

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2016 Legislative Session

Bill No. CB-74-2016

Chapter No. 69

Proposed and Presented by Council Members Franklin, Davis, Harrison, Lehman,
Patterson, and Taveras

Introduced by Council Members Franklin, Davis, Harrison,
Lehman, Patterson, and Taveras

Date of Introduction October 18, 2016

BILL

1 AN ACT concerning

2 Local Economic Opportunity and Employment

3 For the purpose of enhancing access to local economic opportunities through public procurement
4 by increasing participation opportunities for County-based small businesses and County-based
5 minority business enterprises under certain circumstances; establishing a Prince George’s County
6 Supply Schedule program; enabling and modifying the Business Development Reserve Program;
7 expanding the threshold for reserving certain procurement opportunities for County-based small
8 businesses and County-based businesses from \$100,000 to \$500,000; requiring small business
9 subcontracting plans for responsive bidders and eligible award recipients under certain
10 circumstances; enhancing prompt payment requirements for the County Government and
11 contractors in certain circumstances; modifying the meaning of best value in procurement
12 decisions; increasing compliance and reporting requirements for the Purchasing Agent, county
13 agencies, and award recipients under certain circumstances; establishing requirements for the
14 timing of award notifications and mandatory debriefings to unsuccessful bidders subject to
15 certain conditions; requiring bundled public works procurements to meet County-based small
16 business participation requirements separately for design and construction work; authorizing the
17 Purchasing Agent to require bonding assistance to County-based small businesses subject to
18 certain conditions; requiring the County to utilize County-based small businesses that are
19 authorized resellers or distributors of certain commodities under certain circumstances; adjusting
20 the definitions of various procurement terms and generally relating to local economic

1 opportunities in the County.

2 BY repealing and reenacting with amendments:

3 SUBTITLE 10A. PURCHASING.

4 Sections 10A-101, 10A-106, 10A-112, 10A-114, 10A-
5 115, 10A-118, 10A-132, 10A-148, 10A-153, 10A-
6 158.01, 10A-159, 10A-161, 10A-162, 10A-163, 10A-
7 164, 10A-165, 10A-166, 10A-169,
8 The Prince George's County Code
9 (2015 Edition).

10 BY adding:

11 SUBTITLE 10A. PURCHASING.
12 Sections 10A-152.01 and 10A-177,
13 The Prince George's County Code
14 (2015 Edition).

15 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
16 Maryland, that Sections 10A-101, 10A-106, 10A-112, 10A-114, 10A-115, 10A-118, 10A-132,
17 10A-148, 10A-153, 10A-158.01, 10A-159, 10A-161, 10A-162, 10A-163, 10A-164, 10A-165,
18 10A-166, and 10A-169 of the Prince George's County Code be and the same are hereby repealed
19 and reenacted with the following amendments:

20 SUBTITLE 10A. PURCHASING.

21 DIVISION 1. ADMINISTRATIVE PROCEDURES.

22 Sec. 10A-101. Definitions.

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

26 * * * * *

27 (2.1) **Best value** means the basis for awarding contracts for services which optimizes
28 weighted factors such as quality, cost, diversity, and performance, among responsive and
29 responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable
30 analysis and “best value” criteria shall be prescribed and predetermined in the Request for
31 Proposals or Invitation for Bids. [means the combination of relevant quality, performance and

1 other source selection factors, in addition to the price, that results in optimal return to the County
2 in meeting the pre-determined objectives and requirements of a procurement.]

3 * * * * *

4 (6.1) Commodity means any equipment, materials, or supplies. It does not include
5 services, including, but not limited to, construction and professional services.

6 * * * * *

7 (13) **County-based business** means a business whose principal place of operation is
8 located within Prince George's County, that meets the requirements of Section 10A-163(a), and
9 whose application for certification as a County-based business is approved by the Purchasing
10 Agent. Principal place of operation shall be determined by factors as set forth in the regulations.
11 County-based small businesses and County-based minority business enterprises are County-
12 based businesses in accordance with Section 10A-163 of this Subtitle.

13 * * * * *

14 (13.2) **County-based minority business enterprise** means a business that is both:

15 (A) a minority business enterprise as certified by the Supplier Development and
16 Diversity Division; and

17 (B) a County-based business in accordance with Section 10A-163 of this Subtitle.

18 (13.3) **County-based small business** means a business that

19 (A) (i) meets the requirements of Section [10A-161(b)] 10A-163(b) of this
20 Subtitle and

21 (ii) whose application for certification as a County-based small business is
22 approved by the Purchasing Agent[.]; or

23 (B) is a County-based minority business enterprise that meets the requirements of
24 Section 10A-163(g) of this Subtitle.

25 * * * * *

26 (35) **Purchasing Agent** means the Director of Central Services, [or the Director of Central
27 Services designee.]

28 * * * * *

29 (38) **Responsive bidder** means one who has submitted a bid under Section 10A-112 of
30 this Subtitle which conforms in all material respects to the Invitation For Bid and whose bid
31 complies with the applicable provisions of Division 7 of this Subtitle.

* * * * *

Sec. 10A-106. - Determinations.

Each determination or decision on any matter required by the provisions of this Subtitle to be in writing shall be based upon written findings of the officer making the determination or decision, and shall be retained in the official contract file. Every bidder or offeror shall be given written notice of the procurement award decision from the responsible Procurement Officer or the Purchasing Agent for every procurement awarded pursuant to Sections 10A-112, 10A-113, 10A-115 of this Subtitle within seven (7) calendar days after the procurement award is made.

(a) Every unsuccessful bidder or offeror, upon written request to the Purchasing Agent or the responsible Procurement Officer, is entitled to a mandatory post-award debriefing for a procurement awarded pursuant to Section 10A-112 or 10A-113 of this Subtitle. The responsible Procurement Officer or the Purchasing Agent shall make a good faith effort to schedule such a debriefing within forty-five (45) calendar days after receipt of the written request for debriefing, provided that the responsible Procurement Officer or the Purchasing Agent may schedule the debriefing beyond forty-five (45) calendar days of the request where the responsible Procurement Officer or the Purchasing Agent makes a good faith effort to accommodate a large number of concurrent requests.

(b) All notices of award decisions for procurements subject to Sections 10A-112 or 10A-113 of this Subtitle shall contain a notice informing bidders or offerors of the right to a debriefing in accordance with the time constraints of this Section.

The Purchasing Agent may adopt regulations, subject to approval of such regulations by resolution of the County Council, to further implement this Section. The Purchasing Agent may also require vendors to register with the County’s enterprise resource planning (ERP) system to facilitate compliance reporting and general data management.

DIVISION 2. - AWARD OF CONTRACTS.

Sec. 10A-112. - Competitive sealed bidding.

(a) Competitive sealed bidding shall be the primary method used to acquire materials, equipment, services, supplies, or construction wherein the following conditions exist as determined by the Purchasing Agent or designee:

- (1) The cost of the purchase is estimated to exceed the sum of Thirty Thousand Dollars (\$30,000) for goods or services; and

1 (2) Specifications exist or can be developed wherein [price] analysis can be performed on
2 an equitable basis yielding an award to the [lowest evaluated] responsive and responsible bidder
3 offering the best value to the County.

4 (3) Subject to regulations to be issued by the Purchasing Agent, competitive sealed
5 bidding may be used at dollar[s] levels below the amounts specified in paragraph (1).

6 (b) The Purchasing Agent shall give public notice of an Invitation for Bid in at least one
7 County newspaper of record and on a central website designated by the Purchasing Agent for a
8 sufficient time prior to the date set forth therein for the public opening of bids or the Invitation
9 for Bids shall be rendered void and illegal.

10 (1) As a courtesy, the Purchasing Agent or responsible Procurement Officer shall also
11 give electronic public notice of any Invitation for Bids to

12 (A) All County-based businesses and County-located businesses, as defined by this
13 Subtitle, who provide services or supplies that would be responsive to the procurement; and

14 (B) A designated representative of the Prince George's Chamber of Commerce,
15 Greater Prince George's Business Roundtable, and the Prince George's Community College.

16 (2) The Purchasing Agent shall set forth procedures for public notices in regulations.

17 (c) Best Value.

18 (1) The contract shall be awarded by written notice to the responsive and responsible
19 bidder whose bid is determined to deliver the best value to the County, as defined in Section
20 10A-101(a)(2.1) of this Subtitle, based on predetermined criteria specified in the Invitation for
21 Bids.

22 (2) Commodity-only purchases. A procurement contract solely for the purchase of a
23 commodity, excluding any procurement of services (including, but not limited to, construction
24 and professional services), shall be awarded to the responsive and responsible bidder whose bid
25 is determined to contain the bid price that is the best value to the County, as specified in the
26 Invitation for Bids. If an award solely for the purchase of a commodity is not made to the lowest
27 evaluated bidder, a written determination citing the reasons shall be made by the Purchasing
28 Agent or designee and made a permanent part of the bid file. If purchasing authority in excess of
29 Thirty Thousand Dollars (\$30,000) has been delegated to a department head outside of the

1 Department of Central Services, a written determination citing the reasons for not selecting the
2 responsive and responsible bid solely for the purchase of a commodity that is most favorable to
3 the County with respect to technical requirements and costs shall be forwarded to the Purchasing
4 Agent for approval prior to the award of the contract.

5 (3) No purchase or contract shall be made or awarded within two (2) weeks [one (1)
6 week] from the date of the public opening of bids.

7 * * * * *

8 **Sec. 10A-114. - Contract negotiation.**

9 * * * * *

10 (b) Any contract authorized under this Section shall be awarded (including at renewal or
11 extension) with at least forty percent (40%) certified County-based small business participation
12 or the procurement shall be rendered void and illegal, unless the Purchasing Agent exercises the
13 waiver determination and procedure set forth in Section 10A-161(b) with required approvals.
14 Contracts authorized under this Section are subject to the same provisions of Section 10A-164
15 applicable to contracts subject to County-based small business participation requirements under
16 Section 10A-161.

17 (c) The purchase of goods or services through a contract between the County and a third
18 party fiscal agent, such as an escrow agent, is a public procurement subject to the requirements
19 of this Subtitle.

20 (d) A procurement contract deemed necessary by the Purchasing Agent in writing, with
21 notice to the County Executive and County Council, due to a temporary public safety emergency
22 may be awarded under this Section and shall not be subject to the requirements of Subsection
23 (b), above, or Section 10A-164 provided that the duration of the contract does not exceed one-
24 hundred and eighty (180) calendar days and is not eligible for renewal or extension. A
25 “temporary public safety emergency” in this Section is “an unforeseen occurrence or condition
26 of limited duration that requires immediate action to protect public health, safety, or welfare
27 from actual or threatened harm.”

28 **Sec. 10A-115. - Small purchases.**

29 (a) Any contract not expected by the Purchasing Agent at the time price quotations are
30 solicited to exceed an aggregate amount of Thirty Thousand Dollars (\$30,000) for goods and
31 services or construction, may be entered into according to a simplified small purchase procedure

1 set forth in regulations. Such regulations shall include appropriate requirements for obtaining
2 competition and minority participation.

3 * * * * *

4 (d) For contracts that use a simplified purchase procedure prescribed in Subsection (a), the
5 Purchasing Agent or the Purchasing Agent's designee shall reserve such contracts for County-
6 based small businesses, provided, that the Purchasing Agent or the Purchasing Agent's designee
7 shall not be required to reserve the contract if the Purchasing Agent or the Purchasing Agent's
8 designee determines in writing that

9 (1) there are not at least two (2) [three (3) available] County-based small businesses that
10 are responsive bidders to the procurement [could adequately perform the requirements or deliver
11 the goods or services that are the subject of the contract] or

12 (2) a County-based small business cannot offer a reasonable price for the contract with
13 the inclusion of any bonus authorized under this Subtitle. In this Section, "reasonable price"
14 means within twelve percent (12%) above the best price on the open market. Prior to this
15 determination being made, the lowest bidding County-based small business shall be given the
16 opportunity to win the procurement by offering a bid or proposal price less than twelve percent
17 (12%) higher than the best price on the open market identified by the Purchasing Agent or the
18 Purchasing Agent's designee. In determining bid or proposal price in this Section, applicable bid
19 or price preferences authorized under this Subtitle shall be applied.

20 (e) Prior to making a written determination required under Subsection (d), above, the
21 Purchasing Agent or the Purchasing Agent's designee shall consult with the database of County-
22 based small businesses designated and maintained by the Office of Central Services to contact or
23 otherwise gather information about the availability and pricing of County-based small businesses
24 for the contract.

25 (f) The written determination required under Subsection (d), above, shall briefly detail the
26 reasons for determining that not at least two (2) [three (3) available] County-based small
27 businesses could adequately perform the requirements of the contract or that a County-based
28 small business could not offer a reasonable price, including a comparison of any pricing
29 information between County-based small businesses and that of businesses on the open market,
30 which were considered by the Purchasing Agent or the Purchasing Agent's designee. The
31 Purchasing Agent or the Purchasing Agent's designee shall submit written determinations

1 required under Subsection (d), above, to the Office of Central Services and the County Council
2 within thirty (30) days of the written determination being made.

3 * * * * *

4 **DIVISION 4. - BID AND CONTRACT SECURITY.**

5 **Sec. 10A-132. - Bonds; generally.**

6 (a) Unless otherwise required by State or Federal law or regulation or as a condition to State
7 or Federal assistance, no bid, performance, or payment bonds may be required by the Purchasing
8 Agent to be posted if the contract price [is less than] does not exceed One-Hundred Thousand
9 Dollars (\$100,000). [Twenty-five Thousand Dollars (\$25,000).]

10 (b) As a written condition of a procurement award or procurement contract authorized under
11 this Subtitle, the Purchasing Agent or the Purchasing Agent’s designee may require responsive
12 bidders or an award recipient, excluding County-based small businesses, to provide bid,
13 performance, and/or payment bonding assistance to County-based small businesses in order to
14 assist in complying with Division 7 of this Subtitle.

15 **DIVISION 6. - SPECIAL PROVISIONS.**

16 **SUBDIVISION 8. - DEBARMENT; SUSPENSION OF BIDDERS AND OFFERORS.**

17 **Sec. 10A-148. - Debarment; suspension of bidders and offerors.**

18 (a) The Purchasing Agent shall establish regulations and procedures for the debarment and
19 suspension pending a final determination on debarment of any person who has:

20 * * * * *

21 (14) Committed any improper conduct or has otherwise willfully violated this Subtitle;
22 or

23 (15) Done any other act which, under any County, State, the District of Columbia, or
24 Federal law, bars the person from the award of any contract with any County, State, or Federal
25 agency.

26 **SUBDIVISION 10. - CONTRACT ADMINISTRATION.**

27 **Sec. 10A-153. - Prompt payment.**

28 * * * * *

29 (b) It is the policy of the County to make a payment under a procurement contract within
30 thirty (30) calendar days after the receipt date.

31 (c) Interest penalties shall accrue daily beginning thirty-one (31) calendar days after the
32 receipt date and ending on, but excluding, the payment date, using the rate established in

1 Subsection (e) calculated on a 30-day [365-day] basis. Interest penalties shall not continue to
 2 accrue [after a claim is filed as provided by the contract document(s) or by applicable County
 3 procedure(s) or] for more than one year after the due date.

4 (d) Interest penalties under this Section shall be automatically added to any payment made to
 5 a contractor for an invoice(s) which remains unpaid more than forty-five (45) calendar days after
 6 the receipt date, unless the County is not liable to pay interest because of one of the exclusions
 7 provided for by Subsection (g).

8 (e) The rate of interest penalty shall be [six] one percent (1%) [(6%)] per month [annum] on
 9 a pro rata basis.

10 (f) Written claims for interest penalties which the County has failed to pay in accordance
 11 with the requirements of Subsection (d) must be received by the Director of Finance within thirty
 12 (30) calendar days after the payment date and shall be time and date stamped by the Office of
 13 Finance when received.

14 (g) The County is not liable under this Section for an interest penalty under any of the
 15 following circumstances:

16 (1) Invoice payments made in advance or within forty-five (45) calendar days after the
 17 receipt date;

18 (2) Contractor's written claim(s) for any unpaid interest penalty amounts owed not
 19 received by the Director of Finance within thirty (30) calendar days after the County payment
 20 date;

21 (3) Work subject to contract claim as provided by the contract document(s) or applicable
 22 County procedure(s);

23 (4) Amounts withheld consistent with payment terms, such as retainage;

24 (5) Payments made to a third party on behalf of the contractor for financing purposes;

25 (6) Amounts representing unpaid interest penalties;

26 (7) Interest penalties amounting to less than \$10.00 per invoice; or,

27 (8) Contracts or other County obligations outside of the scope of this [legislation]

28 Subtitle.

29 (h) This Section does not authorize the appropriation of additional funds for the payment of
 30 any required interest penalty. The Director of Finance shall pay any interest penalty required by
 31 this Section consistent with County procedure(s).

1 (1) In the case that sufficient funds are unappropriated and/or unavailable to pay any
2 interest penalty owed at the time a proper invoice is paid:

3 (A) The Director of Finance will pay the maximum amount of the interest penalty
4 owed that can be paid with available, appropriated funds; and

5 (B) Within a one (1) year period after the payment date, the County will ensure that
6 appropriate procedures are followed to identify (and, if needed, obtain an appropriation of)
7 additional funding and make a payment for the remaining balance owed for the interest penalty[;
8 and]

9 [(C) No incremental interest on the outstanding interest penalty owed will be due
10 or paid in this circumstance; and

11 (D) The contractor is not required to file a claim pursuant to Subsection (f)].

12 * * * * *

13 (j) Contractor Prompt Payment.

14 (1) For all procurement contracts authorized under this Subtitle, the prime contractor
15 shall pay each of its subcontractors (including a material supplier) for satisfactory performance
16 under the respective subcontract within seven (7) calendar days after receipt of such amounts that
17 are paid to the prime contractor by the County for such work performed under the contract. In the
18 event that there is a good faith dispute over all or any portion of the amount due on a payment
19 from a prime contractor to a subcontractor, the prime contractor may withhold the disputed
20 amount but shall pay the undisputed amount. A subcontractor who further subcontracts work on
21 procurement projects authorized by this Subtitle is responsible for the same requirements and
22 interest penalties for payment to its subcontractors (lower tier subcontractors) after receiving
23 payment under this Subsection as applicable to a prime contractor.

24 (2) Interest penalties. Any contractor who violates Paragraph (1), above, shall pay to the
25 subcontractor a penalty of one and a half percent (1.5%) of the amount due per month for every
26 month to the subcontractor owed payment or portion thereof that payment is not made. Interest
27 penalties shall accrue daily beginning eight (8) calendar days after payment is received by the
28 prime contractor (or higher tier subcontractor) and ending on, but excluding, the payment date,
29 using the rate established in this Paragraph calculated on a monthly (30-day) basis. This
30 Subsection is enforceable in the Circuit Court of Prince George’s County, and is not intended to
31 create a private right of action against the County. Willful violations of this Subsection may also

1 result in a contractor being suspended or debarred in accordance with Section 10A-148.

2 (3) Contract Clauses Required. For all procurement contracts authorized under this
 3 Subtitle, including at the time of any contract renewal or extension, the Purchasing Agent or the
 4 Purchasing Agent's designee shall include a clause requiring the prime contractor to include in
 5 each of its subcontracts

6 (A) a payment clause which obligates the prime contractor to pay the subcontractor
 7 for satisfactory performance under its subcontract within seven (7) days out of such amounts as
 8 are paid to the prime contractor by the County for such work performed under such contract; and

9 (B) an interest penalty clause which obligates the prime contractor to pay to the
 10 subcontractor an interest penalty on amounts due in the case of each payment not made in
 11 accordance with the payment clause included in the subcontract pursuant to Subparagraph (A),
 12 above

13 (i) for the period beginning on the day after the required payment date and
 14 ending on the date on which payment of the amount due is made; and

15 (ii) computed at the rate specified in Paragraph (2) of this Subsection.

16 For all procurement contracts authorized under this Subtitle, the Purchasing Agent or
 17 the Purchasing Agent's designee shall further require the prime contractor to include a clause in
 18 its subcontracts requiring the subcontractor to include a payment clause and an interest penalty
 19 clause conforming to the standards of Paragraph (3) of this Subsection in each of its subcontracts
 20 and to require each of its subcontractors to include such clauses in their subcontracts with each
 21 lower-tier subcontractor or supplier.

22 (k) With regard to this Section, the Director of Finance shall have the following specific
 23 authority and responsibilities:

24 (1) To establish, as deemed necessary, regulations and procedures enforcing the
 25 requirements of this Section; [and]

26 (2) To resolve timely, written claims made by a contractor concerning unpaid interest
 27 penalties or pertaining to unearned discounts taken that are associated with invoice payments
 28 made by the County. This Subsection does not apply to any other contractor disputes or claims
 29 which shall be subject to the provisions of the contract document(s) or other applicable County
 30 procedure(s)[.]; and

31 (3) To require vendors to enroll in Automated Clearing House (ACH) or a similar

1 electronic payment system with the County.

2 **SUBDIVISION 14. - BUSINESS DEVELOPMENT RESERVE PROGRAM.**

3 **Sec. 10A-158.01. - Business Development Reserve Program.**

4 [(a)The County Purchasing Agent may develop and implement a program designed to
5 encourage and assist County-based businesses to contract with the County for goods and
6 services. Such program shall be called the Business Development Reserve Program, and may
7 include the establishment of a sheltered market program, expedited procurement process, and
8 other preferences for eligible businesses.

9 (b) Rules and regulations for the Business Development Reserve Program shall be
10 promulgated by the County Purchasing Agent and shall govern the implementation and
11 administration of the Business Development Reserve Program.]

12 (a) The Purchasing Agent shall develop and implement a program designed to encourage and
13 assist County-based small businesses to contract with the County for goods and services. Such
14 program shall be called the Business Development Reserve Program, and shall include the
15 establishment of a sheltered market program, expedited procurement process, and other
16 preferences for eligible businesses.

17 (b) Business Development Reserve Program Sheltered Market. By April 15 of each year, the
18 Director of Central Services shall identify and reserve at least Five Million Dollars (\$5,000,000)
19 in procurement contracting and subcontracting opportunities in the next fiscal year solely for
20 award to County-based small businesses enrolled in the Business Development Reserve
21 Program, including submitting written notice of these opportunities to the County Executive,
22 County Council, and eligible enrollees in the Business Development Reserve Program.

23 (c) Rules and regulations for the Business Development Reserve Program shall be
24 promulgated by the Purchasing Agent in accordance with this Section and shall govern the
25 implementation and administration of the Business Development Reserve Program.

26 **DIVISION 7. ECONOMIC DEVELOPMENT**

27 **Sec. 10A-157. – Legislative findings and policy.**

28 * * * * *

29 (i) The County government finds that County-based minority business enterprises undergo
30 extensive certification review through their existing minority business enterprise certification
31 procedures, which establish their principal places of operation and typically contain size of

1 business restrictions, like the Maryland Department of Transportation (MDOT) Minority or
 2 Disadvantaged Business Enterprise (MBE/DBE) Program, and which are comparably rigorous to
 3 County-based business and County-based small business certification under this Subtitle. It is in
 4 the public interest to reduce the redundancy and regulatory burden of County-based business and
 5 County-based small business certification procedures for businesses that have already been
 6 approved for minority business enterprise certification.

7 **SUBDIVISION 1. COUNTY-BASED BUSINESS ASSISTANCE**

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

9 (a) For any procurement that is greater than [One] Five Hundred Thousand Dollars
 10 (\$[1]500,000) in total value for which a County agency or the County government secures
 11 competitive bids or proposals, including, but not limited to, competitive bids secured pursuant to
 12 Section 10A-112 or competitive proposals pursuant to Section 10A-113, the Purchasing Agent
 13 shall require the following:

14 (1) At least forty percent (40%) certified County-based small business participation;
 15 provided, that the costs of materials, goods, and supplies shall not be counted towards the forty
 16 percent (40%) participation requirement, unless such materials, goods, and supplies are
 17 purchased from County-based small businesses; and

18 (2) A bid or proposal responding to a solicitation shall be deemed nonresponsive and
 19 shall be rejected by the Purchasing Agent if it fails to meet the forty percent (40%) minimum
 20 certified County-based small business participation requirement in Paragraph (1) of this
 21 Subsection, unless the participation requirement is waived and adjusted pursuant to Subsection
 22 (b) of this Section.

23 (3) Any existing procurement contract or agreement for which a County agency or the
 24 County government secured competitive bids or proposals, including, but not limited to, any
 25 procurement contract that was awarded pursuant to Section 10A-112 or Section 10A-113, and
 26 including any existing multiyear contract or extended contract, which does not include at least
 27 forty percent (40%) certified County-based small business participation as prescribed in this
 28 Subsection at the time of any contemplated exercise of an option, extension, or renewal,
 29 including automatic extensions or renewals (e.g. "evergreen" contracts or agreements), shall not
 30 be renewed or extended.

1 (b) If the Purchasing Agent determines that there are insufficient responsible County-based
2 small businesses to completely fulfill the requirement of Paragraph (1) of Subsection (a) for a
3 particular procurement or if the requirement would result in the loss of federal or state funds or
4 grants, the Purchasing Agent, upon approval by Council resolution and concurrence of the
5 County Executive, may waive the requirement and adjust or modify the minimum participation
6 percentage requirement. [, subject to the approval of the County Executive. For procurement
7 contracts or agreements subject to approval by legislative act under Section 819 of the Charter, a
8 waiver and/or percentage adjustment authorized by this Subsection must also be approved by the
9 County Council. For procurement contracts or agreements not subject to approval by legislative
10 act under Section 819 of the Charter, notice of a waiver and/or percentage adjustment authorized
11 by this Subsection must be sent to the County Council by the Purchasing Agent by no less than
12 fourteen (14) calendar days prior to the decision being made to waive the requirement and adjust
13 the minimum participation percentage in Paragraph (1) of Subsection (a).]

14 (c) Failure to apply the applicable provisions of this Subdivision [Section 10A-160 and this
15 Section] to a procurement award, subject to the waivers and adjustments authorized by this
16 Division, shall render the procurement award and/or contract or agreement void.

17 (d) On a case by case basis, for any procurement subject to the requirements of Subsection
18 (a) of this Section, the Purchasing Agent may require more than forty percent (40%) certified
19 County-based small business participation if the Purchasing Agent determines that there is a
20 sufficient number of County-based small businesses to justify a higher certified County-based
21 small business participation requirement.

22 (e) For any procurement contract greater than Five Hundred Thousand Dollars (\$500,000) in
23 value, solely for the purchase of commodities, bid in accordance with Section 10A-112 of this
24 Subtitle, where the lowest evaluated bid or proposal price from a responsive bidder is not from a
25 County-based small business, the lowest bidding responsible and responsive County-based small
26 business shall be given a final opportunity by the Purchasing Agent or the Purchasing Agent's
27 designee to offer a responsive bid or proposal price less than the lowest responsive bid or
28 proposal price and thus win the procurement award. In determining a bid or proposal price in this
29 Subsection, applicable bid or price preferences authorized under this Subtitle shall be applied.
30 This subsection shall become effective on October 1, 2017.

1 (f) For any procurement contract greater than Five Hundred Thousand Dollars (\$500,000) in
2 value, bid in accordance with Section 10A-112 of this Subtitle, where the lowest evaluated bid or
3 proposal price from a responsive bidder is not from a County-based small business, the lowest
4 bidding responsible and responsive County-based small business shall be given a final
5 opportunity by the Purchasing Agent or the Purchasing Agent's designee to offer a responsive
6 bid or proposal price less than the lowest responsive bid or proposal price and thus win the
7 procurement award. In determining a bid or proposal price in this Subsection, applicable bid or
8 price preferences authorized under this Subtitle shall be applied. This subsection shall expire and
9 be of no further force and effect on October 1, 2017.

10 (g) The Prince George's County Supply Schedule Program. There is established a Prince
11 George's County Supply Schedule (PGCSS) program, a sheltered-market procurement program
12 under which certain contracts greater than Five Hundred Thousand Dollars (\$500,000) in value
13 shall be awarded only to County-based small businesses. The PGCSS program may consist of
14 multiple award schedules or other procurement programs established by the Purchasing Agent.

15 (1) By April 15 of each year, the Director of Central Services shall propose to the County
16 Council the PGCSS, a list of North American Industry Classification System (NAICS) industry
17 classifications or comparable categories of goods or services that shall only be available for bid
18 or award among County-based small businesses during the next fiscal year, based on the capacity
19 and prevalence of County-based small businesses within that industry category. The proposed
20 PGCSS is subject to amendment and approval by resolution of the County Council and shall be
21 approved by Council resolution no later than June 1 of each year after public hearing or the
22 PGCSS proposed by the Director of Central Services shall go into effect for the next fiscal year.
23 If the Director of Central Services fails to submit the PGCSS to the Council by April 15 in
24 accordance with this Subsection, the Council shall propose and adopt the PGCSS by Council
25 resolution no later than June 1.

26 (2) A PGCSS contract may be awarded by:

27 (A) Any source selection method authorized by this Subtitle;

28 (B) A contract with a contractor who maintains a price agreement or schedule with
29 any federal agency so long as the contract does not authorize a price higher than is contained in
30 the contract between the federal agency and the contractor; or

1 (C) A contract with a contractor who agrees to adopt the same pricing schedule for
2 the same goods or services as that of a contractor who maintains a price agreement or schedule
3 with any federal agency if the contract does not authorize a price higher than is contained in the
4 contract between the federal agency and the contractor.

5 (3) The Purchasing Agent or the Purchasing Agent’s designee may issue a waiver and
6 elect not to award a procurement set aside pursuant to this Subsection, and may thereafter issue
7 or award the contract or procurement in the open market (with the other applicable requirements
8 in place for this Subtitle) if (i) the Purchasing Agent or Purchasing Agent’s designee determines
9 in writing that the submitted bid(s) or offer(s) from responsible and responsive bidders or
10 offerors for the contract or procurement in the PGCSS is believed to be twelve percent (12%) or
11 more above the likely price on the open market or (ii) the Purchasing Agent does not receive
12 responsive bids or offers from responsible County-based small businesses. Such a waiver must
13 be approved by Council resolution before issuance. For competitive bids or proposals, prior to
14 the submission of the proposed waiver to the Council for approval, the responsible County-based
15 small business with the lowest responsive bid or offer shall be given the opportunity to offer a
16 bid or proposal price less than twelve percent (12%) higher than the likely price on the open
17 market and be awarded the procurement. In determining a bid or proposal price in this
18 Subsection, applicable bid or price preferences authorized under this Subtitle shall be applied.

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

20 * * * * * * * * *

21 (c) For any procurement subject to Section 10A-112, 10A-113, or 10A-114 of this Subtitle
22 with a total value equal to or less than [One] Five Hundred Thousand Dollars (\$[1]500,000), [for
23 which a County agency secures competitive bids or proposals, including, but not limited to,
24 competitive bids pursuant to Section 10A-112 or competitive proposals pursuant to Section 10A-
25 113,] each County agency or the Purchasing Agent shall set-aside the procurement only for
26 award to [bids or proposals from] County-based small businesses, subject to Paragraphs (1) - (4)
27 of this Subsection.

28 (1) A County agency shall not be required to set aside a procurement for County-based
29 small businesses under this Subsection if there are not at least two (2) County-based small
30 businesses that can sufficiently provide the services or goods which are the subject of the
31 procurement. For procurements subject to 10A-112 or 10A-113, [A] a County agency may also

1 refuse to set aside a procurement for County-based small businesses under this Subsection if the
2 agency determines, after applying any applicable preferences, that the lowest County-based
3 small business bid or proposal price is believed to be twelve percent (12%) or more above the
4 likely price on the open market. An agency shall not make such a determination unless the
5 County-based small business with the lowest bid or proposal price has been given the
6 opportunity to win the procurement by offering a bid or proposal price less than twelve percent
7 (12%) higher than the likely price on the open market identified by the agency. If the County
8 agency makes a determination under this Paragraph not to set aside a procurement for County-
9 based small businesses, then the County agency must adhere to the requirements of Paragraph
10 (2) of this Subsection.

11 (2) If there are not at least two (2) County-based small businesses that can sufficiently
12 provide the services or goods which are the subject of a procurement under Paragraph (1) of this
13 Subsection, the County agency shall set-aside the procurement only for bids or proposals from
14 County-based businesses, unless there are not at least two (2) County-based businesses that can
15 sufficiently provide the services or goods which are the subject of the procurement. For
16 procurements subject to 10A-112 or 10A-113, [A] a County agency may also refuse to set aside
17 a procurement for County-based businesses under this Paragraph if the agency determines, after
18 applying any applicable preferences, that the lowest County-based business bid or proposal price
19 is believed to be twelve percent (12%) or more above the likely price on the open market. A
20 County agency shall not make such a determination unless the County-based business with the
21 lowest bid or proposal price has been given the opportunity to win the procurement by offering a
22 bid or proposal price less than twelve percent (12%) higher than the likely price on the open
23 market identified by the agency.

24 (3) Only if a County agency satisfies the requirements of both Paragraphs (1) and (2) of
25 this Subsection and receives approval from the Purchasing Agent and approval by resolution of
26 the County Council, may the County agency thereafter issue or award the procurement in the
27 open market, subject to all of the other applicable preferences and participation requirements
28 prescribed in this Subdivision. [If a County agency, after receiving approval of the Purchasing
29 Agent, makes a determination not to set aside a procurement under either Paragraphs (1) and (2)
30 of this Subsection and opts to issue the procurement in the open market, the County agency must
31 transmit in writing its determination and the reasons for the determination to the County

1 Executive and County Council no later than fourteen (14) calendar days after the date of the
2 determination's approval by the Purchasing Agent.]

3 (4) Any existing contract or agreement, including any existing multiyear contract or
4 extended contract, for a procurement funded by a County agency or the County government with
5 a total value equal to or less than [One] Five Hundred Thousand Dollars (\$[1]500,000) that was
6 not set-aside for County-based small businesses or County-based businesses pursuant to the
7 requirements of this Section[, and for which a County agency or the County government secured
8 competitive bids or proposals, including, but not limited to, any procurement contract that was
9 awarded pursuant to Section 10A-112 or Section 10A-113], at the time of any contemplated
10 exercise of an option, extension, or renewal, including automatic extensions or renewals (e.g.
11 "evergreen" contracts or agreements), shall not be renewed or extended. This Paragraph shall not
12 apply to a contract or agreement for a procurement with greater than fifty percent (50%) [or
13 greater] certified County-based small business participation.

14 (d) The Purchasing Agent may waive the requirements of Subsection (c) of this Section for a
15 procurement if the Purchasing Agent certifies that such a requirement would result in the loss of
16 federal or state funds, subject to the approval of the County Executive and resolution of the
17 County Council. [The Purchasing Agent shall transmit a copy of any such determination to the
18 County Council no later than seven (7) calendar days following the date of the procurement
19 award.]

20 * * * * *

21 (f) If a County agency fails to meet any of the goals set forth in Subsection (a) of this
22 Section or otherwise fails to comply with this Division, the County Executive, or the County
23 Council by resolution, may require that a portion of the agency's procurements be made part of a
24 set-aside program for County-based businesses and/or County-based small businesses. A County
25 agency in violation of this Division may also be subject to a temporary or permanent reduction in
26 its proposed budget allocation in the annual county budget process.

27 * * * * *

28 (h) Annual County Agency Procurement Forecast. By June 1 of each year, the Director of
29 Central Services shall publish on a central designated website a forecast of procurement
30 opportunities for each County agency for the next fiscal year. Each County agency shall
31 expeditiously comply with any information requests from the Office of Central Services in the

1 collection of information to comply with this Subsection. The Director of Central Services shall
 2 provide a courtesy electronic copy of the County Agency Procurement Forecast to a designated
 3 representative of the Prince George's Chamber of Commerce, Greater Prince George's Business
 4 Roundtable, and the Prince George's Community College.

5 **Sec. 10A-163. - County-based business certification requirements.**

6 (a) Except as provided for in Subsection (g), below [as provided for in paragraph (7) of this
 7 subsection], a business that seeks to be certified as a County-based business shall make
 8 application to the Purchasing Agent on a form provided by the Purchasing Agent. Such an
 9 application shall not be approved by the Purchasing Agent unless the business:

10 (1) Requires that its chief executive officer and the highest level managerial employees
 11 of the business maintain their offices and perform their managerial functions in the County;

12 (2) Files a written certificate that the business is not delinquent in the payment of any
 13 County taxes, charges, fees, rents or claims;

14 (3) Files a tax return filed with the State of Maryland establishing that the business has
 15 operated within the County within the preceding twelve (12) months;

16 (4) Files documentation showing that during the preceding twelve (12) months the
 17 business has continuously maintained a valid business license or permit;

18 (5) Files documentation showing that during the preceding twelve (12) months the
 19 business has continuously occupied an office within the County, as its principal place of
 20 operation; and

21 (6) Files documentation showing that:

22 (i) More than fifty percent (50%) of the business' full-time employees are County
 23 residents; or

24 (ii) The owners of more than fifty percent (50%) of the business are County residents;
 25 or

26 (iii) More than (fifty percent) 50% of the assets of the business, excluding bank
 27 accounts, are located in the County; or

28 (iv) More than (fifty percent) 50% of the total sales or other revenues of the business
 29 are derived from transactions of the business in the County.

30 [(7)A business that is certified as a minority business enterprise (MBE) pursuant to
 31 Section 10A-101(a)(26) whose certification indicates that the business's principal address,

1 principal place of operation, or domicile is within Prince George's County, Maryland, shall be
2 automatically deemed to be a certified County-based business under this subsection without
3 further application or certification, provided that, if requested by the Purchasing Agent at the
4 time of a bid or proposal solicitation, the business provides in its bid or proposal a copy of (i)
5 documentation of its existing MBE certification, (ii) a tax return filed with the State of Maryland
6 establishing that the business has operated within the County within the preceding twelve (12)
7 months, and (iii) a certificate of good standing from the Maryland Department of Assessments
8 and Taxation.]

9 (b) Except as provided for in Subsection (g), below, [A] a business that seeks to be certified
10 as a County-based small business shall make an application to the Purchasing Agent on a form
11 provided by the Purchasing Agent. Such an application shall not be approved by the Purchasing
12 Agent unless:

- 13 (1) The business meets the requirements of Section 10A-163(a); and
- 14 (2) The business meets the definition of "small business" pursuant to the Code of
15 Maryland Regulations ("COMAR") 21.01.02.01(80); or
- 16 (3) [For a business classified as being in the construction industry by Sector 23 of the
17 current edition of the NAICS, the] The business meets the federal definition of "small business
18 concern" in Part 121 of Title 13 of the Code of Federal Regulations.

19 * * * * *

20 (d) A business whose application is approved for certification as a County-based small
21 business is automatically certified as a County-based business.

22 * * * * *

23 (g) Reducing redundant certifications.

24 (1) A business that is certified as a minority business enterprise (MBE) pursuant to
25 Section 10A-101(a)(26), whose certification indicates that the business's principal address,
26 principal place of operation, or domicile is within Prince George's County, Maryland, shall be
27 automatically deemed by the Supplier Development and Diversity Division and the Purchasing
28 Agent to be a certified County-based minority business enterprise and County-based business
29 under this Subtitle without further application or certification, provided that, if requested by the
30 Purchasing Agent or the Purchasing Agent's designee at the time of a bid or proposal
31 solicitation, the business provides in its bid or proposal a copy of a tax return filed with the State

1 of Maryland establishing that the business has operated within the County within the preceding
2 twelve (12) months.

3 (2) A County-based minority business enterprise whose approved MBE certification also
4 meets the requirements of Section 10A-163(b)(2) or 10A-163(b)(3) shall be automatically
5 deemed to be a certified County-based small business under this Subtitle by the Supplier
6 Development and Diversity Division and the Purchasing Agent without further application or
7 certification, provided that, if requested by the Purchasing Agent or the Purchasing Agent's
8 designee at the time of a bid or proposal solicitation, the business provides in its bid or proposal
9 a copy of a tax return filed with the State of Maryland establishing that the business has operated
10 within the County within the preceding twelve (12) months. Approved MBE certifications that
11 meet the requirements of this Paragraph shall include

12 (A) MDOT certification in accordance with COMAR 21.11.03, provided such
13 certified business conforms to the requirements of Section 10A-101(a)(26) of this Subtitle;

14 (B) Disadvantaged Business Enterprise (DBE) certification in accordance with 49
15 CFR Part 26, provided such DBE certification is accepted by the Supplier Development and
16 Diversity Division and such certified business conforms to the requirements of Section 10A-
17 101(a)(26) of this Subtitle; and

18 (C) Other MBE or DBE certifications accepted by the Supplier Development and
19 Diversity Division and determined to include comparable size of business standards by the
20 Supplier Development and Diversity Division, provided such certified businesses conform to the
21 requirements of Section 10A-101(a)(26) of this Subtitle.

22 (3) Valid MBE or DBE certification status in accordance with this Subsection shall
23 satisfy the documentation requirements for any County-based business or County-based small
24 business certification renewal for County-based minority business enterprises.

25 (h) Validity during renewal review. At the time of any certification renewal, an existing
26 certification authorized by this Division shall continue to be valid during the pendency of review
27 of the business entity's certification by the Supplier Development and Diversity Division or the
28 Office of Central Services, provided that the business submitted the required renewal documents
29 and other information, and such documents were received by the Supplier Development and
30 Diversity Division or the Office of Central Services on or before the expiration date of the
31 business's certification. The Supplier Development and Diversity Division or the Office of

1 Central Services shall request in full all documents and information required for renewal in
 2 writing to the certified business entity at least ninety (90) days prior to the expiration date of the
 3 business entity's certification or the expiration date shall be extended until ninety (90) days after
 4 the complete written request is sent to the subject certified business entity.

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

6 (a) For the entire duration of the procurement contract or agreement, any vendor given a
 7 County-based business preference under Section 10A-160 or subject to the County-based small
 8 business participation requirements under Section 10A-161 shall maintain no less than the
 9 percentage of certified County-based business participation or certified County-based small
 10 business participation stated in the winning bid or proposal. [At the discretion of the Purchasing
 11 Agent,] [f]Failure to comply with this Division [Section] may subject any vendor given a
 12 business preference under Section 10A-160, subject to the County-based small business
 13 participation requirements under Section 10A-161 to a penalty, to include monetary fines of up
 14 to five percent (5%) of the value of the contract for each violation, [or] a cancellation of the
 15 contract or agreement, or suspension or debarment of the vendor under Section 10A-148 of this
 16 Subtitle.

17 (1) A vendor may request a waiver of the requirements of this Section [Subsection] by
 18 the Purchasing Agent. On a case by case basis, such a waiver request may be granted by the
 19 Purchasing Agent with the approval of the County Executive and approval by resolution of the
 20 County Council, if "best efforts" by the vendor to comply have been demonstrated as prescribed
 21 in Subsection (e) of this Section.

22 [(2)For procurement contracts or agreements subject to approval by legislative act under
 23 Section 819 of the Charter, a waiver and/or percentage adjustment authorized by this Subsection
 24 must be approved by the County Council. For procurement contracts or agreements not subject
 25 to approval by legislative act under Section 819 of the Charter, notice of such a waiver and/ or
 26 percentage adjustment, including the information provided to the Purchasing Agent pursuant to
 27 Paragraphs (1) - (4) of Subsection (e) of this Section, must be sent to the County Council by the
 28 Purchasing Agent by no less than fourteen (14) calendar days prior to the date of the County
 29 Executive's approval of the Purchasing Agent's decision.]

30 (b) Any vendor given a County-based business preference under Section 10A-160 or subject
 31 to the County-based small business participation requirements of Section 10A-161 shall submit a

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

4 (1) The percentage and U.S. dollar value of certified County-based business participation
5 and certified County-based small business participation in the most recent 3 month period,
6 including reporting the percentage and U.S. dollar value of certified County-based business
7 participation and certified County-based small business participation for the period from the
8 beginning of the calendar year to the reporting date;

9 (2) The name and principal place of operation of each business receiving payment under
10 the procurement in the most recent 3 month period, including the U.S. dollar value and
11 percentage of the total contract dollars paid in the most recent 3 month period to each business;
12 and

13 (3) The expected percentage and U.S. dollar value of certified County-based business
14 participation and certified County-based small business participation in the next 12 month
15 period.

16 * * * * *

17 (d) The Purchasing Agent shall make compliance with this Subdivision a written condition of
18 any contract or agreement for [a procurement funded by a County agency or the County
19 government] any procurement subject to Sections 10A-112, 10A-113, and 10A-114 of this
20 Subtitle, by including a mandatory written compliance clause in every such contract or
21 agreement or any such contract or agreement shall be rendered void and illegal.

22 (e) In this Subdivision, the term "best efforts" means efforts to the maximum extent
23 practicable have been made to meet the requirement. A vendor given a County-based business
24 preference under Section 10A-160 or subject to the County-based small business participation
25 requirements under Section 10A-161 shall not be deemed to have demonstrated "best efforts"
26 under Subsection (a) of this Section where there is a sufficient number of County-based
27 businesses or County-based small businesses to enable the vendor to meet the requirements of
28 Subsection (a) of this Section. The Purchasing Agent shall not propose to grant a waiver
29 authorized by Paragraph (1) of Subsection (a) of this Section unless the vendor seeking the
30 waiver:

1 (1) Provides a detailed written statement of the reasons the vendor is unable to maintain
2 its percentages of County-based business or County-based small business participation;

3 (2) Provides a detailed written statement of its efforts to maintain its percentages of
4 County-based business or County-based small business participation, including the precise
5 reasons and justifications for the departure of County-based businesses and County-based small
6 businesses from the procurement since the initial award of the procurement and the vendor's
7 efforts to contact and negotiate with other County-based businesses or County-based small
8 businesses including:

9 (A) The names, addresses, and telephone numbers of the County-based businesses or
10 County-based small businesses that were contacted and the dates such County-based businesses
11 were contacted, and

12 (B) A description of the information provided to County-based businesses or County-
13 based small businesses regarding the descriptions of services or goods sought for the
14 procurement, including plans, specifications and anticipated time schedule for any portions of the
15 work to be performed, where applicable;

16 (3) As to each County-based business or County-based small businesses that placed a
17 subcontract or other quotation or offer which the vendor considered not to be acceptable, a
18 detailed written statement that includes sufficient reasons for this conclusion;

19 (4) A written list of County-based businesses or County-based small businesses found to
20 be unavailable to perform under the procurement; and

21 (5) Provides a detailed description demonstrating that the vendor made sufficient efforts
22 to assist interested County-based businesses or County-based small businesses in obtaining
23 bonding, lines of credit, or insurance required by the vendor.

24 Based on an analysis of the information provided by the vendor seeking a waiver authorized
25 by Paragraph (1) of Subsection (a) of this Section and an analysis by the Purchasing Agent of the
26 availability of County-based businesses or County-based small businesses that provide services
27 or goods that are the subject of the procurement, the Purchasing Agent shall determine whether
28 "best efforts" to comply have been demonstrated by the vendor and whether to propose to grant
29 the vendor's request for a waiver authorized by Paragraph (1) of Subsection (a) of this Section,
30 subject to the approvals [and notice] required by this Section. If the Purchasing Agent does
31 propose to grant a waiver authorized by Paragraph (1) of Subsection (a) of this Section, the

1 Purchasing Agent shall propose [select] a new minimum percentage requirement for County-
2 based business participation or County-based small business participation for the vendor's
3 procurement based on the availability of County-based businesses or County-based small
4 businesses that provide services or goods that are the subject of the procurement, subject to the
5 approvals [and notice] required by this Section.

6 (f) Small Business Subcontracting Plan required. Where the prime contractor is not a
7 County-based small business, the forty percent (40%) County-based small business participation
8 requirement of Sections 10A-161(a) and 10A-114(b) shall be governed by a Small Business
9 Subcontracting Plan, submitted by the prime contractor.

10 (1) **Small Business Subcontracting Plan** is a written plan listing all subcontracts,
11 including individual contract values, between the prime contractor (contract award recipient) and
12 County-based small businesses; and between County-based small businesses and Non-County-
13 based small businesses and all lower tier County-based small business subcontractors for the
14 procurement.

15 (2) At the time of bid or proposal submission for procurements subject to Section 10A-
16 161(a) or prior to the execution of a contract between the County and any vendor for a
17 procurement subject to Section 10A-114(b), the prime contractor(s) shall submit a Small
18 Business Subcontracting Plan executed by the prime contractor and all of the subcontractors
19 being utilized to fulfill the forty percent (40%) County-based small business participation
20 requirement of Section 10A-161(a) or 10A-114(b).

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

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

25 (C) A prime contractor may only modify its Small Business Subcontracting Plan,
26 including modifying its subcontractors, for cause stated in writing, with the approval of the
27 Purchasing Agent, provided that the prime contractor continues to comply with the participation
28 requirements of Sections 10A-161(a) or 10A-114(b). A County-based small business
29 subcontractor can only be removed or have its participation (in contract value) reduced in the
30 Small Business Subcontracting Plan due to incapability to adequately perform the work required
31 under the procurement contract.

1 **requirement.**

2 (a) The Purchasing Agent shall require [include for every government-assisted project,
3 including] prior to the execution and as a condition of the performance of any contracts or
4 agreements for procurements awarded pursuant to Section 10A-112, 10A-113, or 10A-114 of
5 this Subtitle, [funded by a County agency or the County government,] at the time of initial
6 contract execution or, effective as of January 1, 2014, at the time of any exercise of contract
7 renewal, option, or extension (including automatic renewal or extension), a requirement] that the
8 business enter into a First Source and Local Hiring Agreement with the County which states that:

9 (1) The first source for finding employees to fill all jobs created by the government-assisted
10 project shall be the First Source Registry;

11 (2) The first source for finding employees to fill any vacancy occurring in all jobs covered by
12 a First Source and Local Hiring Agreement will be the First Source Registry; and

13 (3) Compliance with this Section is a condition of the First Source and Local Hiring
14 Agreement.

15 * * * * *

16 (f) For every procurement subject to Section 10A-112, 10A-113, or 10A-114 of this Subtitle,
17 [T]he Purchasing Agent shall require "best efforts" to reach a minimum goal that at least fifty-
18 one percent (51%) of the annual man/woman hours (work hours), on both a total work hour and
19 trade by trade basis, be worked by County residents as a condition of any contract or agreement
20 for a procurement funded by a County agency, including requiring "best efforts" to reach a
21 minimum goal that at least fifty-one percent (51%) of the annual apprenticeship work hours on
22 such contracts or agreements be worked by apprentices who are County residents. The
23 requirements of this Subsection extend to hiring by contractors and subcontractors on
24 procurements funded by a County agency under the supervision or control of the contractors and
25 subcontractors.

26 * * * * *

27 (g) For procurements funded by a County agency or the County government, including, but
28 not limited to, procurements awarded pursuant to Section 10A-112, [or Section] 10A-113, or
29 10A-114 of this Subtitle, the Purchasing Agent shall require compliance with this Subdivision as
30 a written condition of the procurement contract or agreement or any such contract or agreement
31 shall be rendered void and illegal.

1 * * * * *

2 (i) Failure to comply with this Section, for a procurement funded by a County agency or the

3 County government, may subject a signatory to a First Source and Local Hiring Agreement or

4 any other entity required to comply with this Subdivision to a penalty, to include monetary fines

5 of up to twenty percent (20%) of the value of the direct and indirect labor costs of the contract, as

6 determined by the Purchasing Agent. For repeated violations of this Section, a signatory to a

7 First Source and Local Hiring Agreement or any other entity required to comply with this

8 Subdivision may be subject to a cancellation of the procurement contract or agreement or

9 suspension or debarment of the signatory under Section 10A-148 of this Subtitle. [, as

10 determined by the Purchasing Agent.]

11 * * * * *

12 SECTION 2. BE IT ENACTED by the County Council of Prince George's County,

13 Maryland, that Section 10A-152.01 and 10A-177 of the Prince George's County Code be and the

14 same are hereby added:

DIVISION 6. - SPECIAL PROVISIONS.

SUBDIVISION 9. - SMALL BUSINESSES.

15 * * * * *

16 **Sec. 10A-152.01. – County-based authorized resellers and distributors.**

In the procurement of commodities for which manufacturers or publishers of such commodities utilize authorized resellers or distributors, including, but not limited to, information technology software and hardware products:

(a) The County shall procure such commodities solely from County-based small businesses that are authorized resellers or distributors if

(1) there are County-based small businesses that are authorized resellers or distributors of such commodities and

(2) such businesses are authorized as resellers or distributors by the publisher or manufacturer of such commodities.

(b) The County is authorized to procure such commodities directly from the manufacturer or publisher only if the requirements of Subsection (a), above, are not met.

DIVISION 7. ECONOMIC DEVELOPMENT

SUBDIVISION 5. – CERTIFICATION BY THE PURCHASING AGENT.

1 **Sec. 10A-177. - Certification by the Purchasing Agent.**

2 Prior to the execution of any procurement contract or agreement subject to Section 10A-112,
 3 10A-113, 10A-114 or 10A-115 of this Subtitle, the Purchasing Agent or Purchasing Agent's
 4 designee shall certify in writing that such procurement is in full compliance with the applicable
 5 provisions of this Subtitle or the procurement shall be rendered void and illegal. Any
 6 procurement award, contract or agreement (including any procurement contract renewal or
 7 extension) under the authority of this Subtitle, including subject to Section 10A-112, 10A-113,
 8 10A-114, or 10A-115, awarded or executed in violation of any provision of Division 6 or
 9 Division 7 of this Subtitle shall be rendered void and illegal. Where a procurement award,
 10 contract or agreement is rendered "void and illegal" by violating a provision of this Subtitle,
 11 "void and illegal" shall mean "terminated for convenience" and shall not create a right of legal
 12 action or damages against any party.

13 SECTION 3. BE IT FURTHER ENACTED that prior to October 1, 2017, the Director of
 14 Central Services shall prescribe regulations to implement the definition of "best value" and
 15 implement the "Small Business Subcontracting Plan" requirement consistent with this Act,
 16 subject to the approval (and modification) of such regulations by Council resolution.

17 SECTION 4. BE IT FURTHER ENACTED any contractual obligation or liability incurred in
 18 violation of this Act, Divisions 6 or 7 of Subtitle 10A of the County Code, or Section 2 of CB-
 19 30-2015 shall be deemed to be an unauthorized contract or liability under County law.

20 SECTION 5. BE IT FURTHER ENACTED that enrolled participants in the Business
 21 Development Reserve Program as of January 1, 2016 that are County-based businesses shall be
 22 eligible for Business Development Reserve Program contracting opportunities at least until the
 23 end of Fiscal Year 2019.

24 SECTION 6. BE IT FURTHER ENACTED that by February 1, 2017, the Director of Central
 25 Services, in consultation with the Supplier Development and Diversity Division, shall send
 26 written advisory and compliance guidance regarding the modifications prescribed in this Act to
 27 each County agency, including any personnel with responsibility for procurement decisions.

28 SECTION 7. BE IT FURTHER ENACTED that the provisions of this Act are hereby
 29 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
 30 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
 31 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining

1 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
2 Act, since the same would have been enacted without the incorporation in this Act of any such
3 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

4 SECTION 8. BE IT FURTHER ENACTED that this Act shall take effect on April 1, 2017,
5 except as otherwise stated in the Act. The provisions of this Act that modify Sections 10A-
6 101(a)(2.1) and 10A-112(c) of the Code shall take effect on October 1, 2017. Additionally,
7 Section 6 of this Act shall take effect forty-five (45) calendar days after the date of enactment.

Adopted this 15th day of November, 2016.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Derrick L. Davis
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
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.