

Introduced 9/5/17  
Public Hearing 9/18/17  
Council Action 10/2/17  
Executive Action 10/5/17  
Effective Date 12/5/17

## 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 September 5, 2017. Ordered posted and hearing scheduled.

By order Jessica Feldmark  
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 September 18, 2017.

By order Jessica Feldmark  
Jessica Feldmark, Administrator

This Bill was read the third time on October 2 2017 and Passed   , Passed with amendments    ✓, Failed   .

By order Jessica Feldmark  
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 4<sup>th</sup> day of October, 2017 at 1 a.m./p.m.

By order Jessica Feldmark  
Jessica Feldmark, Administrator

Approved Vetoed by the County Executive Oct 5, 2017

Allan H. Kittleman  
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 (~~d~~ 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~~ F) *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~~ G) *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.

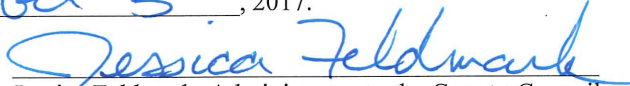
16 (d) *Sale or Lease to Other Governmental Entities.* With the approval of the County Executive  
17 and the County Council, AND UPON SUCH TERMS AND CONDITIONS AS THE COUNTY  
18 PURCHASING AGENT DEEMS PROPER, the County Purchasing agent may sell or lease surplus  
19 supplies to [[the]]A State or any 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.*

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on October 5, 2017.

  
\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

**Amendment 1 to Council Bill No. 72-2017**

**BY: Chairperson at the request  
of the County Executive**

**Legislative Day No. 13  
Date: October 2, 2017**

Amendment No. 1

*(This amendment:*

- 1. ~~Provides in the Purchasing Code that multi-step purchasing may include a combination of purchasing methods, at the discretion of the Purchasing Agent; and~~ 1. Provides in the Purchasing Code that multiple purchasing methods may be used at the discretion of the Purchasing Agent; and*
- 2. Allows for requests for proposals to be used to procure a combination of services and tasks, at the discretion of the Purchasing Agent.)*

1 On page 1, in line 16, after “*Subsections*”, insert “(c)”.

2

3 On page 1, in line 19, insert:

4 “Section 4.108 “Competitive sealed Proposals””.

5

6 On page 4, after line 11, insert:

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

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

11 (1) Multi-step purchasing is a method of purchasing which progresses in increments from  
12 informational requests to final solicitation approval/purchasing.

13 (2) Step 1 involves a formal solicitation requesting information, technical data, or samples.  
14 The purchasing office and the user agency evaluate the respondents' data to determine  
15 acceptable vendors. In step 2 the acceptable vendors are requested to provide price  
16 quotations, proposals or bids.

17 (3) A method may be used under which both price and technical proposals are submitted at  
18 the same time in separate sealed envelopes. However, the price information may not be  
19 reviewed until the technical evaluation is complete and the vendor found acceptable by

1 the purchasing office and the user agency. The sealed pricing and bid information from  
2 vendors found unacceptable during the technical evaluation shall be returned unopened to  
3 the vendors.

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

6  
7 On page 4, in line 12, strike “d” and substitute “E”.

8  
9 On page 4, in line 23, strike “e” and substitute “F”.

10  
11 On page 4, in line 26, strike “F” and substitute “G”.

12  
13 On page 5, in line 12, insert:

14 **“Section 4.108. Competitive sealed proposals.**

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

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

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

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

28 (~~[[d]]~~E) Each competitive sealed proposal may be negotiated to obtain the best offer from the  
29 supplier.”.

30  
31 On page 7, in line 14 insert:

32 **“Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland**  
33 **that, by passage of this Act, the County is confirming its ability to use multi-method purchasing**

1 to procure multiple services and tasks. Nothing contained in this Act shall be construed or  
2 applied to affect adversely the validity or legality of any multi-method purchasing actions  
3 previously taken by the County.”.

4

5 On page 7, in line 15, strike “2” and substitute “3”.

**ADOPTED** as amended 10/2/17  
**FAILED** \_\_\_\_\_  
**SIGNATURE** Jessica Feldman

Amendment 1 to Amendment No. 1 to Council Bill No. 72-2017

BY: Chairperson at the request  
of the County Executive

Legislative Day No. 13  
Date: October 2, 2017

Amendment No. 1

*(This amendment to Amendment 1 better clarifies the Amendment description.)*

- 1 In the Amendment description, strike number 1 in its entirety, and substitute:  
2 "1. Provides in the Purchasing Code that multiple purchasing methods may be used at the  
3 discretion of the Purchasing Agent; and".

ADOPTED 10/2/17

FAILED \_\_\_\_\_

SIGNATURE Jessica Feldman