



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of Audits and Investigations

May 27, 2022

FISCAL AND POLICY NOTE

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin
Director of Budget and Policy Analysis

FROM: Arian Albear
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-046-2022

CB-046-2022 (*Proposed and presented by:* Council Member Franklin)

Assigned to the Committee of the Whole (COW)

AN ACT CONCERNING AMENDMENT OF SECTION 603, CHARTER OF PRINCE GEORGE'S COUNTY for the purpose of proposing an amendment to Section 603 of the Charter of Prince George's County to amend the requirements relating to competitive bidding regarding public notice; consideration of best value in bid selection; consideration of small and minority-owned businesses based in Prince George's County in determining best value; bonding; and generally regarding competitive bidding.

Fiscal Summary

Direct Impact

Expenditures: Increase in expenditures possible.

Revenue: No additional revenue likely.

Indirect Impact

Likely positive.

Legislative Summary

CB-046-2022¹, proposed by Council Member Franklin, was presented and referred to the Committee of the Whole (COW) on May 31, 2022. CB-046-2022 would amend “Section 603. – Competitive Bidding” of the County Charter to expand the publication requirements for the purchases and contracts to include the County’s newspapers of record, a publicly available website of the County Purchasing Agent, and any other manner determined by the County Code. Additionally, the bill would change the procurement practice from considering only “cost” to considering “best value.” Finally, the bill makes a small change to include gender neutral language when speaking about the County Purchasing Agent.

Background/Current Law

Charter Amendment

Amendments to the County Charter are made pursuant to Charter Section 1105.² A Council-initiated Charter amendment must be in the form of an act of the Council approved by not less than two-thirds of the members of the full Council, which is exempt from executive veto. Once enacted by the Council, the proposed amendment is summarized in the form of a question which is then submitted to County voters at the next general election. If a majority of votes cast on the question are in favor of the proposed amendment, the amendment stands adopted from and after the thirtieth day following the election.

Proposed Charter amendments must be published by the County Executive in the County newspapers of record and in media for public notice as defined in Charter Section 1008 for five successive weeks prior to the election at which the question is on the ballot.

Charter Section 603

At present, Section 603 of the Charter, “Competitive Bidding,” generally requires County purchases to be “made from or let by sealed bids or proposals publicly opened after public notice *for such period and in such manner as the County Purchasing Agent or his authorized deputy shall determine.*” It further requires that “purchases and contracts shall be made from or awarded to the responsive and responsible bid that is most favorable to the County with respect to technical requirements and *costs.*”

“Best Value” Procurement

Under County Code Section 10A.101, “Best Value” is defined as:

¹ CB-046-2022.

² [ARTICLE XI - EFFECT AND AMENDMENT OF CHARTER. | Code of Ordinances | Prince George's County, MD | Municode Library](#)

“[T]he basis for awarding contracts which optimizes weighted factors such as quality, cost, diversity, and performance, among responsive and responsible offerors. Such basis shall reflect, whenever possible, objective, and quantifiable analysis and "best value" criteria shall be prescribed and predetermined in the Request for Proposals.”

Resource Personnel

Kathy Canning, Legislative Officer.

Discussion/Policy Analysis

Both CB-040-2022, recommended by the Charter Review Commission, and CB-046-2022 propose amendments to Section 603 of the County Charter, relating to notice and factors in the decision to make a purchase or award a contract. As noted above, current Section 603 only requires consideration of technical requirements and cost in making a purchase or awarding a contract. Additionally, the Section does not require that Request for Proposals (RFP) be advertised in any particular way. How the RFPs are advertised are at the discretion of the County Purchasing Agent.

CB-046-2022 would go a step further than CB-040-2022, which has also been referred to the Committee of the Whole. A brief comparison of the two bills can be found below:

CB-040-2022	CB-046-2022
	Adds gender-neutral language in reference to the County Purchasing Agent.
Requires advertisement of purchases and contracts in the County’s newspapers of record.	Requires advertisement of purchases and contracts in the County’s newspapers of record.
	Requires advertisement of purchases and contracts in a publicly available website and any other manner determined by the County Code.
Replaces “cost” with “best value.”	Replaces “cost” with “best value.”
	Further explains “best value” as to include small- and minority-owned businesses in a responsive and responsible bid considered by the Purchasing Agent so long as it does not conflict with state or federal law.
	Adds “in accordance with the County Code” when the County’s Purchasing Agent considers a security or bond for the performance of work for purchases and contracts.

Best value procurement is currently in place in several neighboring jurisdictions:

- Washington, D.C. requires best value considerations for some contracting; however, the District does not consider business size or owner demographics when selecting.³
- The *State of Maryland* defines best value as:
“[T]he expected outcome of a procurement that provides the greatest overall benefit in response to the requirement with consideration given to the quantities involved, the time required for delivery, the purpose for which required, the competency and responsibility of the bidder, the ability of the bidder to perform satisfactory service, the **plan for utilization of minority contractors** [emphasis added], and the price offered by the bidder.”⁴
- *Montgomery County* requires that procurement above \$100,000 follow a detailed best value analysis; however, Montgomery County does not consider business size or owner demographics when making a best value selection.⁵

Fiscal Impact

Direct Impact

Enactment of CB-046-2022 may result in an adverse financial impact to the County as the County Procurement Agent would consider the bidders location and demographics in addition to cost. However, County-based small- and minority-owned businesses may be both best cost and best values.

Indirect Impact

Requiring that County procurement consider best value, including County-based small- and minority-owned businesses, instead of only cost, may have a long-term positive impact in County finances that may more than offset any additional upfront expenditure. Contracting to County-based businesses would keep more of the local government expenditures within the County and, ostensibly, promote economic development.

Effective Date of Proposed Legislation

The proposed Act, if enacted, shall be presented as a question for voters during the County General Election occurring on November 8, 2022, and if the majority of votes cast on the question shall be in favor of the proposed amendment, such amendment shall stand adopted from and after the thirtieth day following said election.

³ [Code of the District of Columbia](#).

⁴ [Code of Maryland Regulations \(COMAR\)](#).

⁵ [Code of Montgomery County, Maryland](#).

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