

CB-024-2026 – Veteran Owned Business Enterprise Opportunities Program

Office of Procurement – Formal Comments

The Office of Procurement does not support CB-024-2026 as drafted. While the Office supports efforts to expand contracting opportunities, the proposed legislation is not aligned with existing Maryland State or federal certification frameworks and would require the creation of a new certification and compliance structure without the resources necessary to administer the program. Unlike State of Maryland programs, which are supported by disparity studies, regulatory guidance, and established certification processes, the bill establishes mandatory participation goals without a legal or statistical basis, creating potential conflict with federal funding requirements, existing minority and small business programs, and procurement law.

Additionally, the bill requires that two percent of County small business procurement contracts be set aside for Veteran Business Enterprises; however, the definition of a Veteran Business Enterprise does not require the business to meet any small business size standard. As drafted, a veteran-owned firm could qualify for participation even if it exceeds County, State, or federal small business eligibility limits. This creates conflict with existing small business procurement programs and increases the likelihood of protests, inconsistent application, and non-compliance with procurement law.

For the reasons detailed below, the Office of Procurement cannot support the bill in its current form.

1. Certification Structure Is Not Consistent With Maryland or Federal Programs

The bill requires certification through the County or reciprocal certification but does not clearly align with existing certification frameworks used by the State of Maryland or the federal government. Maryland and federal programs use defined eligibility, ownership, and control standards governed by statute, regulation, and administrative procedures, while the bill establishes a new certification structure without regulatory guidance.

Existing programs include:

- Maryland Department of Transportation (MDOT) MBE certification
- Maryland Veteran-Owned Small Business Enterprise Program
- Federal Service-Disabled Veteran Owned Small Business (SDVOSB) / Veteran Owned Small Business (VOSB) verification through the Small Business Administration (SBA)
- County Supplier Development and Diversity certifications

These programs require:

- Defined ownership thresholds
- Control requirements

- Size standards
- Formal certification review procedures
- Appeals processes
- Periodic recertification requirements

The bill does not clearly adopt these standards and instead allows certification through multiple sources without defining which rules apply. This creates risk of:

- Conflicting eligibility criteria
- Duplicate or inconsistent certifications
- Inability to verify compliance
- Increased protest risk
- Audit findings
- Inconsistent application of Subtitle 10A

Because Maryland programs are governed by COMAR and federal programs by federal regulation size standards, creating a new local certification program without regulatory structure presents legal and operational concerns.

2. Mandatory Percentage Goals Without Disparity Study or Legal Basis

The bill requires the County to meet participation goals for Veteran Business Enterprises that ultimately reach fifteen percent of total procurement spending. State and federal participation programs require supporting analysis before establishing mandatory goals.

Established programs require:

- Disparity studies
- Availability analysis
- Market data
- Legal justification under equal protection law
- Periodic review of participation levels

Maryland MBE goals are supported by disparity studies and regulatory findings. The proposed bill contains legislative findings but does not include statistical support or legal analysis sufficient to justify mandatory participation goals.

Potential risks include:

- Constitutional challenge
- Equal protection claims
- Conflict with state procurement rules
- Conflict with federal funding conditions
- Inability to defend goals in protest or litigation

Without supporting analysis, the County may not be able to legally enforce the required participation levels.

3. Conflict With Federal Funding Requirements

Many County procurements are funded in whole or in part with federal funds, including funding from the Federal Transit Administration (FTA), Federal Highway Administration (FHWA), Department of Housing and Urban Development (HUD), Department of Justice (DOJ), Department of Health and Human Services (HHS), and other federal agencies. These programs require strict compliance with federal procurement regulations.

Federal requirements include:

- Full and open competition
- No local preference unless specifically authorized
- Use of approved socioeconomic certification programs
- Goals supported by availability data

Because the bill applies broadly to procurement, it does not clearly protect federally funded contracts from conflicting requirements.

4. Conflict Between Small Business Set-Aside Requirement and VBE Definition

The bill requires that two percent of County small business procurement contracts be set aside for Veteran Business Enterprises, but the definition of Veteran Business Enterprise does not require the business to meet any small business size standard.

Under the bill:

- Veteran = individual who served in the armed forces
- Veteran Business Enterprise (VBE) = business owned by a veteran
- No requirement to meet small business size limits
- No reference to COMAR or Code of Federal Regulations size standards

This creates a structural conflict because a veteran-owned business could be a large business but still qualify for participation in contracts reserved for small businesses.

State and federal programs require veteran-owned businesses to also meet small business size standards when participating in set-aside programs.

This conflict could result in:

- Large businesses competing in small business set-asides
- Protests from certified small businesses
- Violation of existing small business program rules
- Inconsistent application of procurement requirements

Without clear alignment with small business definitions, the County would be required to administer conflicting eligibility rules.

5. County Does Not Have Resources to Administer the Program

The bill requires the Office of Procurement to create and administer a new participation program with significant compliance, monitoring, and reporting responsibilities.

Required duties include:

- Maintain certification directory
- Monitor contractor compliance
- Track quarterly performance
- Produce annual reports
- Maintain public dashboard
- Enforce participation requirements
- Issue waivers
- Apply penalties

The Office of Procurement currently administers:

- Reciprocal Minority Business Enterprise (MBE) certification program
- County business certification program (County-based, County-based small business, County located business, County-based small Minority Business Enterprise, County-based minority business enterprise)
- Compliance monitoring
- Contract reporting
- Certification coordination

Adding a new program would require:

- Additional staff
- Compliance officers
- Certification reviewers
- IT system changes
- Reporting system updates
- Training and outreach

The bill does not provide:

- Funding
- Positions
- Implementation authority
- System support
- Phased implementation plan

Without these resources, the program cannot be implemented as written.

6. Overlapping Participation Programs Create Conflicting Goals

The County already administers multiple participation programs, including:

- Reciprocal Minority Business Enterprise certification
- County business certification program (County-based, County-based small business, County located business, County-based small Minority Business Enterprise, County-based minority business enterprise)

Adding a separate VBE goal may result in competing requirements.

A single contract could be required to meet:

- MBE goal
- VBE goal
- Supplier Utilization goals including: County-based business, County-based small business, County-based small Minority Business Enterprise, County-based minority business enterprise

This may exceed available prime or subcontracting capacity and make compliance impossible.

Maryland and federal programs coordinate participation goals within a single framework. The proposed bill creates an additional program outside that structure.

7. Authority Granted Without Regulatory Framework

The bill authorizes the Purchasing Agent to designate VBE-only solicitations and establish participation requirements, but it does not provide implementing regulations.

The proposed legislation would require the following:

- Written regulations
- Public notice
- Certification procedures
- Appeals process
- Protest procedures
- Enforcement standards

The bill does not provide:

- Regulatory authority
- Appeal rights
- Protest procedures
- Implementation rules

Without regulations, the program cannot be administered consistently.

8. Enforcement Provisions Conflict With Existing Contract Law

The bill allows penalties including:

- Liquidated damages
- Withholding of payment
- Termination
- Suspension
- Debarment

However, the bill does not reference existing enforcement procedures in Subtitle 10A and does not establish standards for applying penalties.

Concerns include:

- No due process language
- No hearing procedures
- No appeal rights
- Possible conflict with current debarment rules

9. Unrealistic Implementation Timeline

The bill provides for implementation within 180 days after enactment.

A program of this type would require:

- Regulations
- Certification procedures
- IT system changes
- Vendor outreach
- Training
- Compliance processes
- Goal analysis
- Reporting systems

These steps cannot reasonably be completed within the proposed timeframe.

10. Conclusion

For the reasons outlined above, the Office of Procurement does not support CB-024-2026 as drafted. The proposed legislation creates conflicts with State and federal procurement requirements, establishes participation goals without legal support, imposes new certification and compliance obligations without resources, and creates operational and legal risks that cannot be addressed within the proposed implementation period.

The Office of Procurement recommends further review to ensure consistency with Maryland law, federal grant requirements, existing County programs, and available administrative resources.