

1 COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2
3 2012 Legislative Session

4
5 Bill No. 2012-05

6 Chapter No. 203

7 Introduced By: Charles County Commissioners

8 Date of Introduction: _____

9
10 BILL

11
12 AN ACT concerning

13 PURCHASING AND PROCUREMENT

14 FOR the purpose of

15 Establishing a Small Local Business Enterprise Program for certain procurements and
16 authorizing the Department of Fiscal and Administrative Services to adopt definitions,
17 purchasing and procurement processes, procedures and guidelines for using agencies and
18 vendors to administer and implement the Program.

19
20 BY amending:

- 21 Chapter 203 – Purchasing Procedures
- 22 Sections 203-1 and 203-2
- 23 Code of Charles County, Maryland
- 24 (1994 Edition, 1995 Supplement)

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27 SECTION 1. BE IT ENACTED BY THE COUNTY COMMISSIONERS OF CHARLES
28 COUNTY, MARYLAND, that the Laws of Charles County, Maryland read as follows:

29 CHAPTER 203

30 PURCHASING PROCEDURES

31 Section § 203-1. Purchasing and procurement policies generally.

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B. Competitive bidding. Unless otherwise provided by law or by these policies, all purchases or procurements with an aggregate value exceeding twenty-five thousand dollars (\$25,000) shall be made by advertise bid. All solicitations for bids shall be advertised and posted pursuant to law. Full opportunity to bid shall be granted to all qualified [,] RESPONSIVE and responsible bidders. The bidders list, maintained by the Purchasing Office, listing the names and addresses of all interested vendors, may be used to solicit bids. Vendors may be removed from the bidders’ list by the Chief of Purchasing for any of the following reasons

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F. Competitive pricing. Whenever practicable, it shall be the policy of the Purchasing Office to secure adequate competition to assure that the purchase or procurement is made at the lowest possible cost consistent with the quality and delivery requirements of the using agency AND THE PROVISIONS OF THIS SECTION. Competitive pricing shall be obtained and at least three (3) quotes documented in all transactions estimated to result in expenditures of one thousand dollars (\$1,000.00) to twenty five thousand dollars (\$25,000). If three quotes cannot be obtained, information shall be documented in the file to that effect. Phone quotes or written quotes may be utilized.

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P. Purchasing and procurement standards.

- (1) *Preferential purchasing and contracts prohibited.* EXCEPT AS PROVED BY THIS SECTION, IT [It] is not permissible to favor any particular individual or firm with orders or to give those submitting bids or quotations information which will give anyone advantage over others seeking county business.
- (2) *Local purchase and contracts.* Unless otherwise provided by THIS SECTION OR BY OTHER applicable law, purchasing of goods or services from vendors whose principal place of business is physically located in Charles County is

1 considered in the best interest of the county provided that cost, quality,
2 specification and delivery are deemed equivalent. In the event that these
3 provisions cannot be met, it then shall be considered in the county's best interest
4 to procure from a vendor whose principal place of business is located in the State
5 of Maryland.

6 (3) *SMALL LOCAL BUSINESS ENTERPRISE PROGRAM.* THIS SECTION
7 ESTABLISHES THE SMALL LOCAL BUSINESS ENTERPRISE (SLBE)
8 PROGRAM. UNDER THIS PROGRAM, PREFERENCE MAY BE GIVEN TO
9 CHARLES COUNTY SMALL BUSINESSES WHICH QUALIFY PURSUANT
10 TO THE PROVISIONS OF THIS SECTION AND BECOME REGISTERED IN
11 THE PROGRAM. PREFERENCES UTILIZED SHALL INCLUDE, BUT MAY
12 NOT NECESSARILY BE LIMITED TO, A PERCENTAGE PREFERENCE
13 APPLIED TO BIDS, PREFERENCE POINTS APPLIED TO PROPOSAL
14 EVALUATIONS, AND A SMALL LOCAL BUSINESS RESERVE. THE
15 PURCHASING DIVISION OF THE DEPARTMENT OF FISCAL AND
16 ADMINISTRATIVE SERVICES SHALL IMPLEMENT THE SLBE PROGRAM
17 AND ADOPT DETAILED PROCUREMENT AND PURCHASING
18 PROCESSES, PROCEDURES AND GUIDELINES FOR USING AGENCIES
19 AND VENDORS NECESSARY FOR THE EFFICIENT ADMINISTRATION OF
20 THE PROGRAM.

21 (a) THE INITIAL PREFERENCE PERCENTAGES, EVALUATION POINTS,
22 RESERVE LEVEL AND CAPS SHALL BE ESTABLISHED BY
23 COMMISSIONER RESOLUTION AND SHALL BE PART OF AND
24 INCORPORATED INTO THIS SECTION BY REFERENCE. FUTURE
25 MODIFICATIONS, IF ANY, TO THESE PARAMETERS, OR THE
26 DEFINITION OF A LOCAL BUSINESS, SHALL BE BY RESOLUTION OF
27 THE COUNTY COMMISSIONERS.

28 (b) DEFINITIONS. IN THIS SECTION, THE FOLLOWING WORDS HAVE
29 THE
30 MEANINGS INDICATED:

31 (i) A SMALL LOCAL BUSINESS IS A FOR-PROFIT BUSINESS,
32 OTHER THAN A BROKER, THAT MEETS THE DEFINITIONS

1 AND CRITERIA FOR BOTH A SMALL AND LOCAL
2 BUSINESS UNDER THIS SECTION.

- 3 (ii) A SMALL BUSINESS IS A BUSINESS THAT IS CERTIFIED
4 AND MAINTAINS ITS CERTIFICATION IN THE STATE OF
5 MARYLAND SMALL BUSINESS RESERVE PROGRAM.
- 6 (iii) A LOCAL BUSINESS IS A BUSINESS IN CHARLES COUNTY
7 THAT HAS
- 8 a. ITS PRINCIPAL PLACE OF BUSINESS IN CHARLES
9 COUNTY; OR
 - 10 b. TWENTY-FIVE (25) PERCENT OF ITS NUMBER OF
11 FULL-TIME EQUIVALENT EMPLOYEES DOMICILED IN
12 CHARLES COUNTY; OR
 - 13 c. HAS A BRANCH OR SATELLITE OFFICE IN THE
14 COUNTY THAT GENERATES AT LEAST 25 PERCENT OF
15 THE COMPANY'S ANNUAL GROSS SALES.
- 16 (iv) A BROKER IS A PERSON THAT CONDUCTS BUSINESS
17 OTHER THAN REAL ESTATE, INVESTMENT OR
18 INSURANCE SALES ON A PASS-THROUGH BASIS WITH
19 RESPECT TO SUPPLIES AND SERVICES.
- 20 (v) A SMALL LOCAL BUSINESS RESERVE MEANS THOSE
21 PROCUREMENTS THAT ARE LIMITED TO RESPONSES
22 FROM LOCAL SMALL BUSINESSES AS DEFINED HEREIN
23 AND WHICH DO NOT EXCEED INFORMAL BID LIMITS AS
24 MAY BE ADOPTED AND MODIFIED FROM TIME TO TIME
25 BY THE COUNTY COMMISSIONERS.

26 (c) SMALL LOCAL BUSINESS - ELIGIBILITY.

- 27 (i) A SMALL LOCAL BUSINESS SHALL BE CERTIFIED IN THE
28 STATE OF MARYLAND SMALL BUSINESS RESERVE
29 PROGRAM (SBPR), SHALL MAINTAIN THAT
30 CERTIFICATION AND SHALL COMPLY WITH ALL
31 PROVISIONS OF THE STATE PROGRAM, INCLUDING
32 ANNUAL RECERTIFICATION.
- 33 (ii) IN ADDITION TO OBTAINING AND MAINTAINING

1 CERTIFICATION IN THE STATE PROGRAM, A SMALL
2 LOCAL BUSINESS SHALL MEET ALL ADDITIONAL
3 COUNTY PROGRAM REQUIREMENTS AT THE TIME OF
4 THE SUBMISSION OF A BID OR PROPOSAL IN ORDER TO
5 BE ELIGIBLE FOR ANY SLBE PROGRAM PREFERENCE.

6 (iii) A SMALL LOCAL BUSINESS IS NO LONGER ELIGIBLE TO
7 PARTICIPATE IN THE PROGRAM WHEN:

8 a. THE BUSINESS HAS RECEIVED MORE THAN \$3
9 MILLION

10 IN AWARDS WITHIN ANY SIXTY (60) MONTH
11 PERIOD BASED UPON THEIR SLBE STATUS EITHER
12 AS A PRIME CONTRACTOR OR A
13 SUBCONTRACTOR, OR

14 b. THE BUSINESS EXCEEDS THE MAXIMUM ANNUAL
15 GROSS SALES OR MAXIMUM NUMBER OF
16 EMPLOYEES ESTABLISHED IN THE CRITERIA FOR
17 CERTIFICATION IN THE MARYLAND SMALL
18 BUSINESS RESERVE PROGRAM; OR

19 c. NO LONGER COMPLIES WITH THE DEFINITION OF
20 A
21 LOCAL BUSINESS.

22 (4) DISCONTINUATION OF MARYLAND SMALL BUSINESS RESERVE
23 PROGRAM.

24 IN THE EVENT THE STATE OF MARYLAND DISCONTINUES ITS SMALL
25 BUSINESS RESERVE PROGRAM, THE COUNTY SMALL LOCAL
26 BUSINESS

27 ENTERPRISE PROGRAM SHALL CONTINUE UNDER THE LAST SMALL
28 BUSINESS RESERVE GROSS SALES, EMPLOYEE AND OTHER CRITERIA
29 IN

30 EFFECT AT THE TIME OF THE TERMINATION OF THE STATE PROGRAM
31 AND

32 THE PURCHASING DIVISION SHALL ESTABLISH PROCEDURES TO
33 IMPLEMENT AND MAINTAIN AN EQUIVALENT SMALL BUSINESS

1 CERTIFICATION PROCESS TO THAT OF THE STATE PROGRAM.

2 (5) EXCLUSIONS. IN ADDITION TO THE EXCLUSIONS CONTAINED IN THE
3 AFOREMENTIONED RESOLUTION, THE PRESIDENT OF THE COUNTY
4 COMMISSIONERS MAY WAIVE THE APPLICATION OF THIS SECTION TO
5 A SPECIFIC CONTRACT, BID OR PROPOSAL IF IT CONFLICTS WITH
6 THE OVERALL OBJECTIVES AND RESPONSIBILITIES OF THIS
7 CHAPTER OR WOULD BE CONTRARY TO THE BEST INTERESTS OF THE
8 COUNTY.

9 (6) ENFORCEABILITY. THIS SECTION DOES NOT GIVE ANY PERSON,
10 INCLUDING A SMALL LOCAL BUSINESS, ANY RIGHT OR STATUS,
11 INCLUDING STANDING, TO CHALLENGE THE AWARD OF A CONTRACT
12 OR SUBCONTRACT UNDER THE COUNTY PROCUREMENT SYSTEM.

13 (7) PENALTIES. A PERSON MUST NOT WILLFULLY MAKE A FALSE
14 STATEMENT TO A COUNTY EMPLOYEE FOR THE PURPOSE OF
15 OBTAINING ELIGIBILITY IN THE SMALL LOCAL BUSINESS
16 ENTERPRISE PROGRAM UNDER THIS SECTION OR FRAUDULENTLY
17 OBTAIN, OR ATTEMPT TO OBTAIN, OR AID ANOTHER PERSON IN
18 FRAUDULENTLY OBTAINING OR ATTEMPTING TO OBTAIN A
19 CONTRACT OR FUNDS TO WHICH THE PERSON IS NOT ENTITLED TO
20 UNDER THIS SECTION. A VIOLATION OF THIS SECTION SHALL BE
21 DEEMED TO CONSTITUTE A MATERIAL BREACH OF ANY CONTRACT
22 AWARDED BY THE COUNTY AND THE PURCHASING DIVISION MAY
23 TERMINATE THE CONTRACT OR EXERCISE ANY OTHER APPROPRIATE
24 REMEDY AVAILABLE TO IT. IN ADDITION, ANY PERSON OR FIRM
25 FOUND TO HAVE VIOLATED THESE PROVISIONS MAY BE
26 DISQUALIFIED BY THE PURCHASING DIVISION FROM DOING
27 BUSINESS WITH THE COUNTY FOR UP TO TWO YEARS.

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29 **Section § 203-2. Competitive bidding.**

30 **A. Specifications.**

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32 (4) In using any of the above types of specifications, it shall be the responsibility of
33 the Chief of Purchasing to afford a basis for full and fair competitive bidding [that is

1 free from restrictions].

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SECTION 2. Transition provisions. To assure the orderly and efficient implementation of this program, the hiring of staff resources to write the necessary purchasing processes, procedures, using agency and vendor guidelines, provide certification assistance, train using agencies and vendors, and to market the availability of the program, it will be necessary to phase in the full implementation of the small local business enterprise program. The purchasing division may phase in the various elements of the preferences specified herein on a schedule recommended by the director of fiscal and administrative services and approved by the county administrator consistent with the aforementioned needs.

SECTION 3. BE IT FURTHER ENACTED, that this Act shall take effect forty-five (45) calendar days after it becomes law.

ADOPTED this 28th day of February, 2012.

COUNTY COMMISSIONERS
CHARLES COUNTY, MARYLAND

Candice Quinn Kelly, President

Reuben B. Collins, II, Esq., Vice President

Ken Robinson

Debra M. Davis, Esq.

Bobby Rucci

ATTEST:

Denise Ferguson, Clerk to the Commissioners