



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of Audits and Investigations

June 8, 2020

FISCAL AND POLICY NOTE

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin *JAH*
Senior Legislative Budget and Policy Analyst

FROM: Isabel Williams *IW*
Senior Legislative and Budget Policy Analyst

RE: Fiscal and Policy Note
CB-2-2020, Local Purchasing Opportunities

CB-2-2020 (*Proposed and presented by:* Councilmembers Franklin, Hawkins, Anderson-Walker, Dernoga, Ivey, Streeter, and Taveras)

Assigned to the Committee of the Whole

AN ACT CONCERNING LOCAL PURCHASING OPPORTUNITIES for the purpose of authorizing the Purchasing Agent to reserve procurement opportunities for prime bids or proposals from County-based small businesses, clarifying the eligibility of joint venture entities to be County-based businesses, County-based minority business enterprises, and County-based small businesses, and simplifying the applicability of bid or proposal preference points, and establishing a County resident-owned business bonus.

Fiscal Summary

Direct Impact:

Expenditures: Minimal. The Office of Central Services does not expect that the Bill will have a significant direct cost.

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Revenues: None.

Indirect Impact:

Potentially positive.

Current Law/Background:

Current County law imposes certain County-based business participation requirements on any procurement that is greater than \$500,000. Generally, procurements subject to the requirements, must include at least 40% certified County-based small business participation. The cost of materials, goods, and supplies is not counted toward this participation requirement, unless the materials, goods, and supplies are purchased from County-based small businesses. The law contains a number of qualifications to the participation requirement, including: provisions for waiver in certain circumstances; specific County-based minority enterprise subcontractor utilization requirements in certain contracts; Purchasing Agent discretion to increase the participation requirement in certain circumstances; and the establishment of a sheltered-market Supply Schedule program (see County Code, § 10A-161).

Presently a County-based business certification currently requires the chief executive officer and the highest level management employees to maintain officers and perform managerial functions in the county, written certification that the business is not delinquent on any County payment, 12 months of operation within the County that is verified by tax returns, documentation verifying valid licensing, and proof of continuous operation and occupation of an office within the County the preceding 12 months. Additionally, the business must meet the Code of Maryland Regulations (COMAR) and federal definitions of “small business.” The current County Code also outlines the certification process for minority business enterprises (MBE) (see § 10A-163).

The County Code also outlines the cumulative preference points based on business type. These preference points include preference consideration for county-based small businesses, county-based minority business enterprises, County-based businesses, minority business enterprises or disadvantaged business enterprises, and County-located businesses (see § 10A-173).

Discussion/Policy Analysis:

CB-2-2020 makes changes to the three different sections in the County’s procurement law discussed above.

1. Purchasing Agent discretion in County-based business participation

The bill adds the following language as a new subsection (h) to § 10A-161:

If the Purchasing Agent determines there is sufficient capacity, the Purchasing Agent may restrict any competitive procurement subject to this Subtitle for solicitation and award prime bidders or prime proposers that are County-based small businesses.

This addition would allow the Purchasing Agent the discretion, based on capacity, to restrict and procurement to County-based prime bidders or proposers.¹ Existing subsection (f) gives the Purchasing Agent the discretion to require more than 40% County-based business participation if there is sufficient capacity, but this addition clearly states that a procurement may be *restricted*.

2. *Joint venture eligibility for certification*

The bill adds the following language as a new subsection (k) to § 10A-163:

A joint venture entity, where a County-based business, County-based minority business enterprise, or County-based small business owns, without condition, a majority (more than 50%) of the joint venture entity's assets and is entitled, without condition, to a majority (more than 50%) of the joint venture entity's revenues and profits, is eligible to be certified as a County-based business, County-based minority business enterprise, or County-based small business, respectively, provided that the majority ownership of the joint venture entity satisfies the respective requirements of this Section.

The Code does not currently define the term "joint venture," though under § 10A-101 a joint venture is considered a "business."² The addition of this more restrictive language makes clear under what circumstances a joint venture is eligible for certification as a County-based business, County-based minority business enterprise, or County-based small business. This change will eliminate an existing ambiguity and ensure that the benefits of contracts awarded to certified joint ventures inure to County-based businesses, consistent with the intent of the Division.

3. *County resident-owned business bonus and new terms*

The bill adds the new designation of "County resident-owned business" and establishes a five percent (5%) bonus in addition to the preference points awarded under § 10A-173(a). A County resident-owned business eligible for this bonus:

a prime bidder or proposer (for joint venture entities, the majority firm of a joint venture entity) which has majority ownership (defined herein as "owning more than 50% of the ownership interest of the entity") by one or more residents domiciled in Prince George's County (a "County resident-owned business").

¹ "Prime bidder" and "prime proposer" are defined later in the Bill.

² § 10A-101(a)(4) provides that "**Business** means any association, corporation, partnership, individual, sole proprietorship, joint stock company, *joint venture*, or any other legal entity through which business is conducted." (emphasis supplied)

To receive the bonus, a bidder or proposer must prove residence by all of the following:

- an affidavit certifying their residence;
- income tax returns establishing residency for the most recent calendar year; and
- documentation establishing majority ownership of the prime bidder or proposer (for joint ventures, the majority firm of the joint venture entity).

The Purchasing Agent may require additional information to clarify current residency or ownership.

Under existing law, no single certified firm can receive a preference of more than 15 percentage points (15%) in any one bid or proposal, but this change would permit an eligible County resident-owned business to receive up to 20 percentage points (20%) (see table below for existing preferences). This additional incentive may result in more money from County contracts remaining in the County and, over time, an increase in the capacity of County resident-owned businesses to compete for contracts in and outside of the County.

Business Type	Where <u>the prime bidder or prime proposer is a certified firm</u> , <u>add the following:</u> [participation in the proposal by each type of certified firm is 45% or more add:]
County-based small business	15%
County-based minority business enterprise	15%
County-based business	10%
Minority Business Enterprise or Disadvantage Business Enterprise	5%
County-located business	3%

Finally, the Bill defines the terms “prime bidder” and “prime proposer” and uses them throughout § 10A-173, including limiting the application of preference points to procurements where the prime bidder or prime proposer is a certified firm. Currently, preference points are applicable where “participation in the proposal by each type of certified firm is 45% or more” (see table above). This change would have the effect of eliminating the possibility of cumulative preference points (with the exclusion of the County resident-owned business bonus discussed above). The terms are defined as follows:

- **Prime Bidder:** the person, firm, entity, or organization submitting a response to a solicitation for competitive bids and is responsible for executing the work as mentioned in the solicitation.

- **Prime Proposer:** the person, firm, entity, or organization submitting a response to a solicitation for competitive proposals and is responsible for executing the work as mentioned in the solicitation.

Fiscal Impact:

Direct Impact

Enactment of CB-2-2020 may result in minimal additional expenditures to cover administrative costs of implementing its changes to the law. However, the Office of Central Services does not anticipate significant additional costs associated with the Bill’s provisions.

Indirect Impact

Enactment of CB-2-2020 may have a positive indirect impact on the County by increasing the participation of local businesses in the County procurement process. This increased participation may result in increasing the capacity of local businesses to seek additional contracting opportunities both within and beyond the County’s borders. Such expansion could result in increased revenue cycling through the local economy. It should be noted, however, the bulk of any positive impact is probably already realized through the existing program; as CB-2-2020 is a refinement, any additional impact will be marginal.

Appropriated in the Current Fiscal Year Budget

No.
