
By: **Senators Colburn and Hooper**

Introduced and read first time: February 4, 2005

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable

Senate action: Adopted

Read second time: March 18, 2005

CHAPTER _____

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:

1

Article - Education

2 4-117.

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

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

11 4-127.

12 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

14 (2) "PREFERENCE" INCLUDES:

15 (I) A PERCENTAGE PREFERENCE;

16 (II) AN EMPLOYEE RESIDENCY REQUIREMENT; OR

17 (III) ANY OTHER PROVISION THAT FAVORS A RESIDENT OVER A
18 NONRESIDENT.

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

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

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

25 (6) "RESPONSIBLE BIDDER" OR "RESPONSIBLE OFFEROR" MEANS A
26 PERSON WHO:

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

29 (II) POSSESSES THE INTEGRITY AND RELIABILITY THAT WILL
30 ENSURE GOOD FAITH PERFORMANCE.

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

33 (8) "SERVICES" MEANS SERVICES, ARCHITECTURAL SERVICES,
34 CONSTRUCTION RELATED SERVICES, ENGINEERING SERVICES, OR ENERGY

1 PERFORMANCE CONTRACT SERVICES, ALL AS DEFINED IN § 11-101 OF THE STATE
2 FINANCE AND PROCUREMENT ARTICLE.

3 (B) THIS SECTION APPLIES TO:

4 (1) A CONTRACT BY A COUNTY BOARD TO EMPLOY ARCHITECTS UNDER §
5 4-117 OF THIS ARTICLE;

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

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

10 (C) WHEN A COUNTY BOARD USES COMPETITIVE SEALED BIDDING TO AWARD
11 A PROCUREMENT CONTRACT, THE COUNTY BOARD MAY GIVE A PREFERENCE TO THE
12 RESIDENT BIDDER WHO SUBMITS THE LOWEST RESPONSIVE BID FROM A RESIDENT
13 BIDDER IF:

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

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

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

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

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

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

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

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

34 (E) (1) AT THE REQUEST OF THE COUNTY BOARD, A NONRESIDENT BIDDER
35 OR NONRESIDENT OFFEROR SUBMITTING A PROPOSAL SHALL PROVIDE A COPY OF
36 THE CURRENT STATUTE, RESOLUTION, POLICY, PROCEDURE, OR EXECUTIVE ORDER

1 THAT PERTAINS TO THE TREATMENT OF NONRESIDENT BIDDERS OR NONRESIDENT
2 OFFERORS BY:

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

5 (II) THE STATE IN WHICH THE NONRESIDENT BIDDER OR
6 NONRESIDENT OFFEROR HAS ITS PRINCIPAL OPERATION THROUGH WHICH IT
7 WOULD PROVIDE SUPPLIES OR SERVICES.

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

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

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

17 5-112.

18 (a) This section does not apply to:

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

21 (2) Emergency repairs; and

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

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

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

30 (ii) The Maryland Contract Weekly or comparable State
31 publication; or

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

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

1 (ii) The specifications may:

2 1. Include a statement of any of the county board's
3 requirements; and

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

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

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

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

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

16 3. Replacement parts or maintenance are a paramount
17 consideration; or

18 4. A product is purchased for resale.

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

22 (i) The quantities involved;

23 (ii) The time required for delivery;

24 (iii) The purpose for which required;

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

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

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

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

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

32 (2) In Montgomery County, by resolution and by implementing
33 regulations, the Montgomery County Board of Education shall establish a minority

1 business utilization program to facilitate the participation of responsible certified
2 minority business enterprises in contracts awarded by the Montgomery County Board
3 of Education in accordance with competitive bidding procedures.

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

8 (f) A contract entered into or purchase made in violation of this section is void.
9 7-106.

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

14 (1) Textbooks;

15 (2) Supplementary readers;

16 (3) Materials of instruction;

17 (4) Visual and auditory aids;

18 (5) Stationery; and

19 (6) School supplies.

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

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

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

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

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

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

