

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2022 Legislative Session

Bill No. CB-101-2022

Chapter No. 84

Proposed and Presented by Council Members Franklin and Hawkins

Introduced by Council Member Franklin, Hawkins, Dernoga, Taveras, Turner, Streeter,
Ivey, Glaros, Harrison, and Medlock

Co-Sponsors _____

Date of Introduction September 27, 2022

BILL

AN ACT concerning

Expanding Equity in Local Procurement Opportunities

For the purpose of implementing recommendations of the 2019 Prince George's County Utilization and Availability Study, known as a Disparity Study, implementing policies to expand opportunities in county government contracting for local, small, and minority-owned businesses, and generally relating to procurement.

BY repealing and reenacting with amendments:

SUBTITLE 10A. PURCHASING.

Sections 10A-101, 10A-114, 10A-132, 10A-133, 10A-136, 10A-159.01, 10A-161, 10A-162, 10A-164, and 10-164.01

The Prince George's County Code
(2019 Edition; 2021 Supplement).

WHEREAS the Prince George's County Office of Central Services contracted with MGT Consulting Group to conduct a Prince George's County Utilization and Availability Study ("County Disparity Study"), released in December of 2019, which assessed racial and ethnic disparities in procurement activities by the Prince George's County Government from 2010 and 2018;

WHEREAS regularly updated disparity studies are widely recognized as necessary legal predicates for establishing racially conscious minority business enterprise programs in public

procurement activities;

WHEREAS the County Disparity Study found several statistically significant racial and ethnic disparities within multiple categories of Prince George’s County Government procurement;

WHEREAS the County Disparity Study recommends utilizing a combination of racially neutral and narrowly tailored racially conscious policy measures to reduce disparities in Prince George’s County Government procurement;

WHEREAS spending with businesses based in Prince George’s County, especially those with majority ownership by County residents, promotes the local circulation of legacy wealth within communities in the County, creating positive improvements to Prince George’s County’s business tax base by the increasing the ability to invest in important public priorities like public education, public roads and transit services, public safety, and services for seniors and veterans, while reducing the need to burden residential property taxes for such services, now, therefore;

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 10A-101, 10A-114, 10A-132, 10A-133, 10A-136, 10A-159.01, 10A-161, 10A-162, 10A-164, and 10-164.01 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-101. Definitions

(a) The words defined in this Section shall have the meanings set forth below whenever they appear in this Subtitle unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular provision.

(1) African American Business Enterprise (“AABE”) means any business enterprise

(A) Which is at least fifty-one percent (51%) owned by one or more African Americans, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more African Americans; and

(B) Whose general management and daily business affairs and essential productive operations are controlled by one or more African Americans; and

(C) Which has been certified by the Supplier Development and Diversity Division as a minority business enterprise pursuant to Division 6 of this Subtitle.

(1.1) [(1)] Agency means any department, agency, board, commission, or any other unit of the County government or any agency which:

- (A) Receives funding from County funds; or
- (B) Is made subject to County procurement law by any local, State, or Federal law.

(1.2) Asian-American and Pacific Islander Business Enterprise (“AAPIBE”) means any business enterprise

(A) Which is at least fifty-one percent (51%) owned by one or more Asian-Pacific Americans or Subcontinent Asian Americans (hereinafter “Asian-American and Pacific Islander Americans”), or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more Asian-American and Pacific Islander Americans; and

(B) Whose general management and daily business affairs and essential productive operations are controlled by one or more Asian-American and Pacific Islander Americans; and

(C) Which has been certified by the Supplier Development and Diversity Division as a minority business enterprise pursuant to Division 6 of this Subtitle.

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(14.2) County resident means a citizen or legal resident whose primary residence and domicile is within Prince George’s County, MD.

[(14.2) County resident means a person whose domicile is located in Prince George's County, Maryland, as determined by standards set forth by the Purchasing Agent, and who either:

- (A) Filed a Maryland state income tax return that establishes a Prince George's County domicile for the most recent full calendar year;
- (B) Is claimed as a dependent on a Maryland state income tax return that establishes a Prince George's County domicile for the most recent full calendar year filed by the person's parent, legal guardian, or spouse; or
- (C) Was not required to file a federal or Maryland state income tax return for the most recent calendar year because the person was not legally liable for income tax pursuant to Section 10-809, Tax-General Article, Annotated Code of Maryland, but was legally domiciled in Prince George's County for the most recent full calendar year, and signs an attestation under oath to this effect on a form provided by the Purchasing Agent.]

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(23.2) Latino Business Enterprise (“LBE”) means any business enterprise

(A) Which is at least fifty-one percent (51%) owned by one or more Hispanic Americans, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more Hispanic Americans; and

(B) Whose general management and daily business affairs and essential productive operations are controlled by one or more Hispanic Americans; and

(C) Which has been certified by the Supplier Development and Diversity Division as a minority business enterprise pursuant to Division 6 of this Subtitle.

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(24.1) Locally-owned and Operated Business means any County-based business

(A) Which is at least fifty-one percent (51%) owned by one or more County residents, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more County residents; and

(B) Whose general management and daily business affairs and essential productive operations are controlled by one or more County residents; and

(C) Which has been certified by the Supplier Development and Diversity Division as a County-based business, County-based small business, and/or County-based minority business enterprise pursuant to Division 7 of this Subtitle.

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(27.1) Native American Business Enterprise (“NABE”) means any business enterprise

(A) Which is at least fifty-one percent (51%) owned by one or more Native Americans, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more Native Americans; and

(B) Whose general management and daily business affairs and essential productive operations are controlled by one or more Native Americans; and

(C) Which has been certified by the Supplier Development and Diversity Division as a minority business enterprise pursuant to Division 6 of this Subtitle.

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(45) Veteran Business Enterprise (“VBE”) means any business enterprise

(A) Which is at least fifty-one percent (51%) owned by one or more Americans who

are Veterans and/or Service Disabled Veterans, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more Veterans and/or Service Disabled Veterans; and

(B) Whose general management and daily business affairs and essential productive operations are controlled by one or more Veterans and/or Service Disabled Veterans; and

(C) Which has been certified by the Supplier Development and Diversity Division as a minority business enterprise pursuant to Division 6 of this Subtitle.

(46) Women’s Business Enterprise (“WBE”) means any business enterprise

(A) Which is at least fifty-one percent (51%) owned by one or more Female Americans, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more Female Americans; and

(B) Whose general management and daily business affairs and essential productive operations are controlled by one or more Female Americans; and

(C) Which has been certified by the Supplier Development and Diversity Division as a minority business enterprise pursuant to Division 6 of this Subtitle.

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DIVISION 2. AWARD OF CONTRACTS

Sec. 10A-114. Contract negotiation.

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(c) Any contract authorized under this Section shall be awarded (including at renewal or extension) with at least fifty percent (50%) [forty percent (40%)] certified County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Business participation or the procurement shall be rendered void and illegal, unless the Purchasing Agent exercises the waiver determination and procedure set forth in Section 10A-161 and 10A-159.01. Contracts authorized under this Section are subject to the same provisions of Section 10A-164 applicable to contracts subject to County-based small business, County-based minority business enterprise, and Locally-owned and Operated Business participation requirements under Section 10A-161.

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DIVISION 4. BID AND CONTRACT SECURITY.

Sec. 10A-132. Bonds; generally.

(a) Subject to Subsection (b), below, [U]unless otherwise required by State or Federal law or regulation or as a condition to State or Federal assistance, no bid, performance, or payment bonds may be required by the Purchasing Agent to be posted if the contract price does not exceed One-Hundred Thousand Dollars (\$100,000).

(b) Additional bonding assistance for County-based small businesses and Locally-owned and Operated Businesses. Unless otherwise required by State or Federal law or regulation or as a condition to State or Federal assistance, no bid, performance, or payment bonds may be required of a County-based small business, County-based Minority Business Enterprises, or Locally-owned and Operated Business by the Purchasing Agent except in accordance with the following:

(1) For procurement contracts more than \$250,000 and up to \$10,000,000 in value, required bonding shall be no more than 40% of the value of the contract,

(2) For procurement contracts above \$10,000,000 in value, required bonding shall be no more than 75% of the value of the contract, and

(3) For procurement contracts of \$250,000 or less, bonding shall not be required.

(c) [b] As a written condition of a procurement award or procurement contract authorized under this Subtitle, the Purchasing Agent or the Purchasing Agent's designee may require responsive bidders or an award recipient, excluding County-based small businesses and Locally-owned and Operated Businesses, to provide bid, performance, and/or payment bonding assistance to County-based small businesses and Locally-owned and Operated Businesses in order to assist in complying with Division 7 of this Subtitle.

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Sec. 10A-133. Bid security.

(a) A bid security shall be required for all construction contracts when the contract price is estimated by the County to exceed Two Hundred and Fifty Thousand (\$250,000) [One Hundred Thousand Dollars (\$100,000)]. The Purchasing Agent may also require such bid security as may be deemed necessary for any other contract required to be awarded by competitive sealed bidding or competitive sealed proposal if the contract is Two Hundred and Fifty Thousand (\$250,000) [One Hundred Thousand Dollars (\$100,000)] or greater. The bid security shall be a bond provided by a surety company authorized to do business in Maryland, cash, or the equivalent of cash, in a form satisfactory to the County.

(b) The bid security shall be in an amount equal to no more than [at least] 5% of the amount of the bid or price proposal and shall be [or] an amount determined by the Purchasing Agent or designee.

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DIVISION 6. SPECIAL PROVISION

SUBDIVISION 1. MINORITY BUSINESS OPPORTUNITIES PROGRAM

Sec. 10A-136. Assistance to minority business enterprises; certification and decertification.

(a) The Purchasing Agent shall structure the procurement procedures and activities of the County to facilitate and encourage the award of at least thirty-four percent (34%) [thirty percent (30%)] of the total dollar value of all County contracts awarded, directly or indirectly, to County-based minority business enterprises or minority business enterprises. The value of subcontracts with County-based minority business enterprises or minority business enterprises shall be included in the computation of the above total dollar value.

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DIVISION 7. - ECONOMIC DEVELOPMENT.

Sec. 10A-159.01. Waiver.

(a) A waiver from the participation requirements set forth in this Division, in accordance with the waiver procedures prescribed in this Division, shall be granted for contracts as follows:

(1) A contract or procurement valued five hundred thousand dollars or more shall be subject to a written waiver from the Purchasing Agent that is approved by the Chief Administrative Officer or the Chief Administrative Officer's [his] designee and will not be subject to the participation requirements in Division 7 Economic Development in this Subtitle;

(2) A contract or procurement with a total value greater than twenty-five hundred dollars and less than five hundred thousand dollars shall be subject to a written waiver by the Purchasing Agent or the Purchasing Agent's designee and will not be subject to the participation requirements in Division 7 Economic Development of this Subtitle.

(3) For a contract or procurement subject to Council approval under Section 819 of the County Charter, a waiver of any of the requirements of Division 7 of this Subtitle for such a contract or procurement shall also require Council approval.

(b) Where a waiver is proposed in accordance with this Section, the Purchasing Agent or the Purchasing Agent's designee shall consider in the written waiver whether a Mentor-Protégé Program Requirement should be included in the contract or procurement.

(c) The Purchasing Agent shall provide to the Clerk of the Council for distribution to the members of the County Council, a quarterly written summary of the waivers granted in accordance with this Section every three months detailing the contract value, contract awardee, address of the contract awardee's principal place of business, and industry area of the contract for each waiver granted in the prior 3 month period.

SUBDIVISION 1. COUNTY-BASED BUSINESS ASSISTANCE

Sec. 10A-161. County-based business participation requirements.

(a) For any procurement that is greater than Five Hundred Thousand Dollars (\$500,000) in total value for which a County agency or the County government secures competitive bids or proposals the Purchasing Agent shall require the following:

(1) At least fifty percent (50%) [forty percent (40%)] certified County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Business participation; provided, that the costs of materials, goods, and supplies shall not be counted towards the fifty percent (50%) [forty percent (40%)] participation requirement, unless such materials, goods, and supplies are purchased from County-based small businesses, County-based minority business enterprises, and/or Locally-owned and Operated Businesses; and

(2) A bid or proposal responding to a solicitation shall be deemed nonresponsive and shall be rejected by the Purchasing Agent if it fails to meet the fifty percent (50%) [forty percent (40%)] minimum certified County-based small business, County-based minority business enterprise, and Locally-owned and Operated Business participation requirement in Paragraph (1) of this Subsection, unless the participation requirement is waived pursuant to Section 10A-159.01.

(3) Any existing procurement contract or agreement entered into after November 15, 2016 and for which a County agency or the County government secured competitive bids or proposals, including any existing multiyear contract or extended contract, entered into after November 15, 2016 that does not include at least fifty percent (50%) [forty percent (40%)] minimum certified County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Business participation as prescribed in this Subsection 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.

(b) If the Purchasing Agent determines in writing that there are insufficient responsible County-based small businesses, County-Based Minority Business Enterprise, and/or locally-owned and operated businesses to completely fulfill the requirement of Paragraph (1) of Subsection (a) for a particular procurement 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 Division 7 pursuant to and subject to Section 10A-159.01.

(c) Disparity Study Implementation

(1) On a procurement by procurement basis, the Purchasing Agent or the Purchasing Agent's designee shall establish an overall Minority Business Enterprise ("MBE") goal and MBE goals for the contract, consistent with the findings of availability and disparities in the most recent Prince George's County Utilization and Availability Study (hereinafter "County Disparity Study"), subject to paragraph (2), below.

(2) For every procurement, the process for establishing an overall MBE goal and MBE subgoals shall be as follows:

(A) The Purchasing Agent or the Purchasing Agent's designee shall determine whether the procurement exceeds \$250,000 in value;

(B) The Purchasing Agent or the Purchasing Agent's designee shall determine whether the procurement will include subcontracting;

(C) If the procurement exceeds \$250,000 in value and will include subcontracting, the Purchasing Agent or the Purchasing Agent's designee shall include an overall MBE goal and MBE subgoals in accordance with the "Disparity Study Recommended MBE Goals and MBE Subgoals" set forth in subparagraph (E), below, unless the number of certified firms that are MBE firms and/or firms within the recommended MBE subgroup that are available to perform the work on the contract is less than three (3). If the procurement exceeds \$250,000 in value and will include subcontracting, the Purchasing Agent or the purchasing agent's designee shall include an overall MBE goal and MBE subgoals in accordance with the "Disparity Study recommended MBE goals and MBE subgoals" set forth in subparagraph (e), below, unless the

number of certified firms that are MBE firms and/or firms within the recommended MBE subgroup that are available to perform the work on the contract is less than three (3). If the Purchasing Agent or Purchasing Agent’s designee determines not to include an overall MBE goal and/or the recommended MBE subgoals in accordance with the “Disparity Study Recommended MBE goals and MBE subgoals” set forth in subparagraph (e), below, the determination shall be in writing and must be approved in advance by the director of central services.

(D) MBE waiver. If a bidder or offeror is unable to meet the overall MBE goal and/or any MBE subgoals established for a contract, the bidder or offeror may request a waiver from the Purchasing Agent or the Purchasing Agent’s designee and submit documentation demonstrating that it made best efforts to meet the overall MBE goal and MBE subgoals. “Best efforts” shall be defined in procurement regulations with the approval of the Director of the Office of Central Services. Such a waiver determination must be in writing and may be granted only with the approval of the Director of the Office of Central Services.

(E) Disparity Study Recommended MBE goals and MBE subgoals. The “Disparity Study Recommended MBE goals and MBE subgoals” are as follows:

(i) for any construction or public works contracts or procurements, the MBE goal is 43%, the AABE subgoal is 23%, and the AAPIBE subgoal is 7%.

(ii) for any architectural and engineering contracts or procurements, the MBE goal is 33% and the AABE subgoal is 16%.

(iii) for any professional services contracts or procurements, the MBE goal is 29%, the AABE goal is 15%, and LBE goal is 5%.

(iv) for any other services contracts or procurements, the MBE goal is 34% and the LBE goal is 6%.

(v) for any goods and supplies contracts or procurements, the MBE goal is 22% and the LBE goal is 4%.

(F) An MBE goal and/or an MBE subgoal is calculated as a percentage of the county’s expenditures on the overall contract or procurement. MBE subgoal expenditures are a subset of overall MBE goal expenditures for a contract or procurement and count towards achieving the overall MBE goal for that contract or procurement.

[(c)In all bids for the construction of public works, if the work is to be subcontracted by the bidder, every bidder, in order to be considered a responsive bidder, shall be required to subcontract with County-based minority business enterprises for at least twenty percent (20%) of the total dollar volume of the contract price unless such bidder is itself a County-based minority business enterprise or minority business enterprise.]

[(d)The Purchasing Agent shall, for all contracts, consult with the Supplier Development and Diversity Division in order to determine whether subcontracting is appropriate. If subcontracting is determined to be appropriate, the Purchasing Agent shall include a mandatory County-based minority business enterprise subcontract clause that requires up to twenty percent (20%) of the contract's total value be performed by one or more County-based minority business enterprises or minority business enterprises.]

(e) Failure to apply the applicable provisions of this subtitle to a procurement award shall render the procurement award and/or contract or agreement void.

(f) On a case by case basis, for any procurement subject to the requirements of Subsection (a) of this Section, the Purchasing Agent may require more than fifty percent (50%) [forty percent (40%)] certified County-based small business, County-based minority business enterprise, and Locally-owned and Operated Business participation if the Purchasing Agent determines that there is a sufficient number of County-based small businesses, County-based minority business enterprises, or Locally-owned and Operated Businesses to justify a higher than 50% certified County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Business participation requirement.

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(i) the acquisition of proprietary information technology goods and services shall not be subject to the requirements of Division 7 of this subtitle.

Sec. 10A-162. County agency local procurement goals.

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(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.

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(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.

(d) The Purchasing Agent may waive the requirements of Subsection (c) of this Section for a procurement if the Purchasing Agent certifies in writing that such a requirement would result in the loss of federal or state funds, subject to the requirements of Section 10A-159.01.

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Sec. 10A-164. Enforcement of County-based business assistance.

(a) For the entire duration of the procurement contract or agreement, any vendor given a preference under this Division or subject to the business participation requirements under this Division shall maintain no less than the percentage of participation stated in the winning bid or proposal. Failure to comply with this Division may subject any vendor given a business preference under this Division, or that is subject to business participation requirements under this Division to a penalty, to include monetary fines of up to five percent (5%) of the value of the contract for each violation, a cancellation of the contract or agreement, or suspension or debarment of the vendor under Section 10A-148 of this Subtitle.

(1) A vendor may request a waiver of the requirements of this Section by the Purchasing Agent. On a case by case basis, such a waiver request may be granted by the Purchasing Agent if "best efforts" by the vendor to comply have been demonstrated as prescribed in Subsection (e) of this Section, subject to Section 10A-159.01.

(b) Any vendor given a County-based business preference under this Division, [or] subject to the County-based small business, County-based minority business enterprise, and Locally-owned and Operated Business participation requirements of Section 10A-161(a), or the Disparity Study Implementation Goals of Section 10A-161 shall submit a quarterly [semi-annual] report within

thirty (30) calendar days after the end of each quarter to the Purchasing Agent, the County Auditor, and a compliance manager designated by the County Council that provides:

(1) The percentage and U.S. dollar value of [certified County-based business participation, and] certified County-based small business participation, County-based minority business enterprise participation, or Locally-owned and Operated Business participation, and certified participation of businesses within the disparity classifications of businesses specified in Section 10A-161(c) (only for the disparity classifications of businesses for which the procurement has participation goals, if any) in the most recent quarterly [semi-annual] period, including reporting the percentage and U.S. dollar value of certified participation in the aforementioned categories [County-based business participation and certified County-based small business participation] for the period from the beginning of the calendar year to the reporting date;

(2) The name and principal place of operation of each business receiving payment under the procurement in the most recent quarterly [semi-annual] period, including the U.S. dollar value and percentage of the total contract dollars paid in the most recent 3 month period to each business; and

(3) The expected percentage and U.S. dollar value of [certified County-based business participation, and] certified County-based small business participation, County-based minority business enterprise participation, and Locally-owned and Operated Business participation, and certified participation of businesses within the disparity classifications of businesses specified in Section 10A-161(c) (only for the disparity classifications of businesses for which the procurement has participation goals, if any) in the next 12 month period.

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(e) In this Subdivision, the term "best efforts" means efforts to the maximum extent practicable have been made to meet the requirement. A vendor given a County-based business preference under this Division or subject to the County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Business participation requirements or Disparity Study Implementation Goals under this Division shall not be deemed to have demonstrated "best efforts" under Subsection (a) of this Section where there is a sufficient number of [County-based businesses, or] County-based small businesses, County-based minority business enterprises, Locally-owned and Operated Businesses, and, if applicable,

1 diversity classifications of businesses to enable the vendor to meet the requirements of
2 Subsection (a) of this Section. A waiver authorized by Paragraph (1) of Subsection (a) of this
3 Section shall not be granted unless the vendor seeking the waiver:

4 (1) Provides a detailed written statement of the reasons the vendor is unable to maintain
5 its required percentages of participation of County-based businesses, [or] County-based small
6 businesses, County-based minority business enterprises, and/or, if applicable, disparity
7 classifications of businesses (collectively meaning, in this Division, “Diverse Suppliers”)
8 [participation];

9 (2) Provides a detailed written statement of its efforts to maintain its percentages of
10 participation of Diverse Suppliers originally required in the procurement [County-based business
11 or County-based small business participation], including the precise reasons and justifications for
12 the departure of County-based businesses and County-based small businesses from the
13 procurement since the initial award of the procurement and the vendor's efforts to contact and
14 negotiate with other Diverse Suppliers [County-based businesses or County-based small
15 businesses] including:

16 (A) The names, addresses, and telephone numbers of the Diverse Suppliers [County-
17 based businesses or County-based small businesses] that were contacted and the dates such
18 County-based businesses were contacted, and

19 (B) A description of the information provided to Diverse Suppliers [County-based
20 businesses or County-based small businesses] regarding the descriptions of services or goods
21 sought for the procurement, including plans, specifications and anticipated time schedule for any
22 portions of the work to be performed, where applicable;

23 (3) As to each Diverse Supplier (within a category for which there is a participation
24 requirement or goal on the procurement) [County-based business or County-based small
25 businesses] that placed a subcontract or other quotation or offer which the vendor considered not
26 to be acceptable, a detailed written statement that includes sufficient reasons for this conclusion;

27 (4) A written list of Diverse Supplier (within a category for which there is a participation
28 requirement or goal on the procurement) [County-based businesses or County-based small
29 businesses] found to be unavailable to perform under the procurement; and

30 (5) Provides a detailed description demonstrating that the vendor made sufficient efforts
31 to assist interested Diverse Supplier (within a category for which there is a participation

1 requirement or goal on the procurement) [County-based businesses or County-based small
2 businesses] in obtaining bonding, lines of credit, or insurance required by the vendor.

3 Based on an analysis of the information provided by the vendor seeking a waiver authorized by
4 Paragraph (1) of Subsection (a) of this Section and an analysis by the Purchasing Agent of the
5 availability of Diverse Supplier (within a category for which there is a participation requirement
6 or goal on the procurement) [County-based businesses or County-based small businesses] that
7 provide services or goods that are the subject of the procurement, the Purchasing Agent shall
8 determine whether "best efforts" to comply have been demonstrated by the vendor and whether
9 to propose to grant the vendor's request for a waiver authorized by Paragraph (1) of Subsection
10 (a) of this Section, subject to the approvals required by this Section. If the Purchasing Agent does
11 propose to grant a waiver authorized by Paragraph (1) of Subsection (a) of this Section, the
12 Purchasing Agent shall propose a new minimum percentage requirement for participation of the
13 categories of Diverse Suppliers originally required in the procurement [County-based business
14 participation or County-based small business participation] for the vendor's procurement based
15 on the availability of Diverse Suppliers [County-based businesses or County-based small
16 businesses] that provide services or goods that are the subject of the procurement, subject to the
17 approvals required by this Section.

18 (f) Small Business Subcontracting Plan required. Where the prime contractor is not a
19 County-based small business, County-based minority business enterprise, or Locally-owned and
20 Operated Business, the fifty percent (50%) [forty percent (40%)] County-based small business,
21 County-based minority business enterprise, and Locally-owned and Operated Business
22 participation requirement of Sections 10A-161(a) and 10A-114(c)[(b)] shall be governed by a
23 Small Business Subcontracting Plan, submitted by the prime contractor.

24 (1) **Small Business Subcontracting Plan** is a written plan listing all subcontracts,
25 including individual contract values, between the prime contractor (contract award recipient) and
26 Diverse Suppliers (within a category for which there is a participation requirement or goal on the
27 procurement) [County-based small businesses]; and between Diverse Suppliers [County-based
28 small businesses, and Non-County-based small businesses] and Non-Diverse Suppliers and all
29 lower tier Diverse Supplier (within a category for which there is a participation requirement or
30 goal on the procurement) [County-based small business] subcontractors for the procurement.

1 (2) At the time of bid or proposal submission for procurements subject to Section 10A-
2 161(a) or prior to the execution of a contract between the County and any vendor for a
3 procurement subject to Section 10A-114(c)(b), the prime contractor(s) shall submit a Small
4 Business Subcontracting Plan executed by the prime contractor and all of the subcontractors
5 being utilized to fulfill the fifty percent (50%) [forty percent (40%)] County-based small
6 business, County-based minority business enterprise, and Locally-owned and Operated Business
7 participation requirement of Section 10A-161(a) or 10A-114(c)(b).

8 (A) For procurements subject to Section 10A-161(a), any bid or proposal that does not
9 meet the requirements of this Subsection shall be deemed nonresponsive.

10 (B) Any prime contractor failing to comply in good faith with the components of its
11 Small Business Subcontracting Plan is in material breach of its contract with the County.

12 (C) A prime contractor may only modify its Small Business Subcontracting Plan,
13 including modifying its subcontractors, for cause stated in writing, with the approval of the
14 Purchasing Agent, provided that the prime contractor continues to comply with the participation
15 requirements of Sections 10A-161(a) or 10A-114(c)(b). A County-based small business,
16 County-based minority business enterprise, and Locally-owned and Operated Business
17 subcontractor can only be removed or have its participation (in contract value) reduced in the
18 Small Business Subcontracting Plan due to incapability to adequately perform the work required
19 under the procurement contract.

20 (h) Certified business participation under this Subtitle, including for County-based minority
21 business enterprises, County-based small businesses, County-based businesses, Locally-owned
22 and Operated Businesses, minority business enterprises, and County-located businesses, shall not
23 include business activity whereby the certified firm's role is limited to that of an extra participant
24 in a transaction, contract, or project through which funds are passed in order to obtain the
25 appearance of certified business participation. The Purchasing Agent may also adopt regulations
26 establishing standards to ensure that certified firms are performing "commercially useful
27 functions" for the purposes of certified business participation determinations.

28 **Sec. 10A-164.01. Mentor-Protégé Program authorized.**

29 * * * * *

30 (c) The Purchasing Agent or the Purchasing Agent's Designee may require any procurement
31 or contract authorized under this Subtitle to include a Mentor-Protégé Program Requirement.

* * * * *

SECTION 2. BE IT FURTHER ENACTED that the Director of Central Services and County Agencies are encouraged to consider the effective and accurate application of Divisions 2, 4, 6, and 7 of Subtitle 10A when considering the retention, promotion, and/or merit pay increases for procurement officers.

SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since the same would have been enacted without the incorporation in this Act of any such invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection, or section.

SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect on February 1, 2023.

Adopted this 24th day of October, 2022.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

BY: _____
Calvin S. Hawkins, II
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.