

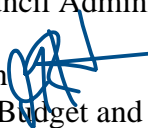



April 12, 2023

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 Banegas 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-030-2023 County Based Business Utilization

CB-030-2023 (*Proposed and presented by:* Council Members Blegay, Oriadha, Burroughs)

Assigned to the Government Operations Fiscal Policy Committee (GOFP)

AN ACT CONCERNING COUNTY BASED BUSINESS UTILIZATION for the purpose of providing that certified County-based small businesses will have the right of first award for County procurements at or under One Hundred Fifty Thousand Dollars (\$150,000).

Fiscal Summary

Direct Impact

Expenditures: No impact on expenditures likely.

Revenue: No impact on revenues likely.

Indirect Impact

Potentially favorable.

Legislative Summary:

CB-030-2023, proposed and sponsored by Council Member Blegay, Oriadha, and Burroughs, was presented on March 7, 2023, and was referred to the Government Operations Fiscal Policy (GOFP) Committee. The Bill would amend §10A-161 of the County Code to require certified County-based small businesses to have the right for first award for County procurements at or under One Hundred Fifty Thousand Dollars (\$150,000).

Current Law/Background:

Section 10A-161, “County-based business participation requirements,” generally requires fifty percent (50%) certified County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Business participation on procurements greater than \$500,000 in total value for which competitive bids or proposals are secured.

Existing County law also specifically requires the Purchasing Agent to set aside a procurement with a total value of \$500,000 or less for award to County-based small businesses, subject to certain conditions.¹ Section 10A-162(c) reads as follows:

- (c) For any procurement subject to Section 10A-112, 10A-113, or 10A-114 of this Subtitle with a total value equal to or less than Five Hundred Thousand Dollars (\$500,000), each County agency or the Purchasing Agent shall set-aside the procurement only for award to County-based small businesses, subject to Paragraphs (1) - (3) of this Subsection.
 - (1) A County agency shall not be required to set aside a procurement for County-based small businesses under this Subsection if there are not at least two (2) County-based small businesses that can sufficiently provide the services or goods which are the subject of the procurement. For procurements subject to 10A-112, a County agency may also refuse to set aside a procurement for County-based small businesses under this Subsection if the agency determines that the lowest County-based small business bid is for a price that is twelve percent (12%) or more above the likely price on the open market.
 - (2) Only if a County agency satisfies the requirements of Paragraph (1) of this Subsection and receives written approval from the Purchasing Agent may the County agency thereafter award the procurement in the open market, subject to all of the other applicable preferences prescribed in this Subdivision.

¹ Section 10A-161 of the Prince George’s County Code, “County-based business participation requirements” requires any procurement that is greater than Five Hundred Thousand Dollars (\$500,000) in total value to be secured through a competitive bid or proposal through the approval of a Purchasing Agent.

- (3) Any existing contract or agreement, including any existing multiyear contract or extended contract, for a procurement funded by a County agency or the County government with a total value equal to or less than Five Hundred Thousand Dollars (\$500,000) that was not set-aside for County-based small businesses or County-based businesses pursuant to the requirements of this Section, at the time of any contemplated exercise of an option, extension, or renewal, including automatic extensions or renewals (e.g. "evergreen" contracts or agreements), shall not be renewed or extended. This Paragraph shall not apply to a contract or agreement for a procurement with greater than fifty percent (50%) certified County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Business participation.

Resource Personnel:

- Devan Martin, Chief of Staff, District 6

Discussion/Policy Analysis:

Provisions of CB-030-2023:

CB-030-2023 would amend §10A-161 of the Code by adding a new subsection (j) as follows:

- (j) All procurements at or under One Hundred Fifty Thousand Dollars (\$150,000) shall first be awarded to a certified County-based small business unless the total invoice of the certified County-based small business exceeds the prevailing market range as determined by the Purchasing Agent. If the total invoice exceeds said market range, that there are insufficient responsible certified County-based small businesses to completely fulfill the requirement of this Paragraph or if the requirement would result in the loss of federal or state funds or grants, the Purchasing Agent may waive the participation requirements of this Section.

Effectively, CB-030-2023 would impose essentially the same requirement as existing (set-aside or first-award to County-based small businesses) on procurements of \$150,000 or less, but with different waiver provisions. CB-030-2023 includes cost-driven (exceeding the prevailing market range) in addition to lack-of-capacity and loss-of-funds waiver options. The existing requirements of §10A-162(c) do not apply if there are fewer than two County-based business that can provide the goods or services, or if the lowest County-based small business bid is for a price that is twelve percent (12%) or more above the likely price on the open market.

It is not clear how much impact the distinctions between the provisions of CB-030-2023 and existing law would have on the amount of procurement dollars going to local businesses. Given that the pool of procurements subject to the requirement are the same, and the waiver provisions similar, it is not likely to be significant.

Fiscal Impact:

- *Direct Impact*

Enactment of CB-030-2023 is not likely to have a substantial direct fiscal impact, as the Purchasing Agent is already required to make virtually identical assessments and awards under 10A-162(c).

- *Indirect Impact*

Enactment of CB-030-2023 may have a favorable indirect fiscal impact on the County, to the extent that it results in more County procurement dollars being spent with local businesses, some of which will return as tax revenue. Additionally, to the extent that the bill's requirement results in growing local businesses, it may result in increased employment opportunities for County residents. However, this impact is likely to be negligible because CB-030-2023 imposes a virtually identical requirement to that under 10A-162(c).

- *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 reach out to me via phone or email.