

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2012 Legislative Session

Bill No. CB-68-2012

Chapter No. 74

Proposed and Presented by The Chairman (by request – County Executive)

Introduced by Council Members Campos, Davis, Franklin, Lehman, Patterson and Turner

Co-Sponsors _____

Date of Introduction October 16, 2012

BILL

1 AN ACT concerning

2 Minority Business Development Division

3 For the purpose of amending provisions of the County Code to change the name of the Minority
4 Business Development Division of the Office of Central Services to the Supplier Development
5 and Diversity Division.

6 BY repealing and reenacting with amendments:

7 SUBTITLE 10A. PURCHASING.

8 Sections 10A-101, 10A-136 and 10A-141

9 The Prince George's County Code

10 (2011 Edition).

11 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
12 Maryland, that Sections 10A-101, 10A-136, and 10A-141 of the Prince George's County Code
13 be and the same are hereby repealed and reenacted with the following amendments:

14 SUBTITLE 10A. PURCHASING.

15 DIVISION 1. ADMINISTRATIVE PROCEDURES.

16 **Sec. 10A-101. Definitions.**

17 (a) The words defined in this Section shall have the meanings set forth below whenever
18 they appear in this Subtitle unless the context in which they are used clearly requires a different
19 meaning or a different definition is prescribed for a particular provision.

20 * * * * *

1 (21) **Executive Director** means the Executive Director of the [Minority Business
2 Development Division] Supplier Development and Diversity Division.

3 * * * * *

4 [(25.1) **Minority Business Development Division** means the Minority Business
5 Development Division of the Office of Central Services or its designee as determined by the
6 Purchasing Agent.]

7 * * * * *

8 (26) **Minority business enterprise** means any business enterprise:

9 (A) Which is at least fifty-one percent (51%) owned by one or more minority
10 individuals, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of
11 the stock of which is owned by one or more minority individuals; and

12 (B) Whose general management and daily business affairs and essential
13 productive operations are controlled by one or more minority individuals; and

14 (C) Which has been certified by the [Minority Business Development Division]
15 Supplier Development and Diversity Division as a Minority Business Enterprise pursuant to
16 Division 6 of this Subtitle.

17 * * * * *

18 (41.1) **Supplier Development and Diversity Division** means the Supplier
19 Development and Diversity Division of the Office of Central Services or its designee as
20 determined by the Purchasing Agent.

21 * * * * *

22 **DIVISION 6. SPECIAL PROVISIONS.**

23 **Subdivision 1. Minority Business Opportunities Program.**

24 **Sec. 10A-136. Assistance to minority business enterprises; certification and decertification.**

25 * * * * *

26 (e) The Purchasing Agent shall, for all contracts, consult with the [Minority Business
27 Development Division] Supplier Development and Diversity Division in order to determine
28 whether subcontracting is appropriate. If subcontracting is determined to be appropriate, the
29 Purchasing Agent may include a mandatory minority business enterprise subcontract clause that
30 requires the equivalent of at least twenty percent (20%) of the contract's total value be performed
31 by one or more minority business enterprises. The Purchasing Agent may include a mandatory

1 minority business enterprise subcontracting goal that is less than 20% of the contract's total value
2 only:

3 (1) After consultation with the [Minority Business Development Division] Supplier
4 Development and Diversity Division;

5 (2) Upon a determination that a twenty percent (20%) mandatory minority business
6 enterprise subcontracting goal is not able to be obtained at a reasonable price; and

7 (3) Upon a determination that the public interest is served.

8 * * * * *

9 (i) The Purchasing Agent may, after consultation with the [Minority Business
10 Development Division] Supplier Development and Diversity Division, require that the
11 competitive bidding of contracts be restricted to minority business enterprises owned by minority
12 individuals as defined in Section 10A-101(a), provided there are at least three (3) minority
13 business enterprises that are providers in the trade of goods or services for which the contract is
14 advertised. No contract shall be awarded pursuant to this provision if the resultant low bid
15 exceeds by fifteen percent (15%) the most recent unit price for the same or most recently
16 comparable goods or services, unless the [Minority Business Development Division] Supplier
17 Development and Diversity Division determines that prices in the relevant market have increased
18 for all vendors without regard to minority status beyond fifteen percent (15%) since the last time
19 similar goods or services were procured.

20 * * * * *

21 (k) The Purchasing Agent along with the [Minority Business Development Division]
22 Supplier Development and Diversity Division shall actively and continually search for and
23 identify minority-owned firms that provide commodities and services required by County
24 Agencies and shall encourage such firms to become certified and bid on contracts advertised by
25 the County.

26 (l) The Purchasing Agent shall require certification of a bidder's status as a County-based
27 Minority Business Enterprise or as a Minority Business Enterprise in form and substance as
28 determined by rules and procedures adopted by the Purchasing Agent and approved by the
29 County Executive or his designee. The [Minority Business Development Division] Supplier
30 Development and Diversity Division shall maintain a registry of certified minority business
31 enterprises.

1 (m) If, upon investigation by the [Minority Business Development Division] Supplier
2 Development and Diversity Division, any Minority Business Enterprise which has been certified
3 by the [Minority Business Development Division] Supplier Development and Diversity Division
4 misrepresented its status either as a County-based business or as a Minority Business Enterprise
5 and no contract with the County is existing, the following shall occur:

6 (1) The Minority Business Enterprise shall be barred from award of any County
7 contract or participation in any contract awarded by the County for a period of one year
8 commencing upon the date written findings of such misrepresentations are made by the
9 Executive Director, regardless of subsequent changes in the minority business enterprise's status;
10 and

11 (2) The officers, directors, partners, or owners of the firm and any firm controlled or
12 managed by them shall be barred from award of any County contract or participation in any
13 contract awarded by the County for a period of one year commencing upon the date written
14 findings of such misrepresentation are made by the Executive Director, regardless of subsequent
15 changes in the minority business enterprise's status.

16 (n) If, upon investigation by the [Minority Business Development Division] Supplier
17 Development and Diversity Division any firm which has been certified by the [Minority
18 Business Development Division] Supplier Development and Diversity Division is awarded a
19 contract with the County as a result of the application of bonus factors pursuant to this Division
20 is found to have misrepresented its status as either a County-based Minority Business Enterprise
21 or a minority business enterprise, the following shall occur:

22 (1) The contract price shall be reduced to the bid price of the apparent lowest
23 responsive bidder or the contract shall be terminated, if in the best interests of the County;

24 (2) The firm shall be barred from award of any County contract or participation in
25 any contract awarded by the County for a period of three (3) years commencing upon the date
26 written findings of such misrepresentations are made by the [Minority Business Development
27 Division] Supplier Development and Diversity Division, regardless of subsequent changes in the
28 Minority Business Enterprise's status; and

29 (3) The officers, directors, partners, or owners of the firm and any firm controlled or
30 managed by them shall be barred from award of any County contract or participation in any
31 contract awarded by the County for a period of three (3) years commencing upon the date written

1 findings of such misrepresentation are made by the [Minority Business Development Division]
2 Supplier Development and Diversity Division, regardless of subsequent changes in the Minority
3 Business Enterprise's status.

4 (o) If the [Minority Business Development Division] Supplier Development and Diversity
5 Division, after investigation, determines that any such individual or firm that has been awarded a
6 County contract has misrepresented its status as either a Minority Business Enterprise or a
7 County-based minority business enterprise, the [Minority Business Development Division]
8 Supplier Development and Diversity Division may request the County Attorney to institute
9 proceedings pursuant to Section 10A-139.

10 (p) Any effort at brokerage or any other arrangement or agreement which attempts to, is
11 intended to, or has the effect of causing fraudulent benefit from the provisions of this Division or
12 is otherwise determined by the [Minority Business Development Division] Supplier
13 Development and Diversity Division to be in circumvention of the requirements of this Division
14 shall be strictly prohibited and shall be barred from award of any County contract.

15 * * * * *

16 (s) The [Minority Business Development Division] Supplier Development and Diversity
17 Division shall provide certification of minority business enterprise status, as such term is set
18 forth in Section 10A-101(a) of this Code. The [Minority Business Development Division]
19 Supplier Development and Diversity Division shall maintain a register of all applicants for
20 certification showing for each applicant the date of the application, name, qualifications, place of
21 business, place of applicant's residence, and action taken on the application. Certification of any
22 business firm as a minority business enterprise may take into account the certification of such
23 firm by any jurisdiction, association, organization or entity:

24 (1) That has entered into a reciprocal acceptance of minority business enterprise
25 certification agreement with the County; or

26 (2) That administers a minority business enterprise certification program that is
27 substantially equivalent to the program operated by the [Minority Business Development
28 Division] Supplier Development and Diversity Division; or

29 (3) That administers a minority business enterprise certification program utilizing
30 eligibility criteria that is likely to further the County's goals under this Division 6 of the Code, as
31 determined by the Purchasing Agent.

1 * * * * *
2 (u) The Executive Director may decertify any minority business enterprise upon findings
3 by the Executive Director of any of the following conditions:

4 (1) The minority business enterprise is subject to debarment or suspension in
5 accordance with Section 10A-148 of this Code;

6 (2) The minority business enterprise has practiced fraud or deceit for the purpose of
7 obtaining certification;

8 (3) The minority business enterprise has furnished to the [Minority Business
9 Development Division] Supplier Development and Diversity Division incomplete or
10 substantially inaccurate ownership or financial information;

11 (4) The minority business enterprise has failed to report any change which affects its
12 qualification for certification; or,

13 (5) The minority business enterprise has willfully violated any provision of this
14 Division.

15 (v) The Commission shall hear the appeal of any determination made by the [Minority
16 Business Development Division] Supplier Development and Diversity Division to deny minority
17 business enterprise status certification and shall hear the appeal of any decision by the Executive
18 Director to decertify any minority business enterprise. Such appeal shall be heard and
19 determined by the Purchasing Agent within ninety (90) days after the date on which it was filed.

20 * * * * *

21 **Subdivision 2. Facilities Constructed With County Contributions.**

22 **Sec. 10A-141. Negotiated Participation Agreements.**

23 (a) The requirements of this Subdivision shall be applicable under the following
24 circumstances:

25 (1) The Director of the Department of Environmental Resources makes a
26 determination that a regional stormwater management facility is desirable for a new development
27 and certifies to the County Executive, the Purchasing Agent, and the [Minority Business
28 Development Division] Supplier Development and Diversity Division that the estimated
29 construction cost of the facility exceeds the estimated cost of providing required on-site controls;
30 or

31 (2) The Director of the Department of Public Works and Transportation certifies to

1 the County Executive, the Purchasing Agent, and the [Minority Business Development Division]
2 Supplier Development and Diversity Division that:

3 (A) Certain public road improvements abutting or within a new development are
4 required as a consequence of the development; and

5 (B) The estimated cost of the construction of the road improvements by the
6 County exceeds the estimated cost of construction by the developer; or

7 (C) The developer can cause the construction to occur on an accelerated basis in
8 advance of planned commencement and completion of the road improvements by the County and
9 would be otherwise required to pay at least seventy-five percent (75%) of the cost of the road
10 improvements on a special assessment or similar basis.

11 * * * * *

12 (c) Subsection (b) shall apply provided the County and the developer have entered into a
13 written agreement wherein the developer shall:

14 * * * * *

15 (7) Be required to subcontract with Minority Business Enterprises for no less than
16 thirty percent (30%) of the amount of County funds contributed with respect to such
17 construction; provided, that if a developer is unable to achieve the Minority Business Enterprise
18 goal set forth in Section 10A-141(c)(7), the developer may request in writing a waiver of the
19 goal, to include the elements of justification set forth in Section 10A-136(g) of the Code. After
20 consultation with the [Minority Business Development Division] Supplier Development and
21 Diversity Division, the Purchasing Agent shall grant such waiver only upon finding that the
22 developers have made a good faith effort to achieve such goal and the public interest otherwise is
23 served by granting such waiver.

24 (d) Nothing in paragraph (c)(1), above, shall be deemed to preclude the developer from
25 constructing the regional stormwater management facility or road improvements himself
26 provided written justification is approved by the Director of the Department of Environmental
27 Resources or the Director of Public Works and Transportation, as may be applicable, the
28 Purchasing Agent, and the [Minority Business Development Division] Supplier Development
29 and Diversity Division.

30 * * * * *

31 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby

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

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

Adopted this 13th day of November , 2012.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Andrea C. Harrison
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
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.