GO ITEM 1
December 9, 2019
Worksession

MEMORANDUM

December 4, 2019

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Expedited Bill 25-19, Contracts and Procurement – Local Business Preference Program - Established

PURPOSE: Worksession – Committee to make recommendations on bill

Expected attendees:
Procurement Director Ash Shetty
Grace Denno, Procurement Compliance Division Chief
Michael Brown, Procurement Local Business Program Manager
Megan Greene, Associate County Attorney

Expedited Bill 25-19, Contracts and Procurement – Local Business Preference Program - Established, sponsored by Lead Sponsor Council President Navarro at the request of the County Executive, was introduced on September 17, 2019. Five speakers testified at the public hearing on October 15.[1]

Bill 25-19 would require a 10% price preference for a local business bidding on a contract or an evaluation factor worth 10% of the total points for a local business submitting a proposal under an RFP for a contract awarded by the County. The Director of the Office of Procurement would be required to certify a business as a local business if it has its principal place of business in the County. The definition of a local business would be established by a Method 2 regulation. The Procurement Regulations, COMCOR §11B.00.01.02.4.72, define a principal place of business in the County as:

> 2.4.72 *Principal Place of Business in the County*: A regular course of business commerce in the County by a business, along with any of the following:
> (1) The business has its physical business location(s) only in the County; or
> (2) The business has physical business locations both in and outside of the County, and the County-based location(s) account for over 50%

[1]#LocalBusinesses, #MoCo4Growth

of the business's total number of employees, or over 50% of the business's gross sales.

The County Attorney's Issue Manager Memorandum raises some legal issues with the local preference in Bill 25-19. See ©11-28. The County Attorney's Office recommended that the legislative record "clearly identify a significant governmental purpose to be served by the legislation and explain how the proposed program is closely related to that significant purpose."

Public Hearing

All 5 speakers supported the Bill. Procurement Director Ash Shetty (©29), representing the Executive, testified that the Bill is designed to "bolster the County's economic growth and support the creation and retention of employment opportunities within the County by establishing a ten percent (10%) preference for County-based businesses." The other 4 speakers represented local companies that would benefit directly from the local preference program created by the Bill. Marilyn Balcombe (©30), representing the Gaithersburg-Germantown Chamber of Commerce, Kenneth O'Connell, O'Connell & Lawrence, Inc. (©31-32), Susan Young Mullineaux, Duane, Cahill, Mullineaux & Mullineaux, P.A. (©33), and Kenny Mallick, Mallick Plumbing (©34-35) each supported the Bill. We also received written testimony supporting the Bill from Jane Redicker, representing the Greater Silver Spring Chamber of Commerce (©36) supporting the Bill.

Issues

1. What is the fiscal and economic impact of the Bill?

The Bill would require the Office of Procurement to certify a business as a local business. A business must have its principal place of business in the County to be certified as a local business. The Procurement Regulations define a principal place of business as follows:

> 2.4.72 *Principal Place of Business in the County*: A regular course of business commerce in the County by a business, along with any of the following:
> (1) The business has its physical business location(s) only in the County; or
> (2) The business has physical business locations both in and outside of the County, and the County-based location(s) account for over 50% of the business's total number of employees, or over 50% of the business's gross sales.

Procurement would then have to apply a 10% price preference for a certified local business under a competitive sealed bid or a 10% local resident factor under a request for proposals. Although Procurement currently certifies a small business as local under the Local Small Business Reserve Program (LSBRP), this would make many more businesses who are not "small" eligible to be certified as a local business. OMB estimated that this could be done by current staff. We understand that Procurement currently has one professional person responsible for these certifications.

Council staff questions whether this can be done by the one existing staff person alone. If a business's only location is in the County, the analysis is straight forward. However, for a business with locations inside and outside the County, Procurement would have to analyze the number of total employees working in the County or if more than 50% of the company's gross sales originate from a County location. These calculations may be simple for a small business under the LSBRP but may become much more complicated for a large business with multiple locations.

OMB also looked at the increased cost of contracts if a local business wins a contract due to the 10% price preference over a non-local business with a lower bid by reviewing bids for FY18 and FY19. OMB did not look at increased costs from RFPs. In FY18, OMB found that 13 contracts would have been won by local businesses for an additional cost of $655,340. In FY19, OMB found that 13 contracts would have been won by local businesses at an increased cost of $58,942. While these numbers appear low compared to the $1 billion in contracts awarded by the County each year, there is no way to accurately predict future costs with confidence. If the Bill succeeds in encouraging more businesses to either locate in the County or more local businesses to bid on County work, it may discourage non-local businesses from bidding on County work. Less competition for County contracts would inevitably lead to higher bid prices, especially if local businesses with a 10% price preference decide to increase bid prices against non-local bidders to take advantage of the price preference.

Finance concluded that the Bill could have a positive impact on the County's economy if more local businesses are awarded County contracts. Finance concluded that this would increase income for local businesses and County residents. However, there is no analysis to support the assumption that local businesses employ more County residents than a business with its principal place of business located elsewhere in the District, Maryland, and Virginia.[2]

2. What are the legal issues with the Bill?

The County Attorney's Office (OCA) raised several potential legal issues that could affect the validity of the Bill. See County Attorney Bill Review Memorandum with attachments at ©11-28. The County Attorney attached several memoranda written by their Office concerning the requirement that a business in the LSBRP have a principal place of business in the County. OCA analyzed the local business requirement under the Commerce Clause, the Equal Protection Clause, and the Privileges and Immunities Clause of the U.S. Constitution. OCA concluded that the local requirement would not violate the Commerce Clause because the County was operating as a market participant rather than a regulator. They also opined that the local preference is likely to survive an Equal Protection challenge under the rational basis test because it does not involve a suspect class or fundamental right. Council staff agrees with this analysis.

OCA's analysis under the Privileges and Immunities Clause in Article IV of the U.S. Constitution is less optimistic. The Courts have determined that the purpose of this provision is to "foster a national union by discouraging discrimination against residents of another state on the basis of [their state] citizenship." Salem *Blue Collar Workers Association v. Salem*, 33 F.3rd 265,

[2] The County does not receive a share of business income tax. The County receives a share of personal income tax and business personal property tax. Personal County income tax is based on the taxpayer's residence not the taxpayer's work address.

267 (3rd Cir. 1994). The Supreme Court, in *United Building and Construction Trades Council v. Camden*, 465 U.S. 208 (1984), held that a local law requiring 40% of the workers on a City construction project to be Camden residents was discriminatory under the Privileges and Immunities Clause. The Court held that the City must show a substantial reason for this discrimination against nonresidents for the law to survive. The Court remanded the case to the lower court to determine if Camden could show a substantial reason for its law. The case was settled before the lower court had to rule on this. More recently, the Supreme Court, in *McBurney v. Young*, 569 U.S. 221 (2013) held that a local law does not violate the Privileges and Immunities Clause unless it involves a fundamental privilege or immunity of citizenship. The Court upheld a Virginia public information law that guaranteed a Virginia resident the right of access to public records but denied that right to residents of other States. The Court held that this law did not violate the Privileges and Immunities Clause because the right to see government documents was not a fundamental privilege or immunity of citizenship.

OCA concluded that a local preference may not violate the Privileges and Immunities Clause if the legislative record demonstrates a substantial reason for this discrimination against a business located outside of the County. Council staff agrees but notes that the legislative record supporting the local preference is slim. The Executive requested this Bill without any data analysis of the percentage of local businesses on the County's bidding list and the percentage of County contract awards historically awarded to local businesses. Also, there is no data to support the assumption that a local business is more likely to employ County residents and bolster the local economy.

OCA also looked at Article 24 of the Maryland Declaration of Rights. It is unclear how Maryland Courts would look at a local preference law that discriminates against a Maryland business located in another County. In the absence of Maryland cases on point, OCA concludes that the Maryland Courts are likely to demand substantial justification for a local preference law that discriminates against a Maryland business. Council staff agrees.

Although not mentioned by OCA, there is also an issue of implied preemption by the General Assembly. Section 1-402 of the Maryland Local Government Code establishes the following reciprocal local preference:

> *(a)* ***Definitions.*** *--*
>
> *(1)* *In this section the following words have the meanings indicated.*
>
> *(2)* *"Nonresident bidder" means a bidder whose principal office is outside the State.*
>
> *(3)* *"Preference" includes:*
>
> *(i)* *a percentage preference;*
>
> *(ii)* *an employee residency requirement; or*
>
> *(iii)* *any other provision that favors a resident over a nonresident.*
>
> *(4)* *"Resident bidder" means a bidder whose principal office is in the State.*
>
> *(b)* ***Conditions for preference.*** *-- When a political subdivision or an instrumentality of government in the State uses competitive bidding to award a procurement contract, the political subdivision or instrumentality may give a preference to the resident bidder who submits the lowest responsive bid of any resident bidder if:*
>
> *(1)* *the resident bidder is a responsible bidder;*

(2) a responsible nonresident bidder submits the lowest responsive bid of all bidders; and

(3) the state in which the nonresident bidder's principal office is located gives a preference to its residents.

*(c) **Form of preference.** -- A preference under this section shall be identical to the preference that the state in which the nonresident bidder's principal office is located gives to its residents.*

This State law defines a nonresident business as a business located outside the State of Maryland. The law expressly permits a local government to establish a local preference law that can be applied only against a nonresident business that is located in a State that has a local preference law. The Maryland Courts may conclude that this limited grant of authority to a local government precludes a local preference law under other circumstances. The only local preference law in a Maryland County we could find was a limited Prince George's County law that creates a 3% preference for a County based business under a request for proposals as part of a law that creates greater preferences for a County based small business, a County based minority owned business, and a nonresident minority owned business. See Prince George's County Code §10A-173 at ©37-38. Prince George's County does not have a similar local preference law for contracts awarded under competitive sealed bidding.

3. Would the local business preference adversely affect minority owned businesses located outside of the County?

The County has a limited minority owned business program designed to remedy the effects of past discrimination against certain minority groups, including women. Code §11B-57 explains the purpose of the program:

11B-57. Legislative findings and policy.

(a) Minority owned businesses have experienced the effects of discrimination in the awarding of County contracts and subcontracts. The effect has been to:

(1) make a smaller percentage of contract and subcontract awards to minority owned businesses than the percentage of qualified minority owned businesses in the County's relevant geographic market area would indicate as reasonable;

(2) impede the economic development and expansion of minority owned businesses in the County's relevant geographic market area;

(3) impair the competitive position of minority owned businesses; and

(4) generally harm minority owned businesses.

(b) Adoption of the minority owned business purchasing program is intended to remedy the effects of discrimination on minority owned businesses.

(c) A goal of awarding an appropriate percentage of the dollar value of County contracts to minority owned businesses in proportion to their availability to perform work under County contracts is a reasonable and appropriate means to remedy discrimination against minority owned businesses.

The County has limited its minority owned business program to businesses owned by members of minority or women owned businesses that have historically been underutilized in the award of County contracts compared to their availability in the relevant geographic market. In order to comply with the Equal Protection Clause of the 14th Amendment as interpreted by the Courts, the program generally requires contractors to subcontract a portion of the work with one or more certified minority owned firms. The County limits bidding on certain contracts to local small businesses under the LSBRP but does not limit bidding on any contracts to minority owned businesses in order to comply with the Equal Protection Clause. The County's most recent disparity study supporting the minority owned business program determined that the relevant geographic market for all County contracts includes jurisdictions outside of the County. For example, an award to a certified minority owned business located in the District of Columbia is counted under our program for participation in County contracts.

Bill 25-19 would provide a greater preference for a large non-minority owned County based business than a minority owned firm located outside of the County. A minority owned business that is the low bidder on a County contract may lose the contract to a non-minority owned County based business under Bill 25-19. Procurement staff provided the following data on the percentage of certified minority owned businesses registered for business with the County that have local zip codes in the County and the percentage of all businesses registered with the County with local zip codes:[3]

Vendors in CVRS	Companies including sole proprietors with local zip codes
Total 30,000 vendors	10,030 (33.43%)
Total 741 MFD certified vendors	280 (37.78%)

This information indicates that Bill 25-19 would adversely affect at least 63% of the certified MFD vendors registered to do business with the County. Therefore, it is possible that Bill 25-19 would reduce the number of prime contracts awarded to a certified MFD vendor.

4. How would the Bill affect the reciprocal local preference law enacted in Bill 49-14?

The Council enacted a reciprocal local preference law effective January 1, 2016 in Bill 49-14. See Code §11B-9(j) at ©39. This reciprocal local preference is limited to a situation where the low bidder is from a jurisdiction outside of the County that provides a local preference for its local businesses. The only such law in a local Washington-Baltimore jurisdiction is the local preference law in the District of Columbia and the limited law in Prince George's County described above. Based on conversations with Procurement staff, we understand that this provision has never been applied since it took effect in 2016.

The reciprocal local preference law is a defensive measure to discourage local preference laws in other jurisdictions by leveling the field for a County based business competing against a business in a jurisdiction with a local preference law. Bill 25-19 would create a local preference law like the type of laws Bill 49-14 was designed to protect against. Bill 25-19 would subject a County based business to a reciprocal local preference law in other jurisdictions. Many States have enacted these reciprocal local preference laws, including Maryland and Virginia. See the

[3] Listing a zip code that is in the County is an indication that the business may be eligible for the local preference, but some of these businesses may also have locations outside the County and may not be eligible under the current definition of principal place of business.

chart of States with reciprocal local preference laws compiled by the State of Oklahoma in December 2018 at ©40-73. Therefore, Bill 25-19 would help a County based business competing for a County contract and may hurt them when competing for a contract in another jurisdiction.

If the Council enacts Bill 25-19, the reciprocal local preference law in Code §11B-9(j) would never be applied unless the non-local business is located in a jurisdiction with a local preference law that provides more than a 10% advantage.

5. Does the legislative record clearly identify a significant governmental purpose and explain how the Bill is closely related to that purpose?

OCA cautions that the legislative record must clearly identify a significant governmental purpose for the local preference and explain how the 10% preference is closely related to that purpose. The public testimony consisted of support from 2 local chambers of commerce who represent County based businesses and 4 County based businesses. Procurement Director Ash Shetty explained that the Bill is designed to "bolster the County's economic growth and support the creation and retention of employment opportunities within the County by establishing a ten percent (10%) preference for County-based businesses." Mr. Shetty argued that County based businesses "employ local residents, provide good jobs, and make real contributions to the local economy." These conclusions are not backed up with any statistics.

6. What is the appropriate local preference?

The only local jurisdictions with a local preference are Prince George's County and the District of Columbia. Prince George's has no local price preference for contracts awarded through competitive sealed bids. The local preference for contracts awarded through competitive proposals is 3%. The District has a local preference for contracts awarded through competitive sealed bids or competitive proposals, but the preference is part of several preferences for different reasons. Here is a chart showing the different preference points for a District based business:

What are the preference points associated with each category of certification?

CBE Category	Proposal Points	Bid % Price Reduction
Local Business Enterprise	2	2%
Small Business Enterprise	3	3%
Disadvantaged Business Enterprise*	2	2%
Development Enterprise Zone	2	2%
Resident-Owned Business	5	5%
Longtime Resident Business	5	10%
Veteran-Owned Business Enterprise	2	2%
Local Manufacturing Business Enterprise	2	2%

***Note:** The personal net worth of the applicant seeking DBE certification must be less than $1,000,000, excluding the value of his/her primary residence and values if his/her ownership interest in the CBE.

A District based business receives a 2% preference. If the business is also small, it receives an additional 5% preference. If the owner lives in the District, the business can receive an additional 5% preference. However, the total preference cannot exceed 12%.

Bill 25-19 would create a 10% local preference for any business that has a principal place of business in the County, including a large, non-minority owned business with owners living outside the County. There is also no maximum amount of the total bid price the 10% preference can apply to. Since most local jurisdictions do not have a local business preference and the preferences in the District and Prince George's are generally lower, the 10% local preference in Bill 25-19 appears to be out of line with other local jurisdictions. The Executive has not yet explained the basis for the decision to request that a local preference be valued at 10%.

7. What is the appropriate effective date for the Bill?

The Bill, as introduced, is an expedited Bill that would take effect on January 1, 2020 and apply to solicitations issued after that date. Obviously, if the Council is going to enact Bill 25-19 the effective date should be moved back. Businesses would need time to apply for certification as a County based business and Procurement is likely to need some time to review and act on these applications.

This packet contains:

F:\LAW\BILLS\1925 Contracts - Local Business Preference\GO Memo.Docx

Expedited Bill No. 25-19
Concerning: Contracts and Procurement – Local business Preference Program - Established
Revised: July 29, 2019 Draft No. 2
Introduced: September 17, 2019
Expires: March 17, 2021
Enacted: [date]
Executive: [date signed]
Effective: January 1, 2020
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) increase the number of local businesses awarded County contracts;
(2) establish a Local Business Preference Program for certain County contracts; and
(3) generally amend the law governing County procurement.

By adding
Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XXI. Local Preference Program
Sections 11B-92, 11B-93, 11B-94, 11B-95, 11B-96, 11B-97, and 11B-98

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 11B-92, 11B-93, 11B-94, 11B-95, 11B-96, 11B-97, and 11B-98 are added as follows:

ARTICLE XXI. Local Business Preference Program.

11B-92. Purpose.

This Article is intended to bolster the County's economic growth and support the creation and retention of employment opportunities within the County by establishing a ten percent (10%) preference for the award of a County contract to a County-based business.

11B-93. Definitions.

In this Article, the following words have the meanings indicated.

Broker means a person that provides goods or services (other than real estate, investment, or insurance sales) on a pass-through basis as:

(a) a supplier of goods who:

(1) does not own, operate, or maintain a place of business in which goods of the general character required under the contract are kept in stock in the regular course of business;

(2) does not regularly assume physical custody or possession of goods of comparable character to those offered to the County; or

(3) exclusively acts as a middleman in the sale of goods to the County; or

(b) a supplier of services who does not regularly maintain the capability, capacity, training, experience, and applicable regulatory licensing to directly perform the principal tasks of a contract with the County and must provide the principal tasks through a subcontract with a third party.

Director means the Director of the Office of Procurement or the Director's designee.

Local Business means a business, other than a broker, that:

(a) has its principal place of business in the County;

(b) meets criteria established by method 2 regulations; and

(c) is certified by the Director as a Local Business under the provisions of this Article.

11B-94. Applicability.

This Article applies to all procurement purchases solicited under Sections 11B-9 or 11B-10.

11B-95. Procedures.

(a) *Eligibility.* To be eligible for local business preference points, a business must affirm and provide supporting documentation to the Director to show that it is a local business as defined in Section 11B-93. The Director may investigate and verify the information provided on the application, as necessary, and must certify a business as a local business for the purposes of this Article.

(b) *Certification.* Preference points must be applied only to a business:

(1) that has a valid local business certification when the business submits a bid or proposal; or

(2) who has applied for local business certification before the time to submit a bid or proposal has passed.

(c) *Notice.* The Director must publicly notify businesses of prospective procurement opportunities.

(d) *Competitive sealed bids.* The Director must adjust the bid of a Local Business who submits a bid in response to an Invitation for Bid issued under Section 11B-9:

(1) by reducing the bid price(s) by a factor of 10%, for the purposes of evaluation and award only; or

(2) if a Local Business is eligible for a reciprocal preference pursuant to Section 11B-9(j), the bid of the Local Business must be adjusted by that reciprocal preference if it exceeds the 10% preference factor.

The Local Business preference points authorized under this Article must not be combined with reciprocal preference points authorized under Section 11B-9(j).

(e) *Competitive sealed proposals.* The Director must include an evaluation factor awarding additional points for a proposal from a Local Business worth 10% of the total available points in a Request for Proposals issued under Section 11B-10.

(f) *Waiver.* The Director may waive a bid or proposal preference under this Section in a solicitation if the Director finds that a preference would result in the loss to the County of Federal or State funds.

11B-96. Regulations.

The Executive must adopt regulations, by Method 2, to implement this Article. The regulations must include:

(a) Certification requirements for a business to qualify as a Local Business;

(b) Procedures to certify, re-certify, or decertify a Local Business; and

(c) Procedures that will enable the Director to monitor compliance with the Local Business Preference Program.

11B-97. Reports.

By October 31st of each year, the Director must report to the Council on the Local Business Preference Program. This report must include the number, solicitation type and dollar amount of contracts that were awarded pursuant to the Program.

11B-98. Penalty.

(a) A person must not:

(1) fraudulently obtain or retain, attempt to obtain or retain, or aid another person in fraudulently obtaining or retaining, or attempting to obtain or retain, certification as a Local Business;

(2) willfully make a false statement to a County official or employee for the purpose of influencing the certification of an entity as a Local Business; or

(3) fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining, or attempting to obtain, public monies to which the person is not entitled under this Article.

(b) A violation of this Article:

(1) is a class A violation; and

(2) may disqualify the violator from doing business with the County for up to 2 years.

Sec. 2. Expedited Effective Date

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on January 1, 2020 and must apply to a solicitation issued under Section 11B-9 or Section 11B-10 on or after January 1, 2020.

Approved:

Nancy Navarro, President, County Council — Date

Approved:

Marc Elrich, County Executive — Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 25-19

Contracts and Procurement – Local business Preference Program - Established

DESCRIPTION:	The Bill would amend Chapter 11B of the County Code by establishing a local business preference program for all procurement purchases solicited under Sections 11B-9 and 11B-10.
PROBLEM:	Local businesses are often at a disadvantage when competing for County procurement contracts due to the cost of operating a business in the County. This Bill seeks to offset some of that cost.
GOALS AND OBJECTIVES:	The Bill will establish a ten percent (10%) preference for County-based businesses.
COORDINATION:	Office of Procurement and Office of the County Attorney
FISCAL IMPACT:	May impact contract award values
ECONOMIC IMPACT:	Could have a positive economic effect on the growth in local businesses by means of County contract awards and increase employment and incomes for both local businesses and their employees.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Local preference programs have been enacted in Prince George's County and Howard County
SOURCE OF INFORMATION:	Office of Procurement
APPLICATION WITHIN MUNICIPALITIES:	NA
PENALTIES:	Class A violation; Debarment

F:\LAW\BILLS\1925 Contracts - Local Business Preference\LRR.Docx

Fiscal Impact Statement
Bill XX-19 - Contracts and Procurement – Local Business Preference Program

1. **Legislative Summary**

The purpose of this legislation is to increase the participation of local businesses in the County procurement process by establishing a Local Business Preference Program for certain County procurement contracts. The legislation adds Sections 11B-92 through 98 to the County Code.

Section 11B-95 provides that, "(d) The Office of Procurement must adjust the bid of a Local Business who submits a bid in response to an Invitation for Bid issued under Section 11B-9 by reducing the bid price(s) by a factor of 10%, for the purposes of evaluation and award only. And (e) the Office of Procurement must include an evaluation factor with a value of 10% of the total available points in a Request for Proposals issued under Section 11B-10, awarding additional points for a proposal from a Local Business."

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

The County's total procurements are currently valued at approximately $1.0 billion. Using data on Invitation for Bids (IFBs) provided from the Office of Procurement, the following table summarizes the fiscal impact to the County if this preference was in place for the last two fiscal years.

Fiscal Year	Number of Low Bidders	Number of Local Low Bidders	Increase if Local Low Bidder Selected
2018	35	13	$655,340
2019	28	13	$58,942

Of the $1.0 billion in annual procurements, the selection of the local low bidder would have resulted in an increase of approximately $655,340 in FY18 and $58,942 in FY19.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**

It is difficult to project expenditure estimates for the next 6 fiscal years as the value of bids varies from each fiscal year.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable.

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   Not applicable.

7. **An estimate of the staff time needed to implement the bill.**

   An existing Local Small Business Program Manager ("Program Manager") will absorb the staff time to implement and administer this program.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   The Program Manager will absorb the added responsibilities.

9. **An estimate of costs when an additional appropriation is needed.**

   Not applicable.

10. **A description of any variable that could affect revenue and cost estimates.**

    The intention of the Bill is to increase the participation of local businesses in the County procurement process. This increased competition in turn may bring cost savings to the County. Or in other scenarios, if the local business that is given preference points wins the contract, there may be an increase in the contract award values.

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    The range of cost increases or cost savings are difficult to project. If a local low bidder is selected under the local preference program, there may be a cost increase (as would have been the case in FY18 and FY19) or a cost savings (if it triggers increased competition for County contracts or encourages non-local vendors to be more aggressive with their pricing).

12. **If a bill is likely to have no fiscal impact, why that is the case.**

    The bill may result in cost savings or cost increases in contract award values as stated above.

13. **Other fiscal impacts or comments.**

    Not applicable.

14. **The following contributed to and concurred with this analysis:**

    Avinash G. Shetty, Office of Procurement

    Grace Denno, Office of Procurement

    Jane Mukira, Office of Management and Budget

    Naeem Mia, Office of Management and Budget

Richard Madaleno

Richard S. Madaleno, Director
Office of Management and Budget

7/5/19
Date

Economic Impact Statement
Expedited Bill ##-19, Contracts and Procurement –
Local Business Preference Program

Background:

The purpose of this legislation is to increase the participation of local businesses in the County procurement process by establishing a Local Business Preference Program for certain County procurement contracts. The legislation adds Sections 11B-92 through 98 to the County Code. Section 11B-95 states that for IFBs, "(d) The Office of Procurement must adjust the bid of a Local Business who submits a bid in response to an Invitation for Bid issued under Section 11B-9 by reducing the bid price(s) by a factor of 10%, for purposes of evaluation and award only, and (e) the Office of Procurement must include an evaluation factor with a value of 10% of the total available points in a request for proposals issued under Section 11B-10, awarding additional points for a proposal from a Local Business".

1. **The sources of information, assumptions, and methodologies used.**

   The source of information is the Office of Procurement. There are no assumptions or methodologies used by the Department of Finance in the preparation of the economic impact statement.

   According to the Office of Procurement, the goal of the bill is to provide incentives for local contractors to bid on Montgomery County government contracts by reducing the bid prices by a factor of 10% for local contractors thereby minimizing the contract price differential for IFBs; or by giving an evaluation factor with a value of 10% of the total available points for RFPs.

2. **A description of any variable that could affect the economic impact estimates.**

   The variables that could affect the economic impact estimates are the number of businesses that would benefit by reducing the contract price or evaluation points differential

3. **The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

   The legislation could have a positive economic effect on the growth in local businesses by means of County contract awards, and increase employment and incomes for both local businesses and their employees. The legislation may also attract more businesses to move to the County and set up their principal place of business in Montgomery County.

4. **If a Bill is likely to have no economic impact, why is that the case?**

   The legislation could have an economic impact. Please see paragraph 3.

Economic Impact Statement
Expedited Bill ##-19, Contracts and Procurement –
Local Business Preference Program

5. The following contributed to or concurred with this analysis:

David Platt and Rob Hagedoorn, Finance;
Grace Denno, Office of Procurement.

Michael Coveyou

Michael Coveyou, Acting Director
Department of Finance

7/3/19
Date

Marc Elrich
County Executive

OFFICE OF THE COUNTY ATTORNEY

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Avinash G. Shetty
Director, Office of Procurement

FROM: Megan B. Greene
Associate County Attorney

VIA: Edward B. Lattner EBL
Chief, Division of Government Operations
Office of the County Attorney

DATE: October 3, 2019

RE: AMENDED - Issue Manager Memo ~ Expedited Bill 25-19- Contracts and Procurement – Local Business Preference Program - Established

---

Expedited Bill 25-19 – Contracts and Procurement – Local Business Preference Program, was introduced to the County Council on September 17, 2019, at the request of the County Executive. At the time of the Bill's introduction, no modifications were proposed. A public hearing on the Bill is scheduled for October 15, 2019.

When the County Council undertook consideration of legislation to establish the Local Business Subcontracting Program in 2004, this Office conducted an in-depth analysis of the legal landscape regarding government purchasing preference programs. See OCA Memorandum Opinions dated September 8, 2004, September 29, 2004, and April 7, 2005, attached hereto. In short, it is our opinion that the legislative record establishing such a program must: (1) identify a significant governmental purpose justifying the implementation of a local preference; and (2) demonstrate that the means proposed to achieve the significant purpose are closely related to achieving that end.

With those words of caution, we note that local business preference programs have been established in many jurisdictions, including Washington, D.C, Prince George's County, Maryland, Boston, MA, Cleveland, OH, and Madison, WI, to name a few. The specific details of the programs often vary from one jurisdiction to another, and few have been subjected to legal scrutiny. The constitutionality of one such program was challenged in *J.F. Shea Co. v. Chicago*, 992 F.2d 745 (7th Cir. 1993). At issue was a City of Chicago ordinance providing a bid advantage of 4 to 8 percent to local businesses for all contracts exceeding $100,000 in value. Municipal Code of

Chicago §2-92-412. The 7th Circuit upheld the program, relying on the market participant exception to the Commerce Clause. Please note, however, that the legality of a local preference program under Maryland law has not been challenged in court.

In conclusion, it is our recommendation that the legislative record for Expedited Bill 25-19 clearly identify a significant governmental purpose to be served by the legislation and explain how the proposed program is closely related to that significant purpose.

cc: Marc Hansen
Robert Drummer
Dale Tibbetts
Tammy Seymour

OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

September 8, 2004

TO: Joseph Beach
Assistant Chief Administrative Officer

VIA: Marc Hansen, Chief MPH
General Counsel Division

FROM: Clifford L. Royalty
Associate County Attorney CLR

RE: *Bill 23-04, Contracts and Procurement - Local Small Business Reserve Program*

Bill 23-04 proposes several amendments to Chapter 11B, Contracts and Procurement. The Bill would require County departments to "post . . . on a County website" certain planned purchases "valued at $1,000 to $25,000." (See § 11B-17A, lines 3-6). The Bill would also create a "Local Small Business Reserve Program" ("Program") whereby each County department would allot to "small businesses" 10% of the "combined total dollar value" of the department's contracts. (See § 11B-66, lines 70-74). A "small business" is defined to include "a minority owned business as defined in § 11B-58(a)" or a business that meets a litany of criteria, including a requirement that "[a]t least 50%" of a business' employees "work in the County."[1] (See § 11B-65, lines 29-64). The Bill is intended to rectify the "competitive disadvantage" that local small businesses encounter, when bidding on County contracts, by creating a "separate defined market in which small businesses will compete against each other, not against larger firms for County contracts." (See Memorandum dated July 9, 2004, from Sonya E. Healy to County Council).

Summary of Opinion

The local preference created by the Bill raises serious legal concerns. To respond to these concerns, we recommend that the legislative record be supplemented with credible evidence, including expert analysis, that identifies the evils that a local preference is meant to

[1] We understand that the Bill is not intended to allow all "minority owned" businesses to participate in the Local Small Business Reserve Program, only those that qualify as a "small business." We also understand that the Bill will be amended to clarify its intended scope. We note that such an amendment is more than a technical matter; if the Program were to include all minority businesses it might violate the United States Constitution under the reasoning adopted by the Supreme Court in *Richmond v. J.A. Croson Co.* 488 U.S. 469 (1989).

101 Monroe Street, Rockville, Maryland 20850-2540 · clifford.royalty@montgomerycountymd.gov · 240-777-6739
TTD 240-777-2545 · FAX 240-777-6706

remedy and that demonstrates that the degree of local preference employed bears a close relation to the evils identified.

We also recommend that the definition of small business be amended to eliminate the criterion that a small business must not be "dominant" in its field of operation. (See, § 11B-65, line 35). As we discuss below, that criteria will be difficult to apply.

Analysis

The Bill is modeled after a recently adopted State law that creates its own small business reserve program, although there are significant differences between the Bill and the State law. (See Senate Bill 904). Foremost among these is the scope of each. All small businesses may participate in the State program, whereas only "local" small businesses may avail themselves of the County program. The Bill's proposed Program, with its locality restrictions, necessitates a more involved legal analysis.

As is evidenced by the State program, the County's proposed Program is a variation on a not uncommon theme. Vendor preference laws are frequently enacted and just as frequently challenged. The success of those challenges often turns on the facts, rather than bright-line legal principles. Subtle factual distinctions sometimes yield disparate results. Nevertheless, we will endeavor to lay down some guiding principles that can be ferreted out of the case law.

Insofar as it affects commerce and advantages a subset of the business community (to wit, local businesses), the Program touches upon provisions of both the United States and Maryland constitutions. Vendor preference laws have been challenged in the federal courts under the Commerce Clause, the Equal Protection Clause, and the Privileges and Immunities Clause. While there have not been comparable challenges to vendor preference laws in the Maryland courts, there have been analogous challenges to regulatory acts under Article 24 of the Maryland Declaration of Rights. We will address each constitutional provision in turn.

Commerce Clause challenges to vendor preference laws have not met with success. The Commerce Clause vests in the United States Congress the power to regulate interstate commerce. The courts have read the Clause as impliedly limiting the authority of state and local governments to regulate commerce. *Hughes v. Oklahoma*, 441 U.S. 322 (1979). The Supreme Court has emphasized that the Clause applies to state and local governments only when they act in their regulatory capacity. In contracting for goods and services, the Supreme Court has reasoned, a government acts as a market participant, not a market regulator. *See Hughes v. Alexandria Scrap*, 426 U.S. 794 (1976); *White v. Massachusetts Council of Construction Employers, Inc.*, 460 U.S. 204 (1983). Therefore, the Commerce Clause is no impediment to vendor preference laws in general, or Bill 23-04 in particular.

The Equal Protection Clause of the 14th Amendment prohibits state and local governments from denying to any person "the equal protection of the laws." The provision ensures that like persons will be treated in a like manner. By favoring some vendors more than

(14)

others, vendor preference laws create a statutory classification that must satisfy the Equal Protection Clause. Insofar as a vendor preference law does not impinge upon a fundamental right or impact a suspect class, it will be subject to rational basis review, meaning that if a rational purpose can be articulated in support of the law and the law furthers that purpose, the law will be upheld. *Smith Setzer & Sons, Inc. v. South Carolina Procurement Review Panel*, 20 F.3d 1311 (1994). The federal courts (but not necessarily the Maryland courts) have accepted, as rational, a local government's desire to promote local businesses or alleviate tax or other burdens that impact local businesses. *See Smith Setzer & Sons, Inc. v. South Carolina Procurement Review Panel*, 20 F.3d 1311 (1994); *Associated Gen. Contractors of California, Inc. v. San Francisco*, 813 F.2d 922 (9th Cir. 1987). The Bill does just that and should survive the rational basis scrutiny to which it would be subject in the federal courts under a 14th Amendment challenge.

The Privileges and Immunities Clause contained in Article IV of the United States Constitution presents a more formidable impediment to vendor preference laws. The Privileges and Immunities Clause entitles "[t]he Citizens of each State to all Privileges and Immunities of Citizens in the several States." Its purpose is to "foster a national union by discouraging discrimination against residents of another state on the basis of [their state] citizenship." *Salem Blue Collar Workers Association v. Salem*, 33 F.3d 265, 267 (1994). The Clause protects "fundamental interests that promote "interstate harmony." *United Building & Construction Trades Council v. Mayor and Council of Camden*, 465 U.S. 208 (1984) (internal citations omitted). That protection extends to the acts of local governments. The Supreme Court so held in *United Building & Construction Trades Council v. Mayor and Council of Camden*, a case that is particularly pertinent to our review of the Bill.

In *Camden*, a municipality enacted an ordinance requiring "40% of the employees of contractors and subcontractors working on city construction projects be Camden residents." *Id.* at 210. The Supreme Court was called upon to decide whether an "out-of-state resident's interest in employment on public works contracts" in Camden was protected by the Clause. *Id.* at 219. The Court found that it was. The "pursuit of a common calling is one of the most fundamental of those privileges protected by the Clause." *Id.* And, insofar as the Camden ordinance infringed upon a nonresident's ability to seek employment with a private contractor, even one working on a public project, it was found to be discriminatory within the meaning of the Privileges and Immunities Clause. But the Court also found that the Clause "is not absolute" and, thus, that discrimination against nonresidents will be upheld if there is a "substantial reason" for it. *Id.* at 222. "The inquiry in each case must be concerned with whether such [substantial] reasons do exist and whether the degree of discrimination bears a close relation to them." *Id.* (internal citations omitted). The Court remanded the case to allow the state court to "decide . . . on the best method for making the necessary findings." *Id.* at 223. [2] By so doing, the Court implied that

[2] The City of Camden contended that the ordinance was "necessary to counteract grave economic and social ills . . .;" including "[s]piraling unemployment, a sharp decline in population, and a dramatic reduction in the number of businesses located in the city . . . ." *Id.* at 222.

it may not be giving the usual deference to legislative rationale that is afforded under the rational basis test.

Camden creates a measure of uncertainty as to the legality of the local preference created by the Bill. While the Bill contains no residency requirement, it does require that "at least 50 percent" of the employees of a small business "work in the County." (See lines 38-39). Further, in order to qualify as a small business, the Bill requires that a business have "a principal place of business in the County" and pay "personal property taxes to the County . . . ." (See lines 36-37, 40-43). If the courts were to equate the Bill's location requirements with a residency requirement, then the County would be charged with demonstrating a substantial problem justifying the discriminatory impact of the Bill.

However, insofar as the courts view a residency requirement as qualitatively different than a work location requirement, the *Camden* decision may be distinguishable. Choosing one's residence may be viewed as more personal, therefore more fundamental, than choosing one's workplace. If the location requirements do not infringe a fundamental right, such as pursuing one's livelihood, then the Bill's legislative rationale may be adequate to repel a challenge under the Privileges and Immunities Clause.

Maryland law further complicates our analysis of the Bill, particularly Article 24 of the Maryland Declaration of Rights. While Article 24 is the State analog to the 14th Amendment to the United States Constitution, the Maryland courts have long reserved the right to read protections in Article 24 that are not contained in the 14th Amendment. *See Attorney General of Maryland v. Waldron*, 289 Md. 683, 426 A.2d 929 (1981). Thus federal decisions upholding vendor preference laws under the 14th Amendment are persuasive, but not controlling, authority. Unlike the federal courts, the Maryland courts have not had occasion to squarely address the validity of vendor preference laws. The closest Maryland cases involve local regulations that discriminate against nonresident persons or entities; these cases address the role of government as market regulator, rather than market participant. *See Frankel v. Board of Regents of the University of Maryland System*, 361 Md. 298, 761 A.2d 324 (2000); *Verzi v. Baltimore County*, 333 Md. 411, 635 A.2d 967 (1994); *Bruce v. Director, Department of Chesapeake Bay Affairs*, 261 Md. 585, 276 A.2d 200 (1971). Nevertheless, the Maryland courts may apply a more rigorous form of equal protection review to the Bill than the deferential form applied by the federal courts. In fact, review by the Maryland courts is likely to be analogous to that of the federal courts under the Privileges and Immunities Clause. *See Verzi v. Baltimore County*, 333 Md. 411, 635 A.2d 967 (1994). The Maryland courts are not likely to summarily approve a procurement program that discriminates against nonresident businesses or employees, especially those located within Maryland. The Maryland courts will probably demand substantial justification for such a program, as did the Supreme Court in *Camden*. The Maryland courts have harbored a long-standing antipathy toward discriminatory local laws. *See, e.g. Bradshaw v. Lankford*, 73 Md. 428, 21 A. 66 (1891); *Havre de Grace v. Johnson*, 143 Md. 601, 123 A. 65 (1923); *Dasch v. Jackson*, 170 Md. 251, 183 A. 534 (1936).

Conclusion

Unfortunately, the existing legislative record does not precisely define the scope of the problem that the Bill's local preference is meant to address or substantiate the existence of that problem. In order to ensure that the Bill survives a challenge in the courts, we recommend that the legislative record be supplemented with information, data, findings, expert analysis, or the like, that identifies the social and economic evils that the local preference is meant to remedy and that describes how the Program will remedy those evils. The record should also show that the Program does not unnecessarily burden those who do not benefit from it. Without that supplementation of the record, the Bill's legal fate is precarious.

In addition to the need for supporting data, the Bill is in need of a minor clarifying amendment. The Bill provides that a small business must be not be "dominant in its field of operation." (See line 35). Lacking a definition of the term "dominant" or standards by which that dominance can be adjudged, the provision will be difficult to implement. And we question whether this criterion is needed; it seems unlikely that a small business will be "dominant in its field of operation." Therefore, we recommend that this criterion be stricken.

Lastly, on an admittedly nonlegal note, we feel constrained to discuss a potential policy implication of the Bill. We are aware that Virginia and Pennsylvania have adopted laws that authorize the imposition of a penalty on a business seeking a government contract if the business is located in a jurisdiction that awards a preference to local businesses.[3] In competing for government contracts from Virginia and Pennsylvania, County businesses may be disadvantaged by such laws, even if the County businesses have never benefitted (or could not benefit) from the County's proposed Program. Passage of the Bill, with the local preference provision intact, might have the unintended effect of dissuading businesses from locating in the County.

If you have any questions or concerns regarding this memorandum, please feel free to contact us.

cc: Charles W. Thompson, Jr., County Attorney
Edward Stockdale, Office of Procurement

I:\RS\ROYALC\Documents & Opinions\Opinion III-o-Bill 23-04.wpd

---

[1] The State of Maryland has enacted a similar law. *See Md. Ann. Code art. 24, § 8-102 (2003).*

OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

September 29, 2004

TO: Joseph Beach,
Assistant Chief Administrative Officer

Via: Marc Hansen Marc Hansen
Division of General Counsel

From: Vickie L. Gaul
Associate County Attorney

RE: Bill No. 23-04: Local Small Business Reserve Program – Supplemental Analysis[1]

Federal regulations generally prohibit the County from implementing a procurement under the proposed Local Small Business Reserve Program if the procurement is funded by federal grant money. There are at least 29 federal regulations (all of which concern procurement and contain identical language) prohibiting local procurement practices that use geographical preferences. A listing of these 29 federal regulations is attached and marked as Attachment 1. All of these regulations set out the procurement requirements for grantees and subgrantees of federal grant programs. These requirements contain the following pertinent language:

> *Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided that its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.*[2]

[1] This advice should be considered as supplementary to our earlier analysis of Bill 23-04 dated September 8, 2004.

[2] See, for example, 24 CFR 85.36(c)(2). A copy of this HUD regulation, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, Subpart C -- Post-Award Requirements Changes, Property, and Subawards" is attached as Attachment 2

Accordingly, if the Council enacts a local preference under Bill 23-04, the bill's current provision, or something similar, requiring that the value of contracts subject to federal and State grant requirements which conflict with the provision of Bill 23-04 be excluded from the total dollar value of procurements undertaken by each using department, should be retained.

If you would like to discuss this matter further, please feel free to call me at x76716.

Attachments

cc: Sonya Healy, Legislative Analyst
Jerry Pasternak, Special Assistant to the County Executive
Clifford Royalty, Associate County Attorney
Beatrice Tignor, Director, Office of Procurement

101 Monroe Street, Rockville, Maryland 20850-2540 • 240-777-6716•TTD 240-777-2545 • Fax 240-777-6705
vickie.gaul@montgomerycountymd.gov

OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: Thomas Perez, President
Montgomery County Council

FROM: Marc P. Hansen, Chief
Division of General Counsel

Clifford L. Royalty
Associate County Attorney

DATE: April 7, 2005

RE: Bill 23-04, Contracts and Procurement-Local Small Business Reserve Program

The full council has conducted two work sessions on Bill 23-04. Out of these sessions three legal issues have arisen.

1. Professor Raskin, in a letter dated March 21, 2005, advised the Council that our legal analysis of Bill 23-04 was unduly pessimistic. The Council asked for our response to Professor Raskin's advice.

We continue to believe that the legislative record for Bill 23-04 should be supplemented in order to identify a significant governmental purpose justifying the implementation of a local preference, and to support that the legislative means selected to accomplish this significant purpose are closely related to achieving that end. We appreciate Professor Raskin's agreement that a strengthened legislative record would "thicken the bill's constitutional armor." *See Raskin letter, p. 1.* But we also believe that Professor Raskin's lack of Maryland experience led him to express unduly optimistic views about the likelihood of the Maryland Court of Appeals rejecting long held precedent in order to sustain a local preference.

2. The Virginia General Assembly enacted House Bill 2151 while the Council considered Bill 23-04. Bill 2151 provides in relevant part:

> Whenever the lowest responsive and responsible bidder is a resident of any other state, **and such state under its laws** allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. (emphasis added).

Noting the phrase "and such state under its laws allows a ... [local] preference", the Council has sought our advice as to whether the enactment of Bill 23-04 would cause this Virginia statute to be applied to businesses from Montgomery County, a political subdivision of a state. We conclude that it is more likely than not that the Virginia Attorney General, if faced with a challenge made by a Virginia business to a proposed contract award to a Montgomery County business, is likely to advise that House Bill 2151 precludes a contract award to the Montgomery County business.

3. Councilmember Silverman has asked about the meaning of "principal place of business" (*see* lines 46-47 of Bill 23-04), one of the criteria for determining whether a local business qualifies for the proposed small business set aside program. We have broadened Councilmember Silverman's inquiry to comment on all of the proposed criteria for identifying local businesses. We conclude that the criteria proposed for defining a local business will be difficult to implement. We recommend that, if the Council restores the local preference

provisions to Bill 23-04, it provide a general definition for a local business, and require the Executive Branch to develop regulations to flesh out this general definition.

Reply to Professor Raskin

Professor Raskin has taken issue with our conclusion that, without further supplementation of the legislative record, the "legal fate" of Bill 23-04 "is precarious." Professor Raskin charges us with "a misreading of legal precedent" and with arriving at a conclusion that is "unduly pessimistic". *See Raskin letter, p. 1.* The former charge is refuted by an examination of the relevant case law; the latter charge, based on our recent experience before the Court of Appeals, is without merit.

Professor Raskin does not substantially differ with our analysis of the applicable federal law. As you will recall, in our Memorandum opinion, we discussed the implications of the Supreme Court's decision in *United Building and Construction Trades Council v. Mayor and Council of Camden*, 465 U.S. 208 (1984). In the *Camden* case, the Supreme Court addressed the constitutionality of a municipal ordinance that required "40% of the employees of contractors and subcontractors working on City construction projects to be Camden residents" *Id.* at 210. The Supreme Court found that an "out-of-state resident's interest in employment on public works contracts" was protected by the Privileges and Immunities Clause of Article IV of the United States Constitution. *Id.* at 219. The Court ruled that a local preference, at least in so far as it includes a residency requirement, must be supported by a "substantial reason." *Id.* at 222.

We pointed out in our Memorandum that the residency requirement, as addressed in *Camden*, is distinguishable from the work place requirement contained in the Bill, but that a Court might apply the Privileges and Immunities Clause to the work place requirement. Professor Raskin seems to discount that possibility, although he provides no legal support for doing so. The breadth of rights protected by the Privileges and Immunities Clause is more expansive than Professor Raskin seems to recognize. The purpose of the Clause is to foster a national union by discouraging discrimination against residents of another state on the basis of state citizenship; one of the fundamental rights sheltered by the Clause's umbrella is the pursuit of a common calling, without regard to the state from which the individual hails. In light of the policy goals of the Privileges and Immunities Clause, we continue to believe that there is a strong possibility that the federal courts would construe a work place requirement as a functional equivalent of a residency requirement. Both impede, on the basis of political or jurisdictional association, the ability of an individual to pursue a livelihood, potentially turning our nation into a Balkanized association of competing principalities.

Therefore, our concern is well-founded. However, we apparently agree with Professor Raskin that, with a better record identifying substantial problems that would be rectified by a local preference, Bill 23-04 would be sustainable under a Privileges and Immunities Clause challenge.

We reject Professor Raskin's reliance on the purported "gentle bite" of the Bill's 10% set aside. You will recall that Professor Raskin expressed the view that the Bill's set aside is defensible because, at 10%, it is smaller than the set aside at issue in *Camden*. Professor Raskin states that, with respect to "minority business contracts set asides" the Supreme Court has "paid close attention to the actual size of preferences, upholding small ones…while invalidating large ones as an overly blunt instrument." *See Raskin letter, p. 3*. In support of that proposition, Professor Raskin compares *Richmond v. Croson*, 488 U.S. 469 (1989), in which the Supreme Court struck down a 30% minority business preference, with *Fullilove v. Klutznick*, 448 U.S. 448 (1980), in which the Supreme Court upheld a 10% preference. This comparison, indeed Professor Raskins entire discussion in this regard, is flawed. *Fullilove* is of dubious persuasive value, having been gutted by the Supreme Court in *Croson* and *Adarand v. Pena*, 515 U.S. 200 (1995). More importantly, in *Croson*, the Court did not strike down the minority business enterprise participation requirement because of its size. The Court struck down the preference primarily because it was not justified by the legislative record. If the preference in *Croson* had been 1%, it would have met the same fate. A "bite" does not have to break the skin to be unconstitutional. If the local preference impinges upon a fundamental right and if the record is insufficient to support that impingement, then the Bill is unconstitutional, regardless of the amount of the set aside in the Bill.[1]

As you will recall, we expressed particular misgivings about how the Maryland Courts would receive Bill 23-04. We rightly cited Maryland cases that expressed hostility to discriminatory local laws. As evidence of the Maryland Courts' longstanding hostility to such laws, we cited three Maryland cases, *Bradshaw v. Lankford*, (a 1891 case), *Havre de Grace v. Johnson* (a 1923 case), and *Dasch v. Jackson*, (a 1936 case). Professor Raskin completely ignores the modern cases that we cited and dismisses the older cases as "antique." Professor Raskin neglects to mention that these "antique" cases, and the principles for which they stand, have been cited and relied on by the Maryland Courts in the modern era, indeed, as recently as 2003. See *Holiday Universal v. Montgomery County*, 377 Md. 305 (2003); *Tyma v. Montgomery County*, 369 Md. 497 (2002); *Frankel v. Board of Regents of the University of Maryland System*, 361 Md. 298 (2000). We cited these "antique" cases because we recognized that the Maryland Court's distrust of discriminatory local laws has been long standing, although we recognize that the Maryland Courts have expressed this hostility in the context of cases involving economic regulations. *Verzi v. Baltimore County*, 333 Md. 411 (1994). Considering this case law in its

[1] The size of the bite becomes relevant in the context of determining if the means the legislature chooses to address a demonstrated problem justifying the program is narrowly tailored to remediate the problem being solved. In short, a

entirety, we believe that the Maryland Courts may well subject Bill 23-04 to the same level of scrutiny as the economic regulations addressed in much of the case law. Our collective experience before Maryland's Appellant Courts buttresses our concern.

Professor Raskin downplays our concerns, but he does not dispute that bolstering the legislative record would be prudent. We continue to urge that the legislative record be bolstered in order to identify a significant reason justifying the enactment of a local preference and that demonstrates that the means selected to remedy this significant problem are closely related to achieving that end.

Virginia Legislation-House Bill 2151

As the Council is aware the Virginia General Assembly has enacted House Bill 2151, which provides in impertinent part,

> Whenever the lowest responsive and responsible bidder is a resident of any other state and **such state under its laws** allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered.

Councilmembers have asked if this Virginia statute only applies to a preference enacted by a state government and would, therefore, not be triggered by a local preference enacted by a political subdivision like Montgomery County. We cannot provide a conclusive answer, but we believe that the Virginia statute would be applied to a business from Montgomery County if the County enacts a local preference law.

We begin by noting that the Virginia Supreme Court determines the intent of the General Assembly based on the words contained in the statute. *Vaughn, Inc. v. Beck*, 262 Va. 673, 677 (2001). A narrow interpretation of the phase "under its [State's] laws" could lead to the

---

government may not adopt a 10% solution to solve a 1% problem.

conclusion that a preference law enacted by Montgomery County would not trigger the retaliatory provisions of House Bill 2151.

But there is another view, one advanced by a representative of the Office of the Virginia Attorney General. An Assistant Attorney General argued to us that a Montgomery County local preference law would trigger the retaliation provisions of House Bill 2151, because Montgomery County derives its powers under state law and, therefore, the provision "under its ['State's] laws" would be satisfied. Clearly, at this point, we cannot conclude with certainty how Virginia will decide to implement House Bill 2151. But it seems more likely than not that, if faced with a challenge made by a Virginia business to a proposed contract award or to a Montgomery County business, Virginia is likely to side with the Virginia business.

Developing Appropriate Criteria for Identifying Local Businesses

If Council elects to restore the local preference provisions to Bill 23-04, then the Council should fashion a clear and workable definition of local business. At this stage, we understand that the Council is considering requiring that a local business meet three criteria.

1. The business must pay personal property tax to the County for the fiscal year in which the business receives a contract award under the program and continue to pay personal property taxes for the term of the contract.

Comments:

The personal property tax is imposed on a fiscal year basis (July 1 through June 30 of the following year). The tax is imposed on property located in the County as of the preceding January 1 (the Date of Finality). Therefore, a business that locates taxable property in Montgomery County, for example on April 12, 2005, will not be required to pay tax until the following July 1st, for example July 1, 2006. Thus, this provision as currently proposed will prevent start-up businesses from qualifying for the program, in some cases for more than a year.

We also note that locating a filing cabinet in a shared office generates personal property tax liability and would therefore satisfy the requirements, as currently drafted.

2. At least 50% of the business' employees must work in the County.

Comment: This criteria will be difficult to implement. For example, does an employee who delivers goods on an average of 5 hours per week in Montgomery County count as working in the County? Should a Montgomery County business that adds temporary employees for a project outside Montgomery County be removed from the program if the additional temporary employees reduce the business' total employees working in the County below 50%?

3. The business must have a principal place of business in the County.

Comment: The term "principal" is unclear in this context. In the corporate law context, "principal place of business" means wherever the corporate charter designates as the principal place of business. This may not necessarily have any relationship to the economic activity that is directly generated at the principal place of business; in fact, another site may generate more income for the business than the site designated in the corporate charter as the principal place of business.

On the other hand, principal may mean more than half. If the intent of Bill 23-04 is to require that the business must generate more than half of its economic activity from sites in the County, how will this activity be measured?

We recommend that Bill 23-04, if a local preference is to be included, provide that a local business must generate significant economic activity in the County and require the Executive Branch to develop regulations to flesh out this general criterion.

cc: Charles W. Thompson, Jr.
County Attorney

Beatrice B. Tignor, Director
Office of Procurement

David Edgerley, Director
Department of Economic Development

Joseph Beach, Assistant Chief
Administrative Officer

Jerry Pasternak Special Assistant to
The County Executive

Andrew Thompson
Assistant County Attorney

MH/maf
I:/GJ/Hansem/Bill 23-04 4-4-05 Memo.doc

OFFICE OF PROCUREMENT

Marc Elrich
County Executive

Avinash G. Shetty
Director

TESTIMONY ON BEHALF OF THE COUNTY EXECUTIVE ON BILL 25-19, LOCAL BUSINESS PREFERENCE PROGRAM

October 15, 2019

I am Ash Shetty, Director of the Office of Procurement. I am here on behalf of the County Executive to encourage the Council's favorable consideration of Bill 25-19 to establish a preference program for Montgomery County based businesses.

The purpose of this legislation is to increase the participation of local businesses in the County's procurement process by establishing a Local Business Preference Program for certain County procurement contracts. This Bill is intended to bolster the County's economic growth and support the creation and retention of employment opportunities within the County by establishing a ten percent (10%) preference for County-based businesses.

Montgomery County has a robust, active and responsive business community. These businesses employ local residents, provide good jobs, and make real contributions to the local economy. It is clear that local businesses will benefit from the new preference program. The program is widely supported by local vendors, chambers of commerce, and County residents, because it encourages local businesses to participate in the County's procurements. In addition, this preference program will provide an economic opportunity that every local business can benefit from now and in the future. Prince George's County and District of Columbia both have local preference programs for their local vendors. This legislation will level the playing field and assist Montgomery County based businesses to gain more County contracting opportunities.

This Bill is one of the many efforts that the County is making based on feedback from the business community to make improvements to procurement programs and procedures. County Executive Elrich believes that passage of this Bill will help us better serve our business community.

2

Gaithersburg-Germantown Chamber of Commerce, Inc.

910 Clopper Road, Suite 205N, Gaithersburg, Maryland 20878 (301) 840-1400, Fax (240) 261-6395

Bill 25-19 – Contracts and Procurement Local Business Preference Program

SUPPORT

The Gaithersburg-Germantown Chamber of Commerce supports Bill 25-19 to establish a ten percent preference for the County-based businesses competing for Montgomery County contracts. Not only will this bill help all participating businesses, the proposed preference program will compliment the existing Local Small Business Reserve Program to ensure that County departments award 20 percent of their procurements for goods, services and construction to registered and certified local, small businesses. While Bill 25-19 is not limiting the size of the participating business – which we agree with - it will nonetheless help our small businesses compete.

I would like to focus my remarks on two specific issues. First, this bill helps to level the playing field for Montgomery County businesses who most likely have higher costs solely because they are based in Montgomery County. Those increased costs include higher costs for owning and/or leasing commercial space and higher personnel costs. In balancing the needs of our local workforce with promoting economic development, the County has passed legislation resulting in a higher cost to do business in Montgomery County. Bill 25-19 recognizes that doing business in Montgomery County comes at a real cost for our local businesses.

The second point is strictly economic. Awarding more contracts to Montgomery County businesses will have an economic multiplier effect in our local economy. Based on the fiscal impact statement, this bill would have resulted in an additional $700,000 coming back into our economy – being spent on jobs and other commercial expenses which will in turn be spent on entertainment, restaurants, and various retail. Pumping more money into local businesses will also help our businesses grow and be more competitive not only within the County, but also outside of Montgomery County.

I would also like to take the opportunity to thank the Director of Procurement for reaching out to businesses and listening to their concerns. Many of our small businesses basically gave up on ever doing business with the County because the process had become too cumbersome. Our understanding is that the process has been significantly streamlined. The challenge now is to convince our existing businesses to give the program another chance. The Gaithersburg-Germantown Chamber has reached out to our members to let them know that changes are being made. Our hope is that the changes result is more businesses getting more contracts and growing our local economy.

3

O'C&L

O'CONNELL & LAWRENCE, INC.

17904 GEORGIA AVENUE, SUITE 302
OLNEY, MARYLAND, 20832

TEL: 301-924-4570 FAX: 301-924-5872

October 15, 2019

Council President

100 Maryland Avenue

Rockville, MD 20850

Reference: Montgomery County Council Public Hearing: Expedited Bill 25-19, Contracts and Procurement – Local Business Preference Program

Good Afternoon,

My name is Ken O'Connell and I am here today representing O'Connell & Lawrence Inc. 17904 Georgia Ave. Olney. I want to thank the Council and County Executive for advancing Bill 25-19 to this stage and allowing me the opportunity to speak to you.

I am proud to say that I am a life-long resident of Montgomery County. I am also proud to say that this year marks O'Connell & Lawrence's 25th year in business – the entirety of this 25 years as a Montgomery County Business.

I live here, I work here, and I pay taxes here. O'Connell & Lawrence has been here for 25 years, and it pays taxes here. I **vote** in every election.

I support Bill 25-19, Contracts and Procurement because

- It is good for Montgomery County businesses
- It is good for Montgomery County tax payers
- It is good for the Montgomery County tax base

Since O'Connell & Lawrence has its principal place of business in Montgomery County, it buys

- Its vehicles here
- Its gas here
- Its office supplies here
- And our employees contribute every day to other Montgomery County businesses

O'Connell & Lawrence generates revenue not only from its business inside Montgomery County, but also from outside Montgomery County. We bring revenue home from the State of Maryland, other states, other counties, the District of Columbia, and the Federal government.

When we compete in other jurisdictions, we compete with firms that benefit from those jurisdictions' local business preferences and sadly, we mostly compete here in our own county against those very same firms with no local businesses preference of our own.

I am not an economist but I have read several articles that show how local dollars, kept local, come back many fold ... far greater than 10%. Further, there is no evidence that 10% preference points for professional services (RFP) cost a single dollar more if awarded to a local firm.

There may be some opponents of the bill that will speak to you here today, I encourage you to ask them if they:

1. Live in Montgomery County; and
2. Represent only Montgomery County Businesses.

Or, simply ask yourself this question:

Why is it ok for other jurisdictions to subject Montgomery County businesses to preference programs, when the same benefits are not afforded to our own Montgomery County businesses ... the answer is simple: it is not.

There is so much more that you can do to help Montgomery County businesses but this is a good start! Please pass this bill, quickly!

Thank you for your time.

Kenneth J. O'Connell, President

DUANE, CAHILL, MULLINEAUX & MULLINEAUX, P. A.
Architecture, Planning, Interiors, Consulting

Susan Young Mullineaux, AIA
Richard C. Mullineaux, AIA
Stephen A. Mullineaux, AIT, LEED Green Associate
Franklin J. Duane, AIA (retired)
John C. Cahill, RA 1931-1994

October 15, 2019

Council President
Montgomery County, Maryland
100 Maryland Avenue
Rockville, MD 20850

Reference: Montgomery County Council Public Hearing
Expedited Bill 25-19- Contracts and Procurement- Local Business Preference Program

Good afternoon,

As a local small business that has proudly provided architectural services in Montgomery County since the 1940s, **we strongly support the proposed Local Business Preference Program Bill 25-19.**

The reasons for our support are as follows:
- We are small business owners based in Montgomery County.
- We live in the county.
- Our staff lives in the county.
- We frequent and support local businesses.
- We work with many other Montgomery County based businesses.
- There are numerous qualified professional firms in the county- no reason to look elsewhere.
- We pay local taxes- personal and business.
- We vote.

The county should give local business preference to county-based businesses on county contracts.
Our neighboring jurisdictions give preferential treatment to their local businesses, putting Montgomery County firms at a competitive disadvantage.

Our tax dollars should support the numerous local Montgomery County qualified businesses instead of awarding contracts to PG, Howard, Baltimore, DC or VA businesses who have no direct financial stake in our county.

Sincerely,

Susan Young Mullineaux

Susan Young Mullineaux, AIA
President, **DCMM Architects**

18243-D Flower Hill Way, Gaithersburg, Maryland 20879 · (301) 208-0100 · Fax (301) 208-1666 ·
33299 Dover Road, Dagsboro, Delaware 19939 · Email: dcmm1@comcast.net
www.dcmmarchitects.net

MALLICK
8010 Cessna Avenue
Gaithersburg, MD 20879
(301) 840-5860

5

October 15, 2019

Council President
100 Maryland Avenue
Rockville, MD 20850

Reference: Montgomery County Council Public Hearing: Expedited Bill 25-19, Contracts and Procurement – Local Business Preference Program

Good Afternoon,

My name is Kenny Mallick and I am here today representing two companies, Mallick Plumbing and Heating Inc. and Mallick Mechanical Contractors Inc. located at 8010 Cessna Ave Gaithersburg. I want to thank the Council and County Executive for advancing Bill 25-19 to this stage and allowing me the opportunity to speak to you.

I am also proud to say that I am a life-long resident of Montgomery County. I am also proud to say that this year marks the Mallick companies 26th year in business – the entirety of this 26 years as a Montgomery County Business.

I live here, I work here, and I pay taxes here. Both of the Mallick companies have been here for 26 years, and play taxes here. I vote in every election.

I support Bill 25-19, Contracts and Procurement because

- It is good for Montgomery County businesses
- It is good for Montgomery County taxpayers
- It is good for the Montgomery County tax base
- It is good for traffic easing within Montgomery County, the 270 corridor, etc.

Since both Mallick companies have its principal place of business in Montgomery County, we buy

- Its vehicles here
- Its gas here
- Its office supplies here
- And our 165+ employees contribute every day to other Montgomery County businesses

Both Mallick Plumbing and Mallick Mechanical generate revenue not only from its business inside Montgomery County, but also from outside Montgomery County. We bring revenue home from the State of Maryland, other states, other counties and the District of Columbia.

When we compete in other jurisdictions, we compete with firms that benefit from those jurisdictions' local business preferences and sadly, we mostly compete here in our own county against those very same firms with no local business's preference of our own.

MALLICK
8010 Cessna Avenue
Gaithersburg, MD 20879
(301) 840-5860

I am not an economist, but I have read several articles that show how local dollars, kept local, come back many fold ... far greater than 10%. Further, there is no evidence that 10% preference points for construction services cost a single dollar more if awarded to a local firm.
There may be some opponents of the bill that will speak to you here today, I encourage you to ask them if they:

1. Live in Montgomery County; and
2. Represent only Montgomery County Businesses.

Or, simply ask yourself this question:

Why is it ok for other jurisdictions to subject Montgomery County businesses to preference programs, when the same benefits are not afforded to our own Montgomery County businesses ... the answer is simple: it is not.

There is so much more that you can do to help Montgomery County businesses, but this is a good start! Please pass this bill, quickly!

Thank you for your time.
Kenny Mallick, President

GREATER SILVER SPRING
CHAMBER OF COMMERCE

OUR MISSION:
Working to enhance the economic prosperity of greater Silver Spring through robust promotion of our member businesses and unrelenting advocacy on their behalf.

Bill 25-19, Contracts and Procurement - Local Business Preference Program
Testimony in Support
Tuesday, October 15, 2019

Good afternoon Council President Navarro and members of the Council. Jane Redicker, President of the Greater Silver Spring Chamber of Commerce, representing more than 440 employers, mostly small businesses that have been interested in doing business with Montgomery County.

I come before you today in support of Expedited Bill 25-19, which would require a 10% price preference for a local business bidding on a contract or submitting a proposal under an RFP for a contract awarded by the County.

For several years now, our Chamber has believed that businesses located in Montgomery County should be given priority for any and all procurement contracts issued by County government entities. County leaders have been reluctant to implement such a requirement, instead awarding the contract simply based on price or prior relationship. While an award on price seems a responsible use of tax dollars, it puts locally owned businesses at a disadvantage. As Montgomery County has enacted laws that increase the cost of operating a business here, local businesses have found it impossible to compete against like vendors in jurisdictions where, for example, the minimum wage is lower and fewer employee benefits are required.

Expedited Bill 25-19 seeks to offset some of the increased cost of doing business in Montgomery County and give our locally owned businesses a better chance of getting work from the County where they operate and contribute to the economy.

It's worth noting that local preference programs are already in place in three of our neighboring jurisdictions – the District of Columbia and Prince George's and Howard counties. It's time Montgomery County recognized the importance of our local businesses and required County agencies to "buy local." This bill is an important first step in that direction. In addition, several of our small business members suggest taking a page from some of these other jurisdictions and also giving extra points on the score sheet for: having a business location in the County, having staff in Montgomery County, and having an owner who resides in Montgomery County.

For these reasons, we urge you to enact Expedited Bill 25-19 and take an important step to awarding our local businesses the business they deserve.

8601 Georgia Avenue, Suite 203, Silver Spring, Maryland 20910
Phone (301)565-3777 • Fax (301)565-3377 • jredicker@gsscc.org • www.gsscc.org

SUBDIVISION 3. - BUSINESS PREFERENCES; COUNTY-LOCATED BUSINESS ASSISTANCE.

Sec. 10A-173. - Business preferences.

(a) On any procurement for which a County agency or the County government secures competitive proposals pursuant to Section 10A-113 the Purchasing Agent shall add the following percentage points to the total evaluated score of the bid or proposal:

Business Type	Where participation in the proposal by each type of certified firm is 45% or more add:
County-based small business	15%
County-based minority business enterprise	15%
County-based business	10%
Minority Business Enterprise or Disadvantage Business Enterprise	5%
County-located business	3%

Cumulative preference points: Where a bid or proposal includes the participation of two or more certified firms and the cumulative participation of the entities is at least 45% of one of the certified business categories above, the preference points applicable to that 45% participation listed above will be applied to the bid. A bid comprised of two or more firms that achieves an additional 45% of participation of one of the certified business categories above will receive an additional amount of preference points listed above applicable to that additional 45% participation. The same firm's participation in a bid or proposal shall not be counted for preference points for more than one of the certified business categories above and shall receive preference points for the highest scoring certified business category for which it qualifies. No single certified firm can receive more than 15% percentage points in any one bid or proposal.

(b) The Purchasing Agent may determine not to apply a bid or proposal preference under this Section if the Purchasing Agent certifies that such a preference would result in the loss of federal or state funds, subject to the approval of the County Executive.

(c) The requirements of this Section shall apply to the procurement of vendors retained by a County agency or the County government to assist in the financing and sale of County government debt. The requirements of this Section shall also apply to the procurement of brokerage firms, investment banking firms, investment management firms, consultants, and other vendors retained to manage or invest funds controlled or administered by a County agency or the County government. The application of this Subsection is subject to the requirements and restrictions of federal and state law.

(d) A business may opt to not receive a business preference under this Section.

(e) For the purposes of this Division, the term "competitive bids or proposals" means any bids or proposals for procurement funded or administered by a County agency or the County government except for procurement awards made pursuant to Section 10A-114.

(CB-67-2014; CB-115-2017)

Sec. 10A-174. - County-located business certification requirements.

(a) A business that seeks to be certified as a County-located business shall make application to the Purchasing Agent on a form provided by the Purchasing Agent. Such an application shall not be approved by the Purchasing Agent unless the business

(1) Submits documentation requested by the Purchasing Agent verifying that the business meets the definition of a County-located business as prescribed in Section 10A-101(13.3), including

(A) Leasing or ownership documents,

(B) Payroll information,

(C) Property and income tax information,

(D) Information regarding office dimensions, and

(E) Any other documentation or information requested by the Purchasing Agent to verify compliance with the definition of County-located business set forth in Section 10A-101(13.3);

(2) Files a written certificate that the business is not delinquent in the payment of any County taxes, charges, fees, rents or claims; and

(3) Files documentation showing that during the preceding twelve (12) months the business has continuously maintained a valid business license or permit.

(b) Once an application for certification is approved under this Section by the Purchasing Agent, a copy of the approved application shall be expeditiously transmitted to the County Auditor.

(c) Nonprofit entities that satisfy the applicable requirements of this Section are eligible to be certified as County-located businesses.

(d) A business that is certified as a County-located business shall meet the requirements of certification under this Section continuously after the date the business's application for certification is approved by the Purchasing Agent or the business's certification shall be void. In such instances, the business must re-apply pursuant to the requirements of this Section to be certified as a County-located business.

(CB-67-2014)

Sec. 10A-175. - Regulations authorized.

The County Executive may promulgate regulations to govern the implementation of this Subdivision, provided that such regulations are consistent with the provisions of this Subdivision. Any such regulations must be approved by the County Council.

(CB-67-2014)

Editor's note— CR-40-2015 approves regulations promulgated by the County Executive governing the implementation and administration of the County-located business certification application process.

County Code §11B-9(j)

(j) *Reciprocal preference for County-based bidder.*

(1) In making an award under this Section, the Director must give a preference to a responsible and responsive County-based bidder if:

(A) a non County-based bidder is the lowest responsible and responsive bidder;

(B) the non County-based bidder has its principal place of business in a state or political subdivision that gives a preference to its residents; and

(C) a preference does not conflict with a federal law or a grant affecting the purchase or contract.

(2) A preference given under this subsection must be identical to the preference that the other state or political subdivision gives to its residents.

(3) A preference must not be given under this subsection if it would result in an award to a County-based bidder when:

(A) a non County-based bidder has submitted a lower responsible and responsive bid than any County-based bidder before the application of any reciprocal preference; and

(B) the non-County-based bidder has its principal place of business in a state or political subdivision that does not give a preference to its resident.

Ferris J. Barger
State Purchasing Director
Central Purchasing

OMES
OFFICE OF MANAGEMENT & ENTERPRISE SERVICES

Denise Northrup
Director

December 14, 2018

RE: Bidding Preferences – Reciprocity

In accordance with the state statute below, the schedule following this memo provides a list of states that provide bidders in their states a preference and a summary of that preference.

Title 74 § 85.17A. Bidding Preferences—Reciprocity—Awarding contracts

A. State agencies shall not discriminate against bidders from states or nations outside Oklahoma, except as provided by this section. State agencies shall reciprocate the bidding preference given by other states or nations to bidders domiciled in their jurisdictions for acquisitions pursuant to the Oklahoma Central Purchasing Act. The State Purchasing Director shall annually prepare and distribute to certified procurement officers a schedule providing which states give bidders in their states a preference and the extent of the preference. This schedule shall be used by state agencies in evaluating bids.

B. For purposes of awarding contracts state agencies shall:

1. Give preference to goods and services that have been manufactured or produced in this state if the price, fitness, availability and quality are otherwise equal;

2. Give preference to goods and services from another state over foreign goods or services if goods or services manufactured or produced in this state are not equal in price, fitness, availability, or quality; and

3. Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

The list of states providing bidders a preference and a summary of the preference may be found at the following:

STATE RECIPROCAL AND PREFERENCE PRACTICES

Reviewed December 14, 2018

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Alabama	Yes	Yes Tie bid will be awarded to the bidder that, in the opinion of the Director of Purchasing, will serve in the best interest of the state.	Preferred Vendor	• Under this preference law, the awarding authority may award a contract to a "preferred vendor" if the vendor was a responsible bidder, falls within one of the definitions of a "preferred vendor," and offers a price of not more than (5%) five percent greater than the low responsible bid. (Not used on a routine basis)
Alaska	Yes	No	Qualified Alaska Bidder 5% Additional Evaluation Criteria 10% Agricultural or Fishery Products Alaska Products 3-7% Recycled Products 5%	• A reduction in the bid price or offer applies to all vendors who qualify as Alaska bidders, as defined in **AS 36.30.990(2).** • **2 AAC 12.260(e)** provides Alaska offerors an additional 10% overall evaluation point preference (10% of the available points) if a numerical rating system is used - such as a Request for Proposal. Alaska bidders, as defined in **AS 36.30.990(2)** are eligible for this preference. • Award will go to the bidder who offers agricultural or fisheries products harvested in the state (or within the jurisdiction of the state) - provided they are available, of comparable quality, and priced not more than 7% higher than products harvested outside of the state (or outside the jurisdiction of the state). Agricultural products include dairy products, timber, and lumber, and products manufactured in the state from timber and lumber. • A 3%, 5%, or 7% reduction applies to the qualifying products value in a bid price or offer that designates the use of Alaska products. The applicable discount is dependent on what percent the product being offered was produced or manufactured in the state. • A reduction in the bid price or offer applies to all vendors who offer recycled products. The products must be on the DGS pre-approved recycled product list.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference and Conditions
Alaska	Yes	No	Employment Program 15% Qualifying Disability 10% Veterans 5%	• Award will be given to the bidder that qualifies for the Alaska bidder preference, and is offering services through a qualified employment program as defined in **AS 36.30.990(12)**, and is the lowest responsible and responsive bidder with a bid not more than 15% higher than the lowest bidder. • Award will be given to the bidder that qualifies for the Alaska bidder preference, and is a qualifying entity as defined in **AS 36.30.321(d)**, and is the lowest responsible and responsive bidder with a bid price no more than 10% higher than the lowest bidder. • Alaska Veterans preference was enacted as of 09/04/2010: A 5% reduction in the bid price or offer to all vendors that qualify as Alaska bidders as defined in **AS 36.30.321(f)** and meet the requirements established in **AS 36.30.990(2)** as a qualifying entity. The preference may not exceed $5,000.00 for a single procurement.
Arizona	Yes	No In tie-bid situations, the agency chief procurement officer shall make the award by drawing lots.	Small Business	• Small Business Preference for procurements under $100,000, **A.R.S. § 41-2535.B**
Arkansas	Yes	No	Prison Industry 15%	• Preference against out-of-state prison industry bids.
California	Yes	Yes	5% of lowest responsive responsible, non-small business's net bid price when certified small business is not lowest bidder. Up to 5% lowest responsive, responsible non-small business net bid	• **Small Business (SB) (GC 14838)** Goods, services, construction, and IT. The maximum preference is $50,000 and when combined with other preferences, the preference total cannot exceed $100,000. Goods, Services, Construction, and IT. • **Non-small Business Subcontractor Preference (GC 14838)** Goods, services, construction, and IT. The maximum preference is $50,000 and when combined with other preferences, the preference cannot exceed $ 100,000.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
California	Yes	Yes In case of the bid between a Small Business and a Disabled Veteran Business Enterprise (DVBE). The award goes to the DVBE.	price that is not subcontracting with a small business when the small business is not the lowest bidder. Up to 5% for Disabled Veteran Business Enterprises (DVBE) 5% of the lowest virgin net bid price. 5% of the lowest responsive, responsible net bid price for worksite in distressed area: an additional 1-4% for hiring high risk unemployed people percentage of workforce during contract performance using scale below:	Applies to bids submitted by non-small business that are subcontracting with at least 25% to a certified small business (SB). Applies unless application of the preference would preclude a SB from winning the contract. • **MVC 14838** Goods, Services, Construction, and IT. Competitive solicitations that include the DVBE participation requirement, regardless of solicitation format delivery method or dollar value must identify in the solicitation the allowable incentive percentage and evaluation will occur. For awards based on low price, the allowable incentive percent identified in the solicitation cannot exceed 5% or be less than 1%. Awards based on high points, incentive cannot exceed 5% or be less than 1% of total available points, not including points for socioeconomic incentives or preferences. • **Recycled Tires (PRC 42891-42894)** Goods. Applies unless application of the preference would precluded a SB from winning the contract. The maximum preference is $50,000, and when combined with other preferences, the preference cannot exceed $100,000. • **Target Area Contract Preference Act (TACPA) (GC 4533 et seq.).** Applies to goods and service contracts over $100,000 if the work site is located in a distressed area as designated by the Department of Finance. TACPA allows to award California based companies the bid preference when 50% of the labor required to perform goods contracts or 90% for service contracts. The maximum preference is $50,000, and when combined with other preferences, the preference total cannot exceed 15% of the net bid price or $100,000, whichever is lower. The hiring preference is allowed only if the worksite preference is claimed and the bidder is eligible for it. The worksite preference does not apply if the state specifies the worksite where the work is to be completed. To receive a contract award based on preferences, the company must certify under penalty of perjury that the required contract labor shall be accomplished at the approved work site.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
California	Yes	Yes In case of the bid between a Small Business and a Disabled Veteran Business Enterprise (DVBE). The award goes to the (DVBE).	1% for 5-9%, 2% for 10-14%, 3% for 15-19%, 4% for 20 or more. Same as for TACPA except applies to worksites in enterprise zones and hiring persons living in targeted employment area or are enterprise zone eligible. Same as for TACPA except applies to worksites in local agency military base recovery area and hiring people living in such area.	**Economic Zone Act (EZA) (GC 7084 et seq.)** Assembly Bill 93 repealed the EZA Program • **Local Agency Military Base Recovery Area (LAMBRA) (GC 7118).** Assembly Bill 93 repealed the LAMBRA Program
Colorado	Yes	Yes Low tie bids require an in-state preference, including preference for Colorado Agricultural products.	Resident Bidder	• Colorado law mandates that resident bidders be given a preference over non-resident bidders equal to the preference given by the state in which the non-resident bidder is a resident, i.e., if a non-resident bidder is 4% lower than the resident bidder but the state of residence of the non-resident bidder awards a 5% preference to in state bidders, then the Colorado bidder becomes the lowest bidder by 1%.
Connecticut	Yes	Yes	Correctional Enterprises	• Each state department, agency, commission or board shall purchase its necessary products and services from the institution industries if such products and services are produced or manufactured and made available by such industries, provided such products and services are of comparable price and quality and in sufficient quantity as may be available for sale or offered for sale outside the institutions.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Connecticut	Yes	Yes	Board of Education and Services for the Blind Disabled Persons Agricultural Products	• The authority in charge of any building or property owned, operated or leased by the state or any municipality therein shall grant to the Department of Rehabilitation Services a permit to operate in such building or on such property a food service facility, a vending machine or a stand for the vending of newspapers, periodicals, confections, tobacco products, food and such other articles as such authority approves when, in the opinion of such authority, such facility, machine or stand is desirable in such location. • Whenever any products made or manufactured by or services provided by persons with disabilities through community rehabilitation programs or in any workshop established, operated or funded by nonprofit and nonsectarian organizations for the purpose of providing persons with disabilities training and employment suited to their abilities meet the requirements of any department, institution or agency supported in whole or in part by the state as to quantity, quality and price such products shall have preference over products or services from other providers, except (1) articles produced or manufactured by Department of Correction industries as provided in section 18-88, (2) emergency purchases made under section 4-98, and (3) janitorial or contractual services provided by a qualified partnership, pursuant to the provisions of subsections (b) to (d), inclusive, of section 4a-82. • The Commissioner of Administrative Services, when purchasing or contracting for the purchase of dairy products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits or vegetables pursuant to subsection (a) of this section, shall give preference to dairy products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits or vegetables grown or produced in this state, when such products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits or vegetables are comparable in cost to other dairy products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits or vegetables being considered for purchase by the commissioner that have not been grown or produced in this state.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Connecticut	Yes	Yes	Recycled material Clean alternative fuel Micro-business Veteran Owned Microbusiness 15%	• Price preference up to 10% for purchase of goods made with recycled materials • Price preference up to 10% for purchase of motor vehicle powered by clean alternative fuel or to convert a motor vehicle to use alternative fuel or dual use of clean alternative fuel • Price preference up to 10% for contracting with a "micro-business" • Price preference for the purpose of determining the lowest responsible qualified bidder if certified by the Connecticut Department of Veteran's Affairs.
Delaware	Yes	No	Public Works Set Asides	• **Public works contract #6962(4)(b).** Preference for Delaware Labor for work regarding Public works for the state. Must be bona fide legal citizens of the state who have established citizenship by residence of at least 90 days in the State. • **Set Asides.** In accordance with Delaware Code, Chapter 96, State Use Law, certain State contracts are awarded as internal contracts as authorized by the State Use Commission (which rests under the jurisdiction of the Department of Health and Social Services). Therefore, these contracts are not part of the normal bid process.
Florida	Yes **Reciprocal**	Yes **Tie Bid**	Resident Bidder Foreign manufacturers Veteran Business Enterprise	• Whenever two or more competitive sealed bids are received one or more of which relates to commodities manufactured, grown or produced within this state, and whenever all things stated in such received bids are equal with respect to price, quality and service, the commodities manufactured, grown or produced within this state shall be give preference. • Any foreign manufacturing company with a factory in Florida and employing over 200 employees working in the state shall have preference over any other foreign company when price, quality, and service are the same, regardless of where the product is manufactured. • Veteran Business Enterprises Opportunity Act – a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified veteran business enterprise, which are equal with respect to all relevant

State	Law/Statute	Preference	Preference	Scope of Preference & Conditions
Florida	Yes	Yes When two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid proposal, or reply received from a business that certifies it has implemented a drug-free workplace program shall be given preference in the award process.	Certified Minority Business Enterprise Drug Free Workplace Home industries in public buildings Printing 5% Personal Property 5%	considerations, including price, quality, and service, shall award such procurement or contract to the certified veteran business enterprise. • Certified Minority Business Enterprise – if two equal responses and one response is from a certified minority business enterprise, the agency shall enter into a contract with the certified minority business enterprise. • Drug Free Workplace – whenever two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the state of by any political subdivision for the procurement of commodities or contractual services, a bid proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be give preference in the award process. • Preference shall be given in the purchase of material and in letting contracts for the construction of any public administrative or institutional building to home industries residing within the state. • A preference shall be given if the lowest bid is submitted by a vendor whose principal place of business is located outside the state for materials to be printed. • A preference shall be given to the lowest responsible and responsive bidder residing in the state when making purchases of personal property through competitive solicitations.
Georgia	Yes	Yes	Resident Bidder	• Resident vendors in the State of Georgia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis and to the same extent that preference is granted in awarding bids or proposals for the same goods or services by such other state, to vendors resident therein over vendor's resident in the State of Georgia. This preference is used for evaluation purposes only.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Georgia	Yes	Yes Tie bid preference shall be given to products manufactured or produced within the State; to products sold by local suppliers within the State; and products manufactured or sold by small businesses.	Compost and Mulch Forest Products Goods manufactured or produced in the State where reasonable and practicable State Use Law 8%	• All state agencies, departments, and authorities responsible for the maintenance of public lands shall give preference to the use of compost and mulch in all road building, land maintenance, and land development activities. Preference shall be given to compost and mulch made in the State of Georgia from organics which are source separated from the state's non-hazardous solid waste stream. • **Georgia Code 50-5-63 Forest products** Green Building Standards; Exclusive use of Georgia forest products in state construction contracts; exception where federal regulations conflict. • (a) No contract for the construction of, addition to, or repair of any facility, the cost of which is borne by the state or any department, agency, commission, authority, or political subdivision thereof, shall be let unless the contract contains a stipulation therein providing that the contractor or any subcontractor shall use exclusively Georgia forest products in the construction thereof, when forest products are to be used in such construction, addition, or repair, and if Georgia forest products are available. (b) This Code section shall not apply when in conflict with federal rules and regulations concerning construction. • The state and any department, agency, or commission thereof, when contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality. • Price preference in the cost evaluation in accordance with the State Use Law intended to create opportunities for disabled persons employed by community based rehabilitation programs and training centers certified by the State Use Council.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Hawaii	Yes	Yes	Class I 10% Class II 15% Recycled 5% Software 10% Printing 15% Tax 4.5% 5% Rehabilitation Program	• Reciprocal law applies to bidders from states which apply preferences. Preference shall be equal to the preference the out of state bidder would receive in their own State or shall be in the amount the out of state preference exceeds comparable in Hawaii. Preference applies to state and counties for commodities produced, manufactured, grown, mined, or excavated in Hawaii, and requires over 50% Hawaii input counted towards the total cost of the product. *Agricultural, aqua-cultural, horticultural, forestry, flower farming, or livestock product that is raised, grown, or harvested in the state. • Recycled products based on recycled content as a percentage to total weight. In-state contractors' preference. • Software development businesses principally located in-state, with 80% of labor for software development performed by persons domiciled in Hawaii. "Software Development Business" includes my work related to feasibility studies, systems analysis, programming, testing, or implementation of an electronic data processing system." • Printing, binding, and stationery work. Effective July 1, 1994, applies to all out-of-state bidders if their price is lower than Hawaii's bidders' price. • Tax Preference. Preference to ensure fair competition for bidders paying the Hawaii general excise and applicable use tax. • Qualified Community Rehabilitation Program (QRF). Preference for QRF's located in Hawaii.
Idaho	Yes	Yes Tie-bid preference given only to products of local and domestic production and manufacture of Idaho domiciled bidders.	10% printing only	• Printing preference of 10% applies to state and counties. Reciprocal law applies to state and political subdivisions for commodities, construction and services.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Illinois	Yes	Yes In tie-bid situations, preference shall be given to the Illinois vendor over an out of state vendor.	Resident Bidder Soybean Oil-based Ink Recycled Supplies Recyclable Paper Environmental preferable procurement Correctional Industries Sheltered Workshops U.S. Steel Coal 10% Vehicle Mileage Small businesses	• Reciprocal law allows when a contract is awarded to the lowest responsible bidder, the resident bidder will be allowed preference against a non-resident bidder from any state which gives a preference to bidders from that state. The preference will be equal to the preference given or required by the state of the non-resident bidder. • Contracts requiring procurement of printing services will specify use of soybean oil based ink unless a State Purchasing Officer determines that another type of ink is required. • When a contract is to be awarded to the lowest responsible bidder, any otherwise qualified bidder who will fulfill the contract through the use of products made of recycled supplies may be given preference over other bidders unable to do so, provided the cost included in the bid of supplies made of recycled materials does not constitute undue economical or practical hardship. • All supplies purchased for use by State agencies must be recyclable paper unless a recyclable substitute cannot be used to meet requirements or contribute an undue economic or practical hardship. • State agencies must contract for supplies and services that are environmentally preference unless contracting supply or service would impose an undue economic or practical hardship. • Preference is given to "Illinois Correctional Industries" for certain designated contracts. • Preference is given to "Illinois Sheltered Workshops for the severely handicapped" for certain designated contracts. • Preference for products made with steel produced in the United States. • Preference is given for use of Illinois coal. • All State vehicles purchased must be flex fuel or fuel efficient hybrid, or be able to run on 5% biodiesel fuel. • The Chief Procurement Officer has the authority to designate as small business set asides a fair proportion of construction, supply, and service contracts for award to small businesses in Illinois. In awarding the contracts, only bids from qualified small businesses shall be considered.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Illinois	Yes	Yes In tie-bid situations, preference shall be given to the Illinois vendor over an out of state vendor.	Agricultural products	• When procuring agricultural products, preference may be given to a bidder who will fulfill the contract through the use of agricultural products grown in Illinois.
			Corn based plastics	• When procuring plastic products, preference may be given to ta bidder who will fulfill the contract through the use of plastic made from Illinois corn by-products.
			Coal	• When purchasing coal for fuel purposes, a preference must be given to Illinois mined coal if the cost is not more than 10% greater than the cost of coal mined in any other state, including transportation cost.
			Minorities, Females, Persons of Disabilities	• Not less than 20% of the total dollar amount of State contracts (non-construction) will be established as a goal to be awarded to businesses owned by minorities (11%), females (7%), and persons with disabilities (2%). In construction contracts, not less than 10% of the total dollar amount is established as a goal to be awarded to businesses owned by minority and female owned businesses (50% of goal to female owned businesses).
			Steel	• Each contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works made by a public agency shall contain a provision that steel products used or supplied in the performance of that contract or any subcontract, shall be manufactured or produced in the United States.
			Domestic Products	• Each purchasing agency procuring products must promote the purchase of and give preference to manufactured articles, materials, and supplies manufactured in the United States.
			Historic Area	• Preference shall be given to locating its facilities, whenever operationally appropriate and economically feasible, in historic properties and buildings located within government.
			Local site preference (leasing)	• Upon the request of the chief executive officer of a unit of local government, leasing preferences may be given to sites located in enterprise zones, tax increment districts or redevelopment districts.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Indiana	Yes	Yes	Resident Bidder	• The Indiana business preference is considered for an out-of-state business only when the offeror is a business from a state bordering Indiana and the offerors home state does not provide a preference to the home state's businesses more favorable than is provided by Indiana to Indiana businesses.
Iowa	Yes	Yes	Resident Bidder Non-resident Bidder	• Preference shall be given to purchasing Iowa products and purchases from Iowa based businesses if the Iowa based business bids submitted are comparable in price to bids submitted by out of state businesses and otherwise meet the required specifications. • If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids from Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be given to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.
Kansas	No	Yes Tie bids from in-state and out-of-state vendors shall be awarded to in-state vendor.	None	No other information available.
Kentucky	No	Yes	Resident Bidder Commodities of Services	• Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires to bidders from that state. The preference shall be equal to the preference given or required by the state of the non-resident bidder. • Preference is to be given in purchasing commodities or services from the Department of Corrections; Division of Prison Industries; Kentucky Industries for the Blind; agencies of individuals with severe disabilities; incorporated or any other nonprofit corporation that furthers the purposes of **KRS Chapter 163**.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Kentucky	No	Yes	Agriculture	• State agencies, as defined by **KRS 45A.505**, shall purchase Kentucky grown agricultural products if the products are available and if the vendor can meet the applicable quality standards and pricing requirements of the state agency.
Louisiana	Yes	Yes	Agricultural or forestry Produce Eggs or crawfish Seafood Products produced from seafood Paper and paper products Agricultural or Forestry Products Meat and meat products	• Agricultural or forestry products, including meat, seafood, produce, eggs, paper or paper products shall be granted a 10% preference (does not have to lower bid price). • Produce processed in Louisiana, but grown outside of Louisiana, provided the cost of the produce processed in Louisiana does not exceed the cost of produce processed outside of Louisiana by more than 7%. • Eggs or crawfish which are processed in Louisiana under the grading service of the Louisiana Dept. of Agriculture and Forestry, provided the cost of the further processed eggs or crawfish does not exceed the cost of other eggs or crawfish by more than 7%. • Seafood shall be: ○ Harvested in Louisiana seas or other Louisiana waters. ○ Harvested by a person who holds a valid appropriate commercial fishing license issued under statute. • Products produced from such seafood shall be processed in Louisiana. Domesticated catfish shall be processed in Louisiana from animals which were grown in Louisiana. • Paper and paper products shall be manufactured or converted in Louisiana. • For preference, all other agricultural or forestry products shall be produced, manufactured, or processed in Louisiana. • Meat and meat products shall be processed in Louisiana from animals which are alive at the time they enter the processing plant. Meat and meat products which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry, provided the cost of the further processed meat and meat products does not exceed the cost of other meat or meat products by more than 7% (does not have to lower bid price).

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Louisiana	Yes	Yes	Catfish Miscellaneous Steel Treated wood Clay Domestic products 5% Rodeos and livestock shows	• Domesticated or wild catfish which are processed in Louisiana but grown outside of Louisiana provided the cost of the domesticated or wild catfish which are processed outside of Louisiana does not exceed by more than 7% (does not have to lower bid price). • Materials, supplies, products, provisions, or equipment produced, manufactured, or assembled in Louisiana in which the following conditions are met: ○ The cost of such items does not exceed the cost of other items outside the state by more than 10% (does have to lower bid price). ○ The vendor of such Louisiana item agrees to sell the items at the same prices as the lowest bid offered. • Steel rolled in this state provided the cost of the steel rolled in this state does not exceed by more than 10%(does not have to lower bid price). • The above preference language does not apply to treated wood poles or piling. • Preference shall not apply to Louisiana products whose source is clay which is mined or originates in Louisiana and which is manufactured, processed or refined in Louisiana for sale as an expanded clay aggregate form different than its original state. This exception from preference does not apply to bricks manufactured in Louisiana. • Preference for products manufactured anywhere in the United States. This preference applies if no Louisiana product preference takes place. • In-state vendors given preference over out of state vendors provided cost does not exceed by more than 5% for rodeos and livestock shows.
Maine	Yes	Yes	Resident Bidder Best Value Bidder	• **Title 5 M.R.S.A Statute 1825-B (8)** The Director of the Bureau of General Services shall award contracts or purchases to in-state bidders or to bidders offering commodities produced or manufactured in the State if the price, quality, availability and other factors are equivalent. • **Title 5 M.R.S.A Statute 1825-B (9)** In determining the best value bidder, the Director of the Bureau of General Services

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Maine	Yes	Yes	Best Value Bidder	or any department or agency of the State shall, for the purpose of awarding a contract, add a percent increase on the bid of a non-resident bidder equal to the percent, if any, of the preference give to that bidder in the state in which the bidder resides.
Maryland	Yes	Yes	Resident Bidder	• An agency may give a preference to the resident bidder who is a responsible bidder and submits the lowest responsive bid to a competitive sealed bidding process; and does not conflict with a federal law or grant affecting the procurement contract.
Massachusetts	No	Yes	Resident Bidder	• All things being equal, the State <u>may</u> give a preference to goods and supplies first manufactured and sold in the Commonwealth, and then manufactured and sold domestically. We assign not percent under this statute.
Michigan	Yes	No	Michigan Based Firms Printing Resident Bidder	• A preference is given to products manufactured or services offered by Michigan based firms if all other things are equal and if not inconsistent with federal statute. • **STATE PRINTING LAW, PUBLIC ACT 153 of 1937 (MCL 24.62)** All printing for the State of Michigan, except that which is printed for primary school districts, local government units and legal publications for elective state officers, must be printed in Michigan. • A reciprocal preference to a Michigan business against an out-of-state business is allowed for purchases exceeding $100,000 and if not inconsistent with Federal statutes. Under this provision, a Michigan bidder is preferred in the same manner in which the out-of-state bidder would be preferred in its home state. To claim this preference a bidder must <u>certify to being a Michigan business</u> and must authorize the Department of Treasury to release information necessary to verify the entitlement. A business that purposefully or willfully submits a false certification is guilty of a felony, punishable by a fine of not less than $25,000. **(See MCL 18.1268)**
Minnesota	Yes	Yes	All-terrain vehicles Small Businesses	• All all-terrain vehicles purchased by the commissioner (of natural resources) must be manufactured in the state of Minnesota. • For specified goods or services, may award up to 6% preference to targeted group small businesses and veteran-owned small

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Minnesota	Yes	Yes	Small Businesses Minnesota Service Providers Paper Stock Printing	businesses, and may award up to 6% to small businesses located in economically disadvantaged area. Applies to Socially Disadvantaged Small Businesses. • Minnesota Dept. of Employment and Economic Development certified providers and Minnesota Dept. of Human Services licensed providers responding to a solicitation for janitorial services, document imaging services, document shredding services, and mail collating, and sorting services are eligible for a 6% preference. • Whenever practicable, public entities shall purchase paper which has been made on a paper machine located in Minnesota.
Mississippi	No	Yes	Resident Contractors Construction Construction Materials Commodities Grown, Processed or Manufactured Industries for the Blind Resident Contractors	• In the letting of public construction contracts, preference shall be given to resident contractors. • In construction of any building, highway, road, bridge, or other public work or improvement by the State or any of its political subdivisions or municipalities, only materials grown, produced, prepared, made and/or manufactured within the State should be used. • Any foreign manufacturing company with a factory in the state and with over 50 employees working in the State shall have preference over any other foreign company where both price and quality are the same. • Whenever economically feasible, each state agency is required to purchase products manufactured or sold by the Mississippi Industries for the Blind • In letting of public contracts, preference shall be given to resident contractors over non-resident contractors.
Missouri	Yes	Yes	Missouri Products and Firms	• **Statute 34.070** – In making purchases, the commissioner of administration or any agent of the state with purchasing power shall give preference to all commodities and tangible personal property manufactured, mined, produced, processed, or grown within the State of Missouri, to all new generation processing entities defined in Section 348.432, except new generation processing entities that own or operate a renewable fuel production facility or that produce renewable fuel, and to all companies doing business as Missouri firms, corporations or individuals, when quality is equal or better and delivered price

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Missouri	Yes	Yes	Missouri Products and Firms Service Disabled Veterans Nonprofit Organizations For The Blind Missouri Calcium Initiative Resident Bidder Coal United States Products	is the same or less. Such preference may be given whenever competing bids, in their entirety, are comparable. "Commodities" shall include any forest products that has been processed or otherwise had value added to it in this state. • **Statute 34.074.04**—In letting contracts for the performance of any job or services, all agencies, departments, institutions, and other entities of this State and of each political subdivision of this State shall give a 3 point bonus preference to service disabled veteran businesses doing business as a Missouri firm, corporation, or individual, or which maintain a Missouri office or place of business. The goal is not required and the provisions of this subsection shall not apply if there are no (or insufficient) bids or proposals submitted to the public entities listed above. • **Statute 34.165.1** – When making purchases for the State, its governmental agencies or political subdivisions, the commissioner of administration shall give bidding preference consisting of a ten point bonus on bids for products and services manufactured, produced or assembled in qualified nonprofit organizations for the blind. • **Statute 34.375.1** The purchasing agent for any governmental entity that purchases food or beverages to be processed or served in a building or room owned or operated by such governmental entity shall give preference to foods and beverages that contain a higher level of calcium than products of the same type and nutritional quality, and equal to or lower in price than products of the same type and nutritional quality. • **Statute 34.073.1** In letting contracts for the performance of any job or service, preference shall be given to all Missouri resident bidders. • **Statute 34.080.1** State of Missouri institutions preference to coal mined in Missouri. • **Statute 34.353.1** Purchase or lease only goods or commodities manufactured or produced in the United States.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Missouri	Yes	Yes	Not-for-profit Organizations	• **Statute 136.055.2** Fee office contracts shall be awarded through a competitive bidding process with priority given to organizations that are exempt from taxation under Section 501(c)(3)(6) or (4) with special consideration to organizations and entities that reinvest at least 75% of net proceeds to charitable organizations.
Montana	Yes	Yes In case of a tie bid, preference must be given to the bidder, if any offering American made products or supplies.	Goods and Construction Vending Facilities Blind Persons	• Reciprocal preference is applied to lowest responsible bidder only for goods and construction contracts equal to other bidder's in state preference. **(18-1-102 MCA)** • State property for use as a vending facility, preference is given to blind persons.
Nebraska	Yes	Yes	Resident Bidder Resident Disabled Veteran, Enterprise zone Blind Persons	• **Statute 73.101.01** A resident bidder shall be allowed a preference against a non-resident from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the non-resident bidders. Where the lowest responsible bid from a resident bidder is equal in all respects to one from a non-resident bidder from a state which has no preference law, the resident bidder shall be awarded the contract. • **Statute 73.107** When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder if all other factors are equal. • **Statute 71.8611** Priority shall be given to blind persons with respect to vending facilities in any state owned building or any property owned or controlled by the state.
Nevada	Yes	Yes	Resident Bidder	• **NRS 333.336** (Inverse preference imposed on certain bidders resident outside the State of Nevada) was repealed during 2009 legislative session.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Nevada	Yes	Yes	Certificate of Eligibility 5%	• **NRS 338.0117 and NRS 338.1446** Preference given to contractor with a State of Nevada Certificate of Eligibility over contractor without a certificate. Preference only applies to bids estimated over $250,000 and used for ranking purposes to determine the lowest bidder.
New Hampshire	No	Yes In the event of a tie bid, the tie goes to the instate bidder. If no instate bidders, the winner will be determined by drawn lot.	Tie Bid	No other information available.
New Jersey	Yes	No	Resident Bidder	• **N.J.S.A. § 52.32-1.4 and N.J.A.C. 17:12-2.13** Reciprocal law applies to the State for commodities and services. The Director shall apply on a reciprocal basis against an out-of-state bidder any in-state preference which is applied in favor of that bidder by the State or locality in which the bidder maintains its principal place of business.
New Mexico	Yes	Yes	Resident Bidder	• **Statute 13-1-21** New Mexico law provides certain statutory preferences to resident businesses, resident veteran businesses, resident contractors and resident veteran contractors as well as for recycled content goods. These preferences must be applied in regard to invitation for bids and requests for proposals in accordance with statute in determining the lowest bidder or offeror.
New York	Yes	Yes	Principal Place of Business	• Under the Omnibus Procurement Act of 1992 and Amendments of 1994, (now **Section 165.6 a-e of the State Finance Law**) the Office of General Services may deny to a vendor placement on bidders they would otherwise obtain if their principal place of business is located in a jurisdiction that penalizes New York State vendors and if the goods or services offered will be substantially produced or performed outside New York State. These sanctions may be waived when it is determined to be in the best interest of New York State to do so.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
New York	Yes	Yes	Agricultural Products Recycled Product 10% Secondary Product 5%	• Preference applies to State for purchase of food products, the essential components of which are grown, produced or harvested in New York or where the processing facility is located in New York. The Commissioner of General Services assisted by the Commissioner of Agriculture and Markets determine the percentage of each food product or class which must meet these requirements. • Two step policy for recycled products: a) preference is applied for a recycled content product without regard to the product's origin; b) An additional preference may be granted if at least 50% of the secondary materials utilized in manufacture of that product are generated from the waste stream in New York State.
North Carolina	Yes	Yes	Resident Bidder Exemptions Emergencies Non-competitive bidding	• For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over $25,0000, a percent of increase shall be added to a bid of a non-resident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. • A reciprocal preference shall not be used when procurements are being made under **G.S 143-53(a)(5) and G.S. 143-57.** • **Executive Order #50** – Preference is applied to bids on goods only submitted by North Carolina vendors, if the lowest bid from a resident vendor is within $10,000 or within 5% of the lowest bid the resident bidder may opt to match the lowest price and receive the bid award.
North Dakota	Yes	Yes Tie bid preference must be given to bids or proposals submitted by North Dakota vendors.	General Information Resident Bidder	• Reciprocal preference law applies to the Office of Management and Budget, any other state entity, and the governing body of any political subdivision when purchasing any goods, equipment, and contracting to build or repair any building, structure, road or other real property, and professional services (ref. **N.D.C.C. §** **44-08-01**). • A "resident" North Dakota bidder, offeror, seller, or contractor is one who has maintained a bona fide place of business within North Dakota for at least one year prior to the date on which a contract was awarded (ref. **N.D.C.C. §** **44-08-02**).

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
North Dakota	Yes	Yes If tie remains, preference must be given to approved vendors on State Bidders List.	Coal	• State agencies and institutions must comply with **N.D.C.C. §** **48-05-02.1** which describes how to apply preference for bidders supplying coal mined in North Dakota.
			Highway Construction	• **N.D.C.C. §** **25-16.2** requires contracts for highway construction stakes to be awarded to North Dakota activity work centers. services (ref. **N.D.C.C. §** **44-08-01**).
			Food Producers and Processors	• During the 2003 legislative session, **Senate Concurrent Resolution No. 4018** was passed which urges all publicly supported entities that purchase food to support North Dakota producers and processors by purchasing food products grown or produces and processed in North Dakota.
			Sustainability Preferable Products	• **N.D.C.C. §** **54-44.4-07** encourages the Office of Management and Budget, institutions of higher education, state agencies and institutions to purchase environmentally preferable products. Where practicable, bio based products and soybean based ink should be specified. The Office of Management and Budget, in coordination with State Board of Higher Education, shall develop guidelines for a bio-based procurement program. Requires that where practicable, specifications for purchasing newsprint printing services should specify the use of soybean based ink.
			Recycled Products	• **N.D.C.C. §** **54-44.4-08** requires at least 20% the total volume of paper and paper products purchased for state agencies and institutions contain at least 25% recycled material.
			Printing	• **N.D.C.C. §** **46-02-15** requires that if practicable, all state, county, and other political subdivision public printing, binding and blank book manufacturing, blanks and printed stationery must be awarded to a resident North Dakota bidder (see description of North Dakota Bidder in section above). **See also N.D.A.C. § 4-12-16-01.**

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Ohio	Yes	No	Domestic Products Supplies, Services, Information Technology Resident Bidder 5% Construction Printed Goods Mined Products Border States Veteran's Preference 5%	• First, consider domestic products as defined under federal Buy America laws/rules. • The preference only applies to purchases of supplies, services and information technology that use the Invitation to Bid and Reverse Auction processes. Not mandatory for Request for Proposals. • To qualify for the preference, the bidder must be an "Ohio" bidder; 1) offering product produced, raised, grown or manufactured in Ohio or 2) has significant Ohio economic presence - pays taxes, registered with the Ohio Secretary of State and has 10 or more or 75% of workforce located in Ohio. • Reciprocal preferences are given to construction and printed goods. • Mined products must be mined in Ohio or in qualifying border states. • Border state bidders are treated on the same level as Ohio bidders provided the border state does not apply a preference toward Ohio bidders. Currently, Indiana (except mined products), Pennsylvania, Kentucky, Michigan, and New York are recognized as border states with the exception of State of Michigan for printing. • A preference applied to all bids, requests for proposals, and reverse auctions. It will not be compounded with the 5% Buy Ohio in state preference.
Oklahoma	Yes	No	Eastern Red Cedar Initiative Sheltered Workshops Correctional Industries Service Disabled Veteran	• Preference to suppliers of wood products made from or products manufactured utilizing materials from trees harvested in Oklahoma if price for the products and materials are not substantially higher than the price for other wood products and materials. 74 O.S. 85.44D • Preference is given to "Oklahoma Sheltered Workshops for the severely handicapped" for certain designated contracts. • Preference is given to "Oklahoma Correctional Industries" for certain designated contracts. • In awarding contracts for the performance of any job or service, all agencies, departments, institutions and other entities of the State and each political subdivision of the State shall give a 3 point bonus preference to service disabled veteran businesses doing business as an Oklahoma

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Oklahoma	Yes	Yes	Resident Contractors Construction Labor and Materials	firm, corporations of individuals, or which maintain Oklahoma offices or places of business. • Preference given to materials produced in Oklahoma and construction contractors domiciled in Oklahoma for county hospital construction work. 19 O.S. 788 • Provision in contract requiring employment of Oklahoma labor and materials if available and quality meets standards available from out of state suppliers and can be procured at no greater expense than the same quality of labor or material from outside Oklahoma for construction or repair of state institutions pursuant to Section 31 of Article X of the State Constitution. 61 O.S. 9 • Provisions in contract requiring employment of Oklahoma labor and materials if available and quality meets standards available from out of state suppliers and can be procured at no greater expense than the same quality of labor or material from outside Oklahoma for construction or repair of state institutions pursuant to Section 33 of Article X of the State Constitution. 61 O.S. 10
Oregon	Yes	Yes	Printing Qualified Rehabilitation Facilities (QRF) Resident Bidders Interstate Preference Recycle materials Recyclable Food Service Products Goods Purchased to be Recyclable or Reusable	• All public printing, including license plates, shall be performed within the State. • All State and local contracting agencies shall purchase goods and services of Disabled Individuals with eligible QRF's. • All state and local contracting agencies shall give preference to in state offerors if their offers are the same as nonresident offerors. • All state and local contracting agencies shall add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in its state of residence. • All State and local contracting agencies shall prefer goods certified to be manufactured from recycled materials. • State contracting agencies are required to purchase recyclable or biodegradable food services supplies and food packaging products. • All State and local contracting agencies shall ensure goods purchased are recyclable or reusable to maximum extent economically feasible.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Oregon	Yes	Yes	Outsourced Services Disadvantaged Minority Groups Disabled Veteran Owned Businesses	• All State and local contracting agencies must demonstrate that procurement of service will cost less than performing service or that performing service is not feasible. • State and local contracting agencies may support affirmative action goals by limiting competition for public contracts to cost $50,000 or less to disadvantaged or minority groups or may give a preference in awarding public contracts to business owned by disabled veterans.
Pennsylvania	Yes	Yes	Resident Bidders Coal Recycled Content Motor Vehicle Procurement	• Reciprocal Law Limitations Act applies to the procurement of supplies in excess of $10,000. It requires the application of a preference to resident bidders against bidders from states that give preference to resident bidders in an equal percentage. • Any heating system installed in a Commonwealth owned facility be fueled by coal produced by Pennsylvania mines or any mixture of synthetic derived, in whole or part, from coal produced in Pennsylvania mines unless the Secretary of General Services exempts the heating system from the Act based upon enumerated exemptions. • The Commonwealth will provide preference to any bidder who meets the minimum recycle content percentage established in the bid. • All government agencies required to purchase only motor vehicles manufactured in North America or a substantial majority of the principal component as assembled into the final product in an assembly plant in North America.
Rhode Island	No	No	No	• No other information available.
South Carolina	No	Yes	South Carolina end products 7% U.S. end product 2% Resident contractor 7% Resident subcontractor 2% or 4%	• A preference to vendors selling South Carolina or United States end products. • To qualify for resident bidder preference, bidder must maintain an office in the state. • To qualify, the resident subcontractor must meet the following requirements at the time of bid submission: 1) have documented commitment from a single proposed first tier subcontractor to perform some portion of the services expressly required by the solicitation, and

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
South Carolina	No	Yes	In state preference does not apply to the following items listed to the right of this column:	2) must directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and total direct labor cost to the subcontractor for individuals to provide those services exceeds, as applicable, either 20% for a 2% preference or 40% of bidder total bid price for a 4% preference. • 1) A single unit of an item with a price in excess of $50,000; 2) A single award with a total potential value in excess of $500,000; 3) Acquisitions of motor vehicles; 4) Construction, supplies or services related to construction; 5) Competitive sealed proposals; and 6) Procurements valued at $10,000 or less.
South Dakota	Yes	Yes	Grade A Milk Processors Only 5% Qualified Agency Resident Business Resident Supplies Services	• **SDCL 5-18A-24** Any milk processor licensed pursuant to § 39-6-7, bidding any milk or milk product under a competitive bid contract shall receive the bid contract if the processor's bid is equal to or within 5% or less of any other bidder who is not a licensed processor. • **SDCL 5-18A-25** Preferences to certain resident businesses, qualified agencies and businesses using South Dakota supplies or services. In awarding a contract, if all things are equal including the price and quality, a purchasing agency shall give preference: ○ To a qualified agency if the other equal low bid or proposal was submitted by a business that was not a qualified agency; ○ To a resident business if the other equal low bid or proposal was submitted by a nonresident business; To a resident manufacturer if the other equal low bid or proposal was submitted by a resident business that is not a manufacturer; ○ To a resident business whose principal place of business is located in the State of South Dakota, if the other equal low bid or proposal was submitted by a resident business whose principal place of business is not located in the State of South Dakota; ○ To a non-resident business providing or utilizing supplies or services found in South Dakota, if the other equal low bid

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
South Dakota	Yes	Yes	Transportation Resident Bidder	○ or proposal was submitted by a nonresident business not providing or utilizing supplies or services found in South Dakota. ○ In computing price, the cost of transportation, if any, including delivery, shall be considered. • **5-18A-1 of Statute** A resident bidder shall be allowed a preference on a contract against the bid of any bidder from any other state or foreign province that enforces or has a preference for resident bidders. The preference given to the resident bidder shall be equal to the preference in the other state or foreign province.
Tennessee	Yes	Yes	Meat Coal Natural Gas	• **T.C.A. 12-3-809 / 810** All departments, agencies, institutions of state government and public education institutions which purchase meat, meat food products or meat by-products (as defined in § 53-7-202) with state funds shall give preference to producers located within the boundaries of this state when awarding contracts or agreements for the purchase of such meat or meat products, so long as the terms, conditions and quality associated with the in-state producers' proposals are equal to those obtainable from producers located elsewhere. • **T.C.A. 12-3-811** Notwithstanding any provision of law to the contrary, all state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities shall purchase coal mined in the State of Tennessee if such coal is available at a delivered price which is equal to or less than coal mined outside the State of Tennessee. • **T.C.A. 12-3-812** Not withstanding any provision of law to the contrary, all state agencies, departments, boards, commissions, institutions, institutions of higher education, schools, and all other state entities shall purchase natural gas produced from wells located in the State of Tennessee if such gas is available at a price which is equal to or less than natural gas produced from wells located outside the State of Tennessee, with transportation cost into account.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Tennessee	Yes	Yes	Resident Bidder Agricultural Products Services	• Goods produced in Tennessee or offered by Tennessee bidders shall equally be given preference if the cost to the state and quality are equal. • Agricultural products grow in Tennessee shall be given first preference and agricultural products offered by Tennessee bidders shall be given second preference, if cost to the State and quality are equal. • All departments and agencies procuring services shall give preference to services offered by a Tennessee bidder if service requirements are met, and cost of service does not exceed cost of similar services not offered by a Tennessee bidder.
Texas	Yes	Yes	Resident Bidder Agricultural Products Texas Agricultural Products United States Consultant	• Texas Statute of the Government Code, Chapter 2252.002, states that if the low bidder is from a state that grants a percent preference to its own in state bidders, the Texas agency must add the same percent of preference to that bidder's price when evaluating the bid. Preferences do not apply in the involvement of federal funds. • Preference in tie bids for goods and agricultural products produced or grown in Texas, or offered by Texas bidders that are of equal cost and quality to other states of the United States. • Preference in tie bids for goods and agricultural products from other states of the United States over foreign goods and agricultural products that are of equal cost and quality. • If other considerations equal, preference is given to a consultant whose principal place of business is in Texas or who will manage the contract wholly from an office in Texas.
Utah	Yes	Yes	Resident Bidder	• To get reciprocal preference, the Utah vendor must claim preference in the bid and be within the applicable preference percentage of the lowest responsible out of state bidder who is entitled to a preference in his/her state. If so, the Utah vendor has 72 hours to consent in writing to meet the price of the lowest responsible out of state bidder which has an in state preference law.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Vermont	No	Yes	Resident Bidder	• All other considerations being equal, preference will be given to resident bidders of the State and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change (Executive Order 05-16).
Virginia	Yes	Yes In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms, or corporations, otherwise, the tie shall be decided by drawing lots.	Resident Bidder Recycled Content Resident Bidder	• **Statute 2.2-4324.** **A.** Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference. A like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information on this website. **B.** Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances here goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content. **C.** For the proposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Virginia	Yes	Yes	Coal Recycled Paper and Paper Products	• **Statute 2.2-4325. Preference for Virginia coal used in state facilities**. In determining the award of any contract for coal to be purchased for use in state facilities, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% than the bid price of the low responsive and responsible bidder offering coal mined elsewhere. • **Statute 2.2-4326. Preference for recycled paper and paper products used by state agencies.** **A**. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the lowest responsive and responsible bidder offering a product that does not qualify under subsection B. • **B.** For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247
Washington	Yes	No	Class II Work Programs Department of Corrections Inmate Work	• **RCW 39.26.251** State agencies, the legislature, and departments shall purchase for their use all goods and services required that are produced or provided in whole or in part from class II inmate work programs operated by the Department of Corrections through state contract. • **RCW 39.26.250** Any person, firm, or organization which makes any bid to provide any goods or services to any state agency shall be granted a preference over other bidders if (1) the goods or service have been or will be produced or provided in whole or in part by an inmate work program of the Department of Corrections, and (2) an amount equal to at least 15% of the total bid amount has been paid or will be paid by the person, firm, or organization to inmates as wages. Preference provided

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Washington	Yes	No	Recycled Material Electronic Products Polychlorinated Biphenyls Mercury Compounds	under this section shall be equal to 10% of the total bid amount. • **WAC 200-300-085** Preference shall be given to the extent of allowed by statute to goods containing recycled material as outlined under RCW 39.26.255 provided that the purchasing agency sets forth in the competitive solicitation a minimum percent content of recycled material that must be certified by the producer of the goods to qualify for the preference. • **RCW 39.26.265** Electronic products rated by the Electronic Product Environmental Assessment Tool or carry the Restriction of Hazardous Substances certification label will serve as the basis for applying the electronic product purchasing preference. • **RCW 39.26.280** Preference for products and products in packaging that does not contain polychlorinated biphenyls. • **RCW 70.95 MM.060** The Department of Enterprise Services must give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury added compounds or components, unless, (a) there is no economically feasible non-mercury added alternative that performs a similar function; or (b) the product containing mercury is designed to reduce electricity consumption by at least 40% and there is no non-mercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product.
Washington DC	Yes	No	Small Business Resident Bidder Resident Business Local Business Enterprise Enterprise Zone Disadvantaged Business	• **District Code 2-218.43** (a) In evaluating bids or proposals, agencies shall award preferences as follows: 1. In the case of proposals, points shall be granted as follows: A. Three points for a small business enterprise; B. Five points for a resident-owned business; C. Five points for a longtime resident business; D. Two points for a local business enterprise; E. Two points for a local business enterprise with its principal office located in an enterprise zone; F. Two points for a disadvantaged business enterprise.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Washington D.C.	Yes	No	Veteran Owned Business Local Manufacturing Business Small Business Resident Owned Longtime Resident Local Business Local Business Enterprise Zone Disadvantaged Business Certified Business Enterprise	G. Two points for a veteran-owned business enterprise; H. Two points for a local manufacturing business enterprise. 2. In the case of bids, a percentage reduction in price shall be granted as follows: A. 3% for a small business enterprise; B. 5% for a resident-owned business; C. 10% for a longtime resident business; D. 2% for a local business enterprise; E. 2% for a local business enterprise with its principal office located in an enterprise zone; F. 2% for a disadvantaged business enterprise (b) A certified business enterprise shall be entitled to any or all of the preferences provided in this section, but in no case shall a certified business enterprise be a preference of more than 12 points or a reduction in price of more than 12 percent.
West Virginia	Yes	No	Resident Bidder 2.5% Resident Employment Resident Employment Non-resident Vendor Employer	• **West Virginia code,§ 5A-3-37** • From an individual resident vendor who has resided in West Virginia continuously for the 4 years immediately preceding the date the bid was submitted; **or** • From a partnership, association, corporation resident vendor, or from a corporation resident vendor which has an affiliate or subsidiary which employs a minimum 100 state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for 4 years immediately preceding the date on which the bid was submitted. • From a resident vendor who employs at least 75% of the vendor's employees are residents of West Virginia who have resided in the state continuously of the 2 immediately preceding years. • From a non-resident vendor, which employs a minimum of one hundred (100) state residents or a non-resident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
West Virginia	Yes	No	Non-resident Vendor Employer Veteran Owned 3.5% Small, Women Owned Minority Owned Businesses	within West Virginia and which employs a minimum of 100 state residents, if, for purposes of producing or distributing the commodities or completing the project continuously over the entire term of the project, on average at least 75% of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the 2 immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a non-resident vendor by more than 2 1/2% of the latter bid. • From an individual resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard and has resided in West Virginia continuously for the 4 years immediately preceding the date on which the bid is submitted. • If any non-resident vendor that is bidding on the purchase of commodities or printing by the director or by a state department which is also certified as a Small, Women-owned or minority-owned business in West Virginia, the non-resident vendor shall be provided the same preference made available to any resident vendor.
Wisconsin	Yes	No	Resident Bidder	• If a vendor is not a Wisconsin producer, distributor, supplier or retailer and the department determines that the state, foreign nation or subdivision thereof in which the vendor is domiciled grants a preference to vendors domiciled in that state, nation or subdivision in making governmental purchases, the department and any agency making purchases under **S.16.74** shall give a preference over that vendor to Wisconsin producers, distributors, suppliers and retailers, if any, when awarding the order or contract. The department may enter into agreements with states, foreign nations and subdivisions thereof, for the purpose of implementing this subdivision.

State	Reciprocal Law/Statute	Tie Bid Preference	Preference	Scope of Preference & Conditions
Wyoming	Yes	Yes	Resident Construction Subcontractor 5% Wyoming producer and manufacturer Printing 10%	• Preference for construction if not more than 20% of the work is subcontracted to out-of-state firms. • Preference up to 5% applies to State and political subdivisions for all other goods and services manufactured or produced or supplied by a Wyoming resident capable of serving the same. • For printing, preference is granted if 75% of the work is done in state.