

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2024 Legislative Session

Bill No. CB-012-2024
 Chapter No. 14
 Proposed and Presented by The Chair (by request – County Executive)
 Introduced by Council Members Hawkins, Franklin and Watson
 Co-Sponsors _____
 Date of Introduction May 7, 2024

BILL

1 AN ACT concerning

2 Procurement Practices Revisions

3 For the purpose of amending provisions of Subtitle 10A regarding administrative procedures,
 4 award of contracts, and economic development; generally relating to procurements subject to
 5 Subtitle 10A.

6 BY repealing and reenacting with amendments:

7 SUBTITLE 10A. PURCHASING.

8 Section 10A-106, 10A-108, 10A-114, 10A-118,

9 10A-159.01, 10A-163, 10A-164.01, 10A-173,

10 The Prince George's County Code

11 (2023 Edition).

12 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
 13 Maryland, that Section 10A-106, 10A-108, 10A-114, 10A-118, 10A-159.01, 10A-163, 10A-
 14 164.01 and 10A-173 of the Prince George's County Code be and the same is hereby repealed and
 15 reenacted with the following amendments:

16 SUBTITLE 10A. PURCHASING.

17 DIVISION 1. AMINISTRATIVE PROCEDURES.

18 **Sec. 10A-106. Determinations, Award Notice and Debriefings.**

19 (a) Each determination or decision on any matter required by the provisions of this Subtitle to
 20 be in writing shall be based upon written findings of the officer making the determination or
 21 decision and shall be retained in the official contract file.

- (b) Every bidder or offeror shall be given written notice of the procurement award from the responsible Procurement Officer or the Purchasing Agent for every procurement awarded pursuant to Sections 10A-112, and 10A-113 of this Subtitle within seven (7) calendar days after the procurement award is made.
- (c) No later than forty-five days after [notice of the procurement award,] an award is fully executed, an unsuccessful bidder or offeror, upon written request to the Purchasing Agent or the responsible Procurement Officer, is entitled to a post-award debriefing for a procurement awarded pursuant to Section 10A-112 or 10A-113 of this Subtitle. The responsible Procurement Officer or the Purchasing Agent shall make a good faith effort to schedule such a debriefing within forty-five (45) calendar days after receipt of the written request for debriefing, provided that the responsible Procurement Officer or Purchasing Agent may schedule the debriefing beyond forty-five (45) calendar days of the request to accommodate a large number of concurrent requests.
- (d) All notices of award decisions for procurements subject to Sections 10A-112 or 10A-113 of this Subtitle shall contain a notice informing bidders or offerors of the right to a debriefing in accordance with the time constraints of this Section.
- (e) [Notwithstanding the foregoing, no] No request for debriefing may be granted prior to the issuance of a fully executed contract awarded as defined in 10A-101 of this Subtitle.
- (f) The Purchasing Agent may adopt regulations, subject to approval of such regulations by resolution of the County Council, to further implement this Section. The Purchasing Agent may also require vendors to register with the County's enterprise resource planning (ERP) system to facilitate compliance reporting and general data management.

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Sec. 10A-108. Exemptions.

- (a) Unless otherwise ordered by the Purchasing Agent, the acquisition of the following supplies and services shall not be subject to Divisions 2, 6, and 7:
- (1) Regulated public utilities;
 - (2) Supplies for resale to the public;
 - (3) Works of art for museum and public display;

- (4) Published books, maps, periodicals, newspapers, and technical pamphlets;
- (5) Recreational lands and rights-of-way;
- (6) Conference, seminar, and training fees;
- (7) Visiting speakers, professors, and performing artists;
- (8) Acquisition of interests in real property;
- (9) Memberships, dues, and fees for conference and seminars and associated or similar expenses;
- (10) Training courses and materials provided by accredited institutes of learning;
- (11) Construction projects meeting the requirements of Division 6, Subdivision 2, of this Subtitle;
- (12) Employee relocation;
- (13) Experts or specialists employed under Section 902 of the Charter;
- (14) Grants; [and]
- (15) Employment Contracts.
- (16) Purchases that do not exceed two thousand five hundred dollars (\$2500).
- (17) Services or goods that are to be provided by another government agency or government.
- (18) Media (broadcasting and publishing)
- (19) Venue Rentals
- [18] (20) The Purchasing Agent determines that competitive solicitation procedures are not applicable to the requirements or are impracticable for the particular supplier and/or services.

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DIVISION 2. AWARD OF CONTRACTS.

Sec. 10A-114. Contract negotiation.

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- (b) Authority to negotiate a contract under any provision of this Subtitle does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases will be made to the best interest of the

County, [Minority Business Opportunities Program] price and other factors considered. The authority to negotiate contracts in no way eliminates the need of the Purchasing Agent to exert reasonable efforts to obtain the most favorable prices possible.

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Sec. 10A-118. Responsibility prequalification of bidders or offerors.

The County may, on a limited basis, employ a method whereby suppliers seeking to provide a particular type of purchased item may prequalify as responsible prospective contractors for such purchased item. When the Purchasing Agent [with the concurrence of the Commission] determines that it is in the best interest of the County to limit competition to most qualified and capable bidders, the criteria for prequalification shall be set forth in the public notice of the Invitation for Bids. The notice shall state that bids shall only be received from bidders who satisfy the prequalification criteria. Only those bidders who have been prequalified shall be provided the opportunity to bid. Any prospective bidder who is not prequalified shall be notified of this determination in writing. The Invitation for Bids shall be provided to all prequalified bidders and no further public notice of the bid shall be required.

DIVISION 7. ECONOMIC DEVELOPMENT.

Sec. 10A-159.01. Waiver.

(a) A waiver from the participation requirements set forth in this Division, in accordance with the waiver procedures prescribed in this Division, shall be granted for contracts as follows:

- (1) A contract or procurement valued five hundred thousand dollars (\$500,000) or more shall be subject to a written waiver from the Purchasing Agent that is approved by the Chief Administrative Officer or the Chief Administrative Officer's designee and will not be subject to the participation requirements in Division 7 Economic Development in this Subtitle;
- (2) A contract or procurement with a total value greater than twenty-five hundred dollars (\$2,500) and less than five hundred thousand dollars (\$500,000) shall be subject to a written waiver by the Purchasing Agent or the Purchasing Agent's designee and will not be subject to the participation requirements in Division 7 Economic Development of this Subtitle.

(3) For a contract or procurement subject to Council approval under Section 819 of the County Charter, a waiver of any of the requirements of Division 7 of this Subtitle for such a contract or procurement shall also require Council approval.

(b) Where a waiver is proposed in accordance with this Section, the Purchasing Agent or the Purchasing Agent's designee shall consider in the written waiver whether a Mentor-Protégé Program Requirement should be included in the contract or procurement.

(c) The Purchasing Agent shall provide to the Clerk of the Council for distribution to the members of the County Council, a quarterly written summary of the waivers granted in accordance with this Section every three months detailing the contract value, contract awardee, address of the contract awardee's principal place of business, and industry area of the contract for each waiver granted in the prior 3 month period.

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Sec. 10A-163. County-based business certification requirements.

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(b) Except as provided for in Subsection (g), below, a business that seeks to be certified as a County-based small business shall make an application to the Purchasing Agent on a form provided by the Purchasing Agent. Such an application shall not be approved by the Purchasing Agent unless:

(1) The business meets the requirements of Section 10A-163(a); and

(2) The business meets the definition of "small business" pursuant to the Code of Maryland Regulations ("COMAR") 21.01.02.01(80); or

(3) The business meets the federal definition of "small business concern" in Part 121 of Title 13 of the Code of Federal Regulations.

(c) Certification shall be valid for a two-year period.

(d) [(c)] Once an application for certification is approved under this Section by the Purchasing Agent, a copy of the approved application shall be expeditiously transmitted to the County Auditor.

(e) [(d)] A business whose application is approved for certification as a County-based small business is automatically certified as a County-based business.

(f) [(e)] Nonprofit entities that satisfy the applicable requirements of this Section are eligible to be certified as County-based businesses and County-based small businesses.

(g) [(f)] A business that is certified as a County-based business or County-based small business shall meet the requirements of certification under this Section continuously after the date the business's application for certification is approved by the Purchasing Agent or the business's certification shall be void. In such instances, the business must re-apply pursuant to the requirements of this Section to be certified as a County-based business or a County-based small business.

(h) [(g)] Reducing redundant certifications.

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SUBDIVISION 1. COUNTY-BASED BUSINESS ASSISTANCE.

Sec. 10A-164.01. - Mentor-Protégé Program authorized.

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(1) **Mentor Protégé Program Requirement.** A mentor contractor shall comply with all of the following to participate as a mentor in the Mentor-Protégé Program:

- (A) The mentor contractor shall enter into a written mentor-protégé agreement approved by the [Director of Central Services] Purchasing Agent (in this Section, "mentor agreement") with specific County-based small businesses or County-based minority business enterprises to develop their capacity in becoming self-sufficient, competitive, and profitable business enterprises through joint venture entities, prime and subcontractor relationships, bonding and financial support, or other partnerships approved by the [Director of Central Services] Purchasing Agent;
- (B) The County-based small businesses or County-based minority business enterprises, or combination thereof, that have entered into the mentor agreement as protégés, for a procurement with a Mentor-Protégé Program Requirement, shall self-perform at least twenty (20) percent of the value of the procurement; and
- (C) The mentor contractor and the protégé shall comply with the terms of the mentor

agreement.

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SUBDIVISION 3. - BUSINESS PREFERENCES; COUNTY-LOCATED BUSINESS ASSISTANCE.

Sec. 10A-173. Business preferences.

- (a) On any procurement for which a County agency or the County government secures competitive bids pursuant to Section 10A-112 or competitive proposals pursuant to Section 10A-113, the Purchasing Agent shall apply the following percentage bid discount to the bid price or add the following percentage points to the total evaluated score of the proposal:

Business Type	Where the prime bidder or prime proposer is a certified firm, add or discount the following, as applicable:
County-based [small business] <u>minority business enterprise</u>	15%
County-based [minority business enterprise] <u>small business</u>	[15%] <u>12%</u>
County-based business	10%
Minority Business Enterprise or Disadvantage Business Enterprise	5%
County-located business	3%

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SECTION 2. BE IT FURTHER ENACTED by the County Council of Prince George's County, Maryland, that Sections 10A-158.01 of the Prince George's County Code be and the same is hereby repealed:

[SUBDIVISION 14. - BUSINESS DEVELOPMENT RESERVE PROGRAM.]

Sec. 10A-158.01. [Business Development Reserve Program.] RESERVED

- (a) The Purchasing Agent shall develop and implement a program designed to encourage and assist County-based small businesses to contract with the County for goods and services.

Such program shall be called the Business Development Reserve Program, and shall include the establishment of a sheltered market program, expedited procurement process, and other preferences for eligible businesses.

- (b) Business Development Reserve Program Sheltered Market. The Director of Central Services shall make good faith efforts to reach an annual goal of awarding at least Five Million Dollars (\$5,000,000) in procurement contracting and subcontracting to County-based small businesses enrolled in the Business Development Reserve Program. Written notice of these opportunities shall be submitted to eligible enrollees in the Business Development Reserve Program. The goal stated herein is subject to availability of funds in the annual County budget. The Purchasing Agent may adjust the goal during the fiscal year in order to select the most appropriate opportunities for the program and to maximize opportunities for enrollees.
- (c) Rules and regulations for the Business Development Reserve Program shall be promulgated by the Purchasing Agent in accordance with this Section and shall govern the implementation and administration of the Business Development Reserve Program.]

SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since the same would have been enacted without the incorporation in this Act of any such invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection, or section.

SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.

Adopted this 4th day of June, 2024.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Jolene Ivey
Chair

ATTEST:

Donna J. Brown
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Angela D. Alsobrooks
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.

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