

**PRINCE GEORGE'S COUNTY COUNCIL**  
**COMMITTEE REPORT**  
**2016 Legislative Session**

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<b>Reference No.:</b>	CB-074-2016
<b>Draft No.:</b>	2
<b>Committee:</b>	PSFM
<b>Date:</b>	10/13/2016
<b>Action:</b>	FAV (A)

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**REPORT: 1**

Committee Vote: Favorable as Amended, 5-0 (In Favor: Council Members Franklin, Patterson, Harrison, Lehman and Turner)

CB-074-2016 (the Jobs and Opportunity Act Of 2016) seeks to improve the public procurement process to enhance access to local and economic opportunities through various modifications and additions to regulations within Section 10A of the Prince George's County Code.

The Jobs and Opportunity Act of 2016 ("Jobs First II") seeks to enhance opportunities for local small and minority firms and residents in the following ways:

- (1) **Streamline certifications for minority certified firms** - Automatically consider county-based firms with MBE certification (CMBEs) to be county-based small business enterprises (CBSBEs). Currently, CMBEs are automatically considered to be county-based business enterprises (CBBEs), but since minority business certifications typically include a size test, like MDOT's MBE program, there is justification for automatically considering CMBEs to be CBSBEs as well. (Note: This also benefits certified woman-owned businesses because they are minority-owned firms under county law.)
- (2) **Target the 40% local requirement to benefit local small and minority businesses** - Whether competitively bid or sole-sourced, modify the existing 40% contract local participation requirement to require 40% utilization of county-based small business enterprises (CBSBEs) (which, per Proposal #1, includes all CMBEs). Require any waiver or modification of this 40% requirement for a procurement to require Council approval.
- (3) **Require mandatory subcontracting plans to govern the 40% local participation requirement to protect subcontractors** - Require the 40% local participation requirement in Proposal #2 to be governed by a mandatory subcontracting plan submitted at the time of bidding (or the bid shall be deemed nonresponsive) where the

prime bidder is not a CBSBE. Any change in subcontractors in the subcontracting plan for cause must be approved by the Purchasing Agent and cannot modify meeting the 40% CBSBE requirement.

- (4) **Use the “best value” standard instead of “lowest bid”** - Modify the standard for professional and construction services contract awards to “best value” instead of technically acceptable “lowest bid” in order to improve performance quality and give local small and minority businesses fairer opportunities in bid competitions. This would become effective as of July 1, 2017.
- (5) **Create a Prince George’s County Supply Schedule for “local-only” bidding** (similar to the District of Columbia Supply Schedule) -- to be proposed by the Director of Central Services in the annual budget, subject to amendment and budget adoption by the County Council -- consisting of industry product and services (NAICS codes) where we have sufficient local saturation for contracting opportunities, which will be purchased by county agencies in a streamlined process only among CBBEs (which includes all CBSBEs). Require any waivers to get County Council approval.
- (6) **Increase the value of contracts solely for local small and minority businesses** - Change the existing \$100,000 contract threshold for only bidding procurements to CBSBEs to \$500,000 in contract value and require contracts below this threshold to be only bid among CBSBEs. Require any waivers to get County Council approval.
- (7) **Establish a stronger prompt payment law** - Require timely payment of subcontractors for completed work (within 7 days after the prime vendor has been paid by the county) as a condition of the any contract award and significantly increase penalties on the county for delayed payments to prime vendors.
- (8) **Strengthen BDRP capacity building program for local small and minority businesses** - Require, as a part of the annual budget proposal, the Director of Office of Central Services to identify and reserve at least \$5 million in annual contracting and subcontracting opportunities for businesses enrolled in the Business Development Reserve Program subject to Council amendment and approval.
- (9) **Employ interim “last chance” bid opportunities for local small and minority businesses** - Until the “best value” standard is fully implemented on July 1, 2017, for all competitively bid proposals, where a CBSBE prime bid is not initially the lowest bid due to pricing, allow the lowest technically acceptable bidding CBSBE a last opportunity to match and defeat the most competitive bid on price.
- (10) **Strengthen contract debriefing policies** - Strengthen the policy in the county for mandatory debriefings after contract awards.

- (11) **Require contract enforcement clause** - Require a specifically worded clause to be included in all contracts (including purchasing orders) that asserts the responsibility of the vendor to comply with the local business participation requirements and first source/local hiring provisions of our procurement laws under penalty of losing the contract and not being in good standing with the county for eligibility for future procurement opportunities.
- (12) **Bid notice to stakeholders** - Have courtesy notice of any bid opportunities be electronically sent to the Chamber of Commerce, Business Roundtable, and Center for Entrepreneurial Development.
- (13) **Mandatory publication of agency forecasts in advance of the fiscal year** - Publishing of agency annual procurement forecasts shall be mandatory in advance of each fiscal year and shall be transmitted to the Chamber of Commerce, Business Roundtable, and Center for Entrepreneurial Development.
- (14) **Final contracts maintained by OCS** - Require the final version of any executed contracts (including purchasing orders and contract amendments) to be maintained (electronically or in hard copy) by the Office of Central Services.
- (15) **OCS Certification** - Require the Director of Central Services to sign a certification that each contract award has been made in full compliance with our local business participation laws prior to the contract award being made.
- (16) **Hold agencies accountable for enforcement** - Create budget consequences for county agencies for failure to cooperate with OCS and lack of compliance with the Jobs First Act.

During the Committee the following changes were suggested in a Proposed Draft 2C in concert with the Administration:

- Add flexibility to the timeline for mandatory contract debriefings for situations where there are a large number of bidders, p. 4
- A "temporary public safety emergency" provision for noncompetitive contracts, provided they do not have a duration beyond 180 days and cannot be renewed or extended, bottom of p. 6 and onto 7
- Restore a 15 day grace period before prompt payment interest penalties start accruing for the County, p. 9
- Confirm the continuation of the requirement to provide a Maryland tax return for a business to establish county-based status, p. 21
- Clarify that when a contract award does not comply with our procurement laws and is rendered void, it does not create a cause for legal damages for either party, p. 29

During the Committee sessions held on October 3<sup>rd</sup> and October 13<sup>th</sup>, the following speakers testified in support of the bill: Mark Johnson, Sr., Junio Medina of LiUna, Terry Speigner of NGEN, Legusla Floyd, Jr. of Acclaim USA, Loretta Fuller of ISA, Lunique Esteime of Esteime Enterprise, and David Harrington of the Prince George's Chamber of Commerce. Written testimony was also received from Bob Zinsmeister, Director of Government Affairs for Associate Builders and Contractors, Inc.

The Office of Audits and Investigations reports that the bill should have an overall positive impact on the County by providing opportunities for County business expansion and employment for County residents. Some County agencies may also incur additional cost for staff and related operations expenses and monitoring, tracking and administering these requirements, as well as being subject to a temporary or permanent reduction in its proposed budget allocation in the annual County process.

After two Committee sessions and deliberation, the Public Safety and Fiscal Management Committee voted CB-074 -2016 out favorably 5-0 as amended.