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**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

Legislative Session

1992

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Bill No. \_\_\_\_\_ CB-1-

1992

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Chapter No.

41

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Proposed and Presented by The Chairman (by request -

\_\_\_\_\_ County

Executive) \_\_\_\_\_

Introduced by Council Members Bell, Pemberton,

\_\_\_\_\_ Del Giudice and

Fletcher

Co-Sponsors

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Date of Introduction June 23,

1992

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**BILL**

AN ACT concerning

Purchasing

FOR the purpose of adopting a new procurement ordinance and  
prescribing terms, conditions and special policies applicable

to the competitive and noncompetitive procurement of supplies, services and construction for the County and its agencies and matters related to such activity.

BY repealing:

SUBTITLE 10. FINANCE AND TAXATION.

Sections 10-146, 10-147, 10-148, 10-149, 10-150, 10-151, 10-152, 10-152.1, 10-152.2, 10-152.3, 10-153, 10-154, 10-155, 10-156, 10-157, 10-158, 10-159, 10-160, 10-161, 10-161.1, 10-162, 10-163, 10-164, 10-165, 10-166, 10-167, 10-168, 10-168.1, 10-169, 10-170, 10-170.1, 10-170.2, 10-170.3, 10-170.4, and 10-170.5,

The Prince George's County Code  
(1987 Edition, 1990 Supplement).

BY adding:

SUBTITLE 10A. PROCUREMENT.

Sections 10A-101, 10A-102, 10A-103, 10A-104, 10A-105, 10A-106, 10A-107, 10A-108, 10A-109, 10A-110, 10A-111, 10A-112, 10A-113, 10A-114, 10A-115, 10A-116, 10A-117, 10A-118, 10A-119, 10A-120, 10A-121, 10A-122, 10A-123, 10A-124, 10A-125, 10A-126, 10A-127, 10A-128, 10A-129, 10A-130, 10A-131, 10A-132, 10A-133, 10A-134, 10A-135, 10A-136, 10A-137, 10A-138, 10A-139, 10A-140, 10A-141, 10A-142, 10A-143, 10A-144, 10A-145, 10A-146, 10A-147, 10A-148, 10A-149, and 10A-150,

The Prince George's County Code  
(1987 Edition, 1990 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 10-146 through 10-170.5 inclusive, comprising all of Division 3 of Subtitle 10 of the Prince George's County Code be and the same are hereby repealed:

**SUBTITLE 10. FINANCE AND TAXATION.**

**[DIVISION 3. PURCHASING PROCEDURES.] RESERVED.**

**[Sec. 10-146 through 10-170.5] Reserved.**

SECTION 2. BE IT FURTHER ENACTED that a new Subtitle 10A, consisting of Sections 10A-101 through 10A-149, inclusive, be and the same is hereby added to the Prince George's County Code:

**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) "Agency" means any department, agency, board, commission or any other unit of the County government or any agency which (1) receives funding from County funds or (2) is made subject to County procurement law by any local, State or Federal law.

(2) "Award" means the decision by the Purchasing Agent

or the Purchasing Agent's designee to execute a purchase agreement or contract after all necessary approvals have been obtained.

(3) "Broker" means generally a person or business entity that operates predominantly as a middle man and sells goods and services on a pass-through basis, as set forth in the regulations.

(4) "Business" means any association, corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.

(5) "Change order" means a written order signed by the Purchasing Agent or the Purchasing Agent's designee, directing the contractor to make changes which the Changes Clause of the contract authorizes the Purchasing Agent to order without the consent of the contractor.

(6) "Commission" means the Minority Business Opportunities Commission.

(7) "Conditional suspension" means an administrative action by the Purchasing Agent disqualifying a person for reasons of unsatisfactory performance or default on County contracts from either bidding or submitting proposals on County contracts, acting as a supplier of goods or services on procurement or acting as a subcontractor on a County contract until the disqualified person (i) complies with specified conditions; (ii) corrects specified defects affecting

performance or ability to perform; or (iii) takes action to cure the conditions leading to the conditional suspension.

(8) "Construction" means the process of building, altering or improving any public road, bridge, structure, building or other public improvements of any kind to any public real property. It does not include the routine operation, repair, or maintenance of existing structures or buildings.

(9) "Construction management services" means services performed by a person who is experienced in construction and has (i) the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and (ii) the ability to coordinate the design and construction of a project, including the administration of change orders.

(10) "Contract" means any written agreement or order for the purchase or disposal of supplies, services, construction, insurance or any other item. It includes but is not limited to contracts of a fixed-price, cost reimbursement, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; grants; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

(11) "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by

unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

(12) "Contractor" means any business or person having a written contract with the County.

(13) "County based business" means a business whose principal place of operation is located within Prince George's County. Principal place of operation shall be determined by factors as set forth in the regulations.

(14) "County funds" means any monies received by the County or appropriated or approved by the Council or to which the County may at any time have legal or equitable title.

(15) "Debarment" means the action whereby a prospective bidder or offeror or contractor is barred from participating in County procurement related activities for a specified period of time pursuant to the requirements of this Subtitle.

(16) "Designee" means a duly authorized representative of a person holding a specified position. Such authorization shall be in writing.

(17) "Emergency" shall mean a situation resulting from unexpected or unanticipated events which requires immediate action to maintain or restore existing levels of essential

public services; to preserve or prevent further deterioration of public property; to provide temporary food; clothing or shelter to disaster victims; or to prevent damage to property or preserve life or safety.

(18) "Employee" means any classified or exempt service employee of the County and any County elected official.

(19) "Established catalog or market price" means the price included in the most current catalog, price list, schedule, or other form that: (1) is regularly maintained by the manufacturer or vendor of an item; (2) is either published or otherwise available for inspection by customers; and (3) (i) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that time or (ii) states discounted prices at which sales are currently or were last made to local, state or Federal agencies.

(20) "Evaluated bid price" means the dollar amount of a bid, after bid adjustments are made pursuant to the evaluation factors set forth in the Invitation For Bids, which measures the effective price to the County. Such price shall take into account factors which contribute to economy and effectiveness in the operation or use of the item being purchased, such as reliability, maintainability, useful life and residual value.

(21) "Executive Director" means the Executive Director of the Minority Business Opportunities Commission.

(22) "Improper conduct" includes, by way of example and not limitation, intentional billing irregularities, allocating costs from firm fixed price contracts to cost reimbursement contracts, submitting false claims, causing competition to be restrained or limited, misrepresentation, involving falsely claiming to be a minority business enterprise, indictment for any of the above causes or indictment for offenses specified in Division 6, Subdivision 8, when the indictment is the result of alleged misconduct in connection with a County bid, proposal or contract.

(23) "Invitation for Bids" means all documents whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 10A-112 of this Subtitle.

(24) "Letter contract" means the written preliminary contractual document that authorizes the contractor to begin a portion of the agreed upon services immediately. A letter contract is always associated with a definitive contract and can never be the sole document used to complete a procurement.

(25) "Maryland based business" means a business whose principal place of operation is located within the State of Maryland. Principal place of operation shall be determined by factors as set forth in the regulations.

(26) "Minority individuals" are those who have been subjected to prejudice or cultural bias because of their identity as a member of a group in terms of race, color, ethnic

origin, or gender, without regard to their individual capabilities. Minority individuals are limited to members of the following groups:

- (A) African Americans (Black Americans);
- (B) Asian Americans;
- (C) Hispanic Americans; and
- (D) Females.

(27) "Minority business enterprise" means any business enterprise (A) which is at least fifty-one percent (51%) owned by one or more minority individuals; 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 minority individuals, and (B) whose general management and daily business affairs and essential productive operations are controlled by one or more minority individuals and (C) which has been certified by the Commission as a Minority Business Enterprise pursuant to Section 2-452(j) of this Code.

(28) "Negotiation" means contracting by any of the methods set forth in Sections 10A-113, 10A-114 and 10A-115.

(29) "Participation Agreement" means an Agreement entered by the County and a Developer pursuant to Section 10A-141 of this Subtitle wherein the County contributes funds for the construction of regional stormwater management facilities or road improvements to be constructed by or contracted by the Developer.

(30) "Procure" means to buy, rent, lease, lease-

purchase, or otherwise obtain any supplies, services or construction. It includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources and preparation and award of contract. The term does not include the making of any grant or donation.

(31) "Procurement Officer" means any person authorized by the Director of the Office of Central Services, as Purchasing Agent, in accordance with procedures prescribed by regulations, to enter into and administer contracts and make determinations and findings with respect thereto. The term shall also include individuals subordinate to the Purchasing Agent acting within the limits of their delegated procurement authority. This authority shall be designated in writing by the County's Director of Central Services, in his/her capacity as Purchasing Agent, for such period of time as shall be stated in the written designation.

(32) "Proposal Analysis Group (PAG)" is an issue specific group which is responsible for the defining and drafting of Requests For Proposals, soliciting responses, evaluating responses and recommending the top three evaluated providers to the Director of Central Services as Purchasing Agent, for contracts for which competitive bidding is inappropriate.

(33) "Purchase request" means that mechanism whereby an agency requests that a contract be obtained for a specified

need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitation, suggested sources of supply, and information supplied for the making of any determination and finding required pursuant to any applicable provision of this Subtitle.

(34) "Purchased item" means any supply, service, printing, insurance policy or coverage, construction or any other item purchased by this County.

(35) "Purchasing Agent" means the Director of Central Services.

(36) "Request for Proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in Section 10A-113 of this Subtitle.

(37) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(38) "Responsive bidder" means one who has submitted a bid under Section 10A-112 of this Subtitle which conforms in all material respects to the Invitation For Bid.

(39) "Services" means the rendering, by a contractor, of time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. It includes, but is not

limited to, the services provided by architects, engineers, accountants, physicians, consultants and other professional persons.

(40) "Solicitation" means any request of the County to enter into a contract.

(41) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

(42) "Supplies" means all tangible and intellectual property except real property or any interest in real property.

(43) "Unsatisfactory performance" means establishing a record of poor performance or default on one or more contracts for construction, services, supplies, architectural and engineering services, construction related services, or maintenance including, but not limited to, overshipments, undershipments, providing damaged or defective goods, making unauthorized substitutions, billing errors, or service deficiencies. The term includes intentional failure, without good cause, to perform in accordance with the specifications or time limits provided in a contract, or a record of failure to perform, or of poor performance in accordance with the terms of one or more contracts unless the failure to perform or the poor performance was caused by acts beyond the control of the person.

(44) "Using agency" means any County agency which utilizes any supplies, services or construction procured under

this Subtitle.

**Sec. 10A-102. Construction; purposes.**

(a) Unless otherwise indicated, this Subtitle shall be liberally construed and applied to promote the underlying purposes and policies specifically enumerated herein.

(b) The underlying purposes and policies of this Subtitle are, among others, to:

(1) Facilitate the timely delivery of quality public services;

(2) Provide for public confidence in the procedures followed in public procurement;

(3) Ensure the fair and equitable treatment of all persons who deal with the procurement system of this County;

(4) Simplify, clarify and modernize the law governing procurement by this County;

(5) Permit the continued development of procurement regulations, policies and practices;

(6) Provide economy in County procurement activities and to maximize to the fullest extent the purchasing power of the County;

(7) Promote and encourage full and active participation of the Minority Business Enterprise community in the procurement system of the County; and

(8) Provide safeguards for the maintenance of a procurement system of quality and integrity.

**Sec. 10A-103. Centralization of contractual authority.**

(a) All rights, powers, duties and authority relating to the acquisition of supplies, construction, services, printing and insurance, and the management, control, warehousing, sale and disposal of supplies now vested in or exercised by any County agency under the several statutes relating thereto, are the responsibility of the Purchasing Agent as provided herein.

(b) General Powers of the Purchasing Agent. The Purchasing Agent shall have power and authority over, and shall adopt regulations consistent with this Subtitle, governing the procurement, management, control, and disposal of any and all supplies, services, construction, insurance and other items required to be procured by the County.

(c) No agency shall, during any fiscal year, expend or contract to expend any money or incur any liability or enter into any contract which by its terms involves the expenditure of money for any purpose in excess of the amounts appropriated or allotted for the same general classification of expenditure in the budget for such fiscal year, or in any supplemental appropriation as hereinabove provided; and no such payment shall be made nor any obligation or liability incurred, except for purchases in an amount not to exceed One Thousand Dollars (\$1,000), unless the Director of Finance or his designee shall first certify that the funds for the designated purpose are available.

(d) Except as provided herein or pursuant to authorization by executive order of the County Executive, it shall be

unlawful for any County official, elected or appointed, or any employee or person to make, alter, suspend or terminate any contract or letter contract governed by this Subtitle on behalf of the County other than through the Purchasing Agent, and any such purchase, contract, or Letter Contract made or changed contrary to the provisions hereof may be declared void by the County.

**Sec. 10A-104. Authority and duties of the Purchasing Agent.**

(a) The Purchasing Agent shall have the following specific authorities and responsibilities:

(1) To procure contracts for all supplies, services and construction for which payment, in whole or in part, is to be made out of County funds;

(2) To develop and operate a system of property inventory control and exercise supervision and control over all central warehouses and inventories of property belonging to the County in accordance with procedures established by the Director of Finance;

(3) To establish and maintain, after consultation with the appropriate County officials, a program for the development and use of procurement specifications and standards for all supplies, materials and equipment and the inspection and testing of all supplies, services and construction to insure compliance with such specifications and standards;

(4) To establish and maintain a system of requisitions and receipts concerning the furnishing of supplies, services

and construction to County agencies;

(5) To sell or dispose of surplus, forfeited, old and waste supplies;

(6) To participate in joint or cooperative procurement with other public jurisdictions;

(7) To maintain records and reports of all procurement activities of the County;

(8) To delegate limited procurement authority to County employees pursuant to procedures issued by the Purchasing Agent as may be deemed necessary for the efficient operation of the County's purchasing program;

(9) To appoint procurement officers who shall be employees selected in accordance with Subtitle 16 of this Code;  
and

(10) To appoint a contract review committee as defined by the regulations.

**Sec. 10A-105. Regulations and procedures.**

(a) The Purchasing Agent is hereby empowered to issue such procurement regulations and procedures as the Purchasing Agent may deem necessary or appropriate to implement any provision of this Subtitle. Except as otherwise expressly provided in this Subtitle or otherwise required by law, any procurement regulation or procedure issued by the Purchasing Agent shall take effect at such time as designated by the Purchasing Agent and shall be binding upon all persons.

(b) Except as otherwise provided under Division 6,

Subdivision 1 of this Subtitle, regulations shall be recommended by the Purchasing Agent for approval by County Council resolution governing the following to carry out the purposes of this Subtitle:

- \_\_\_\_\_ (1) Sole source procurements;
- \_\_\_\_\_ (2) Emergency procurements;
- \_\_\_\_\_ (3) Special circumstance procurements; and
- \_\_\_\_\_ (4) Minority Business Opportunities program.

\_\_\_\_\_ (c) Amendments to any approved rule or regulation on any matter governed by Subsection (b) may only be recommended by the Purchasing Agent to the County Council for its approval by resolution.

**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.

**Sec. 10A-107. Disputes.**

\_\_\_\_\_ All disputes concerning any decision by the Purchasing Agent and protests of bidders or offerors shall be timely submitted in writing to the Purchasing Agent and resolved in accordance with regulations to be issued by the Purchasing Agent. The determination of the Purchasing Agent on any dispute, after compliance with said regulations, shall be made in writing.

**Sec. 10A-108. Exemptions.**

(a) Unless otherwise ordered by the Purchasing Agent, the acquisition of the following supplies and services shall not be required through the Office of the Purchasing Agent:

(1) Regulated public utilities where service and rates are not negotiable;

(2) Supplies for resale to the public;

(3) Works of art for museum and public display;

(4) Published books, maps, periodicals, newspapers, and technical pamphlets;

(5) Recreational lands and rights-of-way;

(6) Conference, seminar and training fees;

(7) Visiting speakers, professors and performing artists;

(8) Acquisition of interests in real property;

(9) Memberships, dues and fees for conference and seminars and associated or similar expenses;

(10) Training courses and materials provided by accredited institutes of learning;

(11) Construction projects meeting the requirements of Division 6, Subdivision 2 of this Subtitle;

(12) Employee relocation;

(13) Experts or specialists employed under Section 902 of the Charter;

(14) Grants; and

(15) Employment Contracts.

(b) This Section does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases will be made in the best interest of the County, Minority Business Opportunities Program price and other factors considered.

(c) This Subtitle does not apply to any procurement or contract to the extent of any conflict with:

(1) A Federal or State law, regulation, assistance instrument or other requirement governing the procurement or contract; or

(2) The terms of any grant to the County.

**Sec. 10A-109. Relationship with using agencies.**

To facilitate the missions and objectives of using agencies, the Purchasing Agent shall maintain a close and cooperative relationship with all agencies which use the supplies or services resulting from contracts entered into pursuant to this Subtitle.

**Sec. 10A-110. Conflict of interest; ethics.**

(a) No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in, or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally from any person, firm, or corporation having dealings with the County; nor shall he

receive, directly or indirectly, any part of any fee, commission, or other compensation paid or payable by the County unless exempted by the provisions of the Charter of Prince George's County. Any contract made in violation of this provision may be declared void by the County Executive or by Resolution of the Council. The Purchasing Agent may issue policies in furtherance of the intent of this Section.

(b) In furtherance of this provision, all invitations to bid and written quotation requests, formal or otherwise, shall include the following provisions:

"Upon the request of the Purchasing Agent, as a prerequisite for the payment pursuant to the terms of this contract, there shall be furnished to the County a statement, under oath, that no member of the elected governing body of Prince George's County, or members of his or her immediate family, including spouse, parents or children, or any person representing or purporting to represent any member or members of the elected governing body has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, or any other similar form of remuneration and/or on account of the acts of awarding and/or executing the contract and that upon request by the County, as a prerequisite to payment pursuant to the terms of this contract, there will be furnished to the requester, under oath, answers to any interrogatories related to a possible conflict of interest as herein embodied. Any

contract made or entered into where it is discovered that violation of the intent of this provision exists shall be declared null and void and all monies received by the contractor shall be returned to the County."

"Whenever any person shall be convicted of falsely executing a statement under oath, as required above, such person shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine not exceeding One Thousand Dollars (\$1,000.00) or imprisonment not exceeding six (6) months, or both such fine and imprisonment."

**DIVISION 2. AWARD OF CONTRACTS.**

**Sec. 10A-111. Methods of awarding contracts.**

(a) Except as otherwise authorized by law, all County contracts shall be awarded by:

- (1) competitive sealed bidding;
- (2) competitive sealed proposal;
- (3) contract negotiation; or
- (4) small purchase procedures.

(b) No contract or purchase shall be subdivided to avoid the competitive bidding and competitive sealed proposal requirements of this Subtitle.

**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 Fifteen Thousand Dollars (\$15,000) for goods or services; and

(2) Specifications exist or can be developed wherein price analysis can be performed on an equitable basis yielding an award to the lowest evaluated responsive and responsible bidder.

(3) Subject to regulations to be issued by the Purchasing Agent, competitive sealed bidding may be used at dollars levels below the amounts specified in paragraph (1).

(b) The Purchasing Agent shall give public notice of an Invitation for Bid in at least one County newspaper of record for a sufficient time prior to the date set forth therein for the public opening of bids. The Purchasing Agent shall set forth procedures for public notices in regulations.

(c) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid is determined to contain the lowest bid price or lowest evaluated bid price, as specified in the Invitation for Bids. If an award is not made to the lowest evaluated bidder, a written determination citing the reasons shall be made by the Purchasing Agent or designee and made a permanent part of the bid file. If purchasing authority in excess of Fifteen Thousand Dollars (\$15,000) has been delegated to a department head outside of the Department of Central Services, a written determination citing the reasons for not selecting the lowest bidder shall be forwarded to the

Purchasing Agent for approval prior to the award of the contract. No purchase or contract shall be made or awarded within one (1) week from the date of the public opening of bids.

(d) Nothing in this Subtitle shall preclude the County from accepting a voluntary reduction in price from the successful bid; in such an instance, terms, conditions, specifications or quantities in the Invitation for Bids shall remain binding upon the bidder.

(e) In the event that all bids exceed the funds available for the purchase or the Purchasing Agent or the Purchasing Agent's designee determines that all bids are unreasonable, the scope, specifications or conditions of the purchase may be reduced or modified and revised bids may be solicited from all responsive and responsible bidders that responded to the initial solicitation. In such instance, the Purchasing Agent or designee may waive the public notice requirement of paragraph (b) of this Section. If either no bid or only one bid is received from a responsive and responsible bidder in response to an Invitation for Bids the scope, specifications or conditions of the purchase may be modified and revised bids may be solicited. In this instance public notice shall be given.

(f) When it is considered not advantageous to prepare specifications to support an award based on price alone, an Invitation for Bids may be issued requesting the submission of unpriced technical offers, or samples, or both, and a separate

sealed submission of price bids. Bidders whose technical submissions or samples, or both, have been found to be acceptable under the criteria set forth in the Invitation for Bids, shall then have their prices considered. When this method is used, only bidders submitting acceptable technical offers or samples, (or both), shall have their price bids opened and considered.

**Sec. 10A-113. Competitive sealed proposal.**

(a) The competitive sealed proposal method may be used when:

(1) The cost of the purchase is estimated to exceed the sum of Fifteen Thousand Dollars (\$15,000) for goods and services; and

(2) Specifications cannot be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price; or

(3) Quality, availability, technical competence, and capability are of paramount importance in relation to price; or

(4) The market place will respond better to a solicitation permitting a range of alternate proposals, and negotiation; or

(5) The Purchasing Agent determines that the bid prices received by competitive sealed bidding are unreasonable as to all or part of the requirements or when only one or no responsive bid is received in response to an Invitation for Bids; or

(6) When the Purchasing Agent or his designee makes a written determination that competitive sealed bidding is otherwise not advantageous to the County.

(b) Competitive sealed proposals shall be solicited by a Request for Proposals which, along with such additional content as may be deemed appropriate by the Purchasing Agent or designee, shall include the following:

(1) A statement of the scope of services to be the subject of the contract; and

(2) A list of factors and the relative importance or weight of each factor, including price, that will be used in evaluating proposals.

(c) The Purchasing Agent may request of the head of the using agency and any other County agency that a representative of such agency be designated to serve on a Proposal Analysis Group (PAG) to assist the Purchasing Agent in the evaluation of proposals in response to the Request for Proposals and to make recommendations to the Purchasing Agent as to which proposal is most advantageous to the County.

(d) A Request for Proposals shall be given adequate public notice in the same manner as provided in Section 10A-112(b).

(e) Before proposals are received, the Purchasing agent or designee or the proposal analysis group may conduct a pre-proposal conference with all potential offerors for the purpose of assuring full understanding of the using agency's requirements, as described in the Request For Proposals. All

such offerors shall be accorded fair and equal treatment with respect to this conference.

(f) The Purchasing Agent or designee and the proposal analysis group may not disclose to a competing offeror any information derived from a proposal of, or from interviews with, another competing offeror.

(g) Proposals and best and final offers are irrevocable for the period specified in the Request for Proposals or any request for best and final offers, except that the proposal may be withdrawn or corrected as provided in regulations issued by the Purchasing Agent.

(h) The Director of Central Services shall review the recommendations of the Proposal Analysis Group and direct the Proposal Analysis Group to negotiate a contract with one of the top three offerors whose proposal and best and final offer is determined to be the most advantageous to the County, in accordance with the evaluation factors set forth in the Request for Proposals.

(i) The Proposal Analysis Group shall forward the final negotiated contract to the Director of Central Services for approval.

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

(a) A contract may be made by negotiation under the following circumstances:

(1) If it is determined that competitive sealed bidding or competitive sealed proposal cannot be used in awarding a

contract because there is only one available or practical source for the subject of the contract, the Purchasing Agent is authorized to award a contract by noncompetitive negotiation. The following circumstances shall be sufficient to determine that only one source for the contract is available or practical:

(A) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material or similar circumstances where competition is impractical; or

(B) When the contemplated procurement is for technical, non- personal services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature; or

(C) When the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the same manufacturer, and where the Purchasing Agent determines that a substitute part or component of another manufacturer will not perform the same function in the equipment as the part or component it is to replace; or

(D) When the contemplated procurement involves construction where a contractor or group of contractors are already at work on the site and it would not be practicable to allow another contractor or an additional contractor to work on

the same site, or when the amount and value of the work is too small to interest other contractors to mobilize and demobilize;  
or

(E) When property is required for experiment, test, development or research in conjunction with determining the relative merits of the product or property for subsequent buys; or

(F) When only one product will meet the technical and performance requirements for the procurement.

(2) If it is determined in writing that competitive sealed bidding or competitive sealed proposal cannot be used in awarding a contract because an unanticipated emergency leaves insufficient time to use either of these methods, the Purchasing Agent is authorized to contract pursuant to emergency procedures established by regulations issued by the Purchasing agent. The duration of any contract entered into under this Section shall not exceed the period of time necessary to abate the emergency.

(3) Upon written certification by the using agency that any of the following circumstances exists, the Purchasing Agent or the Purchasing Agent's designee may negotiate a contract:

(A) A public exigency will not permit a delay incident to advertising; or

(B) Services or goods are to be provided by or under contract with another government agency or government.

(4) Authority to negotiate a contract under any

provision of this Subtitle does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases will be made to the best interest of the County, Minority Business Opportunities Program price and other factors considered. The authority to negotiate contracts in no way eliminates the need of the Purchasing Agent to exert reasonable efforts to obtain the most favorable prices possible.

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

(a) Any contract not expected by the Purchasing Agent at the time price quotations are solicited to exceed an aggregate amount of Fifteen Thousand Dollars (\$15,000.00) for goods and services or construction, may be entered into according to a simplified small purchase procedure set forth in regulations. Such regulations shall include appropriate requirements for obtaining competition and minority participation.

(b) The Purchasing Agent may delegate the authority to enter into small purchase contracts to using agencies pursuant to the regulations authorized in subsection (a).

(c) The Purchasing Agent shall consolidate similar requirements of using agencies for purposes of achieving maximum volume discounts, whenever practicable.

**Sec. 10A-116. Cancellation of solicitations; rejection of bids and offers.**

If the Purchasing Agent, with the using agency head or designee, determines that it is fiscally advantageous or is

otherwise in the County's best interest, an Invitation for Bid, a Request for Proposals, or other solicitation may be cancelled, or all bids or proposals may be rejected.

**Sec. 10A-117. Responsibility of bidders and offerors.**

A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted by the Purchasing Agent. The failure of a bidder or offeror promptly to supply information in connection with such an inquiry may be grounds for a determination of nonresponsibility with respect to such a bidder or offeror.

**Sec. 10A-118. Responsibility prequalification of bidders or offerors.**

The County may, on a limited basis employ a method whereby suppliers seeking to provide a particular type of purchased item may prequalify as responsible prospective contractors for such purchased item. When the Purchasing Agent with the concurrence of the Commission determines that it is in the best interest of the County to limit competition to most qualified and capable bidders, the criteria for prequalification shall be set forth in the public notice of the Invitation for Bids. The notice shall state that bids shall only be received from bidders who satisfy the prequalification criteria. Only those bidders who have been prequalified shall be provided the opportunity to bid. Any prospective bidder who is not prequalified shall be notified of this determination in writing. The Invitation for Bids shall be provided to all

prequalified bidders and no further public notice of the bid shall be required.

**Sec. 10A-119. Cost or pricing data.**

The Purchasing Agent or designee may prescribe by regulation or the terms or conditions of any particular procurement that the bidder or offeror provide such cost or pricing data as may be deemed appropriate under the circumstances.

**Sec. 10A-120. Statement of ownership.**

(a) The Purchasing Agent shall advise each and every business when responding to a Solicitation on the part of the County that the award of any contract shall be conditioned on the individual providing a statement of the ownership of the said business entity which shall contain the following:

(1) A statement by the business entity or its authorized representative listing the name or names as well as the business and residence addresses of all those individuals having a ten percent (10%) financial interest in the business entity;

(2) If the business entity is a corporation, there shall be filed instead, a statement listing the officers of the corporation, their business and residence addresses, the date on which they assumed their respective offices, a list of the members of the current Board of Directors, their business and residence addresses, as well as the date on which each director assumed his office and the date on which his term as a director

shall expire (if any); and

(3) Further, if the business entity is a corporation, in addition to the requirements set forth in paragraph (1) above, the business entity must file a statement containing the names and residence addresses of those individuals owning at least ten percent (10%) of the shares of any class of corporate security, including but not limited to stocks of any type or class and serial maturity bonds of any type or class.

(b) Any statement filed with the Purchasing Agent pursuant to this Section shall be valid for a period of one (1) year from the date it is filed, provided that the information contained therein is updated as necessary upon the award of any subsequent contract.

(c) No contract shall be finally awarded unless there has been compliance with the provisions of this Section.

**Sec. 10A-121. Prevailing wage rate.**

Each Invitation for Bids on contracts subject to the County prevailing wage law shall include the requirement that not less than the prevailing rates of pay, as established by the Wage Determination Board, be paid to those classes of employees of contractors and subcontractors established by the Wage Determination Board.

**Sec. 10A-122. Nondiscrimination.**

(a) No contract may be awarded to any contractor unless the contract contains provisions obligating the contractor not to discriminate in any manner against any employee or applicant

for employment because of sex, race, creed, color, age, mental or physical handicap, sexual orientation or national origin and obligating the contractor to include a similar clause in all subcontracts.

(b) If the non-discrimination clause is omitted from a contract or subcontract subject to this Section, the County may declare the contract to be void. In that event, the contractor is entitled to the reasonable value of work that has been performed and materials that have been provided.

(c) If the contractor willfully fails to comply with the requirements of the non-discrimination clause and the contract is partly executory, the County may compel the contractor to continue to perform under the contract, but the County:

(1) is liable for no more than the reasonable value of work performed and materials provided after the date on which the breach of contract was or should have been discovered; and

(2) shall deduct any money that has been paid under the contract from the money that became due under item (1) of this Section.

(d) If a subcontractor willfully fails to comply with the requirements of a non-discrimination clause, the contractor may void the subcontract. In that event, the contractor is liable for no more than the reasonable value of work performed or materials provided.

(e) Any person, including an employee or prospective employee, who has information about a violation of this section

or a non-discrimination clause may inform the Human Relations Commission. The Human Relations Commission shall cause an immediate investigation of the charge, and if it concludes that the charges are true, may invoke any remedy available by law.

**Sec. 10A-123. Inspection of contractor's plant and records.**

(a) The County may inspect the plant or business of a contractor or any subcontractor under any contract awarded or to be awarded by the County.

(b) The County shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract entered under this Subtitle. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

**Sec. 10A-124. Price fixing prohibited.**

Each bidder or offeror shall, by virtue of submitting a bid or proposal, guarantee that he has not been a party with other bidders or offerors to any agreement that would, as an effect, restrict or limit competition. Violations of this guarantee shall render void the bid or proposal of such bidders or offerors. Further, any contract, where this guarantee has been violated may be cancelled and all amounts paid on such contract may be recovered.

**Sec. 10A-125. Collusive bidding or negotiations.**

(a) A person who enters into a contract with the County

after engaging in collusion with another person for the purpose of defrauding the County is liable to the County for all amounts which have been paid by the County on the contract. This remedy shall not be exclusive of any other remedy that may be available to the County under any other applicable County, State or Federal law.

(b) When for any reason collusion is suspected among any bidders or offerors, a written notice of such suspicion shall be transmitted to the County Attorney for transmission, when appropriate, to the State Attorney General.

(c) All documents involved in any procurement in which collusion is suspected shall be retained until the State Attorney General gives notice that they may be destroyed. All retained documents shall be made available to the State Attorney General or his designee upon request.

**Sec. 10A-126. Maximum practicable competition.**

All specifications shall be drafted so as to assure the maximum practicable competition to fulfill the County's requirements. Specifications shall not be drawn in such a manner as to favor a single prospective bidder or offeror over other prospective bidders or offerors. This requirement shall not be construed to preclude the specification of brand name items with the approval of the Purchasing Agent or designee provided the term "or equal" or an equivalent term is used.

**Sec. 10A-127. Responsibility for selection of methods of construction contracting management.**

The Purchasing Agent may issue regulations providing for as many alternative methods of management of construction contracting as are feasible, setting forth criteria to be used in determining which method of management of construction is to be used for a particular project, and may grant to the using agency responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting for a particular project; provided, however, that the Purchasing Agent shall execute and include in the contract file a written statement, or may approve a determination by the using agency, setting forth the facts which led to the selection of a particular method of construction management in each instance.

**Sec. 10A-128. Brokering.**

The County shall not contract with any Broker unless brokering is a standard practice in the applicable industry with respect to which such contract relates or as provided by the waiver of the Purchasing Agent. The Purchasing Agent shall set forth in regulation those industries in which brokering will be allowed, the factors for determining whether a business shall be treated as a broker, and the procedure for waiving this exception.

**DIVISION 3. PROHIBITED TYPES OF CONTRACTS.**

**Sec. 10A-129. Cost-plus-a-percentage-of-cost.**

The cost-plus-a-percentage-of-cost system of contracting shall not be used. This prohibition shall not apply to

contracts based upon a manufacturer's established catalog or market prices or to contracts for materials and services in short supply or where fluctuating market conditions make it impractical for suppliers to guarantee fixed prices for reasonable time periods.

**Sec. 10A-130. Cost-reimbursement type contracts.**

(a) No cost-reimbursement contract may be made unless the Purchasing Agent determines or approves a using agency's determination that such contract is likely to be more beneficial to the County than any other type of contract.

(b) Each contractor under a cost-reimbursement type contract shall obtain approval of the County, as provided for in the contract, before entering into:

(1) A cost-reimbursement type subcontract; or

(2) Any other type of subcontract involving more than \$25,000.00, or 5% of the estimated cost of the prime contract, whichever amount is less.

(c) Except with respect to firm-fixed-price type contracts, no contract type shall be used unless the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and that the contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(d) All cost-reimbursement type contracts shall contain a provision that only costs determined to be allowable, in

accordance with established cost principles as defined in the regulations, will be reimbursable.

**Sec. 10A-131. Multi-year contracts.**

(a) A contract for supplies or services which extends beyond the current fiscal year may be entered into for periods not in excess of the time set forth in the Invitation for Bids or Request for Proposals (inclusive of any options exercisable thereunder), if funds for the first fiscal year of the contemplated contract are available at the time of contracting.

Payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds therefor.

(b) If funds are not appropriated for the continued performance of a contract approved under this Section, the contract for that year is terminated either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both parties from future performance of the contract, but not from their existing obligations.

(c) All contracts entered into under this Section shall contain a notice that they are subject to termination, either automatically or in accordance with a termination clause, upon the failure of the County Council to appropriate funds for the future performance of the contract.

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

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

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 is less than Twenty-five Thousand Dollars (\$25,000).

**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 Fifty Thousand Dollars (\$50,000). The Purchasing Agent may 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 Twenty-five Thousand Dollars (\$25,000) 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 at least 5% of the amount of the bid or price proposal or an amount determined by the Purchasing Agent or designee.

(c) When the Invitation for Bids or Request for Proposals requires a bid security be provided, noncompliance requires that the bid be rejected; provided, however, that the Purchasing Agent may set forth by regulation exceptions to this requirement in the event of substantial compliance.

(d) If a bidder is permitted to withdraw its bid before award because of mistake in the bid, no action shall be taken

against its bid security.

(e) Businesses may be permitted to file with the Purchasing Agent an annual bid security in an amount established by the Purchasing Agent in lieu of furnishing individual bid securities.

**Sec. 10A-134. Performance and payment bonds.**

(a) Prior to the award of any construction contract exceeding Fifty Thousand Dollars (\$50,000) in amount, a performance bond executed by a surety company authorized to do business in this State, or the equivalent in cash, or other security satisfactory to the County, and in such amount as shall be deemed adequate, for the protection of the County must be filed with the County. Certificates of Guarantee issued by the Development Guaranty Group of Prince George's County, Inc. or any other approved organization pursuant to Section 23-104 of this Code will not be deemed to be satisfactory security for the purpose of satisfying the Bond requirements for County contracts.

(b) Prior to the award of any construction contract exceeding Fifty Thousand Dollars (\$50,000) in amount, a payment bond executed by a surety company authorized to do business in this State, or the equivalent in cash, or other security satisfactory to the County for the protection of all persons supplying labor and materials, including lessors of equipment to the extent of the fair rental value thereof, to the contractor or his subcontractor in the prosecution of the work

provided for in the contract for the use of each such person must be filed with the County. The bond shall be in an amount not less than fifty percent (50%) of the total amount payable by the terms of the contract. Certificates of Guarantee issued by the Development Guaranty Group of Prince George's County, Inc. or any other approved organization pursuant to Section 23-104 of this Code will not be deemed to be satisfactory security for the purpose of satisfying the Bond requirements for County contracts.

**DIVISION 5. SALES TRANSACTIONS.**

**Sec. 10A-135. Sale and disposal of personal property.**

(a) In order to produce the highest return for the sale of personal property, the Purchasing Agent may select from the following sales methods the one which, in the Purchasing Agent's judgment, will yield the greatest return under the circumstances of each sale: competitive sealed bids, as prescribed in Section 10A-112; competitive spot bids sale; competitive auction sale; trade-in; or exchange for goods which are of current need. The Purchasing Agent may negotiate a sale when the above methods are inappropriate or have failed to produce a fair price or value.

(b) All agencies shall submit to the Purchasing Agent, at such times and in such form as he may prescribe, reports listing stocks of all personal property which are no longer used or which have become obsolete, worn out or scrapped. The Purchasing Agent shall have the authority to transfer

serviceable surplus commodities between agencies in lieu of filling requisitions for the purchase of new and additional stock of the same or similar articles.

(c) Notwithstanding the provisions of Subsection (a), upon certification by the Purchasing Agent that the property is not needed by the County, the County Executive, by Executive Order, may authorize the donation of one car per year to the Prince George's County Board of Education to be used as a door prize for the purposes of encouraging students to participate in alcohol free and drug free school functions.

**DIVISION 6. SPECIAL PROVISIONS.**

**Subdivision 1. Minority Business Opportunities Program.**

**Sec. 10A-136. Assistance to minority business enterprises.**

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

(b) 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 minority business enterprises for at least twenty percent (20%) of the total dollar volume of the contract price unless such bidder is itself a minority business

enterprise.

(c) In determining the lowest responsible and responsive bidder, for contracts valued at One Million Dollars (\$1,000,000) or less, the Purchasing Agent shall adjust the bid price(s) submitted by a County based Minority Business Enterprise or a minority business enterprise, for the purposes of evaluation and award only, by reducing the bid price(s) of such firm by the application of bonus factors according to the following schedule:

<u>BID OF LOWEST</u>	<u>MINORITY BUSINESS</u>	<u>PRINCE</u>
<u>GEORGE'S</u>		
<u>RESPONSIVE BIDDER</u>	<u>ENTERPRISE</u>	<u>BASED</u>
<u>MINORITY</u>		<u>BUSINESS</u>
		<u>ENTERPRISE</u>
		<u>BONUS</u>
<u>FACTOR</u>		
<u>Factored by:</u>	<u>.05</u>	<u>.10</u>

(d) For contracts valued greater than One Million Dollars (\$1,000,000), the Purchasing Agent shall adjust the bid price submitted by a County based Minority Business Enterprise or a Minority Business Enterprise for the purpose of evaluation and award only by reducing the bid price(s) of such firm by the application of an Evaluation Bonus according the following schedule:

	<u>MINORITY BUSINESS</u>	<u>PRINCE GEORGE'S</u>
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	ENTERPRISE	BASED MINORITY
		BUSINESS
		ENTERPRISE
		BONUS FACTOR
Bid Price Subtracted by:	\$50,000.00	\$100,000.00

(e) The Purchasing agent shall for all contracts, consult with the Commission or its authorized representative, in order to determine whether subcontracting is appropriate. If subcontracting is determined to be appropriate, the Purchasing Agent may include a mandatory minority business enterprise subcontract clause that requires the equivalent of at least twenty percent (20%) of the contract's total value be performed by one or more minority business enterprises. The Purchasing Agent may include a mandatory minority business enterprise subcontracting goal that is less than 20% of the contract's total value only: (1) after consultation with the Commission or its authorized representative; (2) upon a determination that a twenty percent (20%) mandatory minority business enterprise subcontracting goal is not able to be obtained at a reasonable price; and (3) upon a determination that the public interest is served.

(f) In making the determinations that the public interest is served, under Subsection (e), the Purchasing agent shall obtain the concurrence of the Executive Director and may consider engineering estimates, the general market availability of minority business enterprises to provide the services

requested, other bids and offers, the cost of the contract and any other relevant factor.

(g) If, for any reason, a bidder is unable to achieve a subcontract goal for Minority Business Enterprise participation, the bidder may request, in writing, a waiver of the goal with justification to include the following:

(1) A detailed statement of the efforts made to select portions of the work proposed to be performed by minority business enterprises in order to increase the likelihood of achieving the stated goal;

(2) A detailed statement of the efforts made to contact and negotiate with minority business enterprises including:

(A) The names, addresses, and telephone numbers of minority business enterprises and the dates such minority businesses were contacted, and

(B) A description of the information provided to minority business enterprises regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(3) As to each Minority Business Enterprise that placed a subcontract quotation or offer which the bidder considered not to be acceptable, a detailed statement of the reasons for this conclusion; and

(4) A list of Minority Business Enterprise subcontractors found to be unavailable to perform under the contract. The Purchasing Agent may grant the waiver only upon

a reasonable demonstration by the bidder that the Minority Business Enterprise participation goal is unable to be obtained at a reasonable price and if the Purchasing Agent determine that the public interest will be served.

(h) Whenever the County procures goods or services in accordance with Section 10A-113 of this Code and weighted evaluation points are used, up to 15% of the total evaluation points shall be awarded for Minority Business Enterprises participation unless the Purchasing Agent elects to restrict the procurement pursuant to Subsection (i) below.

(i) The Purchasing Agent may, after consultation with the Commission or its authorized representative, require that the competitive bidding of contracts be restricted to minority business enterprises owned by minority individuals as defined in Section 10A-101 (26) provided there are at least three (3) minority business enterprises that are providers in the trade of goods or services for which the contract is advertised. No contract shall be awarded pursuant to this provision if the resultant low bid exceeds by fifteen percent (15%) the most recent unit price for the same or most recently comparable goods or services, unless the Commission determines that prices in the relevant market have, for all vendors, without regard to minority status have increased beyond fifteen percent (15%) since the last time similar goods or services were procured.

(j) The Purchasing agent shall consider the following criteria in determining whether to utilize a procurement method

authorized by either Subsections (c), (d), (g), (h), and (i) of this Section or Section 10A-113;

(1) Whether the procedure selected is likely to increase the number of minority business enterprises responding to the County's procurement requirements;

(2) Whether the procedure selected is likely to increase the dollar value of procurement awards to minority business enterprises;

(3) Whether the procedure selected is likely to further the County's goals under this Division 6 of the Code without unnecessarily interfering with the efficient operation of the County government; and

(4) Whether the procedure selected is the most effective alternative available which will further the goals stated in this section.

(k) The Purchasing Agent along with the Commission shall actively and continually search for and identify minority-owned firms that provide commodities and services required by County Agencies and shall encourage such firms to become certified and bid on contracts advertised by the County.

(l) The Purchasing Agent shall require certification of a bidder's status as a County based Minority Business Enterprise or as a Minority Business Enterprise in form and substance as determined by rules and procedures adopted by the Commission and approved by the County Executive or his designee. The Commission shall maintain a registry of certified minority

business enterprises.

(m) If, upon investigation by the Commission, any Minority Business Enterprise which has been certified by the Commission misrepresented its status either as a County based business or as a Minority Business Enterprise and no contract with the County is existing the following shall occur:

(1) The Minority Business Enterprise shall be barred from award of any County contract or participation in any contract awarded by the County for a period of one year commencing upon the date written findings of such misrepresentations are made by the Executive Director, regardless of subsequent changes in the minority business enterprise's status; and

(2) The officers, directors, partners, or owners of the firm and any firm controlled or managed by them shall be barred from award of any County contract or participation in any contract awarded by the County for a period of one year commencing upon the date written findings of such misrepresentation are made by the Executive Director regardless of subsequent changes in the minority business enterprise's status.

(n) If, upon investigation by the Commission, or its authorized representative, any firm which has been certified by the Commission awarded a contract with the County as a result of the application of bonus factors pursuant to this Division is found to have misrepresented its status as either a County

based Minority Business Enterprise or a minority business enterprise, the following shall occur:

(1) The contract price shall be reduced to the bid price of the apparent lowest responsive bidder or the contract shall be terminated, if in the best interests of the County;

(2) The firm shall be barred from award of any County contract or participation in any contract awarded by the County for a period of three (3) years commencing upon the date written findings of such misrepresentations are made by the Commission regardless of subsequent changes in the Minority Business Enterprise's status; and

(3) The officers, directors, partners or owners of the firm and any firm controlled or managed by them shall be barred from award of any County contract or participation in any contract awarded by the County for a period of three (3) years commencing upon the date written findings of such misrepresentation are made by the Commission, regardless of subsequent changes in the Minority Business Enterprise's status.

(o) If the Commission, after investigation, determines that any such individual or firm that has been awarded a County contract has misrepresented its status as either a Minority Business Enterprise or a County based minority business enterprise, the Commission may request the County Attorney to institute proceedings pursuant to Section 10A-139.

(p) Any effort at brokerage or any other arrangement or agreement which attempts to, is intended to, or has the effect

of causing fraudulent benefit from the provisions of this Division or is otherwise determined by the Commission to be in circumvention of the requirements of this Division shall be strictly prohibited and shall be barred from award of any County contract.

(q) The County Executive may, by executive order, impose such additional requirements as may be deemed appropriate to effectuate the overall policy of this Division 6 to encourage and increase certified Minority Business Enterprise participation in the award of County contracts.

(r) The Purchasing Agent shall report to the County Council on a yearly basis the impact of this legislation on the extent of Minority Business Enterprise involvement in County contracts, including the fiscal impact of this Division.

**Sec. 10A-137. Contract monitoring.**

(a) The Purchasing Agent and the Commission shall have the right to periodically monitor work performed under a contract awarded under this Subtitle to ensure compliance with all applicable provisions of the contract. All contractors and subcontractors shall grant the Purchasing Agent, the Commission and any authorized representative access to the contractor's or subcontractor's work site place of business, and applicable business records.

(b) The Purchasing Agent and the Commission may perform or contract to perform periodic or random compliance audits of contracts awarded under this Subtitle.

**Sec. 10A-138. Monthly Reports.**

(a) The Purchasing Agent will maintain records and statistics on contract bids and awards and transmit on a monthly basis a report to the County Executive and the County Council that summarizes progress and efforts made to achieve the goals stated in Section 10A-136. The report shall identify problems encountered or anticipated in meeting those goals, and shall, at a minimum, contain the number, dollar amount and method of award of all contracts and subcontracts awarded minority business enterprises.

**Sec. 10A-139. Penalties.**

(a) It is unlawful for a person to knowingly misrepresent his or her status as a minority business enterprise or County based Minority Business Enterprise for purposes of obtaining a County contract, and is subject to the penalty stated in Section 1-123 of this Code.

**Subdivision 2. Facilities Constructed With County Contributions.**

**Sec. 10A-140. Applicability of Subdivision.**

The provisions of this Subdivision shall apply to the construction of regional stormwater management facilities and road improvements when required in connection with new developments in the County and when the County makes a monetary contribution (including by way of reimbursement) to the construction of such a facility or road improvements pursuant to applicable provisions of the County's stormwater management

program or the County's approved budget.

**Sec. 10A-141. Negotiated Participation Agreements.**

(a) The requirements of this Subdivision shall be applicable under the following circumstances:

(1) The Director of the Department of Environmental Resources makes a determination that a regional stormwater management facility is desirable for a new development and certifies to the County Executive, the Purchasing Agent, and the Commission that the estimated construction cost of the facility exceeds the estimated cost of providing required on-site controls; or

(2) The Director of the Department of Public Works and Transportation certifies to the County Executive, the Purchasing Agent and the Commission that:

(A) Certain public road improvements abutting or within a new development are required as a consequence of the development; and

(B) The estimated cost of the construction of the road improvements by the County exceeds the estimated cost of construction by the developer; or

(C) The developer can cause the construction to occur on an accelerated basis in advance of planned commencement and completion of the road improvements by the County and would be otherwise required to pay at least seventy-five percent (75%) of the cost of the road improvements on a special assessment or similar basis.

(b) Any construction activities towards which County funds are contributed when either of the certifications specified in subsection (a) has been made shall not be subject to the competitive procurement requirements of this Subtitle provided the requirements of subsection (c) are met.

(c) Subsection (b) shall apply provided the County and the developer have entered into a written agreement wherein the developer shall:

(1) Be required to competitively procure the construction of the regional stormwater management facility or road improvements; a minimum of three certified quotes or bids for all construction costs related to the stormwater management facility or road improvements shall be provided to the Director of the Department of Environmental Resources or the Director of Public Works and Transportation, as may be applicable, and the Purchasing Agent for review;

(2) Be required to post or cause to be posted a performance bond executed by a surety company authorized to do business in this State, or the equivalent in cash, or other security satisfactory to the County, in the amount equal to or greater than the total cost of the facility or road improvements as estimated by the appropriate Director, including an additional twenty-five percent (25%) of the cost for contingencies, as determined at the time the bond is posted, to insure the satisfactory performance and complexion of the facility or road improvements;

(3) Be required to post or cause to be posted a payment bond executed by a surety company authorized to do business in this State or the equivalent in cash, or other security satisfactory to the County, in an amount not less than fifty percent (50%) of the estimated cost of the facility or road improvements for the protection of all persons supplying labor and materials, including lessors of equipment to the extent of the fair rental value thereof, to the contractor or his subcontractor in the prosecution of the work provided for in the contract for the use of each such person;

(4) Be required to submit to a County audit when it has been determined that an audit is necessary to insure County contribution funds are properly used and to determine the actual cost for constructing the regional stormwater management facility or road improvements;

(5) Be required to certify that no person who is currently suspended, barred, or debarred from participation in contract activities for any government will be used to perform any of the work on the facility or road improvements during the period of any suspension, barment or debarment;

(6) Be required to comply with such laws and regulations as may be generally applicable to stormwater management activities and road improvements in the County; and

(7) Be required to subcontract with Minority Business Enterprises for no less than 30 percent of the amount of County funds contributed with respect to such construction; provided,

that if a developer is unable to achieve the Minority Business Enterprise goal set forth in this Section 10A-141(c) (7). The developer may request in writing a waiver of the goal, to include the elements of justification set forth in Section 10A-136(g) of the this Code. After consultation with the Commission or its authorized representative, the Purchasing Agent shall grant such waiver only upon finding that the developers have made a good faith effort to achieve such goal and the public interest otherwise is served by granting such waiver.

(d) Nothing in paragraph (c) (1) above shall be deemed to preclude the developer from constructing the regional stormwater management facility or road improvements himself provided written justification is approved by the Director of the Department of Environmental Resources or the Director of Public Works and Transportation, as may be applicable, the Purchasing Agent and the Commission.

(e) Any agreement entered into pursuant to this Subdivision shall include such provisions as may be deemed appropriate by the Purchasing Agent to effect consistency with special policies set forth in other sections of this Subtitle such as (by way of example and not limitation) and restrictions concerning doing business with persons having business ties with South Africa.

(f) Certification of cost estimates under Subsection (b) of this Section shall be made by application of standards

regularly used by the County in estimating construction costs for County projects.

**Subdivision 3. Low Noise Emission Supplies.**

**Sec. 10A-142. Duty to acquire low noise emission supplies.**

All agencies shall acquire by purchase or lease, to the greatest extent practicable, the quietest available supplies for use by the County. Supplies certified by the Administrator of the United States Environmental Protection Agency as "low noise emission products" pursuant to Section 15 of the Noise Control Act of 1972 shall be considered to meet the intent of this Section.

**Subdivision 4. County Preference for Recycled Materials.**

**Sec. 10A-143. Recyclable Materials.**

(a) The County Purchasing Agent is authorized to review and revise all product procurement specifications to establish a preference for those products containing compost material generated by composting operations located within Prince George's County or operations consuming organic materials collected in the County, recycled materials including paper and paper products, asphalt pavement, crushed concrete subbase and foundry slag and paving materials utilizing recycled materials including, but not limited to, crumb rubber from tires, ash, glass and glassy aggregates, and to provide bid specifications encouraging the maximum purchase of recyclable asphalt pavement and paving materials utilizing recycled materials.

**Subdivision 5. South Africa Contracts.**

**Sec. 10A-144. Prohibited procurement - Republic of South Africa.**

(a) The Purchasing Agent shall not enter into any contract with any corporation or other business entity having any investments, licenses or operations in the Republic of South Africa; nor may any County purchase be made of any product originating from the Republic of South Africa, except as provided in subsection (b). A contract for services which was in effect on January 21, 1986, may be extended according to its terms.

(b) A product, the purchase of which is prohibited under subsection (a), may be purchased if the Purchasing Agent determines that:

(1) The purchase is essential; or

(2) No reasonable alternative to the purchase of the product exists; or

(3) The application of this Section would significantly impair competition.

(c) For purposes of compliance with subsection (a), corporations or other business entities having investments, licenses or operations in the Republic of South Africa shall execute an affidavit under the penalty of issuing a false statement in compliance with this Section.

**Subdivision 6. Tie Bids.**

**Sec. 10A-145. Tie bids and proposals.**

If a competitive bid or competitive sealed proposal results

in two or more bidders or offerors being equally eligible for award, the responsibility of the bidders and offerors having been determined, the contract shall be awarded in the following order:

- \_\_\_\_\_ (a) County based minority business enterprise;
- \_\_\_\_\_ (b) County based business;
- \_\_\_\_\_ (c) Other minority business enterprise;
- \_\_\_\_\_ (d) Maryland based business;
- \_\_\_\_\_ (e) Any other fair and equitable manner determined by the Purchasing Agent.

**Subdivision 7. Cooperative Purchasing.**

**Sec. 10A-146. Cooperative purchasing with other jurisdictions.**

It shall be the duty of the Purchasing Agent to develop, to the maximum extent feasible, a program for the joint or cooperative purchasing of common-use supplies with other organizations or jurisdictions and the Purchasing Agent shall endeavor to arrange for a program of standardization of common-use supplies. The Purchasing Agent may, as appropriate, undertake and participate in similar programs involving joint or cooperative purchases with other organizations or jurisdictions and may procure services and supplies from such parties or to utilize the contracts or schedules established by such organizations or jurisdictions when appropriate and when such actions shall be in the best interests of the County as determined by the Purchasing Agent.

**Sec. 10A-147. Purchasing services for other public activities.**

In the interest of public service to the citizens of the County, the facilities and service of the Office of the Purchasing Agent may be made available to other public activities in the County which obtain their financial support in part from the County and municipalities. As a condition precedent to providing such service, the other public activity shall agree upon submission of requisition or written request to final fiscal responsibility for such purchases. The Purchasing Agent may establish a schedule of service fees as appropriate with approval by resolution of the County Council.

**Subdivision 8. Debarment; Suspension of Bidders and Offerors.**

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

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

(1) Obtained any contract in violation of any provision of this Code or the Laws of the State of Maryland or the United States of America, the District of Columbia, any State, or any United States Territory;

(2) Obtained payment for services not provided or goods not provided to the County on the basis of a false claim;

(3) Been convicted of, plead nolo contendere to, or been sentenced pursuant to Article 27 Section 641 of the Annotated Code of Maryland for the offense of bribery, attempted bribery, or conspiracy to bribe in furtherance of

obtaining a contract with the State of Maryland or any of its subdivisions based upon acts committed after July 1, 1977 under the provisions of Article 27 of the Annotated Code of Maryland;

(4) Been convicted of, plead nolo contendere to, or been sentenced pursuant to Article 27 Section 641 of the Annotated Code of Maryland for the offense of bribery, attempted bribery or conspiracy to bribe under the provisions of Article 27 of the Annotated Code of Maryland;

(5) During the course of an official investigation or other proceeding has admitted, in writing or under oath, acts or omissions which would constitute bribery, attempted bribery or conspiracy to bribe under the provisions of Article 27 of the Annotated Code of Maryland;

(6) Been convicted of, plead nolo contendere to, or been sentenced pursuant to Article 27 Section 641 of the Annotated Code of Maryland or other comparable State, Federal, U.S. Territory, or District of Columbia statute for the offense of bribery, attempted bribery or conspiracy to bribe under the laws of another state, the District of Columbia, U.S. Territory or the Federal statute;

(7) Been convicted of, plead nolo contendere to, or been sentenced pursuant to Article 27 Section 641 of the Annotated Code of Maryland or other comparable State, Federal, U.S. Territory, or District of Columbia statute of a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract under any state, the

District of Columbia, U.S. Territory or Federal statute;

\_\_\_\_\_ (8) Been convicted of, plead nolo contendere to, or been sentenced pursuant to Article 27 Section 641 of the Annotated Code of Maryland or other comparable State, Federal, U.S. Territory, or District of Columbia statute for the offense of fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property under any state, the District of Columbia, U.S. Territory or Federal statute;

\_\_\_\_\_ (9) Been found civilly liable under any state, the District of Columbia or Federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

\_\_\_\_\_ (10) Been convicted of, plead nolo contendere to, or been sentenced pursuant to Article 27 Section 641 of the Annotated Code of Maryland or other comparable State, Federal, U.S. Territory, or District of Columbia statute for any violation of a state, District of Columbia or Federal antitrust statute;

\_\_\_\_\_ (11) Been convicted of, plead nolo contendere to, or been sentenced pursuant to Article 27 Section 641 of the Annotated Code of Maryland or other comparable State, Federal, U.S. Territory, or District of Columbia statute for violation of any provision of the Racketeer Influence and Corrupt Organization Act, Title 18, United States Code, Sections 1961 et seq., or the Mail Fraud Act, Title 18, United States Code,

Sections 1341 et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

\_\_\_\_\_ (12) Been convicted of, plead nolo contendere to, or been sentenced pursuant to Article 27 Section 641 of the Annotated Code of Maryland or other comparable State, Federal, U.S. Territory, or District of Columbia statute for the offense of conspiracy to commit any act or omission which would constitute grounds for conviction or liability under any statute described in paragraph (7), (8), (10) or (11);

\_\_\_\_\_ (13) Admitted, in writing or under oath, during the course of an official investigation, or other proceeding, acts or omissions which would constitute grounds for conviction or liability under any statute described in paragraphs (7) through (11);

\_\_\_\_\_ (14) Committed any improper conduct; or

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

\_\_\_\_\_ (b) Unless otherwise prescribed by any applicable law, a debarment under this Section shall be effective for a period generally not to exceed five (5) years commencing upon the date written findings are made by the Purchasing Agent regardless of subsequent changes in the person's status. In the event that the person is not a natural person, the officers, directors, partners or owners of the firm and any firm controlled or

managed by them shall also be barred from award of any County contract or participation in any contract awarded by the County during the applicable period.

(c) Pending a final determination as to whether debarment is to occur or the investigation or prosecution of any act alleged to give rise to the right of the Purchasing Agent to debar a prospective bidder or offeror or contractor, the Purchasing Agent may suspend the person for a period of time not to exceed six (6) months or such greater period as may be certified to the Purchasing Agent by the investigating or prosecuting agency as required to complete the investigation or prosecution.

**Sec. 10A-149. Conditional suspension.**

The Purchasing Agent shall prescribe by regulation the procedure for conditional suspension of persons, for a period of time not to exceed six (6) months, from participation in County procurement activities when the Purchasing Agent determines that unsatisfactory performance or contract default can be remedied by fulfillment of specified conditions.

**Sec. 10A-150. Award of contract prohibited.**

(a) Contract not to be awarded to disqualified person. No person shall knowingly award or enter into any contract whereby supplies, services, or construction will be supplied directly or indirectly to the County by a person or business entity disqualified under this Subdivision.

(b) Where public exigencies or similar factors necessitate

the continuance of the contractual services in connection with which the debarment is based, the Purchasing Agent shall not be required to terminate the existing contract but the contractor shall be liable to the County for any profits from the contract.

**Sec. 10A-151. Disqualification not a bar to other actions.**

Disqualification of any person under this Subdivision shall not be exclusive of any other remedy that may be available to the County under any other applicable County, State or Federal law.

**SUBDIVISION 9. SMALL BUSINESSES.**

**Sec. 10A-152. Small businesses.**

The County Purchasing Agent shall develop and implement a program designed to encourage and assist small businesses in the County to contract with the County for goods and services.

SECTION 3. BE IT FURTHER ENACTED that, notwithstanding any provision herein to the contrary, the Minority Business Opportunities Commission shall continue to monitor the utilization of minority business enterprises by the County and other relevant public and private entities, and shall make an annual report of its findings to the County Executive and County Council.

SECTION 4. BE IT FURTHER ENACTED that on the fifth anniversary of the effective date of this legislation and every fifth anniversary thereafter, after a study, evaluation, assessment, and review of the factual and statistical predicate

adopted in CR-4-1992, the County Executive shall assess the continued adverse effects of discrimination in the marketplace in which Prince George's County does business and its continued adverse impact on Minority Business Enterprises; then the County Executive shall submit recommendations to the County Council for adjustments and modifications, as needed to Division 6, Subdivision 1, of Subtitle 10A.

SECTION 5. BE IT FURTHER ENACTED that the Purchasing Agent will cause a disparity study to be undertaken which addresses the utilization of Asian Americans, Pacific Islanders, and Native Americans. The disparity study will be presented to the County Council for approval by August 1, 1993.

SECTION 6. BE IT FURTHER ENACTED that the provisions of this Act are severable, and if any provision, sentence, clause, section or part hereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstance to which this Act or any part hereof is inapplicable had been specifically exempted herefrom.

SECTION 7. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) days after it becomes law.

Adopted this 21st day of July, 1992.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY:

\_\_\_\_\_

Richard J. Castaldi  
Chairman

ATTEST:

\_\_\_\_\_  
Joyce T. Sweeney  
Acting Clerk of the Council

APPROVED:

DATE: \_\_\_\_\_

\_\_\_\_\_

BY:

Parris N. Glendening  
County Executive

KEY:

Underscoring indicates language added to existing law.  
[Brackets] indicate language deleted from existing law.