Welcome to the first NIGP SEFL Chapter newsletter of 2011. I hope that the content is interesting/useful to you. Of note is the inclusion of the PowerPoint presentation regarding the new Office of the Inspector General in Broward County, which was made at the 3/3/11 Chapter Meeting.

As a reminder, our next Chapter meeting will be on June 2, in Boca Raton. Hope to see you there. 

Angelo

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LOCAL VENDOR PREFERENCE ORDINANCES (IT CAN HAPPEN TO YOU!)
Farewell to a Legend

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• CPPB Exam Review Seminar
  March 17 - 18
• Planning, Scheduling and Requirements Analysis
  April 6 - 8
• Legal Aspects of Purchasing LEAP Series
  April 20 - 22
• Effective Contract Writing
  May 26 - 27
• Get What You Need Through Successful Negotiations June
  16 through 17
• Developing and Managing RFPs
  July 20 - 22

For additional course details and to register go to the Pro-D Tab on the Home Page of the Chapter web site:
https://www.nigpsefl.org/index.cfm?
The idea of establishing a “preference” for “local” businesses is a concept that is raised for discussion from time to time, especially during times of economic difficulty, as currently exists. Where such ordinances are in place, typically the ordinance creates a situation whereby firms defined as “local” receive a predetermined percentage advantage over other firms bidding for the local government’s business that are not considered local. This percentage of cost advantage granted to the local businesses is normally between one and ten percent and calculated by reducing that percentage of the cost of a bid or quote submitted by local firm from the actual amount bid by that firm to the local government.

However, establishing a “preference” for “local” vendors in a local government’s procurement process creates several difficulties both operationally and financially, as follows:

The granting of a local preference typically tends to suppress competition in most procurements, with “non-local” bidders feeling they are at a disadvantage and being less willing to expend their time, effort, and funds on procurements they feel are slanted against them. A reduction in competition, especially where a diverse market does not exist, raises the cost of doing business for the government. During these trying economic times, efficient procurement practices are of primary importance in order to keep costs and taxes as low as possible.

How does a government establish a level of “preference” to be provided to local vendors? Is 1% cost advantage too little, is 10% too much? For some goods and services, a 2% local advantage would be a decisive factor, in other areas it would be insignificant. Typically these types of ordinances take a very “broad brush” approach to very different markets, which limits their effectiveness. If, as sometimes is suggested, a preference is only applied when “all other things are equal”, the incident of this occurring is extremely rare, especially considering the fact that most governments procurement process normally takes in many factors other than cost alone in its award recommendations.

Who would qualify as a “local” vendor? Must the firm be centrally headquartered in boundaries of the government; does a local branch office of a large national firm qualify as local? Does a resident of the government who operates a business outside of that government’s boundaries qualify as a local vendor? All these issues and many more occur when a local preference is established. Local preference ordinances create an environment where every procurement action becomes an exercise in trying to overlay a general policy direction upon a specific set of circumstances, no two of which are alike. This environment tends to greatly increase the number of aggrieved bidders. This is due to perceived unfairness, either in the granting of a preference to another competing bidder or the decision to not consider a bidder eligible for the local preference, when that bidder believes that they do qualify, in some way, shape, or form.

Retaliatory ordinances by other governments have been known to occur against government entities that establish local bidder preferences. Another government can decide to “disadvantage” the vendors from a particular agency that has a local preference ordinance, when those bidders are bidding for another government agencies goods and services. This type of retaliatory ordinance is established in an effort to level the playing field, but results in favoring the vendors from larger government entities, due to the larger volume of expenditures for those governments.

A local preference ordinance, applied to every procurement would at least severely restrict, or totally disqualify that government from participation in Co-operative Purchasing opportunities. With approximately forty agencies currently involved in our local co-operative effort, this may be a very costly loss to any particular local government. While the additional cost of this loss will vary from agency to agency, both the additional cost of goods and services and the additional staff time necessary to duplicate Co-Op contracts should be considered.

Due to all of the above stated difficulties, local preferences ordinances slow the procurement process, and therefore, make it more difficult to meet the needs of our residents in a timely manner. Government staff is charged with meeting or exceeding the needs of our residents as established by each governing board and doing so within designated timeframes. Lengthening the procurement process, which many agencies have has striven to streamline, would be counter-productive to these important goals.

In addition to the difficulties outlined above with local preference ordinances, historically the effectiveness of these ordinances at actually impacting true local businesses in any significant way is problematic. The cost of these ordinances is very easy to demonstrate, if not to quantify to the penny, but how much “ripple effect” expending local government funds “locally” is similarly imprecise.

LOCAL VENDOR PREFERENCE ORDINANCES
(IT CAN HAPPEN TO YOU!)

BY ANGELO SALOMONE
LOCAL VENDOR PREFERENCE ORDINANCES

(IT CAN HAPPEN TO YOU!)

BY ANGELO SALOMONE

A Positive Approach

From a purchasing professional's point of view, it is easier on this subject to point out all of the real difficulties with local preference ordinances. They are difficult, cumbersome, can be litigious and, if nothing else, rub against the grain of our basic marching orders, to obtain the "best bang for the buck" in every procurement.

However, providing a more positive response to the issue in addition to the negative information outlined above may be a necessary component to a successful argument. With this in mind, the following responses to a call to "look into" a local preference ordinance may prove useful as a starting point towards that more positive response:

Using a carefully defined description of what you are considering a “local” vendor, provide a multi-year history of expenditures with these firms, not only defining the amount spent as a total number, but also providing the number of firms with which your entity is currently doing business. If this has not been done previously, you may be pleasantly surprised at the amount of business currently transacted with the local business community, despite the fact that you do not have a local preference ordinance. When you are compiling this number, it should be presented as a percentage of total expenditures, minus goods and services that are unavailable within the boundaries of the particular local government in question. For instance, your government entity may not have a wholesale fuel supplier or a firm to provide highly specialized computer software within its entity’s boundaries. Once these unavailable goods or services are subtracted from the total amount expended, the percentage of available dollars spent with local vendors will be larger. Also, do not forget that a large portion of funds expended through procurement cards are spent locally; add that amount in the total, if data is available.

Describe in detail the outreach effort your entity has made to engage the local business community. This includes your legal notices for bids and RFP’s, both through publications and the Internet, and should also include the number of local businesses (again closely defined) that your entity normally contacts when a procurement is advertised. This outreach program may also include classes or materials that your entity has provided regarding “how to do business with”, and/or presentations or communications with local Chambers of Commerce and other representatives of the local business community. A demonstration of this effort, along with an estimate of the staff time expended to provide this outreach program may be an effective tool in displaying the level of concern that the government entity has with seeking business from local vendors, absent a formal preference program for those vendors.

A suggestion may also be made that, instead of direct purchases by the local government, that a more appropriate role to be played by the local government would be as a facilitator and/or clearing house of information regarding the connections between the local business community and the residents within that community. Acting as a conduit to help promote awareness of the ability of local businesses to serve the residents of the community may be a more proper role for the local government to play. Many small local businesses are aimed at the retail market, which is a more natural fit in promoting the use of those businesses by the local government entity’s residents, rather than directly by the local government. Local governments are more in the vein of industrial or commercial users. While not as direct a relationship as issuing purchase orders from the local government, the assistance in promoting a local business with the residents could have a much greater and deeper impact on the bottom line of the local business community, over a longer period of time.

It may be apparent that the establishment of some type of local preference ordinance is inevitable, and despite your best efforts and arguments, the will of the governing body is pointed in that direction. If so, have a game plan and attempt to define the terms under which this ordinance will be established. A clear definition of terms (such as; to whom, under what circumstances, and to what degree) under which the ordinance has affect is needed. Careful definition of these questions presented in a clear and well thought out manner will most likely save your entity much difficulty, and possible litigation, going forward. There are plenty of examples of local bidder preference ordinances on the NIGP National website, along with other sources to help your efforts in drafting this plan.

The issue of local vendor preference is a difficult and sensitive subject, especially in the current economic climate. A mixture of both the positive and negative in response to this issue may be the best course of action to take in answering the concerns of your governing body.
HEALTH TIP

FOLLOWING AN INFECTION

**FLU TRAVELS**

Flu viruses constantly mutate, making it tough for our immune defenses to recognize the virus and combat it. Since the current strain of the H1N1 virus (known as swine flu) is relatively new, it may be more contagious than seasonal flu, although it seems no more virulent and most cases should be resolved without significant medical intervention. Here is a look at how flu infections spread:

**WHAT DO YOU HAVE?**

- **Influenza**
  - Aches
  - Headache
  - Fatigue
  - Cough
  - Muscle aches
  - Fever
  - Runny nose

- **Cold**
  - Sneeze
  - Sore throat
  - Fatigue
  - Runny nose

- **Strep throat**
  - A sore throat, but no stuffy nose, may mean it's a streptococcal bacterial infection, which can help

- **Stomach flu**
  - Virus enters via mouth and multiplies in small intestine; symptoms can appear in a few hours, but usually take a day, food poisoning typically is a bacterial infection, such as E. coli

- **Headache**

- **Vomiting**

- **Diarrhea**

**WAYS TO AVOID FLU**

- **Vaccination**
  - Vaccination provides up to 90% protection
  - Swine flu shots should be available by December
  - Takes about two weeks before protection begins

- **H1N1 vaccination**
  - In two doses, a couple weeks apart
  - Adults may only need one H1N1 vaccination

- **Wear mask**
  - Masks can be worn by sick people if any droplets they expel do not easily land on objects or people. Most masks are not as effective if worn by people who are not trying to avoid breaching in a virus

- **Wash hands**
  - Wash hands five times a day for at least 20 seconds; this is what it takes to prevent the spread of germs and viruses, less than half the people wash their hands and this often

**HEALTH TIP**

**WHAT DO YOU HAVE?**

Symptoms to consider for flu or pneumonia:

- Headache
- High fever
- Chest pain
- Chills
- Sore throat
- Severe fatigue

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ON THE LIGHT SIDE

The Art of Negotiation

"If I win, then I get to shred the sofa and you take the blame."

"Let's compromise: If you forget about the pay rise, then I'll forget about the pay cut."

"Don't worry, I've seen this negotiation tactic before."

FOOTNOTE: NEGOTIATION.COM ALLOWS FREE USE OF THEIR BUSINESS CARTOONS AS LONG AS THEIR DOMAIN NAME SHOWS ON THE CARTOON.
The end of credit cards is coming
Source: money.cnn.com
Credit cards may soon be as outdated as vinyl records. (Remember those?) And this is the year that the slow, steady march to oblivion begins. Check out the article in Money.CNN.Com: http://money.cnn.com

moneybox
Do We Need Google To Measure Inflation? Economists are creating new methods for tracking prices.
By Annie Lowrey
Posted Monday, Dec. 20, 2010, at 5:10 PM ET

Annie Lowrey reports on economics and business for Slate. Previously, she worked as a staff writer for the Washington Independent and on the editorial staffs of Foreign Policy and The New Yorker. Her e-mail is annie.lowrey@slate.com.

OUR NEWEST OVER ACHIEVERS
(recently certified)

- Irene Costa, CPPO
  Broward County Sheriff's Office
- Patricia Morning-Lewis, CPPO
  Broward County Board of County Commissioners
- Dena R. Stern, CPPO
  Broward County Board of County Commissioners
- Anthony J. Cariveau, CPPB
  Broward County Board of County Commissioners
- Kyle B. Carter, CPPB
  City of Fort Lauderdale
- Kathleen R. Davis, CPPB
  Broward County Board of County Commissioners
- Michal A. Durden, CPPB
  Broward County Aviation Department
- David R. Santucci, CPPB
  City of Coconut Creek
- John C. Torrenga, CPPB
  Broward County Board of County Commissioners
Proclamation
Office of the Mayor

PURCHASING MONTH

WHEREAS, the purchasing professions play a significant role in the efficiency and effectiveness of both government and business; and

WHEREAS, purchasing professionals, through their combined purchasing power, spend billions of dollars every year and so have a significant influence upon economic conditions throughout the world; and

WHEREAS, the Southeast Florida Chapter of NIGP (National Institute of Governmental Purchasing) and other professional purchasing associations throughout the world engage in special efforts, during the month of March, to inform the public about the importance of the role played by the purchasing profession in business, industry and government;

NOW, THEREFORE, I, MICHAEL J. RYAN, MAYOR OF THE CITY OF SUNRISE, FLORIDA, hereby proclaim March, 2011 as:

PURCHASING MONTH

WITNESS MY HAND AND OFFICIAL SEAL OF THE CITY OF SUNRISE, FLORIDA

Michael J. Ryan, Mayor
1) Misconduct – Any violation of the state or federal constitution, any state or federal statutes or code, any county or municipal ordinance of code; or any conduct involving fraud, corruption or abuse. [Sec. 12.01(A)(2)]

2) Gross Mismanagement – Material waste or significant mismanagement of public resources. [Sec. 12.01(A)(3)]
1) All elected and appointed officials ("Officials") and employees ("Employees") of the Charter Government of Broward County and of all municipalities, including any city, town or village duly incorporated under the laws of the state within Broward County. [Sec. 12.01(B)(1)(a)]

2) All entities and persons (other than employees of the County of any Municipality) that provide goods or services to the County or any Municipality under contract for compensation, but solely with respect to the provision of such goods or services ("Providers"). [Sec. 12.01(B)(1)(b)]

The IG shall commence an investigation if good cause exists that any Official, Employee or Provider has engaged in misconduct or gross mismanagement. [Sec. 12.01(B)(2)]
Good Cause

The Inspector General may find good cause:

1) On his/her own initiative; or

2) Based on a signed, verified complaint stating allegations that, if true, would constitute misconduct or gross mismanagement. [Sec. 12.01(B)(3)]

Complaint

A complaint may only serve as a basis for a good cause finding if it is signed by an identified person who verifies the content of the complaint by including the following statement:

“Under penalties of perjury, I declare that I have read the foregoing complaint and that based on my personal knowledge the facts stated in it are true.” [Sec. 12.01(B)(4)]
**Inspector General Investigation**

IG shall have the power to subpoena witnesses, administer oaths, and require (through subpoena or otherwise) the production of documents and records. [Sec. 12.01(B)(6)]

IG may audit any program, contract, or the operations of any division, department, or office of the county or municipalities. [Sec. 12.01(B)(7)]

IG may audit the operations or performance of any Provider relating to the Provider’s contract for compensation with the County or Municipality. [Sec. 12.01(B)(7)]

**IG Investigation (Continued)**

All Officials, Employees, and Providers shall fully cooperate with investigations. [Sec. 12.01(B)(9)]

IG shall interview all persons implicated by a complaint, and all persons implicated during the investigation. [Sec. 12.01(B)(10)]

IG may attend all duly-noticed local government meetings relating to the procurement of goods or services, and may pose questions and raise concerns consistent with the functions, authority, and powers of the IG. [Sec. 12.01(B)(11)]
To the full extent provided under applicable law, including under Section 112.3188(2), F.S., as amended, the Inspector General’s records related to active investigations shall be confidential and exempt from disclosure. [Sec. 12.01(B)(12)]

If the IG determines that a person has filed a complaint with a malicious intent to injure an Official’s, Employee’s or Provider’s reputation with baseless, spurious or false accusations or with a reckless disregard for the truth of the allegations, the complainant shall be liable for all costs incurred by the IG in investigation of the complaint. [Sec. 12.01(B)(13)]
1) IG issues a demand letter for reimbursement of costs.

2) If complainant objects in writing to the demand within thirty (30) days, the matter shall be referred to Hearing Officer for adjudication.

3) If no objection, IG’s determination shall be final and binding, and may be enforced by a court of competent jurisdiction. [Sec. 12.01(B)(13)]

Recovery of Costs for Malicious Complaint

Recovery of Costs – Prevailing Official

A Official or Employee who prevails in full in any administrative hearing in connection with a complaint filed with the IG shall be entitled to reimbursement of all reasonable attorney’s fees and costs incurred. [Sec. 12.01(B)(14)]
IG Finding of Probable Cause

After completing his/her investigation and determining that there is probable cause to believe misconduct has occurred, the IG shall notify the appropriate civil, criminal or administrative agencies charged with the enforcement related to the alleged misconduct.

If no agency has jurisdiction over the alleged misconduct, the matter shall be referred to a Hearing Officer for quasi-judicial enforcement proceedings. [Section 12.01(C)(1)]

Criminal Offenses

IG shall refer findings of alleged criminal offenses to the Office of the State Attorney and/or the Office of the United States Attorney. [Section 12.01(C)(1)(a)]
Civil Offenses – Ch. 112, F.S.

The IG shall refer findings of alleged civil offenses involving a violations of Chapter 112, Part III, F.S., to the Florida Commission on Ethics. [Section 12.01(C)(1)(b)]

Election Code Violations

The IG shall refer findings of alleged violations of the Florida Election Code, Chapters 97 through 196, F.S., to the Florida Elections Commission (except as to alleged violations that may be criminal in nature, which shall be referred to the Office of the State Attorney). [Section 12.01(C)(1)(c)]
**Other Violations**

The IG shall refer other alleged offenses to the appropriate civil, criminal or administrative agency that would have jurisdiction over the matter. [Section 12.01(C)(1)(d)]

**Action Brought by the IG**

Any civil infraction which does not fall within one of the previously detailed categories shall be stated in a complaint brought in the name of the IG.

IG may retain independent counsel to represent him/her in prosecuting the complaint before a hearing officer.

Accused shall file a response within thirty (30) days after being served. [Section 12.01(C)(2)]
Hearing Procedures

Except to any extent inconsistent with the Broward County Charter, the Florida Rules of Civil Procedure and the Florida Evidence Code, as amended, shall apply to all matter referred to a Hearing Officer.

Authority of the Hearing Officer

1) Issue scheduling orders, case-management orders, and briefing schedules;

2) Issue notice of hearings;

3) Hold hearings on any procedural or substantive matters related to the Complaint;

4) Administer oaths and affirmations;

5) Issue subpoenas (attendance of witnesses and production of documents);

6) Rule on motions presented;
7) Issue appropriate orders to effectuate discovery;

8) Regulate the course of the hearing;

9) Dispose of procedural requests; and

10) Enter any order consistent with his/her authority. [Section 12.01(C)(4)]

**Final Order of Hearing Officer**

Shall be issued within thirty (30) days after completion of the hearing process.

Shall contained detailed findings of fact and conclusions of law.

If the hearing officer determines that misconduct has occurred, the final order shall specify the sanctions imposed, if any. [Section 12.01(C)(5)]
The Final Order of the Hearing Officer shall determine whether the IG has proved the allegations of the complaint by a preponderance of the evidence. [Section 12.01(C)(5)]

Sanctions

1) Fines
2) Public Reprimand/Censure
**Fines**

1) An Official, Employee, or Provider determined to have committed misconduct shall be assessed a monetary fine of between $250 and $5,000.

2) In determining the amount of the fine, the Hearing Officer shall consider the gravity of the violation, whether it was intentional, and whether it was a repeat offense.

3) Hearing Officer may determine that no fine shall be imposed upon making an affirmative, express finding that the violation was unintentional and *de minimis*.

4) In addition to a fine, the Hearing Officer may order the Official, Employee, or Provider to pay restitution or to disgorge any sums wrongfully received (directly or indirectly) by that person or entity. [Section 12.01(C)(5)(a)]

**Public Reprimand/Censure**

An Official or Employee who is found to have violated any provision of this Code may be subject to public reprimand or censure. [Section 12.01(C)(5)(b)]
The IG shall issue reports, including recommendations, in the following circumstances:

1) At the conclusion of an investigation involving allegations of gross mismanagement; and

2) At the conclusion of an investigation involving allegations of misconduct, if the IG determines that a report will assist the County or any Municipality in preventing similar future misconduct. [Section 12.01(D)(1)]

The IG may follow up on any recommendations he/she makes to determine whether such recommendations have been implemented. [Section 12.01(D)(4)]
Cost of Investigations

The IG shall establish policies and procedures to monitor the costs of investigations undertaken. [Section 12.01(D)(4)]

IG – Minimum Qualifications

The IG shall be a person who has at least 10 years of experience in any one or a combination of the following:

1) As a federal, state, or local law enforcement officer or official;

2) As a federal or state court judge;

3) As a federal, state or local government attorney with expertise in investigating fraud, mismanagement and corruption;

4) As an inspector general, CPA or internal auditor;

5) As a person with progressive supervisory experience in an investigative public agency similar to an IG;

6) As a person who has managed and completed complex investigations involving fraud, theft or conspiracy; or

7) As a person who has demonstrated an ability to work with local, state and federal law enforcement agencies and the judiciary. [Section 12.01(E)(1)]
1) Minimum of a 4-year degree from an accredited institution of higher learning.

2) Experience in the management of a private or public entity.

3) Has not been employed by the County or any Municipality during the two (2) year period immediately prior to selection.

4) Has not been found guilty or entered a plea of *nolo contendere* to any felony, or any misdemeanor involving the breach of public trust. [Section 12.01(E)(1)]

The responsibility for selecting the IG shall be vested solely with the Inspector General Selection-Oversight Committee. [Section 12.01(E)(2)(a)]
**Composition of Selection-Oversight Committee**

Five, non-elected officials:

1) One person appointed by Broward League of Cities;

2) One person appointed by the State Attorney for the 17th Judicial Circuit;

3) One person appointed by the Public Defender for the 17th Judicial Circuit;

4) The U.S. Attorney for the Southern District of Florida or his/her appointee; and

5) One person appointed by an affirmative vote of at least 3 members, referenced above. [Section 12.01(E)(2)]

**Selection-Oversight Committee (continued)**

1) Any appointee may be removed at any time by the appointing or designating authority.

2) Shall elect a chair person and establish its own rules of procedure.

3) Broward County HR division shall provide staff support.

4) Shall select qualified Hearing Officers to preside over hearings. [Section 12.01(E)(2)]
Diversity

In selecting the Inspector General and Hearing Officers, the Selection-Oversight Committee shall take into consideration the rich diversity of the County’s residents. [Section 12.01(E)(2)(l)]

Inspector General - Term

The IG shall be appointed for a term of four (4) years, commencing from the time the IG and the County enter into a contract. The Selection-Oversight Committee shall convene at least six (6) months prior to the end of the four-year contract term to determine whether to renew the contract of the IG or to solicit new candidates. [Section 12.01(E)(3)]
Once the Selection-Oversight Committee selects an IG, the Committee shall notify the County Administrator and the County Attorney. The Director of the County Human Resources Department and the County Attorney shall negotiate an employment contract with the IG. [Section 12.01(E)(4)]

The IG may be removed based on specified charges of the following: neglect of duty, abuse of power or authority, discrimination, or ethical misconduct.

Removal shall be considered at a duly noticed public hearing of the Selection-Oversight Committee.

The IG shall be provided sufficient advance notice of the reasons for the possible removal, and shall be given an opportunity to be heard on the charges. [Section 12.01(E)(5)]
**Inspector General - Vacancy**

In the event of a vacancy in the position of IG, the Chairperson of the Selection-Oversight Committee shall appoint an interim IG until such time as a successor IG is selected and assumes office. [Section 12.01(E)(6)]

**Annual Report**

1) The IG shall annually publish a written report to the County and Municipalities detailing activities of the Office of the Inspector General.

2) The Selection-Oversight Committee shall convene within sixty (60) days of its receipt of the annual report to consider the report and performance of the IG. [Section 12.01(F)]
Financial Support and Budgeting

The IG’s budget is subject to approval of the County Commission.

Within 60 days of selection, the IG shall submit a proposed budget to the County Commission covering the remainder of the County’s fiscal year in which the IG is selection. In each subsequent year, the IG shall submit a proposed budget to the County Commission in accordance with the County’s regular budget process. [Section 12.01(G)]

IG Budget (Continued)

Each proposed budget shall include a reasonable estimate of operating and capital expenditures of the IG, funds to enable Hearing Officers to be retained, and funds to enable the IG to retain outside counsel.

The County Commission shall provide sufficient funds for the IG to carry out his/her duties in an efficient manner.

In order to fund the IG office, the County may impose a fee of .25% on the total value of each County contract.

In the event funds raised from such contract fees are insufficient to fund the office, the County Commission may supplement funding from the County’s general revenue fund. [Section 12.01(G)]
THE END