

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2017 Legislative Session

Bill No. CB-115-2017

Chapter No. 94

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

Introduced by Council Members Turner, Harrison, Davis, Glaros, Franklin, Taveras,
Patterson and Toles

Date of Introduction October 17, 2017

BILL

1 AN ACT concerning

2 Procurements

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

6 BY repealing and reenacting with amendments:

7 SUBTITLE 10A. PURCHASING.

8 Sections 10A-101, 10A-108, 10A-112, 10A-114, 10A-
9 115, 10A-136, 10A-138, 10A-145, 10A-155, 10A-
10 158.01, 10A-161, 10A-162, 10A-163,10A-164, 10A-
11 169, 10A-171, 10A-173, and 10A-176

12 The Prince George's County Code
13 (2015 Edition; 2016 Supplement).

14 BY adding:

15 SUBTITLE 10A. PURCHASING.

16 Sections 10A-110.01 and 10A-159.01
17 The Prince George's County Code
18 (2015 Edition; 2016 Supplement).

19 BY repealing:

20 SUBTITLE 10A. PURCHASING.
21 Sections 10A-160

The Prince George's County Code
(2015 Edition; 2016 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 10A-101, 10A-108, 10A-112, 10A-114, 10A-115, 10A-136, 10A-138, 10A-145, 10A-155, 10A-158.01, 10A-161, 10A-162, 10A- 163, 10A-164, 10A-169, 10A-171, 10A-173, and 10A-176 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 10A. PURCHASING.

DIVISION 1. ADMINISTRATIVE PROCEDURES.

Sec. 10A-101. Definitions.

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

* * * * *

28.1 Open market means an unrestricted competitive market in which any buyer and seller is free to participate, which shall include, but not limited to, direct relationship purposes.

* * * * *

Sec. 10A-108. - Exemptions.

(a) Unless otherwise ordered by the Purchasing Agent, the acquisition of the following supplies and services shall not be [required through the Office of the Purchasing Agent] subject to Divisions 2, 6, and 7:

* * * * *

(1) Regulated public utilities [where service and rates are not negotiable];

* * * * *

(16) Purchases that do not exceed two thousand five hundred dollars (\$2500).

* * * * *

DIVISION 2. AWARD OF CONTRACTS.

Sec. 10A-112. Competitive sealed bidding.

(c) Best Value.

* * * * *

(2) Commodity-only purchases. A procurement contract solely for the purchase of a

1 commodity, excluding any procurement of services (including, but not limited to, construction
2 and professional services), shall be awarded to the responsive and responsible bidder with the
3 lowest evaluated bid. [whose bid is determined to contain the bid price that is the best value to
4 the County, as specified in the Invitation for Bids. If an award solely for the purchase of a
5 commodity is not made to the lowest evaluated bidder, a written determination citing the reasons
6 shall be made by the Purchasing Agent or designee and made a permanent part of the bid file. If
7 purchasing authority in excess of Thirty Thousand Dollars (\$30,000) has been delegated to a
8 department head outside of the Department of Central Services, a written determination citing
9 the reasons for not selecting the responsive and responsible bid solely for the purchase of a
10 commodity that is most favorable to the County with respect to technical requirements and costs
11 shall be forwarded to the Purchasing Agent for approval prior to the award of the contract.]

12 * * * * *

13 (g) In determining the lowest responsible and responsive bidder for a procurement contract
14 solely for the purchase of a commodity, excluding any procurement of services (including, but
15 not limited to, construction and professional services), the Purchasing Agent shall adjust the bid
16 or proposal price(s) submitted by a County-based minority business enterprise or a minority
17 business enterprise as certified by the Supplier Development and Diversity Division, for the
18 purposes of evaluation and award only, by reducing the bid price(s) of such firm by the
19 application of bonus factors according to the following schedule:

<u>BID OF LOWEST RESPONSIVE BIDDER</u>	<u>MINORITY BUSINESS ENTERPRISE</u>	<u>PRINCE GEORGE'S BASED MINORITY BUSINESS ENTERPRISE BONUS FACTOR</u>
<u>Factored by:</u>	<u>.05</u>	<u>.15</u>

20 * * * * *

21 **Sec. 10A-114. - Contract negotiation.**

22 * * * * *

23 (b) Any contract authorized under this Section shall be awarded (including at renewal or
24 extension) with at least forty percent (40%) certified County-based small business participation or
25 the procurement shall be rendered void and illegal, unless the Purchasing Agent exercises the
26 waiver determination and procedure set forth in Section [10A-161(b)] 10A-161 and 10A-159.01.

[with required approvals.] Contracts authorized under this Section are subject to the same provisions of Section 10A-164 applicable to contracts subject to County-based small business participation requirements under Section 10A-161.

(d) A procurement contract deemed necessary by the Purchasing Agent in writing, with notice to the County Executive and Clerk of the County Council, due to a temporary public [safety] emergency or other liability exposure may be awarded under this Section and shall not be subject to the requirements of Subsection (b), above, or [Section 10A-164] Division 7 of this Subtitle, provided that the duration of the contract does not exceed [one-hundred and eighty (180) calendar days] one year and is not eligible for renewal or extension. A "temporary public [safety] emergency" in this Section is "an unforeseen occurrence or condition of limited duration that requires immediate action to protect public health, safety, or welfare from actual or threatened harm." A "liability exposure" in this Section is an action or inaction that exposes Prince George's County to greater liability.

Sec. 10A-115. – Small purchases.

(d) For contracts that use a simplified purchase procedure prescribed in Subsection (a), the Purchasing Agent or the Purchasing Agent's designee shall reserve such contracts for County-based small businesses, provided, [that] however, the Purchasing Agent or the Purchasing Agent's designee shall not be required to reserve the contract if the Purchasing Agent or the Purchasing Agent's designee determines in writing that

(2) a County-based small business cannot offer a reasonable price for the contract with the inclusion of any bonus authorized under this Subtitle. In this Section, "reasonable price" means within twelve percent (12%) above the best price on the open market. [Prior to this determination being made, the lowest bidding County-based small business shall be given the opportunity to win the procurement by offering a bid or proposal price less than twelve percent (12%) higher than the best price on the open market identified by the Purchasing Agent or the Purchasing Agent's designee. In determining bid or proposal price in this Section, applicable bid or price preferences authorized under this Subtitle shall be applied.]

(e) Prior to making a written determination required under Subsection (d), above, the Purchasing Agent or the Purchasing Agent's designee shall [consult with] review the database of County-based small businesses designated and maintained by the Supplier Development and Diversity Division [Office of Central Services] to contact or otherwise gather information about the availability and pricing of County-based small businesses for the contract.

(f) The written determination required under Subsection (d), above, shall briefly detail the reasons for determining that not at least two (2) County-based small businesses could adequately perform the requirements of the contract or that a County-based small business could not offer a reasonable price, including a comparison of any pricing information between County-based small businesses and that of businesses on the open market, which were considered by the Purchasing Agent or the Purchasing Agent's designee. The Purchasing Agent or the Purchasing Agent's designee shall submit written determinations required under Subsection (d), above, to the Office of Central Services and the County Council within thirty (30) days of the written determination being made.]

(f) The Purchasing Agent or the Purchasing Agent's designee may concurrently request prices on the open market and among County-based small businesses for procurements subject to this Section in order to expedite pricing determinations.

(g) Purchases that do not exceed two thousand five hundred dollars (\$2500) shall not be subject to Subsections (d), (e) and (f) of this Section.

* * * * *

DIVISION 6. SPECIAL PROVISIONS.

SUBDIVISION 1. - MINORITY BUSINESS OPPORTUNITIES PROGRAM.

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

* * * * *

[(b) In all bids for the construction of public works, if the work is to be subcontracted by the bidder, every bidder, in order to be considered a responsive bidder, shall be required to subcontract with County-based minority business enterprises or minority business enterprises for at least twenty percent (20%) of the total dollar volume of the contract price unless such bidder is itself a minority business enterprise or County-based minority business enterprise.

(c) In determining the lowest responsible and responsive bidder, the Purchasing Agent shall

1 adjust the bid or proposal price(s) submitted by a County-based minority business enterprise or a
 2 minority business enterprise as certified by the Supplier Development and Diversity Division, for
 3 the purposes of evaluation and award only, by reducing the bid price(s) of such firm by the
 4 application of bonus factors according to the following schedule:
 5

BID OF LOWEST RESPONSIVE BIDDER	MINORITY BUSINESS ENTERPRISE	PRINCE GEORGE'S BASED MINORITY BUSINESS ENTERPRISE BONUS FACTOR	
Factored by:		.05	.15

6 (d) For bids or proposals that are not made entirely by County-based minority business
 7 enterprises or minority business enterprises as certified by the Supplier Development and
 8 Diversity Division, the Purchasing Agent shall reduce the bid price(s) submitted, for evaluation
 9 and award purposes only, at an increasing bonus factor of one and a half percent (1.5%) for
 10 every ten percent (10%) increment of certified County-based minority business enterprise
 11 participation and one half of one percent (0.5%) for every ten percent (10%) increment of
 12 certified minority business enterprise participation. Bids or proposals with one hundred percent
 13 (100%) of certified County-based minority business enterprise participation shall receive the
 14 maximum fifteen percent (15%) bid price reduction (bonus factor) and bids or proposals with
 15 one hundred percent (100%) of certified minority business enterprise participation shall receive
 16 the maximum five percent (5%) bid price reduction (bonus factor). Bids or proposals awarded a
 17 price reduction or bonus factor for certified County-based minority business enterprise
 18 participation or certified minority business enterprise participation are subject to the same
 19 provisions in Section 10A-164 applicable to bids or proposals that receive preferences for
 20 certified County-based business participation.

21 (e) Bids or proposals are entitled to receive the greater of the preference points or
 22 percentages allowed for a business under either this Section, Section 10A-160, or Section 10A-
 23 173, as applicable. The preferences allowed under this Section, Section 10A-160, and Section
 24 10A-173 shall not be applied cumulatively for the same business.

25 (f) The Purchasing Agent shall, for all contracts, consult with the Supplier Development

1 and Diversity Division in order to determine whether subcontracting is appropriate. If
 2 subcontracting is determined to be appropriate, the Purchasing Agent shall include a mandatory
 3 minority business enterprise and County-based minority business enterprise subcontract clause
 4 that requires up to twenty percent (20%) of the contract's total value be performed by one or
 5 more minority business enterprises or County-based minority business enterprises. A contract
 6 with a total value of \$500,000 or greater that includes a mandatory minority business enterprise
 7 and County-based minority business enterprise subcontract clause shall also include compliance
 8 with a mandatory subcontracting plan as a condition of the contract, the requirements of which
 9 shall be determined by the Purchasing Agent, and which applies for the full term of the contract.
 10 The Purchasing Agent shall require that the mandatory subcontracting plan, at a minimum,
 11 provides verification of the percentage of the contract's total value that is subcontracted to
 12 County-based minority business enterprises or minority business enterprises throughout the full
 13 term of the contract. Any change to the mandatory subcontracting plan must be approved by the
 14 Purchasing Agent and notice of such a change shall be given by the Purchasing Agent to the
 15 MBE Compliance Officer of the County Council within seven (7) calendar days after the date the
 16 change is approved. The Purchasing Agent may include a mandatory minority business
 17 enterprise and County-based minority business enterprise subcontracting goal that is less than
 18 (20%) of the contract's total value only:

19 (1) After consultation with the Supplier Development and Diversity Division;

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

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

24 (g) In making the determinations that the public interest is served, under Subsection (f), the
 25 Purchasing agent shall obtain the concurrence of the Executive Director and may consider
 26 engineering estimates, the general market availability of minority business enterprises to provide
 27 the services requested, other bids and offers, the cost of the contract, and any other relevant
 28 factor.

29 (h) If, for any reason, a bidder is unable to achieve a subcontract goal for Minority Business
 30 Enterprise and County-based Minority Business Enterprise participation as required by the
 31 Purchasing Agent, the bidder may request, in writing, a waiver of the goal with justification to

1 include the following:

2 (1) A detailed statement of the efforts made to select portions of the work proposed to
 3 be performed by minority business enterprises and County-based minority business enterprises in
 4 order to increase the likelihood of achieving the stated goal;

5 (2) A detailed statement of the efforts made to contact and negotiate with minority
 6 business enterprises and County-based minority business enterprises including:

7 (A) The names, addresses, and telephone numbers of minority business
 8 enterprises and County-based minority business enterprises and the dates such minority
 9 businesses and County-based minority business enterprises were contacted, and

10 (B) A description of the information provided to minority business enterprises and
 11 County-based minority business enterprises regarding the plans, specifications, and anticipated
 12 time schedule for portions of the work to be performed;

13 (3) As to each Minority Business Enterprise or County-based Minority Business
 14 Enterprise that placed a subcontract quotation or offer which the bidder considered not to be
 15 acceptable, a detailed statement of the reasons for this conclusion; and

16 (4) A list of Minority Business Enterprise and County-based Minority Business
 17 Enterprise subcontractors found to be unavailable to perform under the contract.

18 The Purchasing Agent may grant the waiver only upon a reasonable demonstration by the bidder
 19 that the Minority Business Enterprise or County-based Minority Business Enterprise
 20 participation goal is unable to be obtained at a reasonable price and if the Purchasing Agent
 21 determines that the public interest will be served.

22 (i) Whenever the County procures goods or services in accordance with Section 10A-
 23 113 of this Code and weighted evaluation points are used, up to 15% of the total scored
 24 evaluation points shall be given for Minority Business Enterprise or County-based Minority
 25 Business Enterprise participation unless the Purchasing Agent elects to restrict the procurement
 26 pursuant to Subsection (i) of this Section.]

27 [(j)] (b) The Purchasing Agent may, after consultation with the Supplier Development and
 28 Diversity Division, require that the competitive bidding of contracts be restricted to minority
 29 business enterprises or County-based minority business enterprises owned by minority
 30 individuals as defined in Section 10A-101(a), provided there are at least three (3) minority
 31 business enterprises or County-based minority business enterprises that are providers in the trade

1 of goods or services for which the contract is advertised. No contract shall be awarded pursuant
2 to this provision if the resultant low bid exceeds by fifteen percent (15%) the most recent unit
3 price for the same or most recently comparable goods or services, unless the Supplier
4 Development and Diversity Division determines that prices in the relevant market have increased
5 for all vendors without regard to minority status beyond fifteen percent (15%) since the last time
6 similar goods or services were procured.

7 [(k)] (c) The Purchasing agent shall consider the following criteria in determining whether
8 to utilize a procurement method authorized in [by either Subsections (c), (d), (h), (i), and (j)] this
9 Section [or Section 10A-113]:

10 * * * * *

11 [(l)] (d) The Purchasing Agent shall require that a bidder uses its "best efforts" to first
12 use County-based minority business enterprises to fulfill any of the minority business enterprise
13 goals and requirements of this Section. If not enough County-based minority business enterprises
14 are demonstrated to be available after "best efforts" are exercised in the judgment of the
15 Purchasing Agent, the Purchasing Agent may then allow the bidder to meet any of the minority
16 business enterprise goals and requirements of this Section with minority business enterprises, if
17 available. In this Section, the term "best efforts" means efforts to the maximum extent
18 practicable have been made to meet the goal or requirement.

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

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

28 * * * * *

29 [(o)] (g) If the Supplier Development and Diversity Division, after investigation,
30 determines that any such individual or firm that has been awarded a County contract has
31 misrepresented its status as either a Minority Business Enterprise or a County-based minority

1 business enterprise, the Supplier Development and Diversity Division may request the County
2 Attorney to institute proceedings pursuant to Section 10A-139.

3 [(p)] (h) Any effort at brokerage or any other arrangement or agreement which attempts to,
4 is intended to, or has the effect of causing fraudulent benefit from the provisions of this Division
5 or is otherwise determined by the Supplier Development and Diversity Division to be in
6 circumvention of the requirements of this Division shall be strictly prohibited and shall be barred
7 from award of any County contract.

8 [(q)] (i) The County Executive may, by executive order, impose such additional
9 requirements as may be deemed appropriate to effectuate the overall policy of this Division 6 to
10 encourage and increase certified Minority Business Enterprise participation in the award of
11 County contracts.

12 [(r) The Purchasing Agent shall report to the County Council on a yearly basis the impact
13 of this legislation on the extent of Minority Business Enterprise involvement in County contracts,
14 including the fiscal impact of this Division.]

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

22 * * * * *

23 [(t)] (k) Any person may assert charges of a violation of this Division against any applicant
24 for certification, or certified minority business enterprise. Such charges shall be in writing and
25 sworn to by the complainant and submitted to the Executive Director. If, after an investigation of
26 the allegations the Executive Director believes that no violation has occurred, the charge may be
27 dismissed. Such charge, unless dismissed by the Executive Director without a hearing, shall be
28 heard and determined by the Executive Director within ninety (90) days after the date on which it
29 was filed. After a hearing, the Executive Director may decertify the respondent or take such
30 other action as deemed appropriate. Any person adversely affected by the dismissal of a
31 complaint by the Executive Director or by the decision of the Executive Director following a

1 hearing may appeal such dismissal or decision to the Commission within thirty (30) days after
2 the date of the dismissal or the decision.

3 [(u)] (l) The Executive Director may decertify any minority business enterprise upon
4 findings by the Executive Director of any of the following conditions:

5 * * * * *

6 [(v)] (m) The [Commission] Purchasing Agent shall hear the appeal of any determination
7 made by the Supplier Development and Diversity Division to deny minority business enterprise
8 status certification and shall hear the appeal of any decision by the Executive Director to
9 decertify any minority business enterprise. Such appeal shall be heard and determined by the
10 Purchasing Agent within ninety (90) days after the date on which it was filed.

11 [(w)] (n) Regardless of any minority business certifications issued by other jurisdictions or
12 entities or related reciprocal agreements, the Executive Director shall decertify any business as a
13 minority business enterprise that the Executive Director determines does not meet the
14 requirements of Sections 10A-101(a)(26)(A) and 10A-101(a)(26)(B) of the Code. Such a
15 business shall not be recognized by the Purchasing Agent or Supplier Development and
16 Diversity Division as a minority business enterprise.

17 **Sec. 10A-138. [Monthly] [reports] Reports.**

18 The Purchasing Agent will maintain records and statistics on contract bids and awards and
19 transmit [,on a monthly basis,] annually by July 1, a report to the County Executive and the
20 County Council that summarizes progress and efforts made to achieve the goals stated in
21 Divisions 6 and 7 of this Subtitle. [Section 10A-136]. The report shall identify problems
22 encountered or anticipated in meeting those goals, and shall, at a minimum, contain the number,
23 dollar amount, and method of award of all contracts and subcontracts awarded minority business
24 enterprises, County-based business, County-based minority business enterprise, County-based
25 small business, and County-located business. The report shall include the number and nature of
26 the waivers for contracts over Five Hundred Thousand Dollars (\$500,000) approved by the Chief
27 Administrative Officer pursuant to 10A-159.01.

28 * * * * *

29 **SUBDIVISION 6. - TIE BIDS.**

30 **Sec. 10A-145. - Tie bids and proposals.**

31 (a) If a competitive bid or competitive sealed proposal results in two or more bidders or

offerors being equally eligible for award, the responsibility of the bidders and offerors having been determined, the contract shall be awarded in the following order:

- (1) County-based minority business enterprise;
- (2) County based small business;
- [(2)] (3) County-based business;
- [(3)] (4) Other minority business enterprise;
- [(4)] (5) Maryland-based business;
- [(5)] (6) Any other fair and equitable manner determined by the Purchasing Agent.

* * * * *

SUBDIVISION 11. CERTIFIED SHELTERED WORKSHOP EMPLOYMENT PROGRAM.

Sec. 10A-155. - Utilization of certified sheltered workshops.

* * * * *

[(e) The Purchasing Agent shall report to the County Council by September 1 of each year the extent to which certified sheltered workshops participated in the performance of County contracts during the previous year.]

* * * * *

SUBDIVISION 14. - BUSINESS DEVELOPMENT RESERVE PROGRAM.

Sec. 10A-158.01. Business Development Reserve Program.

* * * * *

(b) Business Development Reserve Program Sheltered Market. [By April 15 of each year, the] The Director of Central Services shall make good faith efforts to reach an annual goal of awarding [identify and reserve] at least Five Million Dollars (\$5,000,000) in procurement contracting and subcontracting [opportunities in the next fiscal year solely for award] to County-based small businesses enrolled in the Business Development Reserve Program [, including submitting written] Written notice of these opportunities shall be submitted to [the County Executive, County Council, and] 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.

* * * * *

DIVISION 7. ECONOMIC DEVELOPMENT.

SUBDIVISION 1. COUNTY-BASED SMALL BUSINESS ASSISTANCE.

* * * * *

Sec. 10A-161. - County-based business participation requirements.

(a) For any procurement that is greater than Five Hundred Thousand Dollars (\$500,000) in total value for which a County agency or the County government secures competitive bids or proposals [, including, but not limited to, competitive bids secured pursuant to Section 10A-112 or competitive proposals pursuant to Section 10A-113,] the Purchasing Agent shall require the following:

* * * * *

(2) A bid or proposal responding to a solicitation shall be deemed nonresponsive and shall be rejected by the Purchasing Agent if it fails to meet the forty percent (40%) minimum certified County-based small business participation requirement in Paragraph (1) of this Subsection, unless the participation requirement is [subject] waived pursuant to Section 10A-159.01[waived and adjusted pursuant to Subsection (b) of this Section].

(3) Any existing procurement contract or agreement entered into after November 15, 2016 and for which a County agency or the County government secured competitive bids or proposals, including[, but not limited to, any procurement contract that was awarded pursuant to Section 10A-112 or Section 10A-113, and including] any existing multiyear contract or extended contract, entered into after November 15, 2016 [which] that does not include at least forty percent (40%) certified County-based small business participation as prescribed in this Subsection at the time of any contemplated exercise of an option, extension, or renewal, including automatic extensions or renewals (e.g. "evergreen" contracts or agreements), shall not be renewed or extended.

(b) If the Purchasing Agent determines in writing that there are insufficient responsible County-based small businesses to completely fulfill the requirement of Paragraph (1) of Subsection (a) for a particular procurement or if the requirement would result in the loss of federal or state funds or grants, the Purchasing Agent [,upon approval by Council resolution and concurrence of the County Executive,] may waive the participation requirements of Division 7 [and adjust or modify the minimum participation percentage requirement] pursuant to Section 10A-159.01.

(c) In all bids for the construction of public works, if the work is to be subcontracted by the

1 bidder, every bidder, in order to be considered a responsive bidder, shall be required to
2 subcontract with County-based minority business enterprises for at least twenty percent (20%) of
3 the total dollar volume of the contract price unless such bidder is itself a County-based minority
4 business enterprise or minority business enterprise.

5 (d) The Purchasing Agent shall, for all contracts, consult with the Supplier Development and
6 Diversity Division in order to determine whether subcontracting is appropriate. If subcontracting
7 is determined to be appropriate, the Purchasing Agent shall include a mandatory County-based
8 minority business enterprise subcontract clause that requires up to twenty percent (20%) of the
9 contract's total value be performed by one or more County-based minority business enterprises
10 or minority business enterprises.

11 [(c)] (e) Failure to apply the applicable provisions of [this Subdivision to] a procurement award,
12 [subject to the waivers and adjustments authorized by this Division], shall render the
13 procurement award and/or contract or agreement void.

14 [(d)] (f) On a case by case basis, for any procurement subject to the requirements of Subsection
15 (a) of this Section, the Purchasing Agent may require more than forty percent (40%) certified
16 County-based small business participation if the Purchasing Agent determines that there is a
17 sufficient number of County-based small businesses to justify a higher certified County-based
18 small business participation requirement.

19 [(e) For any procurement contract greater than Five Hundred Thousand Dollars (\$500,000) in
20 value, solely for the purchase of commodities, bid in accordance with Section 10A-112 of this
21 Subtitle, where the lowest evaluated bid or proposal price from a responsive bidder is not from a
22 County-based small business, the lowest bidding responsible and responsive County-based small
23 business shall be given a final opportunity by the Purchasing Agent or the Purchasing Agent's
24 designee to offer a responsive bid or proposal price less than the lowest responsive bid or
25 proposal price and thus win the procurement award. In determining a bid or proposal price in this
26 Subsection, applicable bid or price preferences authorized under this Subtitle shall be applied.
27 This subsection shall become effective on October 1, 2017.

28 (f) For any procurement contract greater than Five Hundred Thousand Dollars (\$500,000) in
29 value, bid in accordance with Section 10A-112 of this Subtitle, where the lowest evaluated bid or
30 proposal price from a responsive bidder is not from a County-based small business, the lowest
31 bidding responsible and responsive County-based small business shall be given a final

1 opportunity by the Purchasing Agent or the Purchasing Agent's designee to offer a responsive
2 bid or proposal price less than the lowest responsive bid or proposal price and thus win the
3 procurement award. In determining a bid or proposal price in this Subsection, applicable bid or
4 price preferences authorized under this Subtitle shall be applied. This subsection shall expire and
5 be of no further force and effect on October 1, 2017.]

6 (g) The Prince George's County Supply Schedule Program. There is established a Prince
7 George's County Supply Schedule (PGCSS) program, a sheltered-market procurement program
8 [under which certain contracts greater than Five Hundred Thousand Dollars (\$500,000) in value]
9 shall be awarded only to County-based small businesses. The PGCSS program may consist of
10 multiple award schedules or other procurement programs established by the Purchasing Agent.

11 (1) [By April 15 of each year,] Pursuant to Section 10A-138, the Director of Central
12 Services shall propose to the County Council the PGCSS a list of North American Industry
13 Classification System (NAICS) industry classifications or comparable categories of goods or
14 services that shall only be available for bid or award among County-based small businesses,
15 County-based minority business enterprises and/or County-based businesses during the next
16 fiscal year, based on the capacity and prevalence of County-based small businesses, County-
17 based minority business enterprises and/or County-based businesses within [that] those industry
18 [category] categories. The proposed PGCSS is subject to [amendment and] approval by
19 resolution of the County Council [and shall be approved by Council resolution no later than June
20 1 of each year after public hearing] or the PGCSS proposed by the Director of Central Services
21 shall go into effect for the next fiscal year. [If the Director of Central Services fails to submit the
22 PGCSS to the Council by April 15 in accordance with this Subsection, the Council shall propose
23 and adopt the PGCSS by Council resolution no later than June 1].

24 (2) A PGCSS contract may be awarded by:

25 * * * * *

26 (3) The Purchasing Agent or the Purchasing Agent's designee may issue a waiver subject to 10A-
27 159.01. [and elect not to award a procurement set aside pursuant to this Subsection, and may
28 thereafter issue or award the contract or procurement in the open market (with the other
29 applicable requirements in place for this Subtitle) if (i) the Purchasing Agent or Purchasing
30 Agent's designee determines in writing that the submitted bid(s) or offer(s) from responsible and
31 responsive bidders or offerors for the contract or procurement in the PGCSS is believed to be

1 twelve percent (12%) or more above the likely price on the open market or (ii) the Purchasing
 2 Agent does not receive responsive bids or offers from responsible County-based small
 3 businesses. Such a waiver must be approved by Council resolution before issuance. For
 4 competitive bids or proposals, prior to the submission of the proposed waiver to the Council for
 5 approval, the responsible County-based small business with the lowest responsive bid or offer
 6 shall be given the opportunity to offer a bid or proposal price less than twelve percent (12%)
 7 higher than the likely price on the open market and be awarded the procurement. In determining
 8 a bid or proposal price in this Subsection, applicable bid or price preferences authorized under
 9 this Subtitle shall be applied.]

10 **Sec. 10A-162. - County agency local procurement goals.**

11 * * * * *

12 (c) For any procurement subject to Section 10A-112, 10A-113, or 10A-114 of this Subtitle
 13 with a total value equal to or less than Five Hundred Thousand Dollars (\$500,000), each County
 14 agency or the Purchasing Agent shall set-aside the procurement only for award to County-based
 15 small businesses, subject to Paragraphs (1)—~~(3)~~[(4)] of this Subsection.

16 (1) A County agency shall not be required to set aside a procurement for County-
 17 based small businesses under this Subsection if there are not at least two (2) County-based small
 18 businesses that can sufficiently provide the services or goods which are the subject of the
 19 procurement. For procurements subject to 10A-112 [or 10A-113], a County agency may also
 20 refuse to set aside a procurement for County-based small businesses under this Subsection if the
 21 agency determines [, after applying any applicable preferences,] that the lowest County-based
 22 small business bid [or proposal] is for a price [is believed to be] that is twelve percent (12%) or
 23 more above the likely price on the open market. [An agency shall not make such a determination
 24 unless the County-based small business with the lowest bid or proposal price has been given the
 25 opportunity to win the procurement by offering a bid or proposal price less than twelve percent
 26 (12%) higher than the likely price on the open market identified by the agency. If the County
 27 agency makes a determination under this Paragraph not to set aside a procurement for County-
 28 based small businesses, then the County agency must adhere to the requirements of Paragraph
 29 (2) of this Subsection.

30 (2) If there are not at least two (2) County-based small businesses that can
 31 sufficiently provide the services or goods which are the subject of a procurement under

1 Paragraph (1) of this Subsection, the County agency shall set-aside the procurement only for bids
 2 or proposals from County-based businesses, unless there are not at least two (2) County-based
 3 businesses that can sufficiently provide the services or goods which are the subject of the
 4 procurement. For procurements subject to 10A-112 or 10A-113, a County agency may also
 5 refuse to set aside a procurement for County-based businesses under this Paragraph if the agency
 6 determines, after applying any applicable preferences, that the lowest County-based business bid
 7 or proposal price is believed to be twelve percent (12%) or more above the likely price on the
 8 open market. A County agency shall not make such a determination unless the County-based
 9 business with the lowest bid or proposal price has been given the opportunity to win the
 10 procurement by offering a bid or proposal price less than twelve percent (12%) higher than the
 11 likely price on the open market identified by the agency.]

12 [(3)] (2) Only if a County agency satisfies the requirements of [both] Paragraph[s] (1)
 13 [and (2)] of this Subsection and receives written approval from the Purchasing Agent [and
 14 approval by resolution of the County Council,] may the County agency thereafter [issue or]
 15 award the procurement in the open market, subject to all of the other applicable preferences [and
 16 participation requirements] prescribed in this Subdivision.

17 [(4)] (3) Any existing contract or agreement, including any existing multiyear contract
 18 or extended contract, for a procurement funded by a County agency or the County government
 19 with a total value equal to or less than Five Hundred Thousand Dollars (\$500,000) that was not
 20 set-aside for County-based small businesses or County-based businesses pursuant to the
 21 requirements of this Section, at the time of any contemplated exercise of an option, extension, or
 22 renewal, including automatic extensions or renewals (e.g. "evergreen" contracts or agreements),
 23 shall not be renewed or extended. This Paragraph shall not apply to a contract or agreement for a
 24 procurement with greater than fifty percent (50%) certified County-based small business
 25 participation.

26 (d) The Purchasing Agent may waive the requirements of Subsection (c) of this Section for
 27 a procurement if the Purchasing Agent certifies in writing that such a requirement would result in
 28 the loss of federal or state funds, [, subject to the approval of the County Executive and
 29 resolution of the County Council.]

30 [(e) Each County agency shall submit a written report to the Purchasing Agent and to the
 31 County Auditor within thirty (30) calendar days after the end of each quarter after the beginning

1 of the fiscal year that provides:

2 (1) The percentage and U.S. dollar value of certified County-based business
3 participation and certified County-based small business participation in the most recent three (3)
4 month period from the County agency's procurements, including reporting the percentage and
5 U.S. dollar value of certified County-based business participation and certified County-based
6 small business participation for the period from the beginning of the fiscal year to the reporting
7 date;

8 (2) The name and principal place of operation of each business receiving payment under
9 a procurement from the County agency in the most recent three (3) month period, including the
10 U.S. dollar value and percentage of the total procurement dollars paid in the most recent three (3)
11 month period to each business; and

12 (3) For the 4th Quarter of the fiscal year only, the expected percentage and U.S. dollar
13 value of certified County-based business participation and certified County-based small business
14 participation in the next twelve (12) month period.]

15 [(f)] (e) If a County agency fails to meet any of the goals set forth in Subsection (a) of this
16 Section or otherwise fails to comply with this Division, the County Executive, or the County
17 Council by resolution, may require that a portion of the agency's procurements be made part of a
18 set-aside program for County-based businesses and/or County-based small businesses. A County
19 agency in violation of this Division may also be subject to a temporary or permanent reduction in
20 its proposed budget allocation in the annual county budget process.

21 [(g)] (f) As a condition of receiving funding from the County government, a non-County
22 agency or entity that receives more than fifty percent (50%) of its annual budget in the most
23 recent fiscal year from funds received from or administered by a County agency or the County
24 government shall comply with the same goals and requirements as a County agency under
25 Subsections (a), (b) and (e) [(c) (e), and (f)] of this Section, unless the non-County agency or
26 entity certifies in writing to the County Council and the County Executive that such compliance
27 would violate federal or state law.

28 [(h)] (g) Annual County Agency Procurement Forecast. By [June 1] July 1 of each year,
29 the Director of Central Services shall publish on a central designated website a forecast of
30 procurement opportunities for each County agency for the next fiscal year. Each County agency
31 shall expeditiously comply with any information requests from the Office of Central Services in

1 the collection of information to comply with this Subsection. The Director of Central Services
2 shall provide a courtesy electronic copy of the County Agency Procurement Forecast to a
3 designated representative of the Prince George's Chamber of Commerce, Greater Prince George's
4 Business Roundtable, and the Prince George's Community College.

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

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

10 * * * * *

11 (3) Files a copy of a federal tax return filed with the Internal Revenue Service [State of
12 Maryland] establishing that the business has continuously operated within the Prince George's
13 County within the preceding twelve (12) months;

14 * * * * *

15 (g) Reducing redundant certifications.

16 (1) A business that is certified as a minority business enterprise (MBE) pursuant to Section
17 10A-101(a)(26), whose certification indicates that the business's principal address, principal
18 place of operation, or domicile is within Prince George's County, Maryland, shall be
19 automatically deemed by the Supplier Development and Diversity Division and the Purchasing
20 Agent to be a certified County-based minority business enterprise and County-based business
21 under this Subtitle without further application or certification, provided that, [if requested by the
22 Purchasing Agent or the Purchasing Agent's designee at the time of a bid or proposal
23 solicitation,] the business provides the Supplier Development and Diversity Division [in its bid
24 or proposal] a copy of a federal tax return filed with the [State of Maryland] Internal Revenue
25 Service establishing that the business has continuously operated within the County within the
26 preceding twelve (12) months.

27 (2) A County-based minority business enterprise whose approved MBE certification also
28 meets the requirements of Section [10A-163(b)(2) or 10A-163(b)(3)] 10A-163(g) (1) shall be
29 automatically deemed to be a certified County-based small business under this Subtitle by the
30 Supplier Development and Diversity Division and the Purchasing Agent without further
31 application or certification, provided that [, if requested by the Purchasing Agent or the

1 Purchasing Agent's designee at the time of a bid or proposal solicitation,] the business provides
2 [in its bid or proposal] the Supplier Development and Diversity Division a copy of a federal tax
3 return filed with the [State of Maryland] Internal Revenue Service establishing that the business
4 has continuously operated within the County within the preceding twelve (12) months. Approved
5 MBE certifications that meet the requirements of this Paragraph shall include

6 (A) MDOT certification in accordance with COMAR 21.11.03, provided such certified
7 business conforms to the requirements of Section 10A-101(a)(26) of this Subtitle;

8 (B) Disadvantaged Business Enterprise (DBE) certification in accordance with 49 CFR
9 Part 26, provided such DBE certification is accepted by the Supplier Development and Diversity
10 Division and such certified business conforms to the requirements of Section 10A-101(a)(26) of
11 this Subtitle; and

12 (C) Other MBE or DBE certifications accepted by the Supplier Development and
13 Diversity Division and determined to include comparable size of business standards by the
14 Supplier Development and Diversity Division, provided such certified businesses conform to the
15 requirements of Section 10A-101(a)(26) of this Subtitle.

16 (3) Valid MBE or DBE certification status in accordance with this Subsection and the
17 submission to the Supplier Development and Diversity Division of a copy of a federal tax return
18 filed with the Internal Revenue Service establishing that the business has continuously operated
19 within the County within the preceding twelve (12) months shall satisfy the documentation
20 requirements for any County-based business or County-based small business certification
21 renewal for County-based minority business enterprises.

22 * * * * *

23 (i) In addition to the provisions of Subsection (g), above, the Purchasing Agent may utilize an
24 expedited process for any certification renewal under this Division, including the submission of a
25 (i) a “no change” affidavit, (ii) a copy of a federal tax return filed with the Internal Revenue
26 Service establishing that the business has operated within the County within the preceding
27 twelve (12) months, and (iii) a certificate of good standing with the Maryland State Department
28 of Assessments and Taxation, to satisfy the documentation requirements for certification
29 renewal.

30 (j) On a case by case basis, the Purchasing Agent may require additional information for
31 verification purposes at the Purchasing Agent’s discretion.

1 **Sec. 10A-164. - Enforcement of County-based business assistance.**

2 (a) For the entire duration of the procurement contract or agreement, any vendor given a
 3 [County-based business] preference under this Division [Section 10A-160] or subject to the
 4 [County-based small] business participation requirements under this Division [Section 10A-161]
 5 shall maintain no less than the percentage of [certified County-based business participation or
 6 certified County-based small business] participation stated in the winning bid or proposal.
 7 Failure to comply with this Division may subject any vendor given a business preference under
 8 [Section 10A-160], this Division, or that is subject to [the County-based small] business
 9 participation requirements under [Section 10A-161] this Division to a penalty, to include
 10 monetary fines of up to five percent (5%) of the value of the contract for each violation, a
 11 cancellation of the contract or agreement, or suspension or debarment of the vendor under
 12 Section 10A-148 of this Subtitle.

13 (1) A vendor may request a waiver of the requirements of this Section by the
 14 Purchasing Agent. On a case by case basis, such a waiver request may be granted by the
 15 Purchasing Agent [with the approval of the County Executive and approval by resolution of the
 16 County Council,] if "best efforts" by the vendor to comply have been demonstrated as prescribed
 17 in Subsection (e) of this Section.

18 (b) Any vendor given a County-based business preference under [Section 10A-160] this
 19 Division or subject to the County-based small business participation requirements of Section
 20 10A-161 shall submit a [quarterly] semi-annual report within thirty (30) calendar days after the
 21 end of each quarter to the Purchasing Agent, the County Auditor, and a compliance manager
 22 designated by the County Council that provides:

23 (1) The percentage and U.S. dollar value of certified County-based business
 24 participation and certified County-based small business participation in the most recent semi-
 25 annual [3 month] period, including reporting the percentage and U.S. dollar value of certified
 26 County-based business participation and certified County-based small business participation for
 27 the period from the beginning of the calendar year to the reporting date;

28 (2) The name and principal place of operation of each business receiving payment
 29 under the procurement in the most recent semi-annual [3 month] period, including the U.S. dollar
 30 value and percentage of the total contract dollars paid in the most recent 3 month period to each
 31 business; and

1 (3) The expected percentage and U.S. dollar value of certified County-based business
2 participation and certified County-based small business participation in the next 12 month
3 period.

4 (c) At the discretion of the Purchasing Agent or the County Auditor, any vendor given a
5 [County-based] business preference under [Section 10A-160] this Division or subject to the
6 [County-based] business participation requirements of [Section 10A-161] this Division shall be
7 subject to an audit of documents or other information deemed necessary by the Purchasing Agent
8 or the County Auditor to verify compliance with this Section upon thirty (30) calendar days
9 written notice, including, but not limited to, copies of any contracts with subcontractors or other
10 vendors.

11 (d) The Purchasing Agent shall make compliance with this Subdivision a written condition
12 of any contract or agreement for any procurement subject to Sections 10A-112, 10A-113, and
13 10A-114 of this Subtitle, by including a mandatory written compliance clause in every such
14 contract or agreement. [or any such contract or agreement shall be rendered void and illegal.]

15 (e) In this Subdivision, the term "best efforts" means efforts to the maximum extent
16 practicable have been made to meet the requirement. A vendor given a County-based business
17 preference under [Section 10A-160] this Division or subject to the County-based small business
18 participation requirements under [Section 10A-161] this Division shall not be deemed to have
19 demonstrated "best efforts" under Subsection (a) of this Section where there is a sufficient
20 number of County-based businesses or County-based small businesses to enable the vendor to
21 meet the requirements of Subsection (a) of this Section. [The Purchasing Agent shall not propose
22 to grant a] A waiver authorized by Paragraph (1) of Subsection (a) of this Section shall not be
23 granted unless the vendor seeking the waiver:

24 * * * * *

25 (f) Small Business Subcontracting Plan required. Where the prime contractor is not a
26 County-based small business, the forty percent (40%) County-based small business participation
27 requirement of Sections 10A-161(a) and 10A-114(b) shall be governed by a Small Business
28 Subcontracting Plan, submitted by the prime contractor.

29 * * * * *

30 (g) Certified business participation under this Subtitle, including for County-based minority
31 business enterprises, County-based small businesses, County-based businesses, minority

business enterprises, and County-located businesses, shall not include business activity whereby the certified firm’s role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of certified business participation. The Purchasing Agent may also adopt regulations establishing standards to ensure that certified firms are performing “commercially useful functions” for the purposes of certified business participation determinations.

* * * * *

SUBDIVISION 2. FIRST SOURCE HIRING PROGRAM AND LOCAL HIRING REQUIREMENTS.

* * * * *

Sec. 10A-169. - First Source and Local Hiring Agreements required; local hiring requirement.

(a) The Purchasing Agent shall require prior to the execution and as a condition of the performance of any contracts or agreements for procurements greater than \$500,000 in contract value, awarded pursuant to Section 10A-112, 10A-113, or 10A-114 of this Subtitle, at the time of initial contract execution or, effective as of January 1, 2014, at the time of any exercise of contract renewal, option, or extension (including automatic renewal or extension), a requirement that the business enter into a First Source and Local Hiring Agreement with the County which states that:

(1) The first source for finding employees to fill all jobs created by the government-assisted project shall be the First Source Registry;

(2) The first source for finding employees to fill any vacancy occurring in all jobs covered by a First Source and Local Hiring Agreement will be the First Source Registry; and

(3) Compliance with this Section is a condition of the First Source and Local Hiring Agreement.

* * * * *

(f) For every procurement greater than \$500,000 in contract value and subject to Section 10A-112, 10A-113, or 10A-114 of this Subtitle, the Purchasing Agent shall require "best efforts" to reach a minimum goal that at least fifty-one percent (51%) of the annual man/woman hours (work hours), on both a total work hour and trade by trade basis, be worked by County residents as a condition of any contract or agreement for a procurement funded by a County agency,

1 including requiring "best efforts" to reach a minimum goal that at least fifty-one percent (51%)
2 of the annual apprenticeship work hours on such contracts or agreements be worked by
3 apprentices who are County residents. The requirements of this Subsection extend to hiring by
4 contractors and subcontractors on procurements funded by a County agency under the
5 supervision or control of the contractors and subcontractors.

6 * * * * *

7 (g) For procurements funded by a County agency or the County government greater than
8 \$500,000 in contract value and [, including, but not limited to, procurements] awarded pursuant
9 to Section 10A-112, 10A-113, or 10A-114 of this Subtitle, the Purchasing Agent shall require
10 compliance with this Subdivision as a written condition of the procurement contract or
11 agreement or any such contract or agreement shall be rendered void and illegal.

12 * * * * *

13 (l) The Purchasing Agent may waive and adjust or modify the requirements of this
14 Subdivision, on a case by case basis, if the Purchasing Agent determines in writing that

15 (1) there is an insufficient number of available Prince George's County residents in the
16 labor market who possess the skills required to do the work included in the contract or

17 (2) "best efforts" were made in accordance with Subsection (h), above.

18 **Sec. 10A-171. - Reports.**

19 The Prince George's County Economic Development Corporation's Workforce Services
20 Division shall submit [quarterly] reports pursuant to section 10A-138, to the County Auditor, the
21 Purchasing Agent, and a compliance manager designated by the County Council verifying the
22 requirements in Section 10A-167. The reports shall also detail the number of government-
23 assisted projects for which First Source and Local Hiring Agreements were executed, the number
24 of jobs that result from the First Source and Local Hiring Agreements, the number of County
25 residents actually employed in government-assisted projects, and the number of unemployed
26 County residents on the First Source Registry. The format of the reporting under this Section
27 shall be determined by the County Executive or the County Executive's designee.

28 * * * * *

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

Sec. 10A-173. – [County-located business] Business preferences.

(a) On any procurement for which a County agency or the County government secures competitive [bids or] proposals [including, but not limited to, competitive bids secured pursuant to Section 10A-112, competitive proposals] pursuant to Section 10A-113 [, or small purchases pursuant to Section 10A-115,]-the Purchasing Agent shall add the following percentage points to the total evaluated score of the bid or proposal:

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

Cumulative preference points: Where a bid or proposal includes the participation of two or more certified firms and the cumulative participation of the entities is at least 45% of one of the certified business categories above, the preference points applicable to that 45% participation listed above will be applied to the bid. A bid comprised of two or more firms that achieves an additional 45% of participation of one of the certified business categories above will receive an additional amount of preference points listed above applicable to that additional 45% participation. The same firm’s participation in a bid or proposal shall not be counted for preference points for more than one of the certified business categories above and shall receive preference points for the highest scoring certified business category for which it qualifies. No single certified firm can receive more than 15% percentage points in any one bid or proposal.

[(1) Apply a bid or proposal preference of seven percent (7%) to any County-located business that submits an approved certification as set forth in Section 10A-174.

(2) For bids or proposals that are not made entirely by County-located businesses, apply a bid or proposal preference at an increasing rate of seven tenths of one percent (0.7%) for every ten percent (10%) increment of certified County-located business participation. Bids or proposals with one hundred percent (100%) certified County-located business participation shall receive the maximum seven percent (7%) bid preference.

(3) Award bids or proposals the greater of the preference points or percentages allowed for a business under either this Section or Section 10A-136, as applicable. The preferences allowed under this Section and Section 10A-136 shall not be applied cumulatively for the same business.]

(b) The Purchasing Agent may determine not to apply a bid or proposal preference under this Section if the Purchasing Agent certifies that such a preference would result in the loss of federal or state funds, subject to the approval of the County Executive. [The Purchasing Agent shall transmit a copy of any such determination to the County Council no later than thirty (30) calendar days following the date of the procurement award.]

* * * * *

(d) A business may opt to not receive a [County-located] business preference under this Section.

* * * * *

[(f) Bids or proposals awarded preferences for certified County-located business

1 participation are subject to the same provisions in Section 10A-164 applicable to bids or
2 proposals that receive preferences for certified County-based business participation.]

3 **SUBDIVISION 4. - LOCAL BUSINESS PARTICIPATION PROCUREMENT REPORT.**

4 **Sec. 10A-176. - Annual Local Business Participation Procurement Report Required.**

5 [Within ninety (90) days after the end of each fiscal year,] [the] The Director of Central
6 Services shall prepare and transmit a written report, subject to section 10A-138 of this Subtitle
7 that shall include information regarding the Local Business Participation Procurement Report, to
8 the County Council and County Executive that includes the following information for that entire
9 fiscal year:

10 * * * * *

11 SECTION 2. BE IT ENACTED by the County Council of Prince George's County,
12 Maryland, that Sections 10A-110.01 and 10A-159.01 of the Prince George's County Code be and
13 the same are hereby added:

14 **SUBTITLE 10A. PURCHASING.**

15 **DIVISION 1. ADMINISTRATIVE PROCEDURES.**

16 **Sec. 10A-110.01. – Grandfather Clause.**

17 (a) Contracts effective prior to November 15, 2016, are not subject to the participation
18 requirements of this Subtitle. The contracts subject to the grandfather clause shall not exceed
19 two (2) one-year term extensions.

20 * * * * *

21 **DIVISION 7. - ECONOMIC DEVELOPMENT.**

22 * * * * *

23 **10A-159.01. Waiver.**

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

26 (1) A contract valued five hundred thousand dollars or more shall be subject to a
27 written waiver from the Purchasing Agent that is approved by the Chief Administrative Officer
28 or his designee and will not be subject to the participation requirements in Division 7 Economic
29 Development in this Subtitle;

30 (2) A contract with a total value greater than twenty-five hundred dollars and less than five
31 hundred thousand dollars shall be subject to a written waiver by the Purchasing Agent and will

1 not be subject to the participation requirements in Division 7 Economic Development of this
 2 Subtitle.

3 SECTION 3. BE IT ENACTED by the County Council of Prince George's County,
 4 Maryland, that Sections 10A-160 of the Prince George's County Code be and the same is hereby
 5 repealed:

6 **DIVISION 7. ECONOMIC DEVELOPMENT.**

7 **SUBDIVISION 1. COUNTY-BASED SMALL BUSINESS ASSISTANCE.**

8 **Sec. 10A-160. [County-based business preferences.] Reserved.**

9 [(a) On any procurement for which a County agency or the County government secures
 10 competitive bids or proposals, including, but not limited to, competitive bids secured pursuant to
 11 Section 10A-112, competitive proposals pursuant to Section 10A-113, or small purchases
 12 pursuant to Section 10A-115, the Purchasing Agent shall:

13 (1) Apply a bid or proposal preference of ten percent (10%) to any County-based
 14 business that submits an approved certification as set forth in Section 10A-163(a) and fifteen
 15 (15%) percent to any County-based small business that submits an approved certification as set
 16 forth in Section 10A-163(b).

17 (2) For bids or proposals that are not made entirely by County-based businesses, apply
 18 a bid or proposal preference at an increasing rate of one percent (1%) for every ten percent
 19 (10%) increment of certified County-based business participation. Bids or proposals with one
 20 hundred percent (100%) certified County-based business participation shall receive the
 21 maximum ten percent (10%) bid preference.

22 (3) For bids or proposals that are not made entirely by County-based small businesses,
 23 apply a bid or proposal preference at an increasing rate of one and a half percent (1.5%) for
 24 every ten percent (10%) increment of certified County-based small business participation. Bids
 25 or proposals with one hundred percent (100%) certified County-based small business
 26 participation shall receive the maximum fifteen percent (15%) bid preference.

27 (4) Award bids or proposals the greater of the preference points or percentages allowed
 28 for a business under either this Section or Section 10A-136, as applicable. The preferences
 29 allowed under this Section and Section 10A-136 shall not be applied cumulatively for the same
 30 business.

31 (b) The Purchasing Agent may determine not to apply a bid or proposal preference under

1 this Section if the Purchasing Agent certifies that such a preference would result in the loss of
2 federal or state funds, subject to the approval of the County Executive. The Purchasing Agent
3 shall transmit a copy of any such determination to the County Council no later than thirty (30)
4 calendar days following the date of the procurement award.

5 (c) The requirements of this Section shall apply to the procurement of vendors retained by a
6 County agency or the County government to assist in the financing and sale of County
7 government debt. The requirements of this Section shall also apply to the procurement of
8 brokerage firms, investment banking firms, investment management firms, consultants, and other
9 vendors retained to manage or invest funds controlled or administered by a County agency or the
10 County government. The application of this Subsection is subject to the requirements and
11 restrictions of federal and state law.

12 (d) A business may opt to not receive a County-based preference under this Section.

13 (e) For the purposes of this Division, the term "competitive bids or proposals" means any
14 bids or proposals for procurement funded or administered by a County agency or the County
15 government except for procurement awards made pursuant to Section 10A-114.]

16 SECTION 4. BE IT FURTHER ENACTED that the provisions of this Act are hereby
17 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
18 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
19 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
20 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
21 Act, since the same would have been enacted without the incorporation in this Act of any such
22 invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection,
23 or section.
24

1 SECTION 5. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
2 calendar days after it becomes law.

Adopted this 14th day of November, 2017.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Derrick Leon Davis
Chairman

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.