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By: **Senators Colburn and Hooper**

Introduced and read first time: February 4, 2005

Assigned to: Education, Health, and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2                           **Education - Procurement - Reciprocal Preferences for Resident Bidders or**  
3                           **Resident Offerors**

4 FOR the purpose of providing that, when awarding certain procurement contracts,  
5 county boards of education may give a certain preference to certain resident  
6 bidders or resident offerors under certain circumstances; defining certain terms;  
7 making the Act applicable to certain types of procurement methods and  
8 procurement contracts for certain types of construction, supplies, and services;  
9 and generally relating to reciprocal preferences for certain resident bidders or  
10 resident offerors on certain procurement contracts awarded by county boards of  
11 education.

12 BY repealing and reenacting, without amendments,  
13 Article - Education  
14 Section 4-117, 5-112, and 7-106  
15 Annotated Code of Maryland  
16 (2004 Replacement Volume and 2004 Supplement)

17 BY adding to  
18 Article - Education  
19 Section 4-127  
20 Annotated Code of Maryland  
21 (2004 Replacement Volume and 2004 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

24                           **Article - Education**

25 4-117.

26 (a) On the recommendation of the county superintendent, a county board may  
27 employ architects to assist in preparing plans and specifications for constructing or  
28 remodeling a building.

1 (b) The construction or remodeling of a building shall conform to all applicable  
2 State and county building, electrical, fire, and plumbing regulations and codes. A fee  
3 may not be charged for any permit required pursuant to these regulations or codes for  
4 construction or remodeling, but a fee may be charged for water or sewer permits, or  
5 for connection and service charges for water and sewerage.

6 4-127.

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
8 INDICATED.

9 (2) "PREFERENCE" INCLUDES:

10 (I) A PERCENTAGE PREFERENCE;

11 (II) AN EMPLOYEE RESIDENCY REQUIREMENT; OR

12 (III) ANY OTHER PROVISION THAT FAVORS A RESIDENT OVER A  
13 NONRESIDENT.

14 (3) "PROPOSAL" MEANS A RESPONSE TO ANY SOLICITATION OTHER  
15 THAN AN INVITATION FOR BIDS.

16 (4) "RESIDENT BIDDER" MEANS A BIDDER WHOSE PRINCIPAL OFFICE IS  
17 LOCATED IN THE STATE.

18 (5) "RESIDENT OFFEROR" MEANS AN OFFEROR WHOSE PRINCIPAL  
19 OFFICE IS LOCATED IN THE STATE.

20 (6) "RESPONSIBLE BIDDER" OR "RESPONSIBLE OFFEROR" MEANS A  
21 PERSON WHO:

22 (I) HAS THE CAPABILITY IN ALL RESPECTS TO PERFORM FULLY  
23 THE REQUIREMENTS FOR A CONTRACT; AND

24 (II) POSSESSES THE INTEGRITY AND RELIABILITY THAT WILL  
25 ENSURE GOOD FAITH PERFORMANCE.

26 (7) "RESPONSIVE BID" MEANS A BID THAT CONFORMS IN ALL MATERIAL  
27 RESPECTS TO THE INVITATION FOR BIDS.

28 (8) "SERVICES" MEANS SERVICES, ARCHITECTURAL SERVICES,  
29 CONSTRUCTION RELATED SERVICES, ENGINEERING SERVICES, OR ENERGY  
30 PERFORMANCE CONTRACT SERVICES, ALL AS DEFINED IN § 11-101 OF THE STATE  
31 FINANCE AND PROCUREMENT ARTICLE.

32 (B) THIS SECTION APPLIES TO:

33 (1) A CONTRACT BY A COUNTY BOARD TO EMPLOY ARCHITECTS UNDER §  
34 4-117 OF THIS ARTICLE;

1 (2) A CONTRACT BY A COUNTY BOARD FOR ANY SCHOOL BUILDING,  
2 IMPROVEMENT, SUPPLIES, OR EQUIPMENT UNDER § 5-112 OF THIS ARTICLE; AND

3 (3) A CONTRACT FOR TEXTBOOKS, MATERIALS OF INSTRUCTION, AND  
4 SUPPLIES UNDER § 7-106 OF THIS ARTICLE.

5 (C) WHEN A COUNTY BOARD USES COMPETITIVE SEALED BIDDING TO AWARD  
6 A PROCUREMENT CONTRACT, THE COUNTY BOARD MAY GIVE A PREFERENCE TO THE  
7 RESIDENT BIDDER WHO SUBMITS THE LOWEST RESPONSIVE BID FROM A RESIDENT  
8 BIDDER IF:

9 (1) THE RESIDENT BIDDER IS A RESPONSIBLE BIDDER;

10 (2) A RESPONSIBLE BIDDER WHOSE PRINCIPAL OFFICE OR OPERATION  
11 IS IN ANOTHER STATE SUBMITS THE LOWEST RESPONSIVE BID;

12 (3) THE STATE IN WHICH THE NONRESIDENT BIDDER'S PRINCIPAL  
13 OFFICE IS LOCATED OR THE STATE IN WHICH THE NONRESIDENT BIDDER HAS ITS  
14 PRINCIPAL OPERATION THROUGH WHICH IT WOULD PROVIDE SUPPLIES OR  
15 SERVICES GIVES A PREFERENCE TO ITS RESIDENTS; AND

16 (4) A PREFERENCE DOES NOT CONFLICT WITH A FEDERAL LAW OR  
17 GRANT AFFECTING THE PROCUREMENT CONTRACT.

18 (D) WHEN A COUNTY BOARD USES COMPETITIVE SEALED PROPOSALS TO  
19 AWARD A PROCUREMENT CONTRACT, THE COUNTY BOARD MAY GIVE A PREFERENCE  
20 TO RESIDENT OFFERORS IF:

21 (1) A RESPONSIBLE OFFEROR WHOSE PRINCIPAL OFFICE OR OPERATION  
22 IS IN ANOTHER STATE SUBMITS A PROPOSAL;

23 (2) THE STATE IN WHICH THE NONRESIDENT OFFEROR'S PRINCIPAL  
24 OFFICE IS LOCATED OR THE STATE IN WHICH THE NONRESIDENT OFFEROR HAS ITS  
25 PRINCIPAL OPERATION THROUGH WHICH IT WOULD PROVIDE THE SUBJECT OF THE  
26 CONTRACT GIVES A PREFERENCE TO ITS RESIDENTS; AND

27 (3) THE PREFERENCE DOES NOT CONFLICT WITH A FEDERAL LAW OR  
28 GRANT AFFECTING THE PROCUREMENT CONTRACT.

29 (E) (1) AT THE REQUEST OF THE COUNTY BOARD, A NONRESIDENT BIDDER  
30 OR NONRESIDENT OFFEROR SUBMITTING A PROPOSAL SHALL PROVIDE A COPY OF  
31 THE CURRENT STATUTE, RESOLUTION, POLICY, PROCEDURE, OR EXECUTIVE ORDER  
32 THAT PERTAINS TO THE TREATMENT OF NONRESIDENT BIDDERS OR NONRESIDENT  
33 OFFERORS BY:

34 (I) THE STATE IN WHICH THE NONRESIDENT BIDDER'S OR  
35 NONRESIDENT OFFEROR'S PRINCIPAL OFFICE IS LOCATED; AND

1 (II) THE STATE IN WHICH THE NONRESIDENT BIDDER OR  
2 NONRESIDENT OFFEROR HAS ITS PRINCIPAL OPERATION THROUGH WHICH IT  
3 WOULD PROVIDE SUPPLIES OR SERVICES.

4 (2) A COUNTY BOARD MAY GIVE A PREFERENCE UNDER THIS SECTION  
5 THAT IS IDENTICAL TO ANY OF THE FOLLOWING PREFERENCES, OR ANY  
6 COMBINATION OF THEM:

7 (I) THE PREFERENCE THAT THE STATE IN WHICH THE  
8 NONRESIDENT BIDDER'S OR NONRESIDENT OFFEROR'S PRINCIPAL OFFICE IS  
9 LOCATED GIVES TO ITS RESIDENTS; OR

10 (II) THE PREFERENCE THAT THE STATE IN WHICH THE  
11 NONRESIDENT BIDDER OR NONRESIDENT OFFEROR HAS ITS PRINCIPAL OPERATION  
12 THROUGH WHICH IT WOULD PROVIDE SUPPLIES OR SERVICES.

13 5-112.

14 (a) This section does not apply to:

15 (1) Contracts for the purchase of books and other materials of instruction  
16 as defined in the State Department of Education Financial Reporting Manual;

17 (2) Emergency repairs; and

18 (3) A county board's participation in contracts for goods or commodities  
19 that are awarded by other public agencies or by intergovernmental purchasing  
20 organizations if the lead agency for the contract follows public bidding procedures.

21 (b) (1) If the cost of any school building, improvement, supplies, or  
22 equipment is more than \$15,000, the county board, at least 2 weeks before bids are to  
23 be filed, shall advertise for bids in a medium accessible to the general public, which  
24 includes:

25 (i) A newspaper of general circulation in the region;

26 (ii) The Maryland Contract Weekly or comparable State  
27 publication; or

28 (iii) An electronic posting on a bid board and physical posting on the  
29 local school system bid board.

30 (2) (i) The county board shall draft specifications that provide a clear  
31 and accurate description of the functional characteristics or the nature of an item to  
32 be procured, without modifying the county board's requirements.

33 (ii) The specifications may:

34 1. Include a statement of any of the county board's  
35 requirements; and

1                                    2.        Provide for the submission of samples, inspection, or  
2 testing of the item before procurement.

3                    (3)        (i)        Except as provided in subparagraph (ii) of this subsection,  
4 specifications that use one or more manufacturer's product to describe the standard of  
5 quality, performance, or other characteristics needed to meet the county board's  
6 requirements, must allow for the submission of equivalent products.

7                                    (ii)        Subparagraph (i) of this paragraph does not apply if the county  
8 board determines in the written specification that:

9                                    1.        A particular manufacturer's product is required to  
10 maintain compatibility of service or equipment;

11                                    2.        A particular manufacturer's product is required to meet  
12 the health needs of students;

13                                    3.        Replacement parts or maintenance are a paramount  
14 consideration; or

15                                    4.        A product is purchased for resale.

16        (c)        (1)        A contract for the school building, improvements, supplies, or other  
17 equipment shall be awarded to the lowest responsible bidder who conforms to  
18 specifications with consideration given to:

19                                    (i)        The quantities involved;

20                                    (ii)        The time required for delivery;

21                                    (iii)        The purpose for which required;

22                                    (iv)        The competency and responsibility of the bidder;

23                                    (v)        The ability of the bidder to perform satisfactory service; and

24                                    (vi)        The plan for utilization of minority contractors.

25                                    (2)        The county board may reject any and all bids and readvertise for  
26 other bids.

27        (d)        (1)        In this subsection, the term "minority business enterprise" has the  
28 meaning stated in § 14-301 of the State Finance and Procurement Article.

29                                    (2)        In Montgomery County, by resolution and by implementing  
30 regulations, the Montgomery County Board of Education shall establish a minority  
31 business utilization program to facilitate the participation of responsible certified  
32 minority business enterprises in contracts awarded by the Montgomery County Board  
33 of Education in accordance with competitive bidding procedures.

1 (e) Nonpublic schools may participate under any contracts for goods or  
2 commodities that are awarded by county boards, other public agencies, or  
3 intergovernmental purchasing organizations, if the lead agency for the contract  
4 award follows public bidding procedures.

5 (f) A contract entered into or purchase made in violation of this section is void.  
6 7-106.

7 (a) On the recommendation of the county superintendent and subject to the  
8 provisions of this article, each county board shall adopt procedures for the selection  
9 and purchase of the following necessary items, at the lowest price consistent with  
10 good quality, for use in the public schools:

11 (1) Textbooks;

12 (2) Supplementary readers;

13 (3) Materials of instruction;

14 (4) Visual and auditory aids;

15 (5) Stationery; and

16 (6) School supplies.

17 (b) (1) Each county board shall adopt procedures for the selection and  
18 purchase for use in each public school library or media center of a collection of books  
19 and auditory and visual materials concerning African American history.

20 (2) The collection in each library or media center shall be appropriate for  
21 students in each age group and reading level in the school.

22 (c) Each county board shall furnish the materials and supplies listed in  
23 subsection (a) of this section:

24 (1) Free of cost for use in the public schools; and

25 (2) In sufficient quantities for the different grades in the public schools.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2005.