

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 319 (Delegate Costa)
Health and Government Operations

Local Government - Procurement - Resident Preferences

This bill prohibits county and municipal governments from giving preference to a local bidder or offeror when using competitive sealed bidding or competitive sealed proposals to award a procurement contract. It specifically repeals existing reciprocal local preference ordinances in Garrett and Frederick counties. A county or municipal government may give preference to a Maryland firm as part of a Minority Business Enterprise (MBE) program.

The bill takes effect July 1, 2008, and applies only prospectively to future contracts.

Fiscal Summary

State Effect: None.

Local Effect: Potential savings in local contract expenditures in some counties, to the extent that they currently have and exercise local preferences in the awarding of procurement contracts. Revenues would not be directly affected.

Small Business Effect: Meaningful.

Analysis

Current Law: The State, political subdivisions, and instrumentalities of the State may grant reciprocal resident preferences when using competitive bidding to award a procurement contract. The State may also grant reciprocal resident preferences when using competitive proposals. Reciprocal preferences specify that if another state gives

preference to firms located in that state, Maryland or its local governments may give preference to Maryland firms over firms from those states. The law is silent with respect to preferences for local firms over Maryland firms located in other counties.

Garrett and Frederick counties both have reciprocal procurement preferences for firms located in those respective counties. They specify that the respective counties may give a preference to the lowest responsive and responsible bid from a Maryland or local firm if the lowest responsive bid is from a firm located in a state or political subdivision that gives a similar preference. The preference can be in the form of a percentage price preference, an employee residency requirement, or other similar provision.

Allegany, Caroline, Cecil, Frederick, and Garrett counties have local resident preferences in their codes while Somerset County has an informal local preference policy for bids under \$5,000. Prince George's County gives county-based minority businesses a preference within its minority business preference program.

Several counties will award a bid to a local bidder in case of a tie bid in which price, quality, and service are deemed equal. Anne Arundel, Baltimore, Caroline, Charles, and Harford counties state this policy in their county codes while St. Mary's County has an informal policy to this effect.

In Anne Arundel and Harford counties, the county purchasing agent may provide local bidders a reciprocal preference. In these counties, if some of the noncounty bidders are from jurisdictions that grant a local preference, then the purchasing agent can give a local bidder the same preferences that the noncounty bidders would have received in their home jurisdictions. Montgomery County has a "Local Small Business Reserve Program" in which procurement procedures for certain county departments must award at least 10% of the total combined dollar value of contracts to local small businesses. In Worcester County, local presence is one factor the county may consider in awarding a contract.

The Baltimore City Charter authorizes the Board of Estimates to provide for a limited bid preference to a responsible bidder on a neighborhood project, if the bidder is a resident of that neighborhood or has its principal place of business located there.

The Department of Legislative Services does not know how many municipalities in Maryland consider local preference when awarding contracts.

Local Fiscal Effect: The bill's effect will vary based on whether local governments have local preferences and the value of contracts awarded under their preference programs. Garrett and Frederick counties, which are both explicitly named in the bill, both advise

that they have not invoked their reciprocal preference provisions in recent years, so the bill will have no effect on them. Prince George's County operates a local small and minority business preference program that provides about \$60 million in contracting opportunities annually. However, the bill specifically allows local preferences if they are part of a minority business preference program, so the Prince George's County program should not be affected. Other local preference programs would likely not be permitted under the terms of the bill.

Small Business Effect: Meaningful. Local small business preference programs would be greatly affected by the bill. Small businesses that are awarded contracts through these programs might not receive those contracts if local preferences are not allowed. Montgomery County estimates that it will award about \$7.0 million in contracts to local small businesses in fiscal 2009. At the same time, nonresident small businesses in Maryland that do not receive awards due to local preferences could benefit from the prohibition of those preferences.

Additional Information

Prior Introductions: HB 1178 of 2007 received an unfavorable report from the House Health and Government Operations Committee.

Cross File: None.

Information Source(s): Montgomery County, Prince George's County, Garrett County, Anne Arundel County, Frederick County, Department of Legislative Services

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