

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2011 Legislative Session

Bill No. CB-17-2011

Chapter No. 37

Proposed and Presented by Council Members Franklin and Harrison

Introduced by Council Members Franklin, Harrison, Turner, Patterson, Olson and Lehman

Co-Sponsors _____

Date of Introduction October 18, 2011

BILL

1 AN ACT concerning

2 Economic Development and Local Employment

3 For the purpose of enhancing the County's economic development by creating bidding
4 preferences and participation requirements for County-based businesses and County-based small
5 businesses on certain procurement contracts for goods and services with the County; establishing
6 a First Source Hiring Program; requiring "best efforts" for meeting a certain local hiring
7 percentage goal for positions on certain procurement projects funded by the County, requiring
8 submission of quarterly audit reports, maintaining a first source registry, providing for penalties
9 and exemptions to the program; authorizing the use of Community Benefit Agreements on
10 County assisted developments that receive a public benefit of a value greater than \$3,000,000
11 with certain exceptions; authorizing Labor Peace Agreements for developments receiving a
12 public benefit of a value greater than \$1,000,000 with certain exceptions; giving priority to
13 County-based Minority Business Enterprises in all Minority Business Enterprise goals for
14 minority contracting and purchasing; requiring subcontracting plans for certain contracts and
15 generally relating to economic development in the County.

16 BY repealing and reenacting with amendments:

17 SUBTITLE 10A. PURCHASING.

18 Sections 10A-101, 10A-136,

19 The Prince George's County Code

20 (2007 Edition, 2010 Supplement).

21 BY adding:

SUBTITLE 10. FINANCE AND TAXATION.

Sections 10-283, 10-284, 10-285, 10-286,
The Prince George's County Code
(2007 Edition, 2010 Supplement).

BY adding:

SUBTITLE 10A. PURCHASING.

Sections 10A-157, 10A-158, 10A-159, 10A-160, 10A-
161, 10A-162, 10A-163, 10A-164, 10A-165, 10A-
166, 10A-167, 10A-168, 10A-169, and 10A-170
The Prince George's County Code
(2007 Edition, 2010 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
Maryland, that Sections 10A-101 and 10A-136 of the Prince George's County Code be and the
same are hereby repealed and reenacted with the following amendments:

SUBTITLE 10A. PURCHASING.

DIVISION 1. ADMINISTRATIVE PROCEDURES.

Sec. 10A-101. Definitions.

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

* * * * *

(4.1) **Certified County-based business participation** means the percentage of the total
contract dollars paid to businesses certified as County-based businesses.

(4.2) **Certified County-based small business participation** means the percentage of total
contract dollars paid to businesses certified as County-based small businesses.

(4.3) **Certified sheltered workshop** means an agency that is:
(A) Organized under the laws of the United States or the State of Maryland;
(B) Certified as a sheltered workshop by the Wage and Hour Division of the United
States Department of Labor;

1 (C) Accredited by the Division of Vocational Rehabilitation of the Maryland
2 Department of Education;

3 (D) Operated in the interest of individuals who have a mental or physical disability,
4 including blindness, that constitutes a substantial handicap to employment and prevents the
5 individual from engaging in normal competitive employment; and

6 (E) The net income of which does not inure wholly or partially to the benefit of any
7 shareholder or other non-disabled individual.

8 * * * * *

9 (13) **County-based business** means a business whose principal place of operation is
10 located within Prince George's County, that meets the requirements of Section 10A-161(a), and
11 whose application for certification as a County-based business is approved by the Purchasing
12 Agent. Principal place of operation shall be determined by factors as set forth in the regulations.

13 (13.1) **County-based business preference** means a business preference given to a bid or
14 proposal pursuant to Section 10A-158.

15 (13.2) **County-based small business** means a business that meets the requirements of
16 Section 10A-161(b) and whose application for certification as a County-based small business is
17 approved by the Purchasing Agent.

18 (13.3) **County or The County** means Prince George's County, Maryland.

19 (13.4) **County agency** means any department, office, division, administrative unit, or
20 agency of the Prince George's County government or any other entity created or authorized to be
21 created, whether expressed or implied, by the Charter or the Code, including any council, board,
22 bureau, commission, institution, tribunal, government corporation, public authority, or other
23 instrumentality thereof or thereunder.

24 * * * * *

25 (14.1) **County resident** means a person whose domicile is located in Prince George's
26 County, Maryland, as determined by standards set forth by the Purchasing Agent, and who
27 either:

28 (A) Filed a Maryland state income tax return that establishes a Prince George's
29 County domicile for the most recent full calendar year;

30 (B) Is claimed as a dependent on a Maryland state income tax return that establishes
31

1 a Prince George’s County domicile for the most recent full calendar year filed by the person’s
2 parent, legal guardian, or spouse; or

3 (C) Was not required to file a federal or Maryland state income tax return for the
4 most recent calendar year because the person was not legally liable for income tax pursuant to
5 Section 10-809, Tax-General Article, Annotated Code of Maryland, but was legally domiciled in
6 Prince George’s County for the most recent full calendar year, and signs an attestation under oath
7 to this effect on a form provided by the Purchasing Agent.

8 The County Executive, the County Executive’s designee, and the Purchasing Agent
9 are authorized to verify a person’s County residency status pursuant to this definition in relation
10 to Division 7 of this Subtitle.

11 * * * * *

12 (16.2) **Domicile** means the place of a person's true, fixed, permanent home, without any
13 present intention of completely abandoning that home, and to which the person has the intention
14 of returning whenever absent. **Domicile** does not include a temporary dwelling unless there is a
15 present intention to abandon permanently or indefinitely the former domicile.

16 * * * * *

17 (30) **Procure** means to buy, rent, lease, lease-purchase, or otherwise obtain any supplies,
18 services, or construction. **Procurement** (or a **procurement**) is the noun form of this term. It
19 includes all functions that pertain to the obtaining of any public procurement, including
20 description of requirements, selection and solicitation of sources, and preparation, [and] award
21 and execution of contract. The term does not include the making of any grant or donation.

22 * * * * *

23 (32.1) **Public benefit** means contracts, grants, conditional loans, tax abatements, land
24 transfers for public redevelopment, or tax increment financing from a County agency or the
25 County government. This definition also includes grants or conditional loans from a third party
26 that receives more than 50% of its annual budget in the most recent fiscal year from funds
27 received from or administered by a County agency or the County government and indirect grants
28 or conditional loans from a County agency or the County government that are facilitated by a
29 third party. This definition does not include funds from the Community Development Block
30 Grant (“CDBG”) program or tax credits awarded under Subtitle 10 of the Code. The application
31 of this definition is subject to the restrictions of federal and state law.

1 * * * * *
2 (35) **Purchasing Agent** means the Director of Central Services or the Director of Central
3 Services' designee.

4 * * * * *

5 **DIVISION 6. SPECIAL PROVISIONS.**

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

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

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

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

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

BID OF LOWEST RESPONSIVE BIDDER	MINORITY BUSINESS ENTERPRISE	PRINCE GEORGE'S BASED MINORITY BUSINESS ENTERPRISE BONUS FACTOR
Factored by:	.05	[.10] .15

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

	MINORITY BUSINESS ENTERPRISE	PRINCE GEORGE'S BASED MINORITY BUSINESS ENTERPRISE BONUS FACTOR
Bid Price Subtracted by:	\$50,000.00	[\$100,000.00] <u>\$150,000.00</u>

1
2 (e) Bids or proposals are entitled to receive the greater of the preference points or
3 percentages allowed under either this Section or Section 10A-158, as applicable. The
4 preferences allowed under this Section and Section 10A-158 shall not be applied cumulatively.

5 (f) [(e)] The Purchasing Agent shall, for all contracts, consult with the Minority
6 Business Development Division in order to determine whether subcontracting is appropriate. If
7 subcontracting is determined to be appropriate, the Purchasing Agent [may] shall include a
8 mandatory minority business enterprise and County-based minority business enterprise
9 subcontract clause that requires up to twenty percent (20%) of the contract's total value be
10 performed by one or more minority business enterprises[.] or County-based minority business
11 enterprises. A contract with a total value of \$500,000 or greater that includes a mandatory
12 minority business enterprise and County-based minority business enterprise subcontract clause
13 shall also include compliance with a mandatory subcontracting plan as a condition of the
14 contract, the requirements of which shall be determined by the Purchasing Agent, and which
15 applies for the full term of the contract. The Purchasing Agent shall require that the mandatory
16 subcontracting plan, at a minimum, provides verification of the percentage of the contract's total
17 value that is subcontracted to County-based minority business enterprises or minority business
18 enterprises throughout the full term of the contract. Any change to the mandatory subcontracting
19 plan must be approved by the Purchasing Agent and notice of such a change shall be given by
20 the Purchasing Agent to the MBE Compliance Officer of the County Council within seven (7)
21 calendar days after the date the change is approved. The Purchasing Agent may include a
22 mandatory minority business enterprise and County-based minority business enterprise
23 subcontracting goal that is less than (20%) of the contract's total value only:

24 (1) After consultation with the Minority Business Development Division;

25 (2) Upon a determination that a twenty percent (20%) mandatory minority business
26 enterprise and County-based minority business enterprise subcontracting goal is not able to be
27 obtained at a reasonable price; and

1 (3) Upon a determination that the public interest is served.

2 (g)[(f)] In making the determinations that the public interest is served, under Subsection
3 [(e)] (f), the Purchasing agent shall obtain the concurrence of the Executive Director and may
4 consider engineering estimates, the general market availability of minority business enterprises
5 to provide the services requested, other bids and offers, the cost of the contract, and any other
6 relevant factor.

7 (h)[(g)] If, for any reason, a bidder is unable to achieve a subcontract goal for Minority
8 Business Enterprise and County-based Minority Business Enterprise participation as required by
9 the Purchasing Agent, the bidder may request, in writing, a waiver of the goal with justification
10 to include the following:

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

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

16 (A) The names, addresses, and telephone numbers of minority business
17 enterprises and County-based minority business enterprises and the dates such minority
18 businesses and County-based minority business enterprises were contacted, and

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

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

25 (4) A list of Minority Business Enterprise and County-based Minority Business
26 Enterprise subcontractors found to be unavailable to perform under the contract.

27 The Purchasing Agent may grant the waiver only upon a reasonable demonstration by
28 the bidder that the Minority Business Enterprise or County-based Minority Business Enterprise
29 participation goal is unable to be obtained at a reasonable price and if the Purchasing Agent
30 determines that the public interest will be served.

1 (i)(h) Whenever the County procures goods or services in accordance with Section
 2 10A-113 of this Code and weighted evaluation points are used, up to 15% of the total scored
 3 evaluation points shall be [awarded] given for Minority Business Enterprise[s] or County-based
 4 Minority Business Enterprise participation unless the Purchasing Agent elects to restrict the
 5 procurement pursuant to Subsection (i) of this Section. [below.]

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

17 (k)(j) The Purchasing agent shall consider the following criteria in determining whether
 18 to utilize a procurement method authorized by either Subsections (c), (d), (h)(g), (i)(h), and
 19 (j)(i) of this Section or Section 10A-113:

20 (1) Whether the procedure selected is likely to increase the number of minority
 21 business enterprises or County-based minority business enterprises responding to the County's
 22 procurement requirements;

23 (2) Whether the procedure selected is likely to increase the dollar value of
 24 procurement awards to minority business enterprises or County-based minority business
 25 enterprises;

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

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

(l) The Purchasing Agent shall require that a bidder uses its “best efforts” to first use County-based minority business enterprises to fulfill any of the minority business enterprise goals and requirements of this Section. If not enough County-based minority business enterprises are demonstrated to be available after “best efforts” are exercised in the judgment of the Purchasing Agent, the Purchasing Agent may then allow the bidder to meet any of the minority business enterprise goals and requirements of this Section with minority business enterprises, if available. In this Section, the term “best efforts” means efforts to the maximum extent practicable have been made to meet the goal or requirement.

* * * * *

SECTION 2. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 10-283, 10-284, 10-285, and 10-286 of the Prince George's County Code be and the same are hereby added:

SUBTITLE 10. FINANCE AND TAXATION.

DIVISION 16. COMMUNITY BENEFIT REQUIREMENTS.

Sec. 10-283. Definitions.

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

(1) **Community Benefit Agreement** means a project-specific, negotiated agreement between one or more developers and a community coalition selected pursuant to Section 10-284 that outlines the project’s “community benefits” or commitments to the community.

(2) **Community Coalition** means a group of stakeholder representatives selected by eligible community stakeholders pursuant to Section 10-284.

(3) **County assisted development** means a development or project that is awarded a public benefit of a value greater than One Million Dollars (\$1,000,000) in any twelve (12) month period.

(4) **Eligible community stakeholder** means

(a) a homeowners or civic organization registered with the Maryland-National Capital Park and Planning Commission;

(b) a tax-exempt entity under Section 501(c) of the United States Internal

1 Revenue Code;

2 (c) a parent teacher organization (“PTO”), parent-teacher association
 3 (“PTA”), or parent-teacher-student association (“PTSA”) affiliated with the Prince George’s
 4 County Public Schools (“PGCPS”); or

5 (d) an incorporated municipal government.

6 An eligible community stakeholder under 4(a) or 4(b) of this Section must be
 7 incorporated at an address or represent homeowners or tenants living at an address that is within
 8 a three (3) mile distance of the County assisted development (as measured from the outer
 9 boundary of the development site in any direction) for at least twelve (12) consecutive months
 10 immediately prior to the County Council’s selection of the eligible stakeholders by resolution
 11 under Section 10-284. An eligible community stakeholder under 4(c) of this Section must be
 12 affiliated at a school that is within a three (3) mile distance of the County assisted development
 13 (as measured from the outer boundary of the development site in any direction).

14 (5) **Labor Peace Agreement** means an agreement as defined by Section 10-285(c)(1).

15 (6) **Public benefit** means contracts, grants, conditional loans, tax abatements, land
 16 transfers for public redevelopment, or tax increment financing from a County agency or the
 17 County government. This definition also includes grants or conditional loans from a third party
 18 that receives more than 50% of its annual budget in the most recent fiscal year from funds
 19 received from or administered by a County agency or the County government and indirect grants
 20 or conditional loans from a County agency or the County government that are facilitated by a
 21 third party. This definition does not include funds from the Community Development Block
 22 Grant (“CDBG”) program or tax credits awarded under Subtitle 10 of the Code. The application
 23 of this definition is subject to the restrictions of federal and state law.

24 (7) **Stakeholder representative** means a person selected by an eligible community
 25 stakeholder to represent the stakeholder in the community coalition.

26 **Sec. 10-284. Community Benefit Agreements authorized.**

27 (a) On a case by case basis, as a condition of a public benefit, the County Executive may
 28 require the developer(s) of a County assisted development that is awarded a total public benefit
 29 of a value greater than Three Million Dollars (\$3,000,000) to enter into a Community Benefit
 30 Agreement with the County.

31 (b) A community coalition, comprised of stakeholder representatives of eligible

1 community stakeholders selected by a resolution proposed by the County Executive to the
2 County Council, shall negotiate a recommendation to the County Council for a Community
3 Benefit Agreement with the developer(s) of a County assisted development. A recommended
4 Community Benefit Agreement may be amended and must be approved by resolution of the
5 County Council, signed by the County Executive, and signed by the developer(s) of a County
6 assisted development in order to become a legally binding Community Benefit Agreement
7 between the County and the developer(s).

8 (1) An eligible community stakeholder selected by County Council resolution under
9 this Subsection is entitled to select only one (1) individual to be a stakeholder representative and
10 member of the community coalition on its behalf. The eligible community stakeholder may
11 replace or remove this stakeholder representative from the community coalition at any time.

12 (2) A stakeholder representative shall only have one vote on any decision or action
13 made by a community coalition.

14 (3) Any vote or other action taken by a community coalition must be made at a public
15 meeting of the community coalition, which shall not occur unless public notice of the meeting
16 has been posted for at least five (5) calendar days.

17 (4) An agreement between the developer(s) of the County assisted development and a
18 majority of the community coalition shall be required in order to make a recommendation for a
19 Community Benefit Agreement to the County Council.

20 (5) A community coalition is a public body under the applicable laws of Prince
21 George's County, Maryland.

22 (6) Other procedures for the operation and function of a community coalition, including
23 the selection and authority of officers of the community coalition, may be set forth in regulations
24 as authorized in Section 10-286.

25 (c) A community coalition and the developer(s) with whom the coalition is negotiating
26 under this Section shall recommend a Community Benefit Agreement within ninety (90) days of
27 the effective date of the County Council resolution establishing the coalition's community
28 stakeholders pursuant to Subsection (b) of this Section. In the event a community coalition and
29 the developer(s) of a County assisted development subject to this Section do not recommend a
30 Community Benefit Agreement to the County Council within this ninety (90) day period, the
31 County Council may adopt a resolution establishing and approving the terms of the Community

1 Benefit Agreement. Such an agreement must be signed by the County Executive and signed by
 2 the developer(s) of the County assisted development subject to this Section in order to become a
 3 legally binding Community Benefit Agreement between the County and the developer(s).

4 (d) The aggregate monetary value of the community benefits required to be proffered in a
 5 Community Benefit Agreement by the developer(s) of a County assisted development subject to
 6 this Section shall be no greater than ten percent (10%) of the total value of the public benefit
 7 awarded to the developer(s) for the County assisted development, as valued by the County's
 8 Office of Management and Budget.

9 (e) A violation of a Community Benefit Agreement by the developer(s) of a County
 10 assisted development subject to this Section may result in a fine of up to five percent (5%) of the
 11 monetary value of the received public benefit for each violation or, for repeated violations, a
 12 complete refund of the value of the received public benefit and cancellation of the remaining
 13 public benefit award, as determined by the County Executive or the County Executive's
 14 designee. Compliance with this Section shall be included as a condition of the Community
 15 Benefit Agreement or the agreement shall be void.

16 (f) Nothing in this Section shall be interpreted to preclude the inclusion of a Community
 17 Benefit Agreement for a development or project not covered by the requirements of this
 18 Division.

19 (g) Any County Council resolution enacted to establish a Community Benefit Agreement
 20 under this Section shall be proposed and adopted on the public record at a public hearing in
 21 compliance with Section 15-807 of the State Government Article of the Annotated Code of
 22 Maryland.

23 **Sec. 10-285. Labor Peace Agreements authorized.**

24 (a) Legislative findings and policy.

25 (1) In the course of managing real property that it owns or in otherwise carrying out its
 26 functions in the public interest, the County may participate in real property developments as a
 27 property owner, lessor, proprietor, lender, or guarantor, facing similar risks and liabilities as
 28 other business entities participating in such ventures. As a result, the County has an ongoing
 29 proprietary interest in these developments and a direct interest in their financial performance.

30 (2) The County must make prudent management decisions, similar to any private
 31 business entity, to ensure efficient management of its business concerns and to maximize

1 benefits and minimize risks. One risk is the possibility of labor-management conflict.

2 (3) A major potential outcome of labor-management conflict is economic action by
 3 labor unions against employers. Experience of municipal and other investors demonstrates, for
 4 example, that organizing drives pursuant to the formal and adversarial union certification process
 5 often deteriorate into protracted and acrimonious labor-management conflict. Labor-
 6 management conflict can result in construction delays, work stoppages, picketing, strikes,
 7 consumer boycotts, and other forms of adverse economic pressure. Such conflict may adversely
 8 affect the County's financial or other proprietary business interests by causing delay in the
 9 completion of a project, reducing the revenues or increasing the costs of the project, and by
 10 generating negative publicity.

11 (4) One method of reducing the risk to the County's proprietary interests is to require,
 12 when reasonable and prudent, as a condition of the County's investment or other economic
 13 participation in a development project, that employers taking part in the development project
 14 seek agreements with labor organizations in which the labor organizations agree to forbear from
 15 adverse economic action against the employers' operations.

16 (b) Determination of need for labor peace agreement.

17 (1) For each development project, the County Executive shall determine whether
 18 Prince George's County has a proprietary interest in the development project and whether a
 19 Labor Peace Agreement would be appropriate. The factors to be taken into account when
 20 determining the existence of a proprietary interest will include:

21 (A) Through a lease of real property that is owned by Prince George's County
 22 and used for the development project, receives ongoing revenue, excluding government fees, tax
 23 revenue, or assessment revenue, or similar fees and revenues, except for tax revenue under the
 24 circumstances specified in Subparagraphs (B) and (C) of this Paragraph;

25 (B) Receives ongoing revenue from the project to repay loans provided by the
 26 County to assist in the development of the project, including incremental tax revenues generated
 27 by the project;

28 (C) Receives ongoing revenue from the project to pay debt service on bonds
 29 provided by the County to assist in the development of the project, including incremental tax
 30 revenues generated by the project;

31 (D) Has significant assets at risk because it has agreed to underwrite or guarantee

1 the development of the project or loans related to the project; or

2 (E) Has a significant ongoing economic and nonregulatory interest at risk in the
 3 financial success of a project which is likely to be adversely affected by labor-management
 4 conflict, except that no interest shall be considered economic and nonregulatory if it arises from
 5 the exercise of regulatory or police powers such as taxation (except as set forth in Subparagraphs
 6 (B) and (C) of this Paragraph), zoning, or the issuance of permits or licenses.

7 (2) (A) If the County Executive determines that the County has a proprietary interest
 8 at risk in a development, the County Executive shall require that the developer(s) of the project,
 9 including the developer(s)' tenants, subtenants, contractors, or subcontractors, demonstrate that
 10 they have entered into a labor peace agreement with the labor organization(s) which seek to
 11 represent, or might seek to represent, workers on the project, prior to, and as a condition
 12 precedent of, the County's award of a public benefit to the development project.

13 (B) For the purposes of this Section:

14 (i) **Contract** means a written agreement, including a management
 15 agreement, service agreement, loan, bond, guarantee, or other similar agreement, to which the
 16 County is a party and in which the County has a proprietary interest;

17 (ii) **Employer** means any person, corporation, company, association,
 18 limited or general partnership, joint venture, contractor, subcontractor, or other entity that
 19 employs individuals at the site of a development project; provided, that the term "employer"
 20 shall not include the United States, Prince George's County, a wholly owned government
 21 corporation, a Federal Reserve Bank, or a state or other political subdivision;

22 (iii) **Labor organization** shall have the same meaning as under 29 U.S.C.
 23 §152(5).

24 (iv) **Labor peace agreement** means a written agreement between an
 25 Employer and a Labor Organization, enforceable under Section 301 of the Labor Management
 26 Relations Act, 29 U.S.C. § 185, that contains, at a minimum, (1) a provision prohibiting the
 27 Labor Organization and its members from engaging in any picketing, work stoppage, boycott, or
 28 other economic interference with the employer's operations in which the County has a
 29 proprietary interest, for the duration of the interest; and (2) provides that any services to be
 30 performed by employees of the employer's tenants, subtenants, contractors, or subcontractors
 31 will also be done under agreements containing the same labor peace assurance.

1 (v) Services means construction, janitorial, security (but not national
 2 security), building and grounds maintenance, warehousing and distribution, mechanics and truck
 3 services, hotel (and any restaurant connected thereto), and grocery sales.

4 (c) Exceptions.

5 The requirements to enter into a labor peace agreement shall not apply to:

6 (1) An employer at the development project that meets the definition of a “small
 7 business” pursuant to the Code of Maryland Regulations (“COMAR”) 21.01.02.01(80);

8 (2) A development project that is not awarded a total public benefit of a value greater
 9 than One Million Dollars (\$1,000,000);

10 (3) A residential development project;

11 (4) A development project that receives only conduit bond financing from the County,
 12 in which the County does not retain a proprietary interest; or

13 (5) A development project involving a historically designated building.

14 (e) Limitations.

15 (1) Nothing in this Section requires an employer to recognize a particular labor
 16 organization.

17 (2) Nothing in this Section requires an employer to enter into a collective bargaining
 18 agreement establishing the substantive terms and conditions of employment.

19 (3) This Section is not intended to, and shall not be interpreted to, enact or express any
 20 generally applicable policy regarding labor-management relations or to regulate those relations
 21 in any way.

22 (4) This Section is not intended to favor any particular outcome in the determination
 23 of employee preference regarding union representation.

24 (5) Nothing in this Section permits or requires the County or any employer to enter
 25 into any agreement in violation of the National Labor Relations Act of 1935, approved July 5,
 26 1935 (49 Stat. 449; 29 U.S.C.S. § 151 et seq.).

27 (f) Requirement of County notice.

28 A request for proposals or invitation to bid or similar document regarding a development
 29 project subject to this Section shall include a summary description of and reference to the
 30 requirements of this Section. Failure to include a description or reference to this Section in the
 31 document shall not exempt an employer otherwise subject to the requirements of this Section.

Sec. 10-286. Regulations authorized.

The County Executive may promulgate regulations to govern the implementation of this Division, provided that such regulations are consistent with the provisions of this Division. Any such regulations must be approved by the County Council.

SECTION 3. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 10A-157, 10A-158, 10A-159, 10A-160, 10A-161, 10A-162, 10A-163, 10A-164, 10A-165, 10A-166, 10A-167, 10A-168, 10A-169, and 10A-170 of the Prince George's County Code be and the same are hereby added:

SUBTITLE 10A. PURCHASING.**DIVISION 7. ECONOMIC DEVELOPMENT.****Sec. 10A-157. Legislative findings and policy.**

(a) The County government finds that the public interest will be served by encouraging businesses to locate and remain in Prince George's County through the provision of local bid and proposal preferences and participation requirements for County-based businesses and County-based small businesses in the award of contracts in direct government procurement.

(b) The County government finds that the local bid and proposal preferences and local participation requirements in direct government procurement prescribed in Subdivision 1 of this Division will serve the public interest because the resulting growth and development of County-based businesses and County-based small businesses will have a significant, positive impact on the economic health of the County by, among other things, increasing the County's commercial tax revenue and improving access to good paying careers for local residents. This will help achieve the public interest objective of diversifying and enlarging the County's tax base that funds vital public services, which is currently overly reliant on residential property taxes.

(c) The County government finds that the local bid and proposal preferences and local participation requirements in direct government procurement prescribed in Subdivision 1 of this Division will serve the public interest objective of rewarding those businesses which contribute the most to the County's economy, especially County-based small businesses, which are the most likely businesses to create jobs for County residents.

(d) The County government finds that because of the lack of local career opportunities for County residents, only forty percent (40%) of the jobs in the County are held by County residents (sixty percent (60%) are held by non-County residents) and approximately sixty percent

1 (60%) of the County's resident workforce works outside of the County on a daily basis, the
 2 highest percentage of out-migration of a local workforce of any jurisdiction in the Washington
 3 DC Metropolitan Statistical Area (MSA), which:

4 (1) Leads to insufficient and inconsistent daytime consumer spending in local
 5 businesses, including retail and professional services, which hurts the County's commercial tax
 6 base; and

7 (2) Causes longer commute times for local residents and contributes to worsening
 8 traffic congestion, which is among the worst in the nation; expensive road repair and
 9 maintenance costs to county taxpayers; and reduced time for parental supervision of county
 10 school-aged children by working parents.

11 (e) The County government finds that the lack of local career opportunities for County
 12 residents contributes to the County having the highest poverty and unemployment rates among
 13 suburban jurisdictions in the Washington DC MSA and having the highest foreclosure and
 14 uninsured rates of any jurisdiction in the State of Maryland. The lack of nearby career
 15 opportunities limits access to employment for low-to-moderate income County residents who
 16 have more limited transportation options.

17 (f) The County government finds that too few of the existing career and business
 18 opportunities related to government funded projects benefit County residents, which contributes
 19 in part to the overall lack of employment and business opportunities in the County for County
 20 residents, particularly low-to-moderate income residents, County-based businesses, and County-
 21 based small businesses. Further, the County government finds that from 2000 to 2011, there was
 22 little to no new net job creation in the County, despite nearly an 8% increase in the County's
 23 population.

24 (g) The County government finds a substantial reason and basis for the County resident
 25 hiring goals prescribed in Subdivision 2 of this Division, including the goal that at least fifty-one
 26 percent (51%) of the work hours on direct government procurement, be worked by County
 27 residents, because the County resident hiring goals will serve the County's public and proprietary
 28 interest by:

29 (1) Reducing the out-migration of the local workforce, which will increase local
 30 consumer spending in county businesses and increase the County's commercial tax base;

31 (2) Helping reduce the County's worsening traffic congestion, road repair costs, and

1 commute times for working parents; and

2 (3) Increasing access to nearby career opportunities for County residents with jobs
 3 paying a prevailing wage and likely to include health and other benefits, which will reduce the
 4 County's unemployment, uninsured, foreclosure, and poverty rates and assist County residents in
 5 affording the high cost of living in the Washington DC MSA.

6 (h) The County government finds that the County resident hiring goals prescribed in
 7 Subdivision 2 of this Division, including the goal that at least fifty-one percent (51%) of the
 8 work hours on direct government procurements be worked by County residents, will not unduly
 9 burden or unreasonably restrict access to employment in the County for out of state residents.
 10 Because Subdivision 2 of this Division only requires a demonstration of "best efforts" to meet
 11 the local hiring goals (rather than requiring employers to meet the local hiring percentages
 12 themselves), in addition to including the appropriate exceptions, the provisions of Subdivision 2
 13 of this Division are not unnecessarily broad and are sufficiently flexible and tailored to achieve
 14 the public interest objectives outlined in this Section.

15 **Subdivision 1. County-Based Business Assistance.**

16 **Sec. 10A-158. County-based business preferences.**

17 (a) On any procurement for which a County agency or the County government secures
 18 competitive bids or proposals, including, but not limited to, competitive bids secured pursuant to
 19 Section 10A-112 or competitive proposals pursuant to Section 10A-113, the Purchasing Agent
 20 shall:

21 (1) Apply a bid or proposal preference of ten percent (10%) to any County-based
 22 business that submits an approved certification as set forth in Section 10A-161(a) and fifteen
 23 (15%) percent to any County-based small business that submits an approved certification as set
 24 forth in Section 10A-161(b).

25 (2) For bids or proposals that are not made entirely by County-based businesses,
 26 apply a bid or proposal preference at an increasing rate of one percent (1%) for every ten percent
 27 (10%) increment of certified County-based business participation. Bids or proposals with one
 28 hundred percent (100%) certified County-based business participation shall receive the
 29 maximum ten percent (10%) bid preference.

30 (3) For bids or proposals that are not made entirely by County-based small
 31 businesses, apply a bid or proposal preference at an increasing rate of one and a half percent

1 (1.5%) for every ten percent (10%) increment of certified County-based small business
 2 participation. Bids or proposals with one hundred percent (100%) certified County-based small
 3 business participation shall receive the maximum fifteen percent (15%) bid preference.

4 (4) Bids or proposals are entitled to receive the greater of the preference points or
 5 percentages allowed under either this Section or Section 10A-136, as applicable. The
 6 preferences allowed under this Section and Section 10A-136 shall not be applied cumulatively.

7 (b) The Purchasing Agent may determine not to apply a bid or proposal preference under
 8 this Section if the Purchasing Agent certifies that such a preference would result in the loss of
 9 federal or state funds, subject to the approval of the County Executive. The Purchasing Agent
 10 shall transmit a copy of any such determination to the County Council no later than thirty (30)
 11 calendar days following the date of the procurement award.

12 (c) The requirements of this Section shall apply to the procurement of vendors retained
 13 by a County agency or the County government to assist in the financing and sale of County
 14 government debt. The requirements of this Section shall also apply to the procurement of
 15 brokerage firms, investment banking firms, investment management firms, consultants, and other
 16 vendors retained to manage or invest funds controlled or administered by a County agency or the
 17 County government. The application of this Subsection is subject to the requirements and
 18 restrictions of federal and state law.

19 (d) A business may opt to not receive a County-based preference under this Section.

20 (e) For the purposes of this Division, the term “competitive bids or proposals” means any
 21 bids or proposals for procurement funded or administered by a County agency or the County
 22 government except for procurement awards made pursuant to Section 10A-114.

23 **Sec. 10A-159. County-based business participation requirements.**

24 (a) For any procurement that is greater than One Hundred Thousand Dollars (\$100,000)
 25 in total value for which a County agency or the County government secures competitive bids or
 26 proposals, including, but not limited to, competitive bids secured pursuant to Section 10A-112 or
 27 competitive proposals pursuant to Section 10A-113, the Purchasing Agent shall require the
 28 following:

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

1 based businesses; and

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

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

15 (b) If the Purchasing Agent determines that there are insufficient responsible County-
16 based businesses to completely fulfill the requirement of Paragraph (1) of Subsection (a) for a
17 particular procurement or if the requirement would result in the loss of federal or state funds or
18 grants, the Purchasing Agent may waive the requirement and adjust the minimum participation
19 percentage, subject to the approval of the County Executive. For procurement contracts or
20 agreements subject to approval by legislative act under Section 819 of the Charter, a waiver
21 and/or percentage adjustment authorized by this Subsection must also be approved by the County
22 Council. For procurement contracts or agreements not subject to approval by legislative act
23 under Section 819 of the Charter, notice of a waiver and/or percentage adjustment authorized by
24 this Subsection must be sent to the County Council by the Purchasing Agent by no less than
25 fourteen (14) calendar days prior to the decision being made to waive the requirement and adjust
26 the minimum participation percentage in Paragraph (1) of Subsection (a).

27 (c) Failure to apply the applicable provisions of Section 10A-158 and this Section to a
28 procurement award, subject to the waivers and adjustments authorized by this Division, shall
29 render the procurement award and/or contract or agreement void.

30 (d) On a case by case basis, for any procurement subject to the requirements of
31 Subsection (a) of this Section, the Purchasing Agent may require more than forty percent (40%)

1 certified County-based business participation if the Purchasing Agent determines that there is a
2 sufficient number of County-based businesses to justify a higher certified County-based business
3 participation requirement.

4 **Sec. 10A-160. County agency local procurement goals**

5 (a) Each County agency, including, but not limited to, each County agency that procures
6 in whole or in part through the Office of Central Services, shall use its “best efforts” to exercise
7 its procurement authority so as to meet, on an annual basis, the goal of procuring at least fifty
8 percent (50%) of the dollar volume of its goods and services, including, but not limited to,
9 construction goods and services, to County-based businesses and at least thirty percent (30%) to
10 County-based small businesses; and

11 (b) The dollar volume referenced in Subsection (a) of this Section shall be based on the
12 expendable budget of the County agency.

13 (c) For any procurement with a total value equal to or less than One Hundred Thousand
14 Dollars (\$100,000) for which a County agency secures competitive bids or proposals, including,
15 but not limited to, competitive bids pursuant to Section 10A-112 or competitive proposals
16 pursuant to Section 10A-113, each County agency shall set-aside the procurement only for bids
17 or proposals from County-based small businesses, subject to Paragraphs (1) – (4) of this
18 Subsection.

19 (1) A County agency shall not be required to set aside a procurement for County-
20 based small businesses under this Subsection if there are not at least two (2) County-based small
21 businesses that can sufficiently provide the services or goods which are the subject of the
22 procurement. A County agency may also refuse to set aside a procurement for County-based
23 small businesses under this Subsection if the agency determines, after applying any applicable
24 preferences, that the lowest County-based small business bid or proposal price is believed to be
25 twelve percent (12%) or more above the likely price on the open market. An agency shall not
26 make such a determination unless the County-based small business with the lowest bid or
27 proposal price has been given the opportunity to win the procurement by offering a bid or
28 proposal price less than twelve percent (12%) higher than the likely price on the open market
29 identified by the agency. If the County agency makes a determination under this Paragraph not
30 to set aside a procurement for County-based small businesses, then the County agency must
31 adhere to the requirements of Paragraph (2) of this Subsection.

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

14 (3) Only if a County agency satisfies the requirements of both Paragraphs (1) and (2)
15 of this Subsection and receives approval from the Purchasing Agent may the County agency
16 thereafter issue the procurement in the open market, subject to all of the other applicable
17 preferences and participation requirements prescribed in this Subdivision. If a County agency,
18 after receiving approval of the Purchasing Agent, makes a determination not to set aside a
19 procurement under either Paragraphs (1) and (2) of this Subsection and opts to issue the
20 procurement in the open market, the County agency must transmit in writing its determination
21 and the reasons for the determination to the County Executive and County Council no later than
22 fourteen (14) calendar days after the date of the determination's approval by the Purchasing
23 Agent.

24 (4) Any existing contract or agreement, including any existing multiyear contract or
25 extended contract, for a procurement funded by a County agency or the County government with
26 a total value equal to or less than One Hundred Thousand Dollars (\$100,000) that was not set-
27 aside for County-based small businesses or County-based businesses pursuant to the
28 requirements of this Section, and for which a County agency or the County government secured
29 competitive bids or proposals, including, but not limited to, any procurement contract that was
30 awarded pursuant to Section 10A-112 or Section 10A-113, at the time of any contemplated
31 exercise of an option, extension, or renewal, including automatic extensions or renewals (e. g.

1 “evergreen” contracts or agreements), shall not be renewed or extended. This Paragraph shall
2 not apply to a contract or agreement for a procurement with fifty percent (50%) or greater
3 certified County-based business participation.

4 (d) The Purchasing Agent may waive the requirements of Subsection (c) of this Section
5 for a procurement if the Purchasing Agent certifies that such a requirement would result in the
6 loss of federal or state funds, subject to the approval of the County Executive. The Purchasing
7 Agent shall transmit a copy of any such determination to the County Council no later than seven
8 (7) calendar days following the date of the procurement award.

9 (e) Each County agency shall submit a written report to the Purchasing Agent and to the
10 County Auditor within thirty (30) calendar days after the end of each quarter after the beginning
11 of the fiscal year that provides:

12 (1) The percentage and U.S. dollar value of certified County-based business
13 participation and certified County-based small business participation in the most recent three (3)
14 month period from the County agency’s procurements, including reporting the percentage and
15 U.S. dollar value of certified County-based business participation and certified County-based
16 small business participation for the period from the beginning of the fiscal year to the reporting
17 date;

18 (2) The name and principal place of operation of each business receiving payment
19 under a procurement from the County agency in the most recent three (3) month period,
20 including the U.S. dollar value and percentage of the total procurement dollars paid in the most
21 recent three (3) month period to each business; and

22 (3) For the 4th Quarter of the fiscal year only, the expected percentage and U.S.
23 dollar value of certified County-based business participation and certified County-based small
24 business participation in the next twelve (12) month period.

25 (f) If a County agency fails to meet any of the goals set forth in Subsection (a) of this
26 Section, the County Executive, or the County Council by resolution, may require that a portion
27 of the agency's procurements be made part of a set-aside program for County-based businesses
28 and/or County-based small businesses.

29 (g) As a condition of receiving funding from the County government, a non-County
30 agency or entity that receives more than fifty percent (50%) of its annual budget in the most
31 recent fiscal year from funds received from or administered by a County agency or the County

1 government shall comply with the same goals and requirements as a County agency under
 2 Subsections (a), (b), (e), and (f) of this Section, unless the non-County agency or entity certifies
 3 in writing to the County Council and the County Executive that such compliance would violate
 4 federal or state law.

5 **Sec. 10A-161. County-based business certification requirements.**

6 (a) A business that seeks to be certified as a County-based business shall make
 7 application to the Purchasing Agent on a form provided by the Purchasing Agent. Such an
 8 application shall not be approved by the Purchasing Agent unless the business:

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

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

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

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

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

21 (6) Files documentation showing that:

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

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

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

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

30 (b) A business that seeks to be certified as a County-based small business shall make an
 31 application to the Purchasing Agent on a form provided by the Purchasing Agent. Such an

1 application shall not be approved by the Purchasing Agent unless:

2 (1) The business meets the requirements of Section 10A-161(a); and

3 (2) The business meets the definition of “small business” pursuant to the Code of
 4 Maryland Regulations (“COMAR”) 21.01.02.01(80); or

5 (3) For a business classified as being in the construction industry by Sector 23 of
 6 the current edition of the NAICS, the business meets the federal definition of “small business
 7 concern” in Part 121 of Title 13 of the Code of Federal Regulations.

8 (c) Once an application for certification is approved under this Section by the Purchasing
 9 Agent, a copy of the approved application shall be expeditiously transmitted to the County
 10 Auditor.

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

13 (e) Nonprofit entities that satisfy the applicable requirements of this Section are eligible
 14 to be certified as County-based businesses and County-based small businesses.

15 (f) A business that is certified as a County-based business or County-based small
 16 business shall meet the requirements of certification under this Section continuously after the
 17 date the business’s application for certification is approved by the Purchasing Agent or the
 18 business’s certification shall be void. In such instances, the business must re-apply pursuant to
 19 the requirements of this Section to be certified as a County-based business or a County-based
 20 small business.

21 **Sec. 10A-162. Enforcement of County-based business assistance.**

22 (a) For the entire duration of the procurement contract or agreement, any vendor given a
 23 County-based business preference under Section 10A-158 or subject to the County-based
 24 business participation requirements under Section 10A-159 shall maintain no less than the
 25 percentage of certified County-based business participation or certified County-based small
 26 business participation stated in the winning bid or proposal. At the discretion of the Purchasing
 27 Agent, failure to comply with this Section may subject any vendor given a business preference
 28 under Section 10A-158 or subject to the County-based business participation requirements under
 29 Section 10A-159 to a penalty, to include monetary fines of up to five percent (5%) of the value
 30 of the contract for each violation, or a cancellation of the contract or agreement.

31 (1) A vendor may request a waiver of the requirements of this Subsection by the

1 Purchasing Agent. On a case by case basis, such a waiver request may be granted by the
2 Purchasing Agent with the approval of the County Executive, if “best efforts” by the vendor to
3 comply have been demonstrated as prescribed in Subsection (e) of this Section.

4 (2) For procurement contracts or agreements subject to approval by legislative act
5 under Section 819 of the Charter, a waiver and/or percentage adjustment authorized by this
6 Subsection must be approved by the County Council. For procurement contracts or agreements
7 not subject to approval by legislative act under Section 819 of the Charter, notice of such a
8 waiver and/ or percentage adjustment, including the information provided to the Purchasing
9 Agent pursuant to Paragraphs (1) – (4) of Subsection (e) of this Section, must be sent to the
10 County Council by the Purchasing Agent by no less than fourteen (14) calendar days prior to the
11 date of the County Executive’s approval of the Purchasing Agent’s decision.

12 (b) Any vendor given a County-based business preference under Section 10A-158 or
13 subject to the County-based business participation requirements of Section 10A-159 shall submit
14 a quarterly report within thirty (30) calendar days after the end of each quarter to the Purchasing
15 Agent, the County Auditor, and a compliance manager designated by the County Council that
16 provides:

17 (1) The percentage and U.S. dollar value of certified County-based business
18 participation and certified County-based small business participation in the most recent 3 month
19 period, including reporting the percentage and U.S. dollar value of certified County-based
20 business participation and certified County-based small business participation for the period
21 from the beginning of the calendar year to the reporting date;

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

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

29 (c) At the discretion of the Purchasing Agent or the County Auditor, any vendor given a
30 County-based business preference under Section 10A-158 or subject to the County-based
31 business participation requirements of Section 10A-159 shall be subject to an audit of documents

1 or other information deemed necessary by the Purchasing Agent or the County Auditor to verify
 2 compliance with this Section upon thirty (30) calendar days written notice, including, but not
 3 limited to, copies of any contracts with subcontractors or other vendors.

4 (d) The Purchasing Agent shall make compliance with this Subdivision a condition of
 5 any contract or agreement for a procurement funded by a County agency or the County
 6 government or any such contract or agreement shall be void. This requirement does not apply to
 7 procurements awarded pursuant to Section 10A-114.

8 (e) In this Subdivision, the term “best efforts” means efforts to the maximum extent
 9 practicable have been made to meet the requirement. A vendor given a County-based business
 10 preference under Section 10A-158 or subject to the County-based business participation
 11 requirements under Section 10A-159 shall not be deemed to have demonstrated “best efforts”
 12 under Subsection (a) of this Section where there is a sufficient number of County-based
 13 businesses or County-based small businesses to enable the vendor to meet the requirements of
 14 Subsection (a) of this Section. The Purchasing Agent shall not grant a waiver authorized by
 15 Paragraph (1) of Subsection (a) of this Section unless the vendor seeking the waiver:

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

18 (2) Provides a detailed written statement of its efforts to maintain its percentages of
 19 County-based business or County-based small business participation, including its efforts to
 20 contact and negotiate with County-based businesses or County-based small businesses including:

21 (A) The names, addresses, and telephone numbers of the County-based
 22 businesses or County-based small businesses that were contacted and the dates such County-
 23 based businesses were contacted, and

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

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

1 (4) A written list of County-based businesses or County-based small businesses found
 2 to be unavailable to perform under the procurement.

3 Based on an analysis of the information provided by the vendor seeking a waiver
 4 authorized by Paragraph (1) of Subsection (a) of this Section and an analysis by the Purchasing
 5 Agent of the availability of County-based businesses or County-based small businesses that
 6 provide services or goods that are the subject of the procurement, the Purchasing Agent shall
 7 determine whether “best efforts” to comply have been demonstrated by the vendor and whether
 8 to grant the vendor’s request for a waiver authorized by Paragraph (1) of Subsection (a) of this
 9 Section, subject to the approvals and notice required by this Section. If the Purchasing Agent
 10 does grant a waiver authorized by Paragraph (1) of Subsection (a) of this Section, the Purchasing
 11 Agent shall select a new minimum percentage requirement for County-based business
 12 participation or County-based small business participation for the vendor’s procurement based
 13 on the availability of County-based businesses or County-based small businesses that provide
 14 services or goods that are the subject of the procurement, subject to the approvals and notice
 15 required by this Section.

16 **Sec. 10A-163 Unbundling required.**

17 The County Executive or the County Executive’s designee shall establish procedures to
 18 ensure that solicitations are subdivided and unbundled and that smaller procurements are created
 19 to the extent feasible and fiscally prudent.

20 **Sec. 10A-164 Compliance of Existing Contracts at Renewal or Extension**

21 At the time of any contemplated exercise of an option, extension, or renewal, including
 22 automatic extensions or renewals (e. g. “evergreen” contracts or agreements), the Purchasing
 23 Agent shall require that any existing contract or agreement for a procurement funded by a
 24 County agency or the County government, including any existing multiyear contract or extended
 25 contract, be amended to comply with the requirements of this Subdivision or the contract or
 26 agreement shall not be renewed or extended by the County government or County agency. This
 27 requirement does not apply to procurements awarded pursuant to Section 10A-114.

28 **Sec. 10A-165. Regulations authorized.**

29 The County Executive may promulgate regulations to govern the implementation of this
 30 Subdivision, provided that such regulations are consistent with the provisions of this
 31 Subdivision. Any such regulations must be approved by the County Council.

1 **Subdivision 2. First Source Hiring Program and Local Hiring Requirements.**

2 **Sec. 10A-166. First Source Registry created.**

3 (a) The Prince George's County Economic Development Corporation's Workforce
 4 Services Division shall maintain a First Source Registry. The First Source Registry shall consist
 5 of the names of veterans, unemployed, low-to-moderate income (defined as being within three
 6 hundred percent (300%) of federal poverty guidelines), and general job-seeking individuals who
 7 are County residents. The Registry shall be the first source for hiring all new hire positions on
 8 procurement projects funded by a County agency or the County government. The Prince
 9 George's County Economic Development Corporation's Workforce Services Division may
 10 require from residents seeking to be listed in the First Source Registry such documentation that it
 11 deems necessary to verify unemployment, income, veteran-status, and residency information
 12 (pursuant to the requirements set forth in Section 10A-101(14.1)) for the purposes of this
 13 Subdivision. The Prince George's County Economic Development Corporation's Workforce
 14 Services Division shall give the Purchasing Agent constant access to the information in the First
 15 Source Registry and access upon request to any information provided by residents pursuant to
 16 this Subsection.

17 (b) In compiling and maintaining the First Source Registry, the Prince George's County
 18 Economic Development Corporation's Workforce Services Division shall contact community
 19 organizations, organized labor locals, civic and citizens associations, and nonprofit institutions
 20 for names and other relevant contact information of unemployed, low-to-moderate income, and
 21 general job seeking County residents. Only County residents are eligible to be listed or included
 22 in the First Source Registry.

23 **Sec. 10A-167. First Source and Local Hiring Agreements required; local hiring**
 24 **requirement.**

25 (a) The Purchasing Agent shall include for every government-assisted project, including as
 26 a condition of any contracts or agreements for procurements funded by a County agency or the
 27 County government, at the time of initial contract execution or, effective as of January 1, 2014,
 28 at the time of any exercise of contract renewal, option, or extension (including automatic renewal
 29 or extension), a requirement that the business enter into a First Source and Local Hiring
 30 Agreement with the County which states that:

31 (1) The first source for finding employees to fill all jobs created by the government-

1 assisted project shall be the First Source Registry;

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

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

6 (b) In selecting qualified County residents from the First Source Registry for interviews or
 7 other consideration for employment for all jobs covered by each First Source and Local Hiring
 8 Agreement, the Prince George’s County Economic Development Corporation’s Workforce
 9 Services Division shall give first priority to referring veterans who are County residents, second
 10 priority to referring unemployed County residents, third priority to referring County residents
 11 within three hundred percent (300%) of federal poverty guidelines, and then fourth priority to
 12 referring other job-seeking County residents.

13 (c) Each business that is a signatory to a First Source and Local Hiring Agreement under a
 14 procurement contract shall submit to the Prince George’s County Economic Development
 15 Corporation’s Workforce Services Division and the Purchasing Agent, by the fifth business day
 16 of every month following the execution of the First Source and Local Hiring Agreement, an
 17 agreement compliance report for the project that includes the:

18 (1) Number of employees needed;

19 (2) Number of current employees transferred;

20 (3) Number of new job openings created;

21 (4) Number of jobs openings listed with the Prince George’s County Economic
 22 Development Corporation’s Workforce Services Division;

23 (5) (A) For the reporting period (during the previous calendar month), the total
 24 number of County residents employed, including new County resident hires, and total hours
 25 worked by County residents, and

26 (B) For the calendar year, the cumulative total number of County residents
 27 employed, including cumulative new County resident hires, and cumulative work hours by
 28 County residents; and

29 (6) (A) For the reporting period (during the previous calendar month), the total
 30 number of employees employed, including new hires, and total employee hours worked, and

31 (B) For the calendar year, the cumulative total number of employees hired,

1 including cumulative new hires, and cumulative employee hours worked, including, for each
2 employee:

3 (A) Name;

4 (B) Job title;

5 (C) Hire date;

6 (D) Residence; and

7 (E) Referral source for all new hires.

8 (d) At least ten (10) calendar days prior to announcing an employment position, a business
9 that is a signatory to a First Source and Local Hiring Agreement under a procurement contract
10 shall notify the Prince George's County Economic Development Corporation's Workforce
11 Services Division of the available positions. If the County resident interviewed or otherwise
12 considered for the position is not hired, the business shall provide reasons why the referred
13 County resident was not hired. A good faith effort is required to hire the referred County
14 resident, if sufficiently qualified for the available position.

15 (e) The requirements of Section 10A-166 and Subsections (a) through (d) of this Section,
16 except for the reporting requirements of Paragraphs (5) and (6) of Subsection (c) of this Section
17 on a form provided by the Purchasing Agent, shall not apply to procurement contracts in the
18 construction industry, as defined by Sector 23 of the current edition of the North American
19 Industry Classification System ("NAICS"), for procurements funded by a County agency or the
20 County government if the procurement contract or agreement is governed by a project labor
21 agreement. The remaining requirements of this Subdivision shall apply to such procurement
22 contracts, agreements, or awards.

23 (f) The Purchasing Agent shall require "best efforts" to reach a minimum goal that at least
24 fifty-one percent (51%) of the annual man/woman hours (work hours), on both a total work hour
25 and trade by trade basis, be worked by County residents as a condition of any contract or
26 agreement for a procurement funded by a County agency, including requiring "best efforts" to
27 reach a minimum goal that at least fifty-one percent (51%) of the annual apprenticeship work
28 hours on such contracts or agreements be worked by apprentices who are County residents. The
29 requirements of this Subsection extend to hiring by contractors and subcontractors on
30 procurements funded by a County agency under the supervision or control of the contractors and
31 subcontractors.

1 (1) In procurements funded by a County agency or the County government,
2 competitive bids or proposals responding to a bid or proposal solicitation, including, but not
3 limited to, competitive bids pursuant to Section 10A-112 or competitive proposals pursuant to
4 Section 10A-113, may be deemed nonresponsive and rejected by the Purchasing Agent if the bid
5 or proposal fails to demonstrate adequate capacity to meet the annual County resident hiring
6 goals of this Subsection in the judgment of the Purchasing Agent.

7 (2) If a procurement subject to this Subsection fails to reach the minimum goal that at
8 least fifty-one percent (51%) of the annual man/woman hours (work hours) or fifty-one percent
9 (51%) of the annual apprenticeship work hours be worked by County residents, a waiver must be
10 granted pursuant to Subsection (h) of this Section or the procurement is subject to the penalties
11 of Subsection (i) of this Section.

12 (3) In order to meet the “best efforts” requirements of this Subsection, an employer
13 required to comply with the annual County resident hiring goals of this Subsection shall require
14 any worker it employs that it deems to be a County resident for the purposes of meeting the
15 annual County resident hiring goals to submit documentation by the end of the calendar year to
16 the employer necessary to establish the worker’s County residency pursuant to the requirements
17 set forth in Section 10A-101(14.1), including a copy of a filed Maryland state income tax return
18 as prescribed in Section 10A-101(14.1)(A) – (B) or an attestation as prescribed in Section 10A-
19 101(14.1)(C) establishing a Prince George’s County domicile for the worker for the most recent
20 full calendar year, unless the worker has already submitted such documentation during the
21 calendar year to the Prince George’s County Workforce Services Division pursuant to Section
22 10A-166(a). The employer shall transmit the documentation required by this Paragraph
23 submitted by its workers during the calendar year to the Prince George’s County Workforce
24 Services Division and the Purchasing Agent by the tenth (10th) business day of the subsequent
25 calendar year or the employer shall be in noncompliance with the “best efforts” requirements of
26 this Subsection and subject to the penalties of Subsection (i) of this Section.

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

31 (h) On a case by case basis, at the request of an employer required to comply with

1 Subsection (f) of this Section, the Purchasing Agent may waive the annual County resident
 2 hiring goals of Subsection (f) of this Section if the Purchasing Agent finds that “best efforts” to
 3 comply with the annual County resident hiring goals by the employer requesting the waiver have
 4 been demonstrated as prescribed in Paragraph (2) of this Subsection. An employer is only
 5 allowed to request and the Purchasing Agent is only allowed to grant a waiver authorized by this
 6 Subsection after the end of the calendar year for which the employer seeks the waiver and the
 7 waiver, if granted, shall only apply for that calendar year.

8 (1) For procurement contracts or agreements subject to approval by legislative act
 9 under Section 819 of the Charter, a waiver authorized by this Subsection must be approved by
 10 the County Council. For procurement contracts or agreements not subject to approval by
 11 legislative act under Section 819 of the Charter, notice of such a waiver, including the
 12 information provided to the Purchasing Agent pursuant to Subparagraphs (A) – (D) of Paragraph
 13 (2) of this Subsection, shall be sent to the County Council by the Purchasing Agent by no less
 14 than fourteen (14) calendar days prior to the date of the County Executive’s approval of the
 15 Purchasing Agent’s decision to waive the provisions of Subsection (f) of this Section.

16 (2) The term “best efforts” in this Subdivision means efforts to the maximum extent
 17 practicable have been made to meet the requirement. “Best efforts” by an employer required to
 18 comply with Subsection (f) of this Section shall not be found and a waiver authorized by this
 19 Subsection shall not be granted unless the employer provides written documentation to the
 20 Purchasing Agent demonstrating that:

21 (A) Whenever employment opportunities became available during the calendar
 22 year, the employer made good faith efforts to hire each County resident who applied or was
 23 referred for employment;

24 (B) The employer sent written notifications during the calendar year to the
 25 Prince George’s County Workforce Services Division and community, labor, and workforce-
 26 related organizations and institutions identified by the County Executive or the County
 27 Executive’s designee whenever employment opportunities became available;

28 (C) For each County resident who applied or was referred for employment
 29 during the calendar year, but was not hired, the employer maintained written documentation that
 30 includes a sufficient explanation of the reason(s) the County resident was not hired; and

31 (D) The employer met other requirements during the calendar year determined

1 by the Purchasing Agent.

2 Based on an analysis of the information provided by the employer seeking a
 3 waiver authorized by this Subsection and an analysis by the Purchasing Agent of the sufficiency
 4 of the County's labor market, the Purchasing Agent shall determine whether "best efforts" to
 5 comply have been demonstrated by the employer and whether to grant the employer's request for
 6 a waiver authorized by this Subsection, subject to the approvals and notice required by this
 7 Subsection. An employer must be in compliance with Paragraph (3) of Subsection (f) of this
 8 Section in order to receive a waiver authorized by this Subsection. A waiver decision by the
 9 Purchasing Agent authorized by this Subsection must be approved by the County Executive.

10 (i) Failure to comply with this Section, for a procurement funded by a County agency or
 11 the County government, may subject a signatory to a First Source and Local Hiring Agreement
 12 or any other entity required to comply with this Subdivision to a penalty, to include monetary
 13 finances of up to twenty percent (20%) of the value of the direct and indirect labor costs of the
 14 contract, as determined by the Purchasing Agent. For repeated violations of this Section, a
 15 signatory to a First Source and Local Hiring Agreement or any other entity required to comply
 16 with this Subdivision may be subject to a cancellation of the procurement contract or agreement,
 17 as determined by the Purchasing Agent.

18 (j) At the discretion of the Purchasing Agent or the County Auditor, any business that is a
 19 signatory to a First Source and Local Hiring Agreement or any other entity required to comply
 20 with this Subdivision shall be subject to an audit of documents or other information deemed
 21 necessary by the Purchasing Agent or the County Auditor to verify compliance with this Section
 22 upon thirty (30) calendar days written notice.

23 (k) Immediately upon execution, the Purchasing Agent shall expeditiously transmit a paper
 24 or electronic copy of any signed First Source and Local Hiring Agreement to the Prince George's
 25 County Economic Development Corporation's Workforce Services Division.

26 **Sec. 10A-168. Compliance of existing contracts at renewal or extension.**

27 For any existing contract or agreement for a procurement funded by a County agency or the
 28 County government, including any existing multiyear contract or extended contract, the
 29 Purchasing Agent shall require the inclusion of a condition in the contract or agreement requiring
 30 best efforts to meet the annual County resident hiring goals of Subsection (f) of Section 10A-167
 31 and requiring compliance with the other applicable provisions of this Subdivision, at the time of

1 any contemplated exercise of an option, extension, or renewal, including automatic extensions or
 2 renewals (e. g. “evergreen” contracts or agreements), or the contract or agreement shall not be
 3 renewed or extended by the County government or County agency.

4 **Sec. 10A-169. Reports.**

5 The Prince George’s County Economic Development Corporation’s Workforce Services
 6 Division shall submit quarterly reports to the County Auditor, the Purchasing Agent, and a
 7 compliance manager designated by the County Council verifying the requirements in Section
 8 10A-167. The reports shall also detail the number of government-assisted projects for which
 9 First Source and Local Hiring Agreements were executed, the number of jobs that result from the
 10 First Source and Local Hiring Agreements, the number of County residents actually employed in
 11 government-assisted projects, and the number of unemployed County residents on the First
 12 Source Registry. The format of the reporting under this Section shall be determined by the
 13 County Executive or the County Executive’s designee.

14 **Sec. 10A-170. Regulations authorized.**

15 The County Executive may promulgate regulations to govern the implementation of this
 16 Subdivision, provided that such regulations are consistent with the provisions of this
 17 Subdivision. Any such regulations must be approved by the County Council.

18 SECTION 4. BE IT FURTHER ENACTED that the provisions of this Act are hereby
 19 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
 20 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
 21 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
 22 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
 23 Act, since the same would have been enacted without the incorporation in this Act of any such
 24 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

25

1 SECTION 5. BE IT FURTHER ENACTED that Sections 10-283, 10-284, 10-285, 10-286,
2 10A-101, and 10A-161 of this Act shall take effect on January 1, 2013, with the remainder of
3 this Act taking effect on July 1, 2013, except for Sections 10A-159(a)(3), 10A-160(a) and (b),
4 10A-160(c)(4), 10A-164, and 10A-168, which shall take effect on January 1, 2014.

Adopted this 15th day of November, 2011.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Ingrid M. Turner
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

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

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