

102COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2023 Legislative Session

Bill No. CB-102-2023

Chapter No. 76

Proposed and Presented by Council Members Burroughs

Introduced by Council Members Burroughs, Dernoga, Ivey, Oriadha and Blegay

Co-Sponsors _____

Date of Introduction October 17, 2023

BILL

1 AN ACT concerning

2 Contractor Requirements and Enforcement

3 For the purpose of amending provisions of the Prince George's County Code related to the
4 solicitation and award of public construction contracts; providing for enforcement of the
5 Procurement Regulations set for by the Purchasing Agent; providing for penalties of said
6 violations; and amending provisions of the Prince George's County Code related to the Office of
7 Human Rights and employment discrimination enforcement; and other generally related matters.

8 BY repealing and reenacting with amendments:

9 SUBTITLE 10A. PURCHASING.

10 Division 1. Administrative Procedures

11 Sections 10A-105

12
13 Division 6. Special Provisions

14 Subdivision 8. Debarment, suspension of bidders and offerors.

15 Sections 10A-148, 10A-150 and 10A-151

16
17 SUBTITLE 2. ADMINISTRATION

18 Division 12. Office of Human Rights

19 Subdivision 2. Administrative Provisions

20 Section 2-195

21 The Prince George's County Code

(2019 Edition; 2021 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 10A-105, 10A-148, 10A-150 and 10A-151 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 10A. PURCHASING.

DIVISION 1. ADMINISTRATIVE PROCEDURES.

Sec. 10A-105. Regulations and Procedures.

(a) The Purchasing Agent is hereby empowered to issue such procurement regulations and procedures as the Purchasing Agent may deem necessary or appropriate to implement any provision of this Subtitle. Except as otherwise expressly provided in this Subtitle or otherwise required by law, any procurement regulation or procedure issued by the Purchasing Agent shall take effect at such time as designated by the Purchasing Agent and shall be binding upon all persons.

* * * * *

(f) The Purchasing Agent, or their designee, shall conduct investigations for the purposes of ensuring compliance with the procurement regulations and procedures set forth in Subsection (a) by all Contractors, and take action pursuant to Section 10A-151.

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SUBTITLE 10A. PURCHASING.

DIVISION 6. SPECIAL PROVISIONS.

SUBDIVISION 8. [DEBARMENT, SUSPENSION OF BIDDERS AND OFFERORS]

PENALTIES AND ENFORCEMENT

Sec. 10A-148. Investigations, [D]ebarments, and suspension of bidders and offerors.

(a) The Purchasing Agent shall establish investigation procedures to ensure compliance of the Procurement Regulations set forth in Section 10A-105(a) by all Contractors. The Purchasing Agent may also receive recommendations from the Office of Human Rights pursuant to Section 2-195.01 of this Code.

1 (b) [(a)] The Purchasing Agent shall establish regulations and procedures for the
2 debarment and suspension pending a final determination on debarment of any person
3 who has:

- 4 (1) Obtained any contract in violation of any provision of this Code or the Laws of
5 the State of Maryland or the United States of America, the District of Columbia,
6 any State, or any United States Territory;

7 * * * * *

8 (c) [(b)] Unless otherwise prescribed by any applicable law, a debarment under this
9 Section shall be effective for a period generally not to exceed five (5) years
10 commencing upon the date written findings are made by the Purchasing Agent
11 regardless of subsequent changes in the person's status. In the event that the person is
12 not a natural person, the officers, directors, partners, or owners of the firm and any firm
13 controlled or managed by them shall also be barred from award of any County contract
14 or participation in any contract awarded by the County during the applicable period.

15 (d) [(c)] Pending a final determination of any investigation, including [as to whether]
16 debarment is to occur or the investigation or prosecution of any act alleged to give rise
17 to the right of the Purchasing Agent to debar a prospective bidder or offeror or
18 contractor, the Purchasing Agent may suspend the person for a period of time not to
19 exceed six (6) months or such greater period as may be certified to the Purchasing
20 Agent by the investigating or prosecuting agency as required to complete the
21 investigation or prosecution.

22 **Sec. 10A-150. - Award of contract prohibited.**

23 (a) Contract not to be awarded to disqualified person. No person shall knowingly award or
24 enter into any contract whereby supplies, services, or construction will be supplied
25 directly or indirectly to the County by a person or business entity disqualified under this
26 Subdivision.

27 (b) Where public exigencies or similar factors necessitate the continuance of the
28 contractual services in connection with which the debarment is based, the Purchasing
29 Agent shall not be required to terminate the existing contract but the contractor shall be
30 liable to the County for any profits from the contract.

31 (c) Where there are no public exigencies nor similar factors necessitating the continuance
32 of the contractual services in connection with which the debarment is based, the

Purchasing Agent shall be empowered to terminate the existing contract and the contractor shall be liable to the County for any profits from the contract execution date through termination date.

Sec. 10A-151. Penalties. [Disqualification not a bar to other actions.]

(a) Disqualification of any person under this Subdivision shall not be exclusive of any other remedy that may be available to the County under any other applicable County, State, or Federal law.

(b) If a Contractor is found to be in violation of the Procurement Regulations, then the Procurement Agent is shall be empowered to:

- a. Terminate an existing contract;
- b. Bar Contractor from future contracts;
- c. Refer investigation to the Office of Human Rights for resolution;
- d. Refer to the Wage and Determination Board for resolution;
- e. Seek a criminal complaint; or
- f. Any combination thereof.

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SUBTITLE 2. ADMINISTRATION.

DIVISION 12. OFFICE OF HUMAN RIGHTS.

SUBDIVISION 2. ADMINISTRATIVE PROVISIONS.

Sec. 2-195.01. Other Awards and Remedies.

(a) In addition to the other awards and relief which are hereinafter provided, the Commission may, in accordance with the standards of proof set forth in Section 2-195, also make the following monetary orders determined by the Commission from the evidence of record as the actual damages, costs, or losses involved, or in such amounts as may be specified below:

- (1) Should the complainant's personal property be damaged, the complainant may be awarded damages not exceeding any expenses actually incurred in repairing the damage or in replacing the property, if such replacement is found by the Commission to be necessary.
- (2) If the complainant was required to incur travel expenses that would not have been incurred but for unlawful discriminatory acts or practices of the respondent, the complainant may be awarded damages not exceeding such expenses. The

1 use of the complainant's automobile shall be compensated at the rate current at the
2 time of the violation for County employees' use of a private automobile for
3 official business. Expenses shall not be awarded to the extent that they have been
4 reimbursed from another source.

5 (3) Damages may also be awarded to compensate complainant for humiliation and
6 embarrassment suffered in an amount determined by the Commission to be
7 appropriately and reasonably warranted considering all of the circumstances, but
8 in no event shall the amount be in excess of Two Hundred Thousand Dollars
9 (\$200,000.00).

10 (4) In the event an award of damages is made, the respondent shall be ordered to pay
11 to the complainant interest at the legal rate on the loss of the use of any monies
12 arising from the act of discrimination, from the date of the Commission order.

13 (5) Damages may also be awarded to compensate complainant for
14 violation of Section 13A-120 in an amount determined by the Commission to be
15 appropriately and reasonably warranted considering all of the circumstances, but
16 in no event shall the amount be in excess of Two Hundred Fifty Thousand Dollars
17 (\$250,000.00).

18 (b) In addition to other awards and relief set forth above, the Commission may impose a civil
19 fine up to Ten Thousand Dollars (\$10,000.00), in accordance with the standards of proof
20 set forth in Section 2-195, on a respondent found to have violated any of the
21 provisions of this Division. The Agency may also negotiate and collect the
22 payment of civil fines and assessments without holding a public hearing, as part of the
23 conciliation procedure set forth in Section 2-203. The terms of the negotiated conciliation
24 agreement between the respondent and the Executive Director, shall be included in a
25 written consent agreement, and if approved by a majority vote of the full
26 body of Commissioners, shall be incorporated into an order of the Commission, as set
27 forth in Section 2-203.

28 (c) In matters related to employment discrimination, including but not limited to labor
29 trafficking, the Commission may in addition to other awards and relief set forth above:

30 (1) Issue a civil fine not to exceed \$5,000 per violation pursuant to Md. Local
31 Government Code Annotated Section 10-202(d);

- 1 (2) File a lien against employer for unpaid wages pursuant to COMAR 09.12.39.02;
- 2 or
- 3 (3) Recommend disqualification and debarment to Purchasing Agent under Section
- 4 10A-148 of this Code.

5 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby
 6 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
 7 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
 8 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
 9 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
 10 Act, since the same would have been enacted without the incorporation in this Act of any such
 11 invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection,
 12 or section.

13 SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
 14 calendar days after it becomes law.

Adopted this 14th day of November, 2023.

COUNTY COUNCIL OF PRINCE
 GEORGE'S COUNTY, MARYLAND

BY: _____
 Thomas E. Dernoga
 Chair

ATTEST:

 Donna J. Brown
 Clerk of the Council

APPROVED:

DATE: _____ BY: _____
 Angela D. Alsobrooks
 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.

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