





September 11, 2024

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

Colette R. Gresham, Esq.
Deputy Council Administrator

THRU: Josh Hamlin 
Director of Budget and Policy Analysis

FROM: Andrew Stover 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-060-2024 Repeal of the Grant Exemption from Procurement Competition

CB-060-2024 (proposed by: Council Member Blegay)

Assigned to Government Operations and Fiscal Policy (GAFP) Committee.

AN ACT CONCERNING THE REPEAL OF THE GRANT EXEMPTION FROM PROCUREMENT COMPETITION for the purpose of allowing products, goods, services that are funded with a grant to be a part of open competition in the Prince George's County's procurement process.

Fiscal Summary

Direct Impact

Expenditures: Potentially significant increase in expenditures, as a result of expected greater staffing needs.

Revenue: No revenue impact likely.

Indirect Impact

Potential to be favorable or adverse.

Legislative Summary:

CB-060-2024¹, proposed and sponsored by the County Member Blegay, was presented on July 2nd, 2024, and referred to the Government Operations and Fiscal Policy (GOFP) Committee. The bill removes procurement contracts funded by grants from the list of supplies and services that are exempt from the typical procurements practices that are set out in Divisions 2, 6, and 7 of Subtitle 10A of the Prince George's County Code.

Current Law/Background:

In Section 10A-108² of the Prince George's County Code, current County law lists a number of supplies and services that are exempt from Divisions 2, 6, and 7 of Subtitle 10A. These Divisions govern the award of contracts, special provisions, and economic development. Most notably, services and/or goods listed under Section 10A-108 are exempt from having to go through the typical competitive solicitation process.

Among these exemptions are grants, as written in subsection (a)(14) of Section 10A-108. This exemption for grants has existed since the passage of this law by the Council in 1992 through CB-001-1992³. The legislative intent of including grants as an exempt service or good at the time of the law's original passage is unclear, but today the law is interpreted to mean that procurements made through funds granted to the County are not subject to the standard procurement process.

In most grant-funded procurements that the Office of Procurement directly handles, those procurements do go through the standard competitive process. However, many of the County's executive agencies receive grant funds for procurements that they use to procure goods and/or services without going through this competitive process as outlined in Divisions 2, 6, and 7 of Subtitle 10A of the County Code. Procurements for the executive agencies make up the bulk of cases where the exemption for grant-funded contracts is exercised.⁴

Resource Personnel:

- Leroy D. Maddox Jr., Legislative Attorney

¹ [Prince George's County Council - Reference No. CB-060-2024 \(legistar.com\)](#)

² [Prince George's County Code Section 10A-108](#)

³ [CB-001-1992](#)

⁴ Council staff discussion with Office of Procurement

- Pamela F. Dickerson, Acting Director & Purchasing Agent, Prince George's County Office of Procurement
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Discussion/Policy Analysis

The intent of CB-060-2024 is to eliminate the provision exempting procurement contracts funded using grant funds from being subject to Divisions 2, 6, and 7 of Subtitle 10A of the County Code. The practical effect of this legislation would be that all contracts funded by grants would be subject to the normal competitive procurement process, including considerations of status and/or inclusion of minority-business enterprises, small businesses, and local businesses.

The impact of this bill could be potentially large. Should this bill pass, all executive agencies currently using this exemption in their procurements of grant-funded contracts would have to go through the competitive procurement process. The Office of Procurement expects that should this legislation go through as proposed, there will be a large increase in waivers from these agencies requesting exemption. The exact number of procurements that would be impacted by this is unknown, as the specific frequency with which the exemption for grant-funded contracts is exercised was not provided by the Office of Procurement. If the number of exemptions currently being used is high, however, it is likely that such a change to the law would create greater strain for the Office, which will be responsible for administering all of these procurements and/or processing waivers for agencies that still wish to request exemptions. This will necessitate greater staffing capacity for the Office of Procurement, as the Office would not have enough staff resources to handle this influx in competitive procurements.

It is important to consider that some grants will have stipulations saying how the money is to be used and possibly indicating that the grant should be used for specific contracts or exempt from competitive procurement. The passage of this law, however, is not expected to impact the County's ability to comply with the terms of a grant. As Section 10A-108(c)(2) of the County Code says, County laws regarding procurement will not apply in situations where the terms of a grant conflict with current law. In these situations, complying with the terms of the grant should be prioritized.

Another important consideration is that a plain reading of the law raises concerns about whether this bill achieves its intended purpose. According to County law, Section 10A-108(a), "the *acquisition* of the following supplies and services shall not be subject to Divisions 2, 6, and 7" (emphasis supplied), with "grants" listed as an exempt acquisition in subparagraph (14). However, this bill is not meant to be aimed at the *acquisition* of grants, which are not subject to procurement. Instead, its legislative intent is to address the acquisition of supplies and services funded by grants. This distinction, though subtle, is significant and may alter the interpretation of the law. A minor revision to the bill would clarify its intent and ensure it accomplishes its objective without confusion.

Fiscal Impact

- *Direct Impact*

CB-060-2024 has the potential to raise costs for the County through an increased need for staffing in the Office of Procurement. Should the bill pass, it is expected that the Office of Procurement will see an increase in competitive procurements for grant funded contracts and an increase in requested waivers for exemption from that process. The extent of this increase is wholly dependent on current use of the exemption across the County government, which is currently unknown. To be able to adequately accommodate any significant increase in workload, the office will need more staff to review grants and ensure compliance to grant terms, as well as more procurement officers and a manager that has extensive experience working with grants. An exact cost cannot be determined at this time but could be significant.

- *Indirect Impact*

The indirect impact of this bill has the potential to be either favorable or adverse, depending on how current grant-funded contracts using an exemption are allocated. Should the bill pass, all contracts would be open for competition, which will mean a number of contractors that had historically filled particular grant-funded contracts could be outbid for the contract in the future. The current makeup of businesses fulfilling these grant-funded contracts is unknown, but should the County find that a majority of these contracts have been going to local and/or minority business enterprises, it is possible these businesses may be outbid and lose the contract, which could result in a decrease in contracts going to these groups. Conversely, if the makeup of the businesses is not local and/or minority business enterprises, these businesses will now have a chance to compete and there could be an increase in contracts going to these groups. More information must be known to determine which outcome is likely.

- *Appropriated in the Current Fiscal Year Budget*

No.

Effective Date of Proposed Legislation:

The Act shall take effect forty-five (45) calendar days after it becomes law.

If you require additional information or have questions about this fiscal impact statement, please reach out to me via email.