

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2020 Legislative Session

Bill No. CB-2-2020

Chapter No. 15

Proposed and Presented by Council Members Franklin, Hawkins, Anderson-Walker,
Dernoga, Ivey, Streeter, and Taveras

Introduced by Council Members Franklin, Hawkins, Anderson-Walker, Dernoga, Ivey
Streeter, Taveras, Turner Davis, Harrison and Glaros

Date of Introduction June 16, 2020

BILL

1 AN ACT concerning

2 Local Purchasing Opportunities

3 For the purpose of authorizing the Purchasing Agent to reserve procurement opportunities for
4 prime bids or proposals from County-based small businesses, clarifying the eligibility of joint
5 venture entities to be County-based businesses, County-based minority business enterprises, and
6 County-based small businesses, simplifying the applicability of bid or proposal preference, and
7 establishing a County resident-owned business preference.

8 BY repealing and reenacting with amendments:

9 SUBTITLE 10A. PURCHASING.
10 Sections 10A-161, 10A-163, and 10A-173,
11 The Prince George's County Code
12 (2019 Edition).

13 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
14 Maryland, that Sections 10A-161, 10A-163, and 10A-173 of the Prince George's County Code
15 be and the same are hereby repealed and reenacted with the following amendments:

16 **SUBTITLE 10A. PURCHASING.**

17 **DIVISION 7. ECONOMIC DEVELOPMENT.**

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

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

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

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

12 (3) Any existing procurement contract or agreement entered into after November 15,
13 2016 and for which a County agency or the County government secured competitive bids or
14 proposals, including any existing multiyear contract or extended contract, entered into after
15 November 15, 2016 that does not include at least forty percent (40%) certified County-based
16 small business participation as prescribed in this Subsection at the time of any contemplated
17 exercise of an option, extension, or renewal, including automatic extensions or renewals (e.g.
18 "evergreen" contracts or agreements), shall not be renewed or extended.

19 * * * * *

20 (h) If the Purchasing Agent determines there is a sufficient number of responsible firms in
21 the respective procurement’s industry area(s), the Purchasing Agent may restrict any competitive
22 procurement subject to this Subtitle for solicitation and award to prime bidders or prime
23 proposers that are County-based small businesses.

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

25 (a) Except as provided for in Subsection (g), below, a business that seeks to be certified as a
26 County-based business shall make application to the Purchasing Agent on a form provided by the
27 Purchasing Agent. Such an application shall not be approved by the Purchasing Agent unless the
28 business:

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

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

3 (3) Files a copy of a federal tax return filed with the Internal Revenue Service
4 establishing that the business has continuously operated within Prince George's County within
5 the preceding twelve (12) months;

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

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

11 (6) Files documentation showing that:

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

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

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

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

20 (b) Except as provided for in Subsection (g), below, a business that seeks to be certified as a
21 County-based small business shall make an application to the Purchasing Agent on a form
22 provided by the Purchasing Agent. Such an application shall not be approved by the Purchasing
23 Agent unless:

24 (1) The business meets the requirements of Section 10A-163(a); and

25 (2) The business meets the definition of "small business" pursuant to the Code of
26 Maryland Regulations ("COMAR") 21.01.02.01(80); or

27 (3) The business meets the federal definition of "small business concern" in Part 121 of
28 Title 13 of the Code of Federal Regulations.

29 * * * * *

30 (k) A joint venture entity, where a County-based business, County-based minority business
31 enterprise, or County-based small business owns, without condition, a majority (more than 50%)

1 of the joint venture entity’s assets and is entitled, without condition, to a majority (more than
2 50%) of the joint venture entity’s revenues and profits, is eligible to be certified as a County-
3 based business, County-based minority business enterprise, or County-based small business,
4 respectively, provided that the majority ownership of the joint venture entity satisfies the
5 respective requirements of this Section.

6 **Sec. 10A-173. - Business preferences.**

7 (a) On any procurement for which a County agency or the County government secures
8 competitive bids pursuant to Section 10A-112 or competitive proposals pursuant to Section 10A-
9 113, the Purchasing Agent shall [add] apply the following percentage bid discount to the bid
10 price or add the following percentage points to the total evaluated score of the [bid or] proposal:

Business Type	Where <u>the prime bidder or prime proposer is a certified firm, add or discount the following, as applicable:</u> [participation in the proposal by each type of certified firm is 45% or more add:]
County-based small business	15%
County-based minority business enterprise	15%
County-based business	10%
Minority Business Enterprise or Disadvantage Business Enterprise	5%
County-located business	3%

11
12 Cumulative preference points: [Where a bid or proposal includes the participation of two or
13 more certified firms and the cumulative participation of the entities is at least 45% of one of the
14 certified business categories above, the preference points applicable to that 45% participation
15 listed above will be applied to the bid. A bid comprised of two or more firms that achieves an
16 additional 45% of participation of one of the certified business categories above will receive an
17 additional amount of preference points listed above applicable to that additional 45%
18 participation.] The same firm that is a prime bidder or prime proposer of [firm’s participation in]
19 a bid or proposal shall not be counted for a preference [points] for more than one of the certified

1 business categories above and shall receive a preference [points] for the highest scoring certified
2 business category for which it qualifies. No single certified firm can receive more than 15%
3 percentage points or discount, as applicable, in any one bid or proposal, with the exception of the
4 application of the County resident-owned business preference prescribed in Subsection (b),
5 below.

6
7 (b) County resident-owned business preference. In addition to the preferences awarded in
8 accordance with Subsection (a), above, the Purchasing Agent shall apply a five percentage
9 [points] (5%) bid discount to the bid price or add five percentage (5%) points to the total
10 evaluated score of the bid or proposal of a prime bidder or prime proposer, respectively, (for
11 joint venture entities, the majority firm of a joint venture entity) that is a County resident-owned
12 business. A County resident-owned business in this Subtitle is a firm that has majority
13 ownership (defined herein as “owning more than 50% of the ownership interest of the entity”) by
14 one or more residents domiciled in Prince George’s County. At the time of bid or proposal, the
15 owner(s) of the prime bidder or prime proposer shall provide an affidavit affirming current
16 domicile in the County, income tax returns establishing residency in the County for the most
17 recent full calendar year, and documentation establishing majority ownership of the prime bidder
18 or prime proposer (for joint venture entities, the majority firm of the joint venture entity) to
19 establish status as a County resident-owned business and be awarded the 5% preference
20 prescribed in this Subsection. The Purchasing Agent may require additional information to
21 clarify current residency or ownership in accordance with this Subsection.

22 (c) [(b)] The Purchasing Agent may determine not to apply a bid or proposal preference
23 under this Section if the Purchasing Agent certifies that such a preference would result in the loss
24 of federal or state funds, subject to the approval of the County Executive.

25 (d) [(c)] The requirements of this Section shall apply to the procurement of vendors retained
26 by a County agency or the County government to assist in the financing and sale of County
27 government debt. The requirements of this Section shall also apply to the procurement of
28 brokerage firms, investment banking firms, investment management firms, consultants, and other
29 vendors retained to manage or invest funds controlled or administered by a County agency or the
30 County government. The application of this Subsection is subject to the requirements and
31 restrictions of federal and state law.

1 (e) [(d)] A business may opt to not receive a business preference under this Section.

2 (f) [(e)] For the purposes of this Division, the term "competitive bids or proposals" means
3 any bids or proposals for procurement funded or administered by a County agency or the County
4 government except for procurement awards made pursuant to Section 10A-114.

5 (g) For the purposes of this Division, the following terms have the following meanings:

6 (1) Prime bidder means the person, firm, entity or organization submitting a response to
7 a solicitation for competitive bids and is responsible for executing the work as mentioned in the
8 solicitation; and

9 (2) Prime proposer means the person, firm, entity or organization submitting a response
10 to a solicitation for competitive proposals and is responsible for executing the work as mentioned
11 in the solicitation.

12 SECTION 2. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
13 calendar days after it becomes law.

Adopted this 14th day of July, 2020.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Todd M. Turner
Council Chair

ATTEST:

Donna 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.