GO Item 3
March 19, 2015
Worksession

MEMORANDUM

March 17, 2015

TO: Government Operations and Fiscal Policy Committee

FROM: Josh Hamlin, Legislative Attorney

SUBJECT: **Worksession:** Bill 49-14, Contracts and Procurement - Formal Solicitation - Reciprocal Local Preference

Bill 49-14, Contracts and Procurement - Formal Solicitation - Reciprocal Local Preference, sponsored by then Council President Rice and Councilmember Elrich, was introduced on October 21, 2014. A public hearing was held on December 2, 2014, at which there were no speakers.

Bill 49-14 would establish a reciprocal preference for a County-based bidder in certain contracts awarded by competitive sealed bidding. Specifically, the Bill would require the Director of the Department of General Services to grant a preference to a responsible and responsive County-based bidder if the lowest responsible and responsive bidder is from another jurisdiction that grants a preference to its resident bidders. The reciprocal **preference** would be identical to the preference granted by the other jurisdiction to its resident bidders.

Background

In 2014, the Council enacted Bill 13-14, which defined "County-based bidder or offeror," and codified a preference for a County-based bidder or offeror in the event of a tie bid or ranking in a contract awarded by formal solicitation. This Bill addresses the situation where a County-based bidder is seeking a County contract awarded by competitive sealed bidding, and competing against bidders from other jurisdictions that offer specific preferences to their resident bidders. The Bill would require that a County-based bidder be given the same preference that such bidders receive in their home jurisdiction. For example, if the low bidder is from a jurisdiction that grants a 10 percent preference to its own resident bidders, the Director would give a 10 percent preference to a County-based bidder for the purpose of evaluating the bid against the low bidder.

Reciprocal preferences are relatively common at the state level across the country (©11-12). The State of Maryland has a reciprocal preference law for State procurement (©13-15), and State law authorizes political subdivisions and instrumentalities of the State to provide for a reciprocal preference (©16-17). The State enabling law provides that if another state gives preference to firms located in that state, a local government may give an equal preference to firms based in Maryland over firms from those states. The law is silent with respect to reciprocal preferences for local firms over Maryland firms located in other counties.

Issues for Committee Discussion

1. Does the Bill exceed the grant of authority in the enabling legislation?

As mentioned above, the State enabling law specifically authorizes Maryland local governments to provide a reciprocal preference for Maryland businesses over those from a state that gives preference to businesses from that state. Bill 49-14 uses the existing definition of "County-based bidder or offeror" to make that preference available to County-based bidders (but not other Maryland-based bidders) over non County-based bidders, which may be other political subdivisions in Maryland. The enabling law specifically authorizes the preference to be granted when the lowest bidder is a bidder that has its principal office in a state *other than* Maryland and that state gives a local preference. The enabling law is silent as to the application of the reciprocal preference over businesses based in Maryland, but not in the County.

While a general local preference law which favors businesses in a local jurisdiction in Maryland over other Maryland businesses may be frowned upon by Maryland courts, a reciprocal preference is somewhat different. Any preference given under a reciprocal preference program is contingent on the existence of a low bidder from a jurisdiction that provides a preference to businesses based in that jurisdiction. In that regard, a Maryland local jurisdiction granting a general (as opposed to reciprocal) local preference would be a prerequisite to the application of a reciprocal preference. It is unlikely the courts could invalidate a reciprocal preference without also invalidating the preference that triggered its application.

It is possible that the General Assembly enacted the enabling law as it did to avoid giving any sort of legislative imprimatur to enactment of other local preferences favoring one Maryland jurisdiction over another. Permitting the application of a reciprocal preference over a Maryland local jurisdiction that gives a general local preference would at least tacitly recognize the authority of local jurisdictions to give general local preferences. Further, the fact that the General Assembly has considered, and approved, the intrastate application of reciprocal preferences is evidenced by the enactment of reciprocal preference laws in other Maryland Counties. Both Frederick County[1] and Garrett County[2] have reciprocal preference laws which are similar to the provisions of Bill 49-14, and were enacted by the Maryland General Assembly as public local laws in 1995 and 1997, respectively ©18-19). Also, the General Assembly has at least twice considered, but not enacted, bills that would prohibit county and municipal governments from giving local preferences generally, and would expressly repeal the Frederick and Garrett County reciprocal preference laws.[3]

While acknowledging the divergence from the express provisions of the enabling law, for the reasons discussed above, Staff does not believe that Bill 49-14 is likely to be invalidated if subject to a legal challenge.

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[1] Frederick County Code, § 2-2-4. Reciprocal local preference.

[2] Garrett County Code, § 30.22. Local Preference Program.

[3] HB1178 (2007): http://mgaleg.maryland.gov/webmga/frmMain.aspx?tab=subject3&ys=2007rs/billfile/hb1178.htm
HB319 (2008): http://mgaleg.maryland.gov/webmga/frmMain.aspx?tab=subject3&ys=2008rs/billfile/hb0319.htm

2. **Could the Bill have a punitive impact on bidders from jurisdictions that do not give local preferences?**

The Bill is drafted to generally mirror the State law authorizing a reciprocal preference. As drafted, the application of the reciprocal preference could result in an award to a County-based bidder when a non County-based bidder based in a jurisdiction that does not give a preference to its residents. An example of this situation is as follows:

Bidder #1, based in a jurisdiction which gives a 10% local preference, is the lowest bidder with a bid of $100,000.

Bidder #2, based in a jurisdiction which does not give any local preference, is the next lowest bidder with a bid of $100,500.

Bidder #3 is a County-based bidder with the third lowest bid of $100,750.

In the above scenario, if bidder #3 receives the benefit of a 10% preference, triggered by the local preference received by bidder #1 in its home jurisdiction, bidder #3 would get the award. This would be the case even though bidder #3's bid is higher than bidder #2, from a jurisdiction with no local preference. In effect, bidder #2 would be punished due to the local preference bidder #1 receives in its home jurisdiction. Because the intent of the Bill is to offer a *reciprocal* preference, staff recommends amending the Bill to avoid this possibility.

Staff Recommendation: Add a new paragraph (3) after line 33, as follows:

(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 residents.

3. **What is the fiscal impact of the Bill?**

The Fiscal Impact Statement submitted by OMB estimates that the Bill would result in the need for 1.0 FTE for a Program Manager I in the Office of Business Relations and Compliance, at an annual cost of $88,360 (personnel costs and operating expenses). This estimate is based on an estimate of investigation time and the number of bids that would need to be investigated. To the extent that the estimated investigation time is for the purpose of researching price preference programs in non County-based bidders home jurisdictions, costs should decrease over time as the County compiles information about various jurisdictions.

The fiscal impact statement also indicates that the implementation of Bill 49-14 would "significantly delay contract award time for invitations for bids," and could invite bid protests and legal challenges.

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Bill No. 49-14
Concerning: Contracts and Procurement – Formal Solicitation – Reciprocal Local Preference
Revised: October 13, 2014 Draft No. 1
Introduced: October 21, 2014
Expires: April 21, 2016
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: ______
Ch. ____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Rice and Councilmember Elrich

AN ACT to:
(1) establish a reciprocal preference for a County-based bidder in certain contracts awarded by competitive sealed bidding;
(2) define preference; and
(3) generally amend the law governing the award of contracts by formal solicitation.

By amending
Montgomery County Code
Chapter 11B, Contracts and Procurement
Sections 11B-1 and 11B-9

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-1 and 11B-9 are amended as follows:

11B-1. Definitions.

Unless the context indicates otherwise, the following terms have the following meanings:

County-based bidder or offeror means a person that has its principal place of business in Montgomery County, as further defined by Executive regulation adopted under Section 11B-8

* * *

Preference means a policy that favors one bidder over another and includes:

(1) a percentage preference;

(2) an employee residency requirement; or

(3) any other law, policy, or practice that favors a resident over a noresident.

* * *

11B-9. Formal solicitation - competitive sealed bidding.

(a) *Conditions for use.* Contracts must be awarded by competitive sealed bidding except as otherwise authorized in this Chapter or regulations. Competitive sealed bidding is initiated by issuing an invitation for bids.

* * *

(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.

Approved:

____

George Leventhal, President, County Council   Date

Approved:

____

Isiah Leggett, County Executive   Date

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council   Date

LEGISLATIVE REQUEST REPORT

Bill 49-14
Contracts and Procurement - Formal Solicitation - Reciprocal Local Preference

DESCRIPTION:	Bill 49-14 would define "preference" and would require that Director give a preference to a responsible and responsive County-based bidder if the lowest responsible and responsive bidder is from another jurisdiction that grants a preference to its resident bidders. The preference would be identical to the preference granted by the other jurisdiction to its resident bidders.
PROBLEM:	The County wishes to support County-based businesses that are seeking to do business with the County.
GOALS AND OBJECTIVES:	To establish a reciprocal preference for a County-based bidder in the event that the lowest responsible and responsive bidder is from a jurisdiction that grants a preference to its resident bidders.
COORDINATION:	Office of Procurement
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Josh Hamlin, 240-777-7892
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable.

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ROCKVILLE, MARYLAND

MEMORANDUM

December 1, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 49-14, Contracts and Procurement - Formal Solicitation - Reciprocal Local Preference

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Michael Coveyou, Department of Finance
David Platt, Department of Finance
Robert Hagedoorn, Department of Finance
David Dise, Director, Department of General Services
Erika Lopez-Finn, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 49-14, Contracts Procurement -
Formal Solicitation Reciprocal Local Preference

1. Legislative Summary.

   The proposed legislation establishes a reciprocal preference for a County-based bidder in certain contracts awarded by competitive sealed bidding. A reciprocal preference in this case must be identical to the preference that the other state or political subdivision gives to its residents.[1] On competitive sealed biddings, the Director must give a preference to a County-based bidder if: (1) a non-County-based bidder is the lowest responsible and responsive bidder; (2) the non-County-based bidder has its principal place of business in a jurisdiction where a preference is given to local residents; and (3) the preference does not conflict with federal law or a grant affecting the purchase of the contract.

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 proposed legislation does not impact County revenues.

   The proposed bill may consistently impact expenditures when the County gives preference to a County-based bidder and does not make an award to the lowest bidder. The price percentage increase can vary and depends on the price of the lowest bids. See response for items 3 and 7.

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

   The proposed bill does not impact County revenues.

   County expenditures may increase on bid awards. However, the exact amount is difficult to estimate; it is possible the amount on any given award could be 1%, 5%, 10%, or higher than the lowest bidder. A key factor in expenditure increases is how the preference programs are established for the non County-based vendors in their home jurisdiction as calculations these preference programs use will serve as the same calculations Montgomery County's OBRC would apply to bids it receives.

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

   The proposed legislation does not affect any retiree pension or group insurance costs.

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[1] An in-state (local) preference is an advantage given to County-resident bidders/proposers in response to a solicitation for products or services which may be granted based on pre-established criteria. For the proposed legislation, the reciprocal preference (if any) would apply the local preference of the non-County bidder's home jurisdiction on that bidder's proposal. For example, if County X applied a 10% price increase to bidder's from Montgomery County, Montgomery County would apply a 10% mark up on bids from County X.

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.

   The proposed legislation does not authorize future spending.

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

   DGS estimates that 1.0 FTE for a Program Manager I (Grade 23) for the Office of Business Relations and Compliance (OBRC) to implement work associated with the proposed legislation. DGS estimates personnel costs at $ 85,626 and associated operating expenses at $2,734 (desktop, phone, and furniture).

   For the proposed legislation, significant staff time will be spent on researching price preference programs in the non County-based bidders' home jurisdictions, applying the calculations to the County-based bidder, adding the associated procurement procedures, and recalculating possible award determinations. DGS receives bids nationally and some bidders' home city, county, or state may have layers of preference programs which DGS would need to investigate. DGS estimates 8.5 to 10 hours of investigation per bid and estimates 164 bids per year (based on the number of bids in FY14), which yields 1,394 to 1,640 staff hours or 1.0 FTE.

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

   Many jurisdictions, such as City of Chicago, City of Los Angeles, City of Portland, and Prince Gorge's County have their own preference programs with unique applications and implementation frameworks.

   For example, Prince George's County has a pricing preference for County based vendors at 5%, 10%, 15% increments depending on the vendors' certifications. The City of Chicago has a credit system where the vendor gets a $1 dollar credit for every $3 dollars they spend with minority or local vendors. Because of these variations, the calculation would be different for each bidder, and the final result on who is the actual low bidder will depend on different calculations based on the applicants' home jurisdictions.

   The staff would have to study each of the low bidder's home jurisdiction preference programs and how to best apply that reciprocal calculation in OBRC and Procurement. This will require significant staff time for each bid to identify, research, contact and discuss with the home jurisdiction's compliance officer.

   This will significantly delay contract award time for invitations for bids (IFBs), and the proposed legislation would create opportunities for the apparent low bidders to challenge the results, protest bid awards, and potentially bring legal actions against the County.

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

   DGS estimates personnel costs for the 1.0 Grade 23 Program Manager I FTE at $85,626 and associated operating expenses at $2,734.

   The increase in bid costs is more difficult to estimate. Assuming DGS receives ten bids and the County-based firm is the highest bidder, DGS would need to investigate all nine other bidders' home jurisdiction preference programs. Using FY14 as a proxy where DGS received 164 bids, DGS estimates 1,394 to 1,640 staff hours for OBRC to identify, research, investigate, correspond with other jurisdictions. Procurement would need to calculate; re-determine; develop written justification for changes to awards, coordination, consultations; and provide technical assistance provided to the using departments.

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

    See item #9.

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

    See item #2.

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

    Not applicable.

13. Other fiscal impacts or comments.

    None

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

    Grace Denno, Department of General Services
    Angela Dizelos, Department of General Services
    Beryl L. Feinberg, Department of General Services
    Pam Jones, Department of General Services
    Erika Lopez-Finn, Office of Management and Budget

Jennifer A. Hughes
Jennifer A. Hughes, Director
Office of Management and Budget

12/1/14
Date

Economic Impact Statement
Bill 49-14, Contracts and Procurement – Formal Solicitation – Reciprocal Local Preference

Background:

This legislation would establish a reciprocal preference for a County-based bidder in certain contracts awarded by competitive sealed bidding. The Director of the Department of General Services (DGS) would grant a preference to a responsible and responsive County-based bidder if the lowest responsible and responsive bidder is from another jurisdiction that grants a preference to its resident bidders. The amount of the reciprocation would be identical to the preference amount allowed by the other jurisdiction.

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

   Department of General Services is the source of information. The economic impact statement is based on the procurement operations of DGS and the number of bids received for review by DGS. For each bid from a non-County bidder, DGS would determine the pricing preference of those bids in order to derive the pricing preference for the County-bidder. This procedure is specific for each bid. Therefore, the determination of the pricing preference is based on the number of bids from each non-County bidder and their local preference. According to DGS, Bill 49-14 could affect the competition pool such that non-County vendors may submit bids.

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

   The variables that could affect the economic impact estimates are based on the number of bids for a particular project from non-County bidders and the jurisdiction for non-County bidder. Because of the uncertainty of the number of non-County bidders and their jurisdictions for each bid, it is uncertain, without specificity of data, to determine the economic impact of Bill 49-14.

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

   As stated in paragraph #2, without specificity of the number of bids from non-County establishments, the specific local preference given to these bidders, and the determination of the award of a local preference, it is difficult to derive the economic impact on employment, spending, saving, investment, incomes, and property value with any certainty for each bid. However, Bill 49-14 could have an impact on employment and business income but such an impact would depend on each award of the contract that is determined by the amount of the local preference given to the County bidder and the cost of the contract.

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

   Bill 49-14 could have an economic impact but without specific data, it is uncertain of the effect on employment, spending, saving, investment, incomes, and property values in the County.

5. **The following contributed to or concurred with this analysis**: David Platt and Rob Hagedoorn, Finance.

Joseph F. Beach, Director
Department of Finance

11-10-14
Date

Procurement Services and Policy

State by State Preference Data (as submitted by each state)

Preference:

Preference is any advantage given to offerors in a competition for contract award which may be granted based on pre-established criteria. These criteria are established by Law.

Law is mandatory; is defined by Statute, Rule, Statewide Policy, Executive Order; and is what gives you Preference Authority. Use of the preference may be identified as either Mandatory or Discretionary.

Reciprocal Preference:

An advantage a state applies in order to match a preference given by another state.

For Example: A preference based on residency.

State	Preference Law/Statute	Tie-Bid Preference	Reciprocal Preference	Preference Conditions Including Law Citation	Date of Verification	
Alabama (AL)	Yes	Yes	Yes	Details	January	2015
Alaska (AK)	Yes	No	Yes	Details	December	2014
Arizona (AZ)	No	No	Yes	Details	January	2015
Arkansas (AR)	No	No	Yes	Details	December	2014
California (CA)	No	Yes	Yes	Details	January	2015
Colorado (CO)	Yes	Yes	Yes	Details	February	2013
Connecticut (CT)	Yes	Yes	Yes	Details	December	2014
Delaware (DE)	No	No	Yes	Details	February	2013
Florida (FL)	Yes	Yes	Yes	Details	December	2014
Georgia (GA)	Yes	Yes	Yes	Details	December	2012
Hawaii (HA)	Yes	Yes	Yes	Details	October	2011
Idaho (ID)	Yes	Yes	Yes	Details	January	2013
Illinois (IL)	Yes	Yes	Yes	Details	March	2014
Indiana (IN)	Yes	No	Yes	Details	December	2014
Iowa (IA)	Yes	No	Yes	Details	February	2013
Kansas (KS)	No	Yes	None	Details	February	2013
Kentucky (KY)	No	Yes	Yes	Details	August	2014
Louisiana (LA)	Yes	Yes	Yes	Details	February	2013
Maine (ME)	Yes	Yes	Yes	Details	December	2012
Maryland (MD)	Yes	Yes	Yes	Details	December	2014
Massachusetts (MA)	Yes	Yes	Yes	Details	January	2001
Michigan (MI)	Yes	No	Yes	Details	October	2011
Minnesota (MN)	Yes	Yes	Yes	Details	July	2014
Mississippi (MS)	Yes	Yes	None	Details	January	2013
Missouri (MO)	Yes	Yes	Yes	Details	December	2014
Montana (MT)	Yes	Yes	Yes	Details	February	2013
Nebraska (NE)	Yes	Yes	Yes	Details	January	2015
Nevada (NV)	Yes	Yes	Yes	Details	January	2015
New Hampshire (NH)	No	Yes	None	N/A	February	2013

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New Jersey (NJ)	Yes	No	Yes	Details	December	2014
New Mexico (NM)	No	Yes	Yes	Details	February	2013
New York (NY)	Yes	Yes	Yes	Details	December	2012
North Carolina (NC)	Yes	Yes	Yes	Details	December	2014
North Dakota (ND)	Yes	Yes	Yes	Details	December	2012
Ohio (OH)	Yes	No	Yes	Details	December	2012
Oklahoma (OK)	Yes	No	None	Details	December	2012
Oregon (OR)	Yes	Yes	Yes	Details	December	2012
Pennsylvania (PA)	Yes	Yes	Yes	Details	January	2015
Rhode Island (RI)	No	No	None	None	March	2009
South Carolina (SC)	No	Yes	Yes	Details	May	2002
South Dakota (SD)	Yes	Yes	Yes	Details	December	2012
Tennessee (TN)	Yes	Yes	Yes	Details	December	2012
Texas (TX)	Yes	Yes	Yes	Details	December	2012
Utah (UT)	No	Yes	Yes	Details	December	2014
Vermont (VT)	No	Yes	None	Details	February	2013
Virginia (VA)	Yes	Yes	Yes	Details	January	2013
Washington (WA)	Yes	No	Yes	Details	January	2015
Washington DC (District of Columbia)	Yes	No	Yes	Details	December	2012
West Virginia (WV)	Yes	No	Yes	Details	December	2014
Wisconsin (WI)	Yes	No	Yes	Details	February	2013
Wyoming (WY)	No	Yes	Yes	Details	May	2009

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Effective: April 13, 2010

West's Annotated Code of Maryland Currentness
State Finance and Procurement
Division II. General Procurement Law [Titles 11-End] (Refs & Annos)
Title 14. Preferences (Refs & Annos)
Subtitle 4. Miscellaneous Purchasing Preferences (Refs & Annos)
→→ § 14-401. Preferences for resident bidders or offerors

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) "Preference" includes:

(i) a percentage preference;

(ii) an employee residency requirement; or

(iii) any other provision that favors a resident over a nonresident.

(3) "Resident bidder" means a bidder whose principal office is located in the State.

(4) "Resident offeror" means an offeror whose principal office is located in the State.

(5) "Services" means services, architectural services, construction related services, engineering services, or energy performance contract services, all as defined in § 11-101 of this article.

Conditions for preference

(b) When a unit uses competitive sealed bidding to award a procurement contract, the unit may give a preference to the resident bidder who submits the lowest responsive bid from a resident bidder if:

(1) the resident bidder is a responsible bidder;

(2) a responsible bidder whose principal office or operation is in another state submits the lowest responsive bid;

(3) the state in which the nonresident bidder's principal office is located or the state in which the nonresident bidder has its principal operation through which it would provide supplies or services gives a preference to its residents; and

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

Form of preference

(c) When a unit uses competitive sealed proposals to award a procurement contract, the unit may give a preference to resident offerors if:

(1) a responsible offeror whose principal office or operation is in another state submits a proposal;

(2) the state in which the nonresident offeror's principal office is located or the state in which the nonresident offeror has its principal operation through which it would provide the subject of the contract gives a preference to its residents; and

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

Treatment of nonresident bidders, offerors

(d)(1) At the request of the unit, a nonresident bidder or nonresident offeror submitting a proposal for a State project shall provide a copy of the current statute, resolution, policy, procedure, or executive order that pertains to the treatment of nonresident bidders or nonresident offerors by:

(i) the state in which the nonresident bidder's or nonresident offeror's principal office is located; and

(ii) the state in which the nonresident bidder or nonresident offeror has its principal operation through which it would provide supplies or services.

(2) A unit may give a preference under this section that is identical to any of the following preferences, or any combination of them:

(i) the preference that the state in which the nonresident bidder's or nonresident offeror's principal office is located gives to its residents; or

(ii) the preference that the state in which the nonresident bidder or nonresident offeror has its principal operation through which it would provide supplies or services gives to its residents.

CREDIT(S)

Added by Acts 1988, c. 48, § 2, eff. Oct. 1, 1988. Amended by Acts 1992, c. 99, § 1, eff. Oct. 1, 1992; Acts 1999, c. 501, § 1, eff. July 1, 1999; Acts 2004, c. 197, § 1, eff. Oct. 1, 2004; Acts 2010, c. 72, § 1, eff. April 13, 2010.

Current through the 2014 Regular Session of the General Assembly.

END OF DOCUMENT

Formerly cited as MD CODE, Art. 24, § 8-102

Effective: October 1, 2013

West's Annotated Code of Maryland Currentness
Local Government (Refs & Annos)
Division I. Definitions; General Provisions [Titles 1-3] (Refs & Annos)
Title 1. Definitions; General Provisions (Refs & Annos)
Subtitle 4. Purchasing and Sales (Refs & Annos)
→→ § 1-402. Reciprocal preference for resident bidders

Definitions

(a)(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.

Conditions for preference

(b) 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

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Formerly cited as MD CODE, Art. 24, § 8-102

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

Form of preference

(c) 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.

CREDIT(S)

Added by Acts 2013, c. 119, § 2, eff. Oct. 1, 2013.

Current through the 2014 Regular Session of the General Assembly.

END OF DOCUMENT

FREDERICK COUNTY CODE

§ 2-2-4. Reciprocal local preference.

(a) (1) In this section the following words have the meanings indicated.

(2) ***FREDERICK COUNTY FIRM*** means a business entity that has its principal office in Frederick County.

(3) ***NONRESIDENT FIRM*** means a business entity that has its principal office out of Frederick County.

(b) (1) When awarding a contract by competitive bidding, if the state or political subdivision in which a nonresident firm is located gives an advantage to its resident businesses, the board of county commissioners of Frederick County may give an identical advantage to the lowest responsive and responsible bid from a Frederick County firm over that of the nonresident firm.

(2) An advantage may include:

(I) A percentage preference;

(II) An employee residency requirement; or

(III) Any other provision that favors a nonresident firm over a Frederick County firm.

(c) The board of county commissioners may adopt regulations to carry out this section.

(1995, Chapter 613, § 1)

Editor's note:

Ch. 613, § 1, 1995, added provisions designated as § 2-2-3 of the Public Local Laws. Inasmuch Chapter 28, § 1, 1995, already added provisions as a § 2-2-3, the editor has redesignated these Chapter 613 provisions as § 2-2-4.

GARRETT COUNTY CODE

§ 30.22 Local Preference Program.

(A) (1) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LOCAL FIRM. A business entity that has its principal office in Garrett County or maintains an active business in Garrett County as defined and evidenced by criteria set by the County Commissioners by ordinance or resolution.

NONRESIDENT FIRM. A business entity that is not a local firm.

(B) The County Commissioners may establish by ordinance or resolution a local preference program applicable to contracts awarded by the county by competitive bids in accordance with this section.

(C) (1) Under a local preference program established under this section, if the state or the political subdivision in which a nonresident firm is located gives an advantage to its resident businesses, the County Commissioners may give an identical advantage to the lowest responsive and responsible bid from a local firm over that of the nonresident firm.

(2) An advantage may include:

(a) A percentage preference;

(b) An employee residency requirement; or

(c) Any other provision that favors a local firm over a nonresident firm.

(D) An ordinance or resolution adopted under this section may reserve to the County Commissioners the right to provide in a solicitation for competitive bids that a local preference is not available under the contract.

(E) A local preference is not available under any contract if the County Commissioners determine that the preference would be inconsistent with the provisions of any applicable federal or state grant or program.

(1986 Code, § 20-14.1) (1997, Ch. 589)