

MEMORANDUM

February 21, 2014

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 13-14, Contracts and Procurement – Formal Solicitation – Local Preference

Bill 13-14, Contracts and Procurement – Formal Solicitation – Local Preference, sponsored by Councilmembers Navarro, Berliner, Riemer, Elrich, Floreen, Branson and Andrews, was introduced on February 4, 2014. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for March 3 at 2:00 p.m.

Bill 13-14 would define “County-based bidder or offeror” and would require that a County-based bidder or offeror be given preference in the event of a tie bid or ranking in contracts awarded by formal solicitation. County procurement regulations currently provide a tie-breaking procedure which gives first preference to a bidder or offeror “who has its principal place of business in Montgomery County.” This bill would codify that preference, as well as require a preference be given to a County-based offeror, in the event of identical price proposals, when a contract award is made on price alone. This bill would also require that a formal solicitation include an explanation of the procedure for resolving a tie bid or ranking.

This packet contains:	<u>Circle #</u>
Bill 13-14	1
Legislative Request Report	5
Procurement Regulation 11B.00.01.04 (excerpts)	6

Bill No. 13-14
Concerning: Contracts and Procurement
- Formal Solicitation - Local
Preference
Revised: January 23, 2013 Draft No. 3
Introduced: February 4, 2014
Expires: August 4, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Navarro, Berliner, Riemer, Elrich, Floreen, Branson and Andrews

AN ACT to:

- (1) establish a preference for a County-based bidder in certain contracts awarded by formal solicitation;
- (2) define a County-based bidder or offeror; 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, 11B-9, and 11B-10

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

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

1 **Sec. 11B-1. Definitions.**

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

- 4 [(a)] * * *
- 5 [(b)] * * *
- 6 [(c)] * * *
- 7 [(d)] * * *
- 8 [(e)] * * *
- 9 [(f)] * * *
- 10 [(g)] * * *

11 County-based bidder or offeror means a person that:

- 12 1) has operated through an office, distribution point, or facility in
13 the County for at least 6 months immediately prior to
14 submitting a bid in response to a formal solicitation issued by
15 the County; and
- 16 (2) owns tangible personal property subject to taxation by the
17 County.

- 18 [(h)] * * *
- 19 [(i)] * * *
- 20 [(j)] * * *
- 21 [(k)] * * *
- 22 [(l)] * * *
- 23 [(m)] * * *
- 24 [(n)] * * *
- 25 [(o)] * * *
- 26 [(p)] * * *
- 27 [(q)] * * *

28 [(r) * * *

29 [(s) * * *

30 [(t) * * *

31 Tie bid means a low bid submitted by a responsible and responsive
 32 bidder that is identical in price to a bid from another responsible and
 33 responsive bidder under a formal solicitation.

34 [(u) * * *

35 **Sec. 11B-9. Formal solicitation - competitive sealed bidding.**

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

39 (b) *Invitation for bids.* An invitation for bids must include specifications,
 40 evaluation criteria including the procedure for resolving tie bids, and all
 41 contractual provisions applicable to the procurement.

42 * * *

43 (i) Tie Bids. If the Director makes an award, the Director must award a
 44 contract to the County-based bidder when there is a tie bid between a
 45 County-based bidder and a non County-based bidder.

46 **11B-10. Formal solicitation - competitive sealed proposals.**

47 * * *

48 (d) *Evaluation and method of award.*
 49 (1) A request for proposals must contain evaluation factors and an
 50 explanation of how the rank of an offeror will be determined,
 51 including the procedure for resolving ties in ranking. Evaluation
 52 factors must include factors related to the technical quality of the
 53 proposal or the ability of the offeror, or both. Evaluation factors

54 may include price. The evaluation process may involve one or
 55 more steps.

56 (2) If the Director determines that a sufficiently detailed scope of
 57 services has been developed to allow for selection of a contractor
 58 on the basis of price, the evaluation process may provide for the
 59 selection of a proposed contractor by requiring all offerors who
 60 meet pre-established levels of competency as reflected in scores
 61 awarded by the qualification and selection committee to compete
 62 for the contract award on the basis of price alone. Price
 63 submissions must be submitted in a sealed offer. If required in
 64 the Request for Proposal, the price proposal must be binding on
 65 the offeror. The price proposal may be submitted at any point
 66 during the evaluation process as stated in the Request for
 67 Proposals. If the Director decides to award a contract on price
 68 alone, the Director must award a contract to the County-based
 69 offeror when a qualified County-based offeror and a qualified
 70 non County-based offeror have submitted identical price
 71 proposals.

72 * * *

73 (f) *Approval of contract awards.* The Director must approve the proposed
 74 ranking of offerors. If a County-based offeror and a non County-based
 75 offeror each receive an identical ranking score, the Director must
 76 consider the County-based offeror to be the higher ranked offeror.

77 * * *

LEGISLATIVE REQUEST REPORT

Bill 13-14

Contracts and Procurement – Formal Solicitation – Local Preference

DESCRIPTION: Bill 13-14 would define “County-based bidder or offeror” and would require that a County-based bidder or offeror be given preference in the event of a tie bid or ranking in contracts awarded by formal solicitation. The bill would also require that formal solicitations include an explanation of the procedure for resolving a tie bid or ranking.

PROBLEM: The County wishes to support County-based businesses that are seeking to do business with the County.

GOALS AND OBJECTIVES: To establish a preference for a County-based bidder in the event of a tie bid or ranking in certain contracts awarded by formal solicitation.

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: John Hamlin, 240-777-7892

APPLICATION WITHIN MUNICIPALITIES: Not applicable

PENALTIES: Not applicable.

11B.00.01.04 Source Selection Methods and Contract Types

4.1 Description of Source Selection Methods

4.1.1 Formal Solicitations — Invitation for Bid (IFB)

4.1.1.1 General

An IFB is a formal solicitation by which competitive sealed bids are invited through a public notice procedure which results in an award to the lowest responsible, responsive offeror.

* * * *

4.1.1.4 Procedure

- (a) IFBs are issued and public notice given under the direction of the Director.
- (b) Responses to the IFB are received by the Director, as specified in the solicitation, time-stamped, and publicly opened.
- (c) Bids are tabulated and forwarded to the Using Department for evaluation when deemed appropriate by the Director or when specifically requested by the Using Department Head.
- (d) The Director may require the Using Department or other person to evaluate the bids in accordance with the method of award criteria, and for responsiveness and responsibility, and forward recommendations to the Director. These recommendations must include an evaluation regarding the reasonableness of the proposed award prices. If retained by the Director, the Director evaluates the bids in accordance with the method of award criteria, and for responsiveness and responsibility.
- (e) In the case of tie bids, the Director resolves a tie by application of the following criteria in the order stated:
 - (1) Making a proposed award of the contract to the bidder who has its principal place of business in Montgomery County;
 - (2) Making a proposed award of the contract to the bidder who is a certified MFD business prior to submitting a bid;
 - (3) Drawing of lots with representatives of the firms involved invited to be present.

* * * *

4.1.2 Formal Solicitation — Best Value Procurement — Request for Proposals (RFP)

4.1.2.1 General

An RFP is a formal solicitation for competitive sealed proposals. Proposals are not publicly opened. An RFP is a procurement process in which quality and price are balanced to obtain the best value for the County. Final costs and scope of work are subject to negotiation after the proposals are received and before the contract is awarded unless otherwise stated in the RFP.

* * * *

4.1.2.4 Procedure

(a) RFPs are issued and public notice given under the direction of the Director.

(b) Without public opening, the Director forwards timely received proposals to the Using Department for evaluation.

(c) The Using Department establishes the QSC members, with the written approval of the Director. Each member of the QSC must be an employee of a public entity, unless specific authorization is obtained from the CAO for another to serve on the QSC. Unless otherwise provided in these regulations, the committee must be composed of an odd number of members and must have at least three members.

(d) The Director may add members to the QSC when appropriate to enhance the ability of the QSC to fairly and objectively evaluate the proposals. When the Director adds members to the QSC, the composition of the QSC does not need to remain an odd number.

(e) The QSC evaluates all proposals received from the Director, in accordance with the evaluation criteria, and reviews offerors for responsibility.

* * * *

(f) In the case of a tie in the numerical QSC scored, the Director resolves the tie by application of the following criteria in the order stated:

(1) the offeror who has its principal place of business in Montgomery County;

(2) the offeror who is a certified MFD business prior to submitting a proposal;

(3) Drawing of lots with representatives of the firms involved invited to be present.

* * * *