

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2023 Legislative Session

Bill No. CB-071-2023

Chapter No. 61

Proposed and Presented by Council Member Burroughs

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

Co-Sponsors _____

Date of Introduction October 3, 2023

BILL

1 AN ACT concerning

2 County Contract Evaluations

3 For the purpose of providing transparency in the County’s construction contracts that it awards
4 each year with the County spending millions of dollars contracting for the procurement of
5 construction services from private sector contractors; the prudent expenditure of public dollars has
6 resulted in a County procurement process that has resulted in the selection of qualified and
7 responsible contractors with most services being delivered in accordance with the terms of the
8 contract; the contractor’s hiring metrics, treatment of employees, and prior performance on
9 contracts is of significant importance to the County; the purpose of these sections is to implement
10 a contractor evaluation program and establish database(s) on contractor performance; and the
11 contractor evaluation program will assure that contractors are routinely evaluated in accordance
12 with approved criteria and that this evaluative data is catalogued and readily accessible to the
13 County Council.

14 BY adding:

15 SUBTITLE 10A. PURCHASING.

16 Sections 10A-178, 10A-179, and 10A-180

17 The Prince George’s County Code

18 (2019 Edition; 2022 Supplement).

19 SECTION 1. BE IT ENACTED by the County Council of Prince George’s County,
20 Maryland, that Sections 10A-178, 10A-179, and 10A-180 of the Prince George’s County Code be

1 and the same is hereby added:

2 **SUBTITLE 2. PURCHASING.**

3 **DIVISION 7. ECONOMIC DEVELOPMENT.**

4 **SUBDIVISION 6. ANNUAL COUNTY CONTRACT EVALUATIONS AND REPORTS.**

5 **Sec. 10A-178. Applicability.**

- 6 (a) The mandates contained in this subdivision shall apply to all County construction projects
7 that exceed one million dollars (\$1,000,000).

8 **Sec. 10A-179. Definitions.**

- 9 (a) **African American Business Enterprise** as defined in Section 10A-101(A)(1) mean any
10 business enterprise that is:

- 11 (1) At least fifty-one percent (51%) owned by one or more African Americans, or, in
12 the case of any publicly-owned corporation, at least fifty-one percent (51%) of the
13 stock of which is owned by one or more African Americans;
14 (2) Whose general management and daily business affairs and essential productive
15 operations are controlled by one or more African Americans; and
16 (3) Which has been certified by the Supplier Development and Diversity Division as a
17 minority business enterprise pursuant to Division 6 of this Subtitle.

- 18 (b) **Asian-Pacific American Enterprise** as defined in Section 10A-101(A)(1.2) shall mean
19 any business enterprise that is:

- 20 (1) At least fifty-one percent (51%) owned by one or more Asian-Pacific Americans,
21 or, in the case of any publicly-owned corporation, at least fifty-one percent (51%)
22 of the stock of which is owned by one or more Asian-Pacific Americans;
23 (2) Whose general management and daily business affairs and essential productive
24 operations are controlled by one or more Asian-Pacific Americans or
25 Subcontinent Asian Americans; and
26 (3) Which has been certified by the Supplier Development and Diversity Division as a
27 minority business enterprise pursuant to Division 6 of this Subtitle.

- 28 (c) **Code** shall mean the Prince George's County Code.

- 29 (d) **Contractor** shall mean any person, firm, corporation, partnership, association, limited
30 liability company, or any combination thereof, who enters into a contract with the
31 County, and which contract is executed by an individual that is authorized to bind the

1 County.

2 (e) County Based as defined in Section 10-308(3) means a business whose principal place
 3 of operation, as determined by the Office of Central Services, is in Prince George's
 4 County, Maryland.

5 (f) Latino Business Enterprise as defined in Section 10A-101(A)(23.2) shall mean any
 6 business enterprise that is:

7 (1) At least fifty-one percent (51%) owned by one or more Hispanic Americans or
 8 Subcontinent Asian Americans, or, in the case of any publicly-owned corporation,
 9 at least fifty-one percent (51%) of the stock of which is owned by one or more
 10 Hispanic Americans;

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

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

15 (g) Local Worker shall mean an employee of a Contractor or Subcontractor that resides
 16 within the County.

17 (h) Locally-owned and Operated Business as defined in Section 10A-101(A)(24.1) shall
 18 mean any County-based business:

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

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

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

27 (i) Minority Business Enterprise as defined in Section 10A-101(A)(26) shall mean any
 28 business enterprise:

29 (1) Which is at least fifty-one percent (51%) owned by one or more minority
 30 individuals, or, in the case of any publicly-owned corporation, at least fifty-one
 31 percent (51%) of the stock of which is owned by one or more minority individuals;

- 1 (2) Whose general management and daily business affairs and essential productive
 2 operations are controlled by one or more minority individuals; and
 3 (3) Which has been certified by the Supplier Development and Diversity Division as
 4 a minority business enterprise pursuant to Division 6 of this Subtitle.

5 **(j) Minority Individuals** as defined in Section 10A-101(A)(26) shall mean those who have
 6 been subjected to prejudice or cultural bias because of their identity as a member of a
 7 group in terms of race, color, ethnic origin, or gender, without regard to their individual
 8 capabilities. Minority individuals are limited to members of the following groups:

- 9 (1) African Americans (Black Americans), which includes persons having origins in
 10 any of the Black racial groups of Africa;
 11 (2) Asian-Pacific Americans, which includes persons whose origins are from Japan,
 12 China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia
 13 (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa,
 14 Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the
 15 Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati,
 16 Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 17 (3) Female, regardless of race, ethnicity or origin;
 18 (4) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban,
 19 Central or South American, or other Spanish or Portuguese culture or origin,
 20 regardless of race;
 21 (5) Native Americans, which includes persons who are American Indians, Eskimos,
 22 Aleuts, or Native Hawaiians;
 23 (6) Subcontinent Asian Americans, which includes persons whose origins are from
 24 India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and
 25 (7) Veterans and Service-Disabled Veterans.

26 **(k) Native American Business Enterprise** as defined in Section 10A-101(A)(27.1) shall
 27 mean any business enterprise that is:

- 28 (1) At least fifty-one percent (51%) owned by one or more Native Americans, in the
 29 case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock
 30 of which is owned by one or more Native Americans;
 31 (2) Whose general management and daily business affairs and essential productive

1 operations are controlled by one or more Native Americans; and

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

4 (l) Subcontractor shall mean any person, firm, corporation, partnership, association,
 5 limited liability company, or any combination thereof who enters into a contract with a
 6 Contractor to assist the Contractor in the performance of a contract with the County. The
 7 term subcontractor does not include vendors or suppliers to the Contractor.

8 (m) Veteran Business Enterprise as defined in Section 10A-101(A)(45) shall mean any
 9 business enterprise that is:

10 (1) Which is at least fifty-one percent (51%) owned by one or more Americans who are
 11 Veterans and/or service-disabled Veterans, or, in the case of any publicly-owned
 12 corporation, at least fifty-one percent (51%) of the stock of which is owned by one
 13 or more Veterans and/or service-disabled Veterans;

14 (2) Whose general management and daily business affairs and essential productive
 15 operations are controlled by one or more Veterans and/or service-disabled
 16 Veterans; and

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

19 (n) Women’s Business Enterprise as defined in Section 10A-101(A)(46) shall mean any
 20 business enterprise that is:

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

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

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

28 **Sec. 10A-180. Evaluation of County Construction Contractors.**

29 (a) The Director of Central Services shall prepare and transmit a written report that shall
 30 include the metrics required in this section to the County Council and County Executive
 31 annually by July 1.

1 (b) The Director of Central Services shall collect and maintain the metrics on Contractors
 2 and Subcontractors that are awarded construction contracts with the County.

3 (c) The metrics shall include:

- 4 (1) The number of Local Workers employed on the project.
 5 (2) The amount of hours worked by the Local Workers on the project.
 6 (3) The percentage of the overall project work hours worked by Local Workers on the
 7 project.
 8 (3) The wages paid to the Contractor’s employees, benefits provided to employees, and
 9 any other fringe benefits provided by the Contractor to its employees.
 10 (4) The wages paid to the subcontractor’s employees, benefits provided to employees,
 11 and any other fringe benefits provided by the Contractor to its employees.
 12 (5) The total number of County-based Minority Business Enterprises utilized on the
 13 contract, the total amount paid to the County-based Minority Business Enterprise,
 14 the percentage of the overall contract value paid to the County-based Minority
 15 Business Enterprise that shall also be subcategorized by the number ,the amount
 16 paid, and the percentage of the overall contract spent on (i) African American
 17 Business Enterprises, (ii) Asian-American and Pacific Islander Business
 18 Enterprises, (iii) Latino Business Enterprises, (iv) Native American Business
 19 Enterprises, (v) Veteran Business Enterprises, and (vi) Women’s Business
 20 Enterprises.
 21 (5) The Agency contracting with the Contractor or Subcontractor.
 22 (6) The performance of the Contractor or Subcontractor to include:
 23 (A) The Quality of work,
 24 (B) The timeliness of completion of the project,
 25 (C) The compliance with the budget; and
 26 (D) The regulatory compliance.
 27 (7) Whether the contract is a new or initial award, existing, renewal, or an extension
 28 for that fiscal year.
 29 (8) Whether the contract was awarded by:
 30 (A) Competitive sealed bidding pursuant to Section 10A-112,
 31 (B) Competitive sealed proposal pursuant to Section 10A-113, or

1 (C) Through contract negotiation or sole source contract pursuant to Section 10A-
2 114 specifying the reasons for not competitively bidding the procurement.

3 (9) Whether a First Source and Local Hiring Agreement was a condition to contracting
4 with the County.

5 (10) Whether the Contractor or Subcontractor has complied with or is in compliance
6 with the reporting requirement(s) of any subtitle, division, or subdivision of the
7 Code.

8 (11) Whether any waiver(s) authorized by the Code were granted to the Contractor or
9 Subcontractor, the date of issuance of such waiver(s), any alternative minimum
10 percentages that were applied to the contract due to any such waiver(s), and a
11 description of the nature and justification for any such waiver(s).

12 (12) Whether any penalties or other compliance actions brought against the Contractor
13 or Subcontractor to enforce the requirements of this Division and, if so, a
14 description of those actions.

15 (13) Whether the contract awarded, renewed, or extended is in full compliance with this
16 Division.

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

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

Adopted this 31st day of October, 2023.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga
Chair

ATTEST:

Donna J. Brown
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Angela D. Alsobrooks
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.