be amended.

(4) *Selection procedure.*

- a. The SAC shall evaluate the statements of qualifications submitted by all proposers, shall conduct discussions with, and may require presentations by no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services; however, if less than three (3) proposals are received, the SAC may interview those firms submitting responses. All expenses, including travel expenses for interview, incurred in the preparation of the proposal shall be borne by the proposer. After presentations and interviews have been completed, the SAC shall rank all responses and determine the response that is most advantageous to the city.
- b. The ranking of firms shall be based on the SAC's ability to differentiate qualifications applicable to the scope and nature of the request for proposals. Such determination shall be based on, but not necessarily be limited to:
 1. The proposer's demonstrated understanding of the city's requirements and plans for meeting those requirements;
 2. The professional qualifications, related experience and adequacy of the personnel assigned to the project;
 3. The prior experience and references of the proposer;
 4. The prior experience, if any, that the proposer has had with the City of Tamarac.
 5. All other statutory requirements of the Consultants' Competitive Negotiation Act as applicable to the specific procurement, including whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985.
- c. Upon reaching consensus on the recommendation by the SAC, the city shall negotiate with the number one ranked firm, and upon completion of negotiations, shall make a recommendation to the city commission for contract award. If negotiations are not successful with the number one ranked firm, the city shall negotiate with the next highest ranked firm.

Section 4: Section 6-146.1 entitled, "Local business preference" is hereby amended as follows:

Sec. 6-146.1. Local business and veteran's preference.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Broward County certified small business vendor. A Broward County certified small business entity must be certified by the Broward County Office of Economic and Small Business Development, and provide proof of such certification to the city as part of any solicitation response. The entity must show that it has maintained a permanent place of business with full-time employees within the Broward County limits for a minimum of one year prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from the Broward County or the city within Broward County where the business resides.

Local Tamarac vendor. A business entity which has maintained a permanent place of business with full-time employees within the city limits for a minimum of one year prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from the city.

Veteran, as defined in 38 CFR § 74.1, as amended, is a person who served on active duty with the U.S. Army, Air Force, Navy, Marine Corps or Coast Guard, for any length of time and at any place and who was discharged or released under conditions other than dishonorable. Reservists or members of the National Guard called to federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify as a veteran.

Veteran-owned small business (VOSB), as specified in 38 CFR § 74.1, as amended, is a business that is not less than fifty-one (51) percent owned by one or more veterans, or in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more veterans; the management and daily business operations of which are controlled by one or more veterans and qualifies as "small" for federal business size standard purposes. When used in this article, the term "VOSB" includes service-disabled veteran-owned small business, as that term is specified in 38 CFR § 74.1, as amended.

(B) Process.

(1) Competitive sealed bid.

(a) For bid evaluation purposes, vendors that meet the definition of local Tamarac vendor, as defined herein, shall be given a five (5) percent evaluation credit. This shall mean that if a responsive and responsible local Tamarac vendor submits a bid/quote that is within five (5) percent of the lowest price submitted by any responsive and responsible vendor, the local Tamarac vendor shall have an option to

submit a best and final offer (BAFO) which is at least one (1) percent lower than the lowest bid/quote. If the local Tamarac vendor submits a bid which is at least one (1) percent lower than that lowest responsive bid/quote, then the award will go to the local Tamarac vendor. If not, the award will be made to the responsible vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a local Tamarac vendor, the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

(b) For bid evaluation purposes, vendors that meet the definition of Broward County certified small business vendor, as detailed herein, shall be given a two and one-half (2.5) percent evaluation credit. This shall mean that if a responsive and responsible Broward County certified small business vendor submits a bid/quote that is within two and one-half (2.5) percent of the lowest price submitted by any responsive and responsible vendor, the Broward County certified small business vendor shall have an option to submit a BAFO which is at least one (1) percent lower than the lowest bid/quote. If the Broward County certified small business vendor submits a bid which is at least one (1) percent lower than that lowest responsive bid/quote, then the award will go to the Broward County certified small business vendor. If not, the award will be made to the responsible vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a local Tamarac vendor, the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

(c) For bid evaluation purposes, vendors that meet the definition of VOSB, as defined herein, shall be given a two and one-half (2.5) percent evaluation credit. This shall mean that if a responsive and responsible VOSB vendor submits a bid/quote that is within two and one-half (2.5) percent of the lowest price submitted by any responsive and responsible vendor, the VOSB shall have an option to submit a best and final offer (BAFO) which is at least one (1) percent lower than the lowest bid/quote. If the VOSB vendor submits a bid which is at least one (1) percent lower than that lowest responsive bid/quote, then the award will go to the VOSB. If not, the award will be made to the responsible vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a VOSB, the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

(2) If there is a local Tamarac vendor, a Broward County certified small business vendor, and a VOSB vendor participating in the same bid solicitation and each vendor qualifies to submit a second bid as detailed above, the local Tamarac vendor will be given first option, then Broward County certified small business vendor the next option, and the VOSB the final option. If the local Tamarac vendor cannot beat the

pricing for the lowest, responsive bid received by at least one (1) percent, an opportunity will be given to the Broward County certified small business vendor. If the Broward County certified small business vendor cannot beat the pricing for the lowest, responsive bid received by at least one (1) percent, an opportunity will be given to the VOSB. If the VOSB cannot beat the pricing for the lowest, responsive bid by at least one (1) percent, then the bid will be awarded to the lowest, responsive and responsible bidder regardless of vendor preferences set forth in this Section.

(3) If multiple local Tamarac vendors submit bids/quotes which are within five (5) percent of the lowest, responsive bid/quote, then all responsible, responsive vendors will be asked to submit a BAFO. The award will be made to the local Tamarac vendor submitting the lowest BAFO providing that that BAFO is at least one (1) percent lower than the lowest bid/quote received in the original solicitation. If no local Tamarac vendor can beat the pricing for the lowest, responsive bid/quote by at least one (1) percent, then the process will be repeated with all responsible Broward County certified small business vendors who have submitted a responsive bid/quote which is within two and one-half (2.5) percent of the lowest bid/quote. If no local Tamarac vendor and no Broward County certified small business vendor can submit a BAFO that is at least one (1) percent lower than the lowest bid/quote submitted in the original solicitation, then the process will be repeated with all responsible VOSB vendors who have submitted a responsive bid/quote which is within two and one-half (2.5) percent of the lowest bid/quote. If no local Tamarac vendor, no Broward County certified small business vendor, and no VOSB vendor can submit a BAFO that is at least one (1) percent lower than the lowest bid/quote submitted in the original solicitation, then the award will be made to the lowest, responsive and responsible bidder regardless of vendor preferences set forth in this Section.

(C) Competitive sealed proposals (request for proposals). For evaluation purposes, local Tamarac vendor, Broward County certified small business vendor, and VOSB shall be a criterion for award in any request for proposal unless specifically exempted by the city manager or the city commission. A vendor located outside of the city limits is considered equivalent to a Tamarac vendor and accorded the same preference if its proposal includes the utilization of subcontracts of at least ten (10) percent of the scope of work provided for in the proposal for identifiable and verifiable local Tamarac vendor(s) as defined herein.

(D) A vendor may only claim one preference, a vendor claiming to be a local Tamarac vendor, or Broward County certified small business vendor, or VOSB cannot also claim another local preference. The vendor seeking the local business and veteran's preference has the burden to show that it qualifies for the preference, to the satisfaction of the city. Any vendor that qualifies or fails to qualify as a local Tamarac vendor, a Broward County certified small business vendor, or VOSB vendor may not protest any competitive solicitation solely on the basis of

qualifying or failing to qualify as a local Tamarac vendor, a Broward County certified small business vendor, or VOSB vendor.

(E) Exceptions.

- (1) No preference set forth in this Section will be included in any competitive solicitation where the city is the lead agency for the Southeast Florida Cooperative Purchasing Group or other recognized consortium or cooperative group to which the city may be a member;
- (2) Utilization of a state or other agency contract;
- (3) State or federal law prohibits the use of local preference;
- (4) The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies prohibit the use of local preferences;
- (5) Sole source or single source purchases;
- (6) The vendor is either non-responsive or non-responsible;
- (7) All bids submitted exceed the budget amount for the project;
- (8) Emergency purchases;
- (9) The city manager and/or the city commission may exempt any competitive solicitation from the local business and veteran's preference at any point prior to award of contract by the city commission. The city manager and/or the city commission shall not exercise this exemption in an arbitrary or capricious manner.

Section 5: Section 6-151 entitled, "Types of contracts and contract administration" is hereby amended as follows:

- (a) *General.* Firm fixed price contracting is the preferred method; however, any type of contract which will promote the best interests of the city may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.
- (b) *Multi-year contracts.*
 - (1) *Specified period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the city provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for such contract.

- (2) *Use.* A multi-year contract is authorized where:
 - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. Such a contract will serve the best interests of the city by encouraging effective competition or otherwise promoting efficiencies in city procurement.
- (3) *Cancellation due to unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be paid for any work, supplies or services already delivered under the contract.
- (c) *Contract administration.* The purchasing and contracts manager officer shall establish operational procedures to maintain a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation requirements for which the contract was awarded and the terms and conditions of the contract.
- (d) *Contingent contracts.* The use of contingent contracts is prohibited.
- (e) *Cancellation due to non-performance.*

(1). *Applicability.* This section applies to contracts, procured by the Purchasing and Contracts Division, between the City and a person or entity which provide for termination of the contract by the City for cause and/or for convenience.

(2). *Authority.*

- a. The City Manager upon consultation with the City's Purchasing and Contracts Manager shall have the authority to terminate a contract for cause, in the event of a breach by the contractor, or for convenience, if in the best interest of the City.
- b. Nothing in this ordinance shall be construed to restrict the City Manager upon consultation with the City's Purchasing and Contracts Manager from simultaneously making a determination to terminate a contract under this section and suspending or debarring a contractor.

(3). *Notice of Decision.* A copy of any decision under this section shall be furnished in writing to the contractor.

(4). *Finality of Decision.* Any decision under this section shall be final and conclusive upon the contractor.

(5). Other Remedies. Nothing in this section shall limit the City from pursuing other legal or contractual rights or remedies against a contractor.

(6). The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided in this Section. If a Contract contains a cancellation or termination clause, that clause rather than this Section shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

Section 6: **CODIFICATION.** The provisions of this Ordinance shall be codified as and become and be made a part of the *City of Tamarac Code of Ordinances*. The Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word “Ordinance”, or similar words, may be changed to “Section,” “Article”, or other appropriate word. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

Section 7: **IMPLEMENTING ADMINISTRATIVE ACTIONS.** The City Manager, or designees, shall have the power and authority to implement the provisions of this Ordinance by taking appropriate administrative actions to include, but not be limited to, the promulgation of appropriate administrative rules and forms.

Section 8: **SAVINGS.** The prior actions of the City of Tamarac relating to the imposition and administration of impact fees and any and all related matters and processes, are hereby ratified and affirmed.

Section 9: **CONFLICTS.** To the extent of any conflict between any other City regulations and ordinances and this Ordinance, this Ordinance shall be deemed to control. Provided, however, that this Ordinance is not intended to amend or repeal any existing chapter or regulation, unless expressly set forth in this Ordinance.

Section 10: **SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not effect the validity of the remaining portion hereof.

Section 11: EFFECTIVE DATE. This Ordinance shall become effective immediately following its adoption.

PASSED, FIRST READING this _____ **DAY OF** _____, 2020.
PASSED, SECOND READING this _____ **DAY OF** _____, 2020.

BY: _____
MAYOR MICHELLE J. GOMEZ

ATTEST

LILLIAN PABON, CMC
ACTING CITY CLERK

RECORD OF COMMISSION VOTE: 1ST Reading
MAYOR GOMEZ _____
DIST 1: V/M COMM. BOLTON _____
DIST 2: COMM. GELIN _____
DIST 3: COMM. FISHMAN _____
DIST 4: COMM. PLACKO _____

RECORD OF COMMISSION VOTE: 2ND Reading
MAYOR GOMEZ _____
DIST 1: V/M COMM. BOLTON _____
DIST 2: COMM. GELIN _____
DIST 3: COMM. FISHMAN _____
DIST 4: COMM. PLACKO _____

I HEREBY CERTIFY that
I have approved this
ORDINANCE as to form

SAMUEL S. GOREN
CITY ATTORNEY