

1 **COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND**

2
3 **2012 Legislative Session**

4
5 Bill No. 2012

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, purchasing and
17 procurement processes, procedures and guidelines for using agencies and vendors to administer and
18 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)

25
26
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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33 * * * * * * *

1 **B. Competitive bidding.** Unless otherwise provided by law or by these policies, all
2 purchases or procurements with an aggregate value exceeding twenty-five thousand dollars
3 (\$25,000) shall: be made by advertise bid. All solicitations for bids shall be advertised and
4 posted pursuant to law. Full opportunity to bid shall be granted to all qualified [,
5 RESPONSIVE] and responsible bidders. The bidders list, maintained by the Purchasing
6 Office, listing the names and addresses of all interested vendors, may be used to solicit bids.
7 Vendors may be removed from the bidders' list by the Chief of Purchasing for any of the
8 following reasons
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10 * * * * *

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

23 (1) *Preferential purchasing and contracts prohibited.* EXCEPT AS PROVED BY THIS
24 SECTION, IT [It] is not permissible to favor any particular individual or firm with
25 orders or to give those submitting bids or quotations information which will give
26 anyone advantage over others seeking county business.

27 (2) *Local purchase and contracts.* Unless otherwise provided by THIS SECTION OR BY
28 OTHER applicable law, purchasing of goods or services from vendors whose principal
29 place of business is physically located in Charles County is considered in the best
30 interest of the county provided that cost, quality, specification and delivery are deemed
31 equivalent. In the event that these provisions cannot be met, it then shall be considered
32 in the county's best interest to procure from a vendor whose principal place of business
33 is located in the State of Maryland.

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

15 (a) THE INITIAL PREFERENCE PERCENTAGES, EVALUATION POINTS,
16 RESERVE LEVEL AND CAPS SHALL BE ESTABLISHED BY
17 COMMISSIONER RESOLUTION AND SHALL BE PART OF AND
18 INCORPORATED INTO THIS SECTION BY REFERENCE. FUTURE
19 MODIFICATIONS, IF ANY, TO THESE PARAMETERS, OR THE DEFINITION
20 OF A LOCAL BUSINESS, SHALL BE BY RESOLUTION OF THE COUNTY
21 COMMISSIONERS.

22 (b) DEFINITIONS. IN THIS SECTION, THE FOLLOWING WORDS HAVE THE
23 MEANINGS INDICATED:

24 (i) A SMALL LOCAL BUSINESS IS A FOR-PROFIT BUSINESS,
25 OTHER THAN A BROKER, THAT MEETS THE DEFINITIONS AND
26 CRITERIA FOR BOTH A SMALL AND LOCAL BUSINESS UNDER
27 THIS SECTION.

28 (ii) A SMALL BUSINESS IS A BUSINESS THAT IS CERTIFIED AND
29 MAINTAINS ITS CERTIFICATION IN THE STATE OF MARYLAND
30 SMALL BUSINESS RESERVE PROGRAM.

31 (iii) A LOCAL BUSINESS IS A BUSINESS IN CHARLES COUNTY
32 THAT HAS

- 1 a. ITS PRINCIPAL PLACE OF BUSINESS IN CHARLES
2 COUNTY; OR
- 3 b. TWENTY-FIVE (25) PERCENT OF ITS NUMBER OF FULL-
4 TIME EQUIVALENT EMPLOYEES DOMICILED IN CHARLES
5 COUNTY; OR
- 6 c. HAS A BRANCH OR SATELLITE OFFICE IN THE COUNTY
7 THAT GENERATES AT LEAST 25 PERCENT OF THE
8 COMPANY'S ANNUAL GROSS SALES.
- 9 (iv) A BROKER IS A PERSON THAT CONDUCTS BUSINESS OTHER
10 THAN REAL ESTATE, INVESTMENT OR INSURANCE SALES ON
11 A PASS-THROUGH BASIS WITH RESPECT TO SUPPLIES AND
12 SERVICES.
- 13 (v) A SMALL LOCAL BUSINESS RESERVE MEANS THOSE
14 PROCUREMENTS THAT ARE LIMITED TO RESPONSES FROM
15 LOCAL SMALL BUSINESSES AS DEFINED HEREIN AND WHICH
16 DO NOT EXCEED INFORMAL BID LIMITS AS MAY BE ADOPTED
17 AND MODIFIED FROM TIME TO TIME BY THE COUNTY
18 COMMISSIONERS.
- 19 (c) SMALL LOCAL BUSINESS - ELIGIBILITY.
- 20 (i) A SMALL LOCAL BUSINESS SHALL BE CERTIFIED IN THE
21 STATE OF MARYLAND SMALL BUSINESS RESERVE PROGRAM
22 (SBPR), SHALL MAINTAIN THAT CERTIFICATION AND SHALL
23 COMPLY WITH ALL PROVISIONS OF THE STATE PROGRAM,
24 INCLUDING ANNUAL RECERTIFICATION.
- 25 (ii) IN ADDITION TO OBTAINING AND MAINTAINING
26 CERTIFICATION IN THE STATE PROGRAM, A SMALL LOCAL
27 BUSINESS SHALL MEET ALL ADDITIONAL COUNTY PROGRAM
28 REQUIREMENTS AT THE TIME OF THE SUBMISSION OF A BID
29 OR PROPOSAL IN ORDER TO BE ELIGIBLE FOR ANY SLBE
30 PROGRAM PREFERENCE.
- 31 (iii) A SMALL LOCAL BUSINESS IS NO LONGER ELIGIBLE TO
32 PARTICIPATE IN THE PROGRAM WHEN:
- 33 a. THE BUSINESS HAS RECEIVED MORE THAN \$3 MILLION

1 IN AWARDS WITHIN ANY SIXTY (60) MONTH PERIOD
2 BASED UPON THEIR SLBE STATUS EITHER AS A PRIME
3 CONTRACTOR OR A SUBCONTRACTOR, OR

4 b. THE BUSINESS EXCEEDS THE MAXIMUM ANNUAL
5 GROSS SALES OR MAXIMUM NUMBER OF EMPLOYEES
6 ESTABLISHED IN the criteria for certification in the Maryland
7 SMALL BUSINESS RESERVE PROGRAM; OR

8 c. NO LONGER COMPLIES WITH THE DEFINITION OF A
9 LOCAL BUSINESS.

10 (4) DISCONTINUATION OF MARYLAND SMALL BUSINESS RESERVE PROGRAM.
11 IN THE EVENT THE STATE OF MARYLAND DISCONTINUES ITS SMALL
12 BUSINESS RESERVE PROGRAM, THE COUNTY SMALL LOCAL BUSINESS
13 ENTERPRISE PROGRAM SHALL CONTINUE UNDER THE LAST SMALL
14 BUSINESS RESERVE GROSS SALES, EMPLOYEE AND OTHER CRITERIA IN
15 EFFECT AT THE TIME OF THE TERMINATION OF THE STATE PROGRAM AND
16 THE PURCHASING DIVISION SHALL ESTABLISH PROCEDURES TO
17 IMPLEMENT AND MAINTAIN AN EQUIVALENT SMALL BUSINESS
18 CERTIFICATION PROCESS TO THAT OF THE STATE PROGRAM.

19 (5) EXCLUSIONS. IN ADDITION TO THE EXCLUSIONS CONTAINED IN THE
20 AFOREMENTIONED RESOLUTION, THE PRESIDENT OF THE COUNTY
21 COMMISSIONERS MAY WAIVE THE APPLICATION OF THIS SECTION TO A
22 SPECIFIC CONTRACT, BID OR PROPOSAL IF IT CONFLICTS WITH THE
23 OVERALL OBJECTIVES AND RESPONSIBILITIES OF THIS CHAPTER OR
24 WOULD BE CONTRARY TO THE BEST INTERESTS OF THE COUNTY.

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

29 (7) PENALTIES. A PERSON MUST NOT WILLFULLY MAKE A FALSE STATEMENT
30 TO A COUNTY EMPLOYEE FOR THE PURPOSE OF OBTAINING ELIGIBILITY
31 IN THE SMALL LOCAL BUSINESS ENTERPRISE PROGRAM UNDER THIS
32 SECTION OR FRAUDULENTLY OBTAIN, OR ATTEMPT TO OBTAIN, OR AID
33 ANOTHER PERSON IN FRAUDULENTLY OBTAINING OR ATTEMPTING TO

1 OBTAIN A CONTRACT OR FUNDS TO WHICH THE PERSON IS NOT
2 ENTITLED TO UNDER THIS SECTION. A VIOLATION OF THIS SECTION
3 SHALL BE DEEMED TO CONSTITUTE A MATERIAL BREACH OF ANY
4 CONTRACT AWARDED BY THE COUNTY AND THE PURCHASING DIVISION
5 MAY TERMINATE THE CONTRACT OR EXERCISE ANY OTHER
6 APPROPRIATE REMEDY AVAILABLE TO IT. IN ADDITION, ANY PERSON OR
7 FIRM FOUND TO HAVE VIOLATED THESE PROVISIONS MAY BE
8 DISQUALIFIED BY THE PURCHASING DIVISION FROM DOING BUSINESS
9 WITH THE COUNTY FOR UP TO TWO YEARS.

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

12 **A. Specifications.**

13 * * * * *

14 (4) In using any of the above types of specifications, it shall be the responsibility of the
15 Chief of Purchasing to afford a basis for full and fair competitive bidding [that is free
16 from restrictions].

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18 * * * * *

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

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

31 **ADOPTED** this _____ day of _____, 2012.

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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