





September 13, 2023

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin 
Director of Budget and Policy Analysis

FROM: Roger G. Banegas 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-071-2023 County Contract Evaluations

CB-071-2023 (*Proposed by:* Council Member Burroughs)

Assigned to the Government Operations and Fiscal Policy Committee

AN ACT CONCERNING COUNTY CONTRACT EVALUATIONS for the purpose of providing transparency in the County's construction contracts that it awards each year with the County spending millions of dollars contracting for the procurement of construction services from private sector contractors; the prudent expenditure of public dollars has resulted in a County procurement process that has resulted in the selection of qualified and responsible contractors with most services being delivered in accordance with the terms of the contract; the contractor's hiring metrics, treatment of employees, and prior performance on contracts is of significant importance to the County; the purpose of these sections is to implement a contractor evaluation program and establish database(s) on contractor performance; and the contractor evaluation program will assure that contractors are routinely evaluated in accordance with approved criteria and that this evaluative data is catalogued and readily accessible to the County Council.

Fiscal Summary

Direct Impact

Expenditures: Additional expenditures may be required due to administrative costs.

Revenues: No revenue impact likely.

Indirect Impact

None likely.

Legislative Summary:

CB-071-2023, proposed and sponsored by Councilmember Burroughs, was presented on July 11, 2023, and referred to the Government Operations and Fiscal Policy (GOFP) Committee. This bill will require the Office of Central Services to maintain the employment metrics of contractors and subcontractors that are awarded construction contracts of one million dollars (\$1,000,000.00) or more with the County and have the Director of the Office of Central Services submit an annual report to the County Executive and County Council each year by July 1. The annual report will aid the County Executive and County Council in assessing the contractors' minority business enterprise participation and local hiring practices.

Background/Current Law:

Section 10A-176¹ of the Prince George's County Code provides that:

The Director of Central Services shall prepare and transmit a written report, subject to section 10A-138² of this Subtitle that shall include information regarding the Local Business Participation Procurement Report, to the County Council and County Executive...

Under the current law, the County Council and County Executive are to receive a report that provides information pertaining to the participation for procurement of all certified County-based businesses (minority, small, county-located). The report will be for an entire fiscal year, and it will highlight key factors that include but are not limited to the total contract dollars awarded, the method in which it was awarded (competitive sealed bidding, competitive sealed proposal, contract negotiation, or small purchase procedures), and whether the provisions required a First Source and Local Hiring Agreement. Section 10A-177³ states that "prior to the execution of any procurement contract or agreement subject to Section 10A-112, 10A-113, 10A-114 or 10A-115 of this Subtitle,

¹ [Sec. 10A-176 of the Prince George's County, MD Code](#)

² [Sec. 10A-138 of the Prince George's County, MD Code](#)

³ [Sec. 10A-177 of the Prince George's County, MD Code](#)

the Purchasing Agent or Purchasing Agent’s designee shall certify in writing that such procurement is in full compliance with the applicable provisions of this Subtitle or the procurement shall be rendered void and illegal...”

Relevant legislation from Other Jurisdictions

In the County of Los Angeles, California, the Board of Supervisors directed the Chief Executive Office (CEO), Auditor-Controller (A-C), County Counsel (Counsel), and the Director of the Internal Services Department (ISD) to establish a work group to develop a mechanism to alert departments of poorly performing contractors⁴. The result of this work group was the Contractor Alert Reporting Database (CARD). Contractors doing business with the County of Los Angeles, CA, are monitored and notified if they perform poorly. Contractors are given transparent reasons as to why they will be placed in CARD and are given ten (10) business days to respond to the notice. Other County departments are notified of the contractor(s) placed in CARD and work with the contractors to resolve any issues to prevent them from future non-compliance. The criteria for placing a contractor in CARD include but are not limited to owing the County for overpayments and/or questioned costs and has not entered into a repayment agreement or agreed to pay the County back, and the contractor and/or their principal owners are currently debarred by other governmental entities.

Resource Personnel

- Jibril Brown, Legislative Officer
- Pleshette Monroe, District 8

Discussion/Policy Analysis

The Director of Central Services is a focal point for CB-071-2023 as they would be required to collect and maintain metrics of construction contracts awarded in the County that exceed one million dollars (\$1,000,000). The degree to which the Office of Central Services collects the required information will be crucial to ensuring that Contractors and Subcontractors will continue to be awarded construction contracts by the County. The metrics/data required to be collected generally cover the number of local workers employed on the project, wages and benefits provided, the number of Minority Business Enterprises engaged, contractor performance, and information related to the award and compliance with the terms of the contract. The specific provisions of the Bill are described below.

The proposed bill, CB-071-2023, would amend Subtitle 10A. *Purchasing*. of the Prince George’s County Code to add Sections 10A-178, 10A-179, and 10A-180 to Division 7. *Economic Development*. The three (3) new sections would create Subdivision 6. *Annual County Contract*

⁴ [County of Los Angeles - Contractor Alert Reporting Database](#)

Evaluations and Reports. These amendments are primarily clarifying in nature, and add the following language to the County Code:

- **§10A-178. Applicability.** The mandates contained in this subdivision shall apply to all County construction projects that exceed one million dollars (\$1,000,000). (page 2, lines 6-7).
- **§10A-179. Definitions.** This section clearly defines what each individual business enterprise requires to be considered either an African American Business Enterprise, Asian-American and Pacific Islander Business Enterprise, Latino Business Enterprise, Locally-owned and Operated Business, Minority Business Enterprise, Native American Business Enterprise, Veteran Business Enterprise, or Women’s Business Enterprise. The following is applied to each respective business enterprise:
 - (a) ... *as defined in Section 10A-101(A)(1)*⁵ shall mean any business that is:
 - (1) At least fifty-one percent (51%) owned by one or more African Americans, [Asian-Pacific American or Subcontinent Asian Americans, Hispanic Americans, Native Americans, etc.,] or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock which is owned by one or more African Americans, [Asian-Pacific American or Subcontinent Asian Americans, Hispanic Americans, Native Americans, etc.];
 - (2) Whose general management and daily business affairs and essential productive operations are controlled by one or more African Americans, Asian-Pacific American or Subcontinent Asian Americans, Hispanic Americans, Native Americans, etc.; and
 - (3) Which has been certified by the Supplier Development and Diversity Division as a minority business enterprise pursuant to Division 6 of this Subtitle.
- **§10A-179(d).** This subsection defines a *Contractor* as any person, firm, corporation, partnership, association, limited liability company, or any combination thereof, who enters into a contract with the County, agency, or official of the County that is authorized to award or enter any contract. (page 2, line 30, to page 3, line 2).
- **§10A-179(f).** This subsection defines a *Local Worker* as an employee of a Contractor or Subcontractor that resides within Prince George’s County, MD. (page 3, lines 13 to 14).
- **§10A-179(i) Minority Individuals.** As defined in Section 10A-101(A)(26), *Minority Individuals* shall mean those who have been subjected to prejudice or cultural bias because of their identity as a member of a group in terms of race, color, ethnic origin, or gender, without regard to their individual capabilities. (page 4, lines 3 through 22).

⁵ [Sec. 10A-101 of the Prince George's County, MD Code](#)

- **§10A-179(k) Subcontractor.** This subsection defines a *Subcontractor* as any person, firm, corporation, partnership, association, limited liability company, or any combination thereof who enters into a contract with a *Contractor* to assist the *Contractor* in the performance of a contract with the County. The term *Subcontractor* does not include vendors or suppliers to the *Contractor*. (page 5, lines 2 through 5).
- **§10A-180. Evaluation of County Construction Contractors.** This subsection states that (a) the Director of Central Services shall prepare and transmit a written report on County contracts that exceed one million dollars (\$1,000,000) and that the report shall include the metrics required in this section to the County Council and County Executive annually by July 1. Additionally, the (b) Director of Central Services shall collect and maintain metrics on Contractors and Subcontractors that are awarded construction contracts with the County. These metrics shall include but are not limited to the following:
 - (1) The number of Local Workers employed on the project.
 - (2) The wages paid to the Contractor’s employees, benefits provided to employees, and any other fringe benefits provided by the Contractor to its employees.
 - (3) The wages paid to the subcontractor’s employees, benefits provided to employees, and any other fringe benefits provided by the Contractor to its employees.
 - (4) The total number of Minority Business Enterprises that shall also be subcategorized by the number of (i) African American Business Enterprises, (ii) Asian-American and Pacific Islander Business Enterprises, (iii) Latino Business Enterprises, (iv) Native American Business Enterprises, (iv) Veteran Business Enterprises, and (v) Women’s Business Enterprises.
 - (5) The Agency contracting with the Contractor or Subcontractor.
 - (6) The performance of the Contractor or Subcontractor to include:
 - (A) The Quality of work,
 - (B) The timeliness of completion of the project,
 - (C) The compliance with the budget; and
 - (D) The regulatory compliance.
 - (7) Whether the contract is a new or initial award, existing, renewal, or an extension for that fiscal year.
 - (8) Whether the contract was awarded by:
 - (A) Competitive bid pursuant to Section 10A-112⁶
 - (B) Proposal pursuant to Section 10A-113⁷, or
 - (C) Through contract negotiation or sole source contract pursuant to Section 10A-114⁸ specifying the reasons for not competitively bidding the procurement.
 - (9) Whether a First Source and Local Hiring Agreement was a condition to contracting with the County.

⁶ [Sec. 10A-112 of the Prince George's County, MD Code](#)

⁷ [Sec. 10A-113 of the Prince George's County, MD Code](#)

⁸ [Sec. 10A-114 of the Prince George's County, MD Code](#)

Fiscal Impact

Direct Impact

The enactment of CB-071-2023 may have a direct adverse fiscal impact on the County due to the possibility of additional administrative costs for contract evaluations of Contractors and their Subcontractors if required. Any additional costs will be dependent on the degree to which the Office of Central Services already collects and maintains the metrics for awarded construction contracts that exceed one million dollars (\$1,000,000), and the number of contracts subject to the Bill's requirements. Council Staff has requested information from the Administration regarding additional expenditures that will be required by the Office of Central Services but has not received it as of the date of this memorandum.

Indirect Impact

The enactment of CB-071-2023 is not likely to have an indirect fiscal impact.

Appropriated in the Current Fiscal Year Budget

No.

Effective Date of Proposed Legislation:

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

If you require additional information or have questions about this fiscal impact statement, please contact me via phone or email.