

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 12

Bill No. 72 -2017

Introduced by: The Chairperson at the request of the County Executive

AN ACT amending the Purchasing Code of Howard County; amending certain definitions; removing certain obsolete references; revising certain duties imposed on the County Purchasing Agent, including the content of a required annual report and the frequency with which the purchasing manual must be reviewed; clarifying that certain requirements apply to formal bids; clarifying the County Purchasing Agent's role in the sale or lease of surplus County property to other governmental entities; making certain technical corrections; and generally relating to the Purchasing Code of Howard County.

Introduced and read first time _____, 2017. Ordered posted and hearing scheduled.

By order _____
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2017.

By order _____
Jessica Feldmark, Administrator

This Bill was read the third time on _____, 2017 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2017 at ___ a.m./p.m.

By order _____
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive _____, 2017

Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the Howard
2 County Code is amended as follows:

3 1. By amending Title 4 “Contracts, Purchasing, and Property”
4 Subtitle 1 “Purchasing”:

5
6 Section 4.102 “Definitions”
7 Subsections (x) and (ao)

8
9 Section 4.103 “Authority and duties of the County Purchasing Agent”
10 Subsections (p), (v), (w), (x), (y), (z), and (aa)

11
12 Section 4.104 “Rules and procedures; purchasing manual”
13 Subsection (a)

14
15 Section 4.106 “Procurement methods; multi-step process; waivers; exemptions”
16 Subsections (c), (d), (e) and (f)

17
18 Section 4.107 “Formal bidding; purchases and sales of \$30,000.00 or more”

19 Section 4.108 “Competitive sealed Proposals”

20 Section 4.115 “Contracts with other government agencies”

21
22 Section 4.118 “Certification of funds; contract administration; multiyear contracts; conflicts”
23 Paragraph (8) of Subsection (b)

24
25 Section 4.120. Rainforest wood products purchasing prohibition.
26 Subsection (c)

27
28 Section 4.129 “Surplus supplies”

29
30 2. By adding Title 4 “Contracts, Purchasing, and Property”
31 Subtitle 1 “Purchasing”

1 *Section 4.102 “Definitions”*

2 *Subsection 4.102(ao)*

3
4 **Title 4. Contracts, Purchasing, and Property.**

5 **Subtitle 1. Purchasing.**

6
7 **Section 4.102. Definitions.**

8 For purposes of this subtitle, the following definitions shall apply:

9 (x) *Minority individual* means an individual who BELONGS TO ONE OF THE FOLLOWING GROUPS:
10 AFRICAN AMERICAN, ASIAN AMERICAN, HISPANIC AMERICAN, NATIVE AMERICAN, WOMAN,
11 DISABLED, OR VETERAN [[is:

- 12 (1) A female;
- 13 (2) Physically or mentally disabled; or
- 14 (3) A member of any of the following groups:
 - 15 (i) African American;
 - 16 (ii) Native American;
 - 17 (iii) Asian American;
 - 18 (iv) Eskimo or Aleutian;
 - 19 (v) Far Eastern;
 - 20 (vi) Hispanic American; or
 - 21 (vii) Near Eastern]].

22 (AO) *VETERAN* MEANS:

- 23 (I) A PERSON WHO SERVED ON FULL TIME ACTIVE DUTY IN THE UNITED STATES ARMED
24 FORCES, OTHER THAN ACTIVE DUTY FOR TRAINING, AND WAS DISCHARGED OR RELEASED
25 UNDER CONDITIONS OTHER THAN DISHONORABLE;
- 26 (II) A PERSON WHO WAS DISABLED FROM A DISEASE OR INJURY INCURRED OR AGGRAVATED IN
27 THE LINE OF DUTY WHILE PERFORMING ACTIVE DUTY FOR TRAINING OR INACTIVE DUTY
28 TRAINING; OR
- 29 (III) A PERSON WHO SERVED FULL TIME AS A COMMISSIONED CORPS MEMBER OF THE PUBLIC
30 HEALTH SERVICE OR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

1 ([[ao]]AP) *Woman business enterprise (WBE)* means a business enterprise:

2 (1) Which is:

3 (i) At least 51 percent owned by one or more women; or

4 (ii) In the case of any publicly owned corporation, at least 51 percent of the stock of
5 which is owned by one or more women; and

6 (2) Whose general management and daily business affairs and essential productive
7 operations are controlled by one or more women; and

8 (3) Which has been certified by the Equal Business Opportunity Commission as a women
9 business enterprise.

10
11 **Section 4.103. Authority and duties of the County Purchasing Agent.**

12 In addition to those functions and responsibilities listed in title VIII of the Howard County
13 Charter or indicated elsewhere in this subtitle, the Howard County Purchasing Agent:

14 (p) May waive the competitive bidding requirements for small purchases and sales [[involving
15 less than \$10,000.00]] THAT ARE LESS THAN THE FORMAL BID THRESHOLD;

16 (v) [[Shall submit to the County Council a semi-annual report of all purchases awarded through
17 formal bidding procedures]] SHALL INCLUDE IN THE REPORT REQUIRED UNDER SUBSECTION
18 4.103(i) OF THIS SUBTITLE A LISTING OF ALL INVITATIONS FOR BIDS AND REQUESTS FOR
19 PROPOSALS ISSUED EACH FISCAL YEAR. The report shall list the contracts awarded during the
20 reporting period, the contract amounts, the lowest bid price, the name of the successful
21 contractor and subcontractors, and the contracts awarded in which security requirements have
22 been waived;

23 [[(w) Shall include in the report required under subsection 4.103(i) of this subtitle a listing of
24 all contract modifications, change orders or adjustment in prices described in subsection
25 4.118(b)(4) of this subtitle;]]

26 ([[x]]w) Shall be responsible for the final decisions on bid protests;

27 ([[y]]x) Shall keep statistics on businesses that participate in the Equal Business Opportunity
28 Program;

29 ([[z]]y) Shall control and supervise all property accounting; and

30 ([[aa]]z) Shall award contracts for insurance.

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Section 4.104. Rules and procedures; purchasing manual.

- (a) *Preparation and revision* means the County Purchasing Agent shall:
- (1) Prepare a purchasing manual containing the necessary rules, regulations and procedures to implement:
 - (i) This subtitle;
 - (ii) Subtitle 5 "Purchasing of Products Made from Recycled Materials" of this title;
 - (iii) Subtitle 6 "Equal Business Opportunity" of this title;
 - (iv) Article VIII of the Howard County Charter;
 - (v) Applicable laws of Maryland regarding purchasing; and
 - (2) ~~[[Revise]]~~ REVIEW the purchasing manual ~~[[at least once every five years]]~~ ANNUALLY AND REVISE THE MANUAL AS NEEDED.

Section 4.106. Procurement methods; multi-step process; waivers; exemptions.

(C) MULTI-METHODS: A COMBINATION OF PURCHASING METHODS MAY BE USED INCLUDING, BUT NOT LIMITED TO EXPRESSIONS OF INTEREST AND REQUESTS FOR PROPOSALS, FOR BOTH CAPITAL AND NON-CAPITAL PROJECTS, ALL AT THE DISCRETION OF THE COUNTY PURCHASING AGENT.

[[c]]D) Multi-Step Purchasing Methods:

- (1) Multi-step purchasing is a method of purchasing which progresses in increments from informational requests to final solicitation approval/purchasing.
- (2) Step 1 involves a formal solicitation requesting information, technical data, or samples. The purchasing office and the user agency evaluate the respondents' data to determine acceptable vendors. In step 2 the acceptable vendors are requested to provide price quotations, proposals or bids.
- (3) A method may be used under which both price and technical proposals are submitted at the same time in separate sealed envelopes. However, the price information may not be reviewed until the technical evaluation is complete and the vendor found acceptable by the purchasing office and the user agency. The sealed pricing and bid information from vendors found unacceptable during the technical evaluation shall be returned unopened to the vendors.

1 (4) In all other respects, multistep sealed purchasing methods shall be treated in the same ways
2 as other purchasing methods.

3 (~~E~~) *Waiver Provisions:*

4 (1) *Informal bidding.* At the sole discretion of the County Purchasing Agent, the informal
5 competitive bidding requirements may be waived for purchases or sales [[of less than
6 \$10,000.00]] THAT ARE LESS THAN THE FORMAL BID THRESHOLD.

7 (2) *Formal bidding.*

8 (i) The County Purchasing Agent, with the approval of the County Executive, may waive
9 formalities in competitive bidding as the interest of the County may require.

10 (ii) The County Council may, by resolution, authorize the County Purchasing Agent to
11 waive the formal competitive bidding requirements of this subtitle for any single
12 purchase or sale if, in the judgment of the County Council, the waiver will best serve
13 the interest of the County.

14 (~~E~~) *Exemption for Insurance.* The procurement of insurance including, without limitation,
15 casualty, property, and liability insurance is exempt from the competitive bidding provisions of
16 this subtitle. The County Purchasing Agent shall award contracts for insurance.

17 (~~F~~) *EXEMPTION FOR RETIREMENT PLANS.* THE PROCUREMENT OF SERVICES AND SUPPLIES
18 RELATED TO MANAGEMENT OF THE HOWARD COUNTY POLICE AND FIRE EMPLOYEES RETIREMENT
19 PLAN AND THE HOWARD COUNTY RETIREMENT PLAN IS EXEMPT FROM THE BIDDING
20 REQUIREMENTS OF THIS SUBTITLE.

21
22 **Section 4.107. Formal bidding; purchases and sales of \$30,000.00 or more.**

23 (a) Except as provided otherwise by this subtitle, the purchase of supplies or services involving
24 an expenditure of \$30,000.00 or more shall be accomplished through a formal bid procedure,
25 with the contract being awarded to the lowest responsive, responsible bidder.

26 (b) Except as provided otherwise by this subtitle, the sale of surplus supplies with an estimated
27 value of \$30,000.00 or more shall be accomplished through a formal bid procedure, with the
28 contract being awarded to the highest responsive, responsible bidder.

29 (c) No contract, sale or purchase shall be subdivided to avoid the requirements of this section.

30 [(d) Procurement of services and supplies related to management of the Howard County Police

1 and Fire Employees Retirement Plan and the Howard County Retirement Plan shall be exempt
2 from the bidding requirements of the Howard County Purchasing Code.]]

3 **Section 4.108. Competitive sealed proposals.**

4 (a) When the County Purchasing Agent determines that competitive sealed bidding is not
5 practical or not advantageous to the County, a contract may be awarded based upon
6 competitive sealed proposals.

7 (b) Public notice of the requests for proposals shall be given in the same manner as public
8 notice for competitive sealed bids.

9 (c) The request for proposals may state the relative importance of price and other evaluation
10 factors. Price may not be the sole evaluation factor. Numerical ratings may be used at the
11 discretion of the Purchasing Agent.

12 (D) A REQUEST FOR PROPOSALS MAY BE UTILIZED TO PROCURE A COMBINATION OF SERVICES
13 AND TASKS, UNDER A SINGLE CONTRACT, INCLUDING BUT NOT LIMITED TO DESIGN,
14 CONSTRUCTION, FINANCING, OPERATIONS AND MAINTENANCE SERVICES AND TASKS, FOR
15 BOTH CAPITAL AND NON-CAPITAL PROJECTS, ALL AT THE DISCRETION OF THE COUNTY
16 PURCHASING AGENT.

17 ([[d]]E) Each competitive sealed proposal may be negotiated to obtain the best offer from the
18 supplier.

19 **Section 4.115. Contracts with other government agencies.**

20 *When used.* This process is used:

21 (a) When a pricing advantage may be obtained by purchasing goods or services through
22 contracts or surplus lists established by other governmental purchasing/supply agencies,
23 including Federal, State, and local government agencies;

24 (b) When it is to the County's advantage to contract with [[a]] State or Federal [[agency]]
25 AGENCIES created to assist local governments with particular types of projects; or

26 (c) When it is in the County's advantage to contract with other counties or public entities
27 including, without limitation, a Board of Education, community college, or library.

28

29 **Section 4.118. Certification of funds; contract administration; multiyear contracts;**

1 **conflicts.**

2 (b) *Contracts:*

3 (8) *Statements under oath.* All contracts VALUED AT OR ABOVE THE FORMAL BID
4 THRESHOLD shall be accompanied by the following statements to be signed under
5 oath by the vendor or purchaser certifying that the vendor or purchaser has not:

- 6 (i) Been a party to an agreement to bid a fixed or uniform price.
7 (ii) Offered nor will offer any gratuity to any County official or employee.
8 (iii) Violated any of the fair employment provisions of section 4.119 "Ethics and Fair
9 Employment Practices" of this subtitle.
10

11 **Section 4.120. Rainforest wood products purchasing prohibition.**

12 (c) *Exemptions.* The County Purchasing Agent shall only exempt an item or type of wood
13 product from the requirements of this subtitle upon:

- 14 (1) Written evidence showing the use of tropical wood or wood products is deemed
15 necessary for historical restoration or to repair existing facilities, that such item has no
16 acceptable nontropical wood equivalent and that imposing the requirements on that item
17 or type would cause undue hardship; or
18 (2) Written evidence showing that the tropic wood item or type has been harvested from a
19 preexisting plantation, managed to maintain environmental functions, including
20 watershed stability and erosion control practices, sustained yield production, and
21 positive impact on the well being of local communities; or
22 (3) Written evidence showing that the use of a tropical wood item would be an
23 environmentally superior alternative to a native or imported wood type presently in use
24 in Howard County; or
25 (4) Written evidence showing that the wood products were required to be purchased under
26 a contract entered into prior to the effective date of this subtitle. The provisions of this
27 subtitle shall not apply to any procurement that is under [[\$2,000.00]] THE FORMAL BID
28 THRESHOLD. The provisions of this subtitle shall not apply to any joint or cooperative
29 purchasing program authorized in accordance with subsection 4.103(t). Notwithstanding
30 any exemptions provided by this section, the County Purchasing Agent shall make

1 every effort to purchase only those items not containing tropical wood or wood
2 products.

3
4 **Section 4.129. Surplus supplies.**

5 (a) *Reports.* All user agencies shall submit to the County Purchasing Agent reports showing
6 stocks of all surplus supplies.

7 (b) *Transfer to Other Agencies.* The County Purchasing Agent may transfer surplus supplies to
8 other using agencies instead of filling requisitions for new supplies.

9 (c) *Disposal.* If the County Purchasing Agent determines that the surplus supplies cannot be
10 used by any agency of the County, the County Purchasing Agent may dispose of the surplus
11 supplies and seek to gain the maximum value for the County in the disposition by:

12 (1) Trading in the surplus supplies;

13 (2) Auctioning or selling surplus supplies, including selling them for scrap value of
14 dismantling them for recovery of valuable parts; OR

15 (3) If no value can be realized from the surplus supplies, by destroying them.

16 (d) *Sale or Lease to Other Governmental Entities.* With the approval of the County Executive
17 and the County Council, AND UPON SUCH TERMS AND CONDITIONS AS THE COUNTY
18 PURCHASING AGENT DEEMS PROPER, the County Purchasing agent may sell or lease surplus
19 supplies to [[the]]A State or any political subdivision or agency of [[the]]A State, or to the
20 Federal Government [[upon such terms and conditions as the County Purchasing Agent
21 deems proper]].

22 **Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland**
23 **that, by passage of this Act, the County is confirming its ability to use multi-method**
24 **purchasing to procure multiple services and tasks. Nothing contained in this Act shall be**
25 **construed or applied to affect adversely the validity or legality of any multi-method**
26 **purchasing actions previously taken by the County.**

27 **Section 2 3. And Be It Further Enacted by the County Council of Howard County, Maryland**
28 **that this Act shall become effective 61 days after its enactment.**