

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

Bill No. CB-92-2012

Chapter No. 89

Proposed and Presented by Council Member Franklin

Introduced by Council Members Franklin, Harrison, Lehman, Toles and Turner

Co-Sponsors _____

Date of Introduction October 23, 2012

BILL

1 AN ACT concerning

2 Economic Development and Local Employment

3 For the purpose of strengthening the requirements for finding “best efforts” by vendors to meet
4 the local hiring percentage goal; and generally providing for the enforcement of County-based
5 business assistance.

6 BY repealing and reenacting with amendments:

7 SUBTITLE 10A. PURCHASING.

8 Section 10A-164,

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 Section 10A-164 of the Prince George's County Code be and the same is hereby
13 repealed and reenacted with the following amendments:

14 SUBTITLE 10A. PURCHASING.

15 DIVISION 7. ECONOMIC DEVELOPMENT.

16 Subdivision 1. County-Based Business Assistance.

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

18 (a) For the entire duration of the procurement contract or agreement, any vendor given a
19 County-based business preference under Section 10A-160 or subject to the County-based
20 business participation requirements under Section 10A-161 shall maintain no less than the
21 percentage of certified County-based business participation or certified County-based small

1 business participation stated in the winning bid or proposal. At the discretion of the Purchasing
 2 Agent, failure to comply with this Section may subject any vendor given a business preference
 3 under Section 10A-160 or subject to the County-based business participation requirements under
 4 Section 10A-161 to a penalty, to include monetary fines of up to five percent (5%) of the value
 5 of the contract for each violation, or a cancellation of the contract or agreement.

6 (1) A vendor may request a waiver of the requirements of this Subsection by the
 7 Purchasing Agent. On a case by case basis, such a waiver request may be granted by the
 8 Purchasing Agent with the approval of the County Executive, if “best efforts” by the vendor to
 9 comply have been demonstrated as prescribed in Subsection (e) of this Section.

10 (2) For procurement contracts or agreements subject to approval by legislative act
 11 under Section 819 of the Charter, a waiver and/or percentage adjustment authorized by this
 12 Subsection must be approved by the County Council. For procurement contracts or agreements
 13 not subject to approval by legislative act under Section 819 of the Charter, notice of such a
 14 waiver and/ or percentage adjustment, including the information provided to the Purchasing
 15 Agent pursuant to Paragraphs (1) – (4) of Subsection (e) of this Section, must be sent to the
 16 County Council by the Purchasing Agent by no less than fourteen (14) calendar days prior to the
 17 date of the County Executive’s approval of the Purchasing Agent’s decision.

18 (b) Any vendor given a County-based business preference under Section 10A-160 or
 19 subject to the County-based business participation requirements of Section 10A-161 shall submit
 20 a quarterly report within thirty (30) calendar days after the end of each quarter to the Purchasing
 21 Agent, the County Auditor, and a compliance manager designated by the County Council that
 22 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 3 month
 25 period, including reporting the percentage and U.S. dollar value of certified County-based
 26 business participation and certified County-based small business participation for the period
 27 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 3 month period, including the U.S. dollar value and
 30 percentage of the total contract dollars paid in the most recent 3 month period to each business;
 31 and

1 (3) The expected percentage and U.S. dollar value of certified County-based
2 business participation and certified County-based small business participation in the next 12
3 month 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 or subject to the County-based
6 business participation requirements of Section 10A-161 shall be subject to an audit of documents
7 or other information deemed necessary by the Purchasing Agent or the County Auditor to verify
8 compliance with this Section upon thirty (30) calendar days written notice, including, but not
9 limited to, copies of any contracts with subcontractors or other vendors.

10 (d) The Purchasing Agent shall make compliance with this Subdivision a condition of
11 any contract or agreement for a procurement funded by a County agency or the County
12 government or any such contract or agreement shall be void. This requirement does not apply to
13 procurements awarded pursuant to Section 10A-114.

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

22 (1) Provides a detailed written statement of the reasons the vendor is unable to
23 maintain its percentages of County-based business or County-based small business participation;

24 (2) Provides a detailed written statement of its efforts to maintain its percentages of
25 County-based business or County-based small business participation, including the precise
26 reasons and justifications for the departure of County-based businesses and County-based small
27 businesses from the procurement since the initial award of the procurement and the vendor’s [its]
28 efforts to contact and negotiate with other County-based businesses or County-based small
29 businesses including:

1 (A) The names, addresses, and telephone numbers of the County-based
 2 businesses or County-based small businesses that were contacted and the dates such County-
 3 based businesses were contacted, and

4 (B) A description of the information provided to County-based businesses or
 5 County-based small businesses regarding the descriptions of services or goods sought for the
 6 procurement, including plans, specifications and anticipated time schedule for any portions of the
 7 work to be performed, where applicable;

8 (3) As to each County-based business or County-based small businesses that placed a
 9 subcontract or other quotation or offer which the vendor considered not to be acceptable, a
 10 detailed written statement that includes sufficient reasons for this conclusion; [and]

11 (4) A written list of County-based businesses or County-based small businesses found
 12 to be unavailable to perform under the procurement[.] ; and

13 (5) [Made documented good faith efforts to assist interested County-based businesses
 14 or County-based small businesses in obtaining bonding, lines of credit, or insurance required by
 15 the vendor.] Provides a detailed description demonstrating that the vendor made sufficient
 16 efforts to assist interested County-based businesses or County-based small businesses in
 17 obtaining bonding, lines of credit, or insurance required by the vendor.

18 Based on an analysis of the information provided by the vendor seeking a waiver
 19 authorized by Paragraph (1) of Subsection (a) of this Section and an analysis by the Purchasing
 20 Agent of the availability of County-based businesses or County-based small businesses that
 21 provide services or goods that are the subject of the procurement, the Purchasing Agent shall
 22 determine whether “best efforts” to comply have been demonstrated by the vendor and whether
 23 to grant the vendor’s request for a waiver authorized by Paragraph (1) of Subsection (a) of this
 24 Section, subject to the approvals and notice required by this Section. If the Purchasing Agent
 25 does grant a waiver authorized by Paragraph (1) of Subsection (a) of this Section, the Purchasing
 26 Agent shall select a new minimum percentage requirement for County-based business
 27 participation or County-based small business participation for the vendor’s procurement based
 28 on the availability of County-based businesses or County-based small businesses that provide
 29 services or goods that are the subject of the procurement, subject to the approvals and notice
 30 required by this Section.
 31

1 SECTION 2. BE IT FURTHER ENACTED that this Act shall take effect on the effective
2 date of Section 10A-164 of CB-17-2011, (July 1, 2013).

Adopted this 20th 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.