

## **CB-028-2026 – Local Diverse Supplier Prime Contractor Program**

### **Office of Procurement – Comments, Legal Concerns, and Implementation Analysis**

The Office of Procurement has reviewed CB-028-2026 and has significant concerns regarding the proposed Local Diverse Supplier Prime Contractor Program. While the intent to increase participation by local and diverse businesses is understood, the bill establishes mandatory prime contract reservation requirements that conflict with existing Subtitle 10A provisions, create potential violations of State and federal procurement rules, and impose operational requirements that cannot be implemented without substantial changes to current procurement procedures.

The bill requires the reservation of at least twenty percent of all procurements for prime contractors that are Locally Owned and Operated Businesses or County-Based Minority Business Enterprises, which creates legal, operational, and administrative concerns as detailed below.

The following supplier diversity data was provided to the County Council on December 8, 2025, in the Office of Procurement’s Fiscal Year 2025 Annual Local Business Participation Procurement Report:

Total County-wide Expenditures: \$744,512,392.25

Entire County-Wide Diverse Supplier Procurement Expenditures: \$229,102,770.59 which is approximately 31% of the County’s total expenditures (this does not include grant expenditures).

- Certified County-based Business (CBB) expenditures: \$5,124,350.61;
- Certified County-based Minority Business Enterprise (CBMBE) expenditures: \$5,148,133.22;
- Certified County-Based Small Businesses (CBSB) expenditures: \$197,991,582.55;
- Certified County-Located Businesses (CLB) expenditures: \$12,971,743.57;
- Certified Minority Business Enterprises (MBE) expenditures: \$7,866,960.64

### **1. Mandatory Reservation of Prime Contracts Conflicts With Existing Subtitle 10A Structure**

Subtitle 10A currently provides participation goals and preferences but does not require mandatory reservation of prime contracts across all procurements. The proposed bill requires that at least twenty percent of the aggregate value of procurements be reserved solely for certain certified businesses.

This represents a significant change in procurement policy because current law allows:

- Participation goals
- Preference points
- Supplier utilization requirements
- Small business assistance programs

but does not require blanket reservation of prime contracts.

The proposed requirement may conflict with current procurement procedures because:

- Not all procurements are suitable for set-aside
- Some procurements require specialized experience
- Some procurements require large capacity contractors
- Some procurements must remain open for competition

Concerns include:

- Reduced competition
- Increased procurement time
- Increased protest risk
- Difficulty meeting operational deadlines
- Conflict with best-value procurement requirements

The current Code allows flexibility, while the bill imposes a fixed percentage.

## **2. Conflict With Federal Procurement Rules and Grant Requirements**

Many County procurements, involve federal funding, which requires compliance with federal procurement regulations. Federal rules require full and open competition and limit the use of local preference or set-aside programs.

Federal requirements include:

- 2 CFR Part 200 – Uniform Guidance
- 49 CFR Part 26 – DBE rules
- Federal Transit Administration procurement rules
- Federal Highway Administration procurement rules
- Housing and Development procurement rules
- Department of Justice and Health and Human Services grant requirements

These rules require:

- Full and open competition
- No geographic preference unless authorized
- Use of DBE programs only where allowed

- Goals supported by availability data
- No arbitrary reservation of contracts

The bill requires:

- 20% reservation of procurements
- Prime contractor restriction
- Limitation to certain local certifications

This may be considered an unauthorized preference when federal funds are involved.

Possible impacts include:

- Grant violations
- Audit findings
- Loss of funding
- Contract invalidation
- Required repayment

The bill does not clearly exclude federally funded contracts.

### **3. Conflict With DBE and MBE Participation Programs**

The County already administers participation programs for:

- Minority Business Enterprise
- Disadvantaged Business Enterprise
- County-based business
- Small business
- Local preference programs

Federal DBE programs require:

- Goals based on availability
- Race-neutral methods where possible
- No conflicting participation programs

The bill creates a new prime contractor reservation program that may interfere with existing goals.

Possible conflicts include:

- DBE subcontracting goals reduced
- MBE participation reduced
- Limited subcontracting opportunities
- Conflicting participation calculations

A single contract may be required to meet:

- DBE goal
- MBE goal
- County-based goal
- Local diverse prime requirement

This may exceed available capacity.

Participation programs must be coordinated, not layered.

#### **4. Use of Multiple Certification Categories Creates Implementation Problems**

The bill limits prime contract reservation to:

- Locally Owned and Operated Business
- County-Based Minority Business Enterprise

These categories already exist within a complex certification structure.

Current certifications include:

- County-based business
- County-based small business
- County-located business
- County-based Minority Business Enterprise
- Minority Business Enterprise
- Locally-owned (proposed new category in separate bill)

Using multiple overlapping certifications to determine eligibility creates confusion.

Issues include:

- Determining which certification controls
- Tracking multiple certifications
- Verifying eligibility at bid time
- Handling expired certifications
- Applying correct preference points

The certification system is already complex, and this bill adds another layer.

#### **5. Prime Contractor Reservation May Not Be Feasible for Many Procurements**

The bill requires that at least twenty percent of the aggregate value of procurements awarded to be reserved for prime contractors meeting specific certification requirements.

However, not all procurements can be performed by County-based minority businesses or local firms.

Examples include:

- Large construction projects
- Complex IT systems which may require proprietary software
- Public safety equipment
- Federally funded projects
- Specialized professional services

Forcing reservation may result in:

- Fewer bidders
- Higher prices
- Project delays
- Failed solicitations
- Reduced quality proposals

Current law allows the Purchasing Agent to determine when set-asides are appropriate. The bill removes that flexibility.

## **6. Requirement for Council Approval of Exemptions Creates Operational Delays**

The bill requires Council approval to remove a procurement from reservation once selected.

This means:

- Procurement cannot proceed without an approved resolution
- Additional legislative action required
- Delays in time-sensitive procurements
- Increased administrative burden

Procurement schedules often require:

- Immediate solicitation
- Emergency purchases
- Grant deadlines
- Construction season timing

Requiring Council approval for exemptions may make it difficult to meet deadlines.

Concerns include:

- Procurement delays
- Missed funding deadlines

- Increased administrative workload
- Reduced efficiency

Procurement decisions are currently handled administratively to avoid these delays.

## **7. Reporting Requirements Increase Administrative Burden**

The bill requires annual reporting on all reserved procurements.

Reporting must include:

- List of reserved procurements
- Outcome analysis
- Fiscal year tracking
- Value calculations
- Replacement procurements if exempt

This requires:

- Additional staff time
- Additional tracking systems
- Additional reporting procedures

No additional resources are provided.

The Office of Procurement already reports on:

- CBB participation
- CBSB participation
- CLB participation
- CBMBE participation
- MBE participation
- Local participation
- Contract awards
- Diverse supplier expenditures

Adding another reporting requirement increases workload and creates a redundant requirement .

## **8. Implementation Timeline Is Unrealistic**

The bill would become effective 45 days after enactment.

Implementation would require:

- Policy changes
- Procedure changes
- Certification verification changes
- Solicitation template changes
- Evaluation changes
- Vendor outreach
- Staff training
- System updates

These changes cannot be completed within the timeframe without additional resources.

## **9. Overall Concern — Mandatory Prime Reservation Is Too Broad**

Current procurement programs allow flexibility through:

- Goals
- Preferences
- Subcontracting requirements
- Small business assistance

The bill requires a fixed percentage of prime contracts to be reserved.

This creates risk of:

- Reduced competition
- Higher costs
- Legal challenges
- Federal conflicts
- Administrative delays

Participation programs should allow discretion, not fixed reservation.

## **10. Conclusion**

The Office of Procurement has significant concerns regarding the implementation of CB-028-2026. The bill establishes a mandatory reservation of prime contracts that conflicts with Subtitle 10A, existing participation programs, federal procurement requirements, and current operational procedures. The use of multiple certification categories, the requirement for Council approval of exemptions, and the broad reservation requirement create administrative burden, legal risk, and potential delays in procurement.

For these reasons, the Office of Procurement recommends further review and modification of the legislation to ensure consistency with County Code, State regulations, and federal procurement requirements.