





October 25, 2023

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin 
Director of Budget and Policy Analysis

FROM: Roger G. Banegas 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-102-2023 Contractor Requirements and Enforcement

CB-102-2023 (*Proposed by:* Council Members Burroughs, Dernoga, Ivey, Oriadha, and Blegay)

Assigned to the Government Operations and Fiscal Policy (GOFP) Committee

AN ACT CONCERNING CONTRACTOR REQUIREMENTS AND ENFORCEMENT for the purpose of amending provisions of the Prince George's County Code related to the solicitation and award of public construction contracts; providing for enforcement of the Procurement Regulations set for by the Purchasing Agent; providing for penalties of said violations; and amending provisions of the Prince George's County Code related to the Office of Human Rights and employment discrimination enforcement; and other generally related matters.

Fiscal Summary

Direct Impact

Expenditures: Additional expenditures likely related to enforcement.

Revenue: Potentially favorable impact on revenues.

Website: <https://pgccouncil.us> | Wayne K. Curry Administration Bldg.
Office: (301) 952-3431 | 1301 McCormick Drive, 3rd Floor
FAX: (301) 780-2097 | Largo, Maryland 20774

Indirect Impact

Potentially favorable.

Legislative Summary:

CB-102-2023¹, proposed and sponsored by Council Members Burroughs, Dernoga, Ivey, Oriadha, and Blegay, was presented on October 17, 2023, and was referred to the Government Operations and Fiscal Policy (GOFP) Committee. The proposed Bill would amend provisions of the Prince George's County Code related to the solicitation and award of public construction contracts, providing for enforcement of the Procurement Regulations set for by the Purchasing Agent, providing for penalties of said violations, and amending provisions of the Prince George's County Code related to the Office of Human Rights and employment discrimination enforcement, and other generally related matters.

Background/Current Law:

Subtitle 10A, *Purchasing*, governs County contracting generally.² Under the current administrative procedures, all rights, powers, duties, and authority relating to the acquisition of supplies, construction, services, printing, and insurance, and the management, control, warehousing, sale, and disposal of supplies are the responsibility of the Purchasing Agent. Currently, section 10A-105(a) states that the "Purchasing Agent is hereby empowered to issue such procurement regulations and procedures as the Purchasing Agent may deem necessary or appropriate to implement any provision of this Subtitle"³. Section 10A-105(b) provides that regulations will be recommended by the Purchasing Agent for approval by County Council resolution when it relates to Sole source procurements, Emergency procurements, Special circumstance procurements, and the Minority Business Opportunities program. Section 10A-105(c) states that "Amendments to any approved rule or regulation on any matter governed by Subsection (b) may only be recommended by the Purchasing Agent to the County Council for its approval by resolution."

Subtitle 2. *Administration*. Division 12. *Office of Human Rights*. Subdivision 2. *Administrative Provisions*. governs the composition of the Human Rights Commission. The Commissioners of the Office of Human Rights is composed of thirteen (13) members that are appointed by the County Executive and confirmed by the County Council pursuant to provisions of Section 322⁴ of the County Charter. The Commission was created with the "power to administer oaths and, upon majority vote of the full body of the Commission, to issue subpoenas for persons or documents during investigations, to compel for the taking of interrogatories and depositions, and to compel

¹ [CB-102-2023](#)

² [Prince George's County Code, Subtitle 10A, Purchasing.](#)

³ [Sec. 10A-105 of the Prince George's County Code](#)

⁴ [Section 322 of the Prince George's County Charter](#)

for a formal hearing the attendance for testimony of witnesses and the production of records and documents relevant or necessary for proceeding”. The Commission is also able to make monetary orders determined from the evidence of record as the actual damages, costs, or losses involved from a complainant regarding discriminatory action or wrongful practice from an employer.

Resource Personnel:

- Amanda Denison, Chief Legislative Officer
 - Dejah Williams, Chief of Staff, Council District 8
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Discussion/Policy Analysis:

Provisions of CB-102-2023:

If enacted, the proposed Bill would amend multiple divisions of Subtitle 10A. *Purchasing*. to add additional language. These amendments are primarily clarifying in nature with some technical changes, such as renaming of titles and capitalization, and are as follows:

- **§10A-105(f).** Subsection (f) is added to confirm that the Purchasing Agent, or their designee, will conduct investigations in order to ensure that compliance with the procurement regulations and procedures are followed according to Section 10A-105(a), and to take necessary action to penalize those that do not as it is outlined in Section 10A-151. (page 2, lines 17 to 19).
- **§10A-148. Investigations, Debarments, and suspension of bidders and offerors.** This section adds a new Subsection (a) that states that “The Purchasing Agent shall establish investigation procedures to ensure compliance of the Procurement Regulations set forth in Section 10A-105(a) by all Contractors. The Purchasing Agent may also receive recommendations from the Office of Human Rights pursuant to Section 2-195.01 of this Code.” (page 2, lines 26 to 29).

With the addition of this new Subsection, all the previous Subsections are given a new letter. The current Subsection (a) becomes Subsection (b), Subsection (b) becomes Subsection (c), and Subsection (c) becomes Subsection (d).

- **§10A-150. Award of contract prohibited.** Subsection (c) is added to clarify that when there are no public exigencies, i.e., urgent demands, or similar factors that require the “continuance of the contractual services in connection with which the debarment is based, the Purchasing Agent shall be empowered to terminate the existing contract and the contractor shall be liable to the County for any profits from the contract execution date through termination date”.

- **§10A-151. Penalties.** The title of this section is changed from “Disqualification not a bar to other actions” to simply “Penalties”. The proposed Bill would add Subsection (b) to include the following language:
 - (b) If a Contractor is found to be in violation of the Procurement Regulations, then the Procurement Agent shall be empowered to:
 - a. Terminate an existing contract;
 - b. Bar Contractor from future contracts;
 - c. Refer investigation to the Office of Human Rights for resolution;
 - d. Refer to the Wage and Determination Board for resolution;
 - e. Seek a criminal complaint or
 - f. Any combination thereof.

CB-102-2023 would also amend Subtitle 2. *Administration*. Division 12. *Office of Human Rights*. Subdivision 2. *Administrative Provisions*. to add section 2-195.01(c) to the Prince George’s County Code. The addition of this Subsection is heavily focused on penalizing violations of employment discrimination, including but not limited to labor trafficking. The Commission may also (1) Issue a civil fine not to exceed \$5,000 per violation pursuant to Md. Local Government Code Annotated Section 10-202(d), (2) File a lien against an employer for unpaid wages pursuant to COMAR 09.12.39.02, or (3) Recommend disqualification and debarment to Purchasing Agent under Section 10A-148.

The provisions of CB-102-2023 set a firm mandate for employers in the County to comply with when they are operating under a County contract. The proposed Bill, combined with CR-101-2023,⁵ is constructed to achieve many of the objectives of CB-001-2023⁶: seeking to strengthen procurement regulations for contractors so that there are fewer wage violations and a reduction in workplace fraud that affects employees working on County projects.

Fiscal Impact:

- *Direct Impact*

Enactment of CB-102-2023 may have an adverse fiscal impact on the County in the form of additional administrative costs associated with enforcement by the Office of Human Rights. If employers are found to be in violation of any provisions of the County Code and are issued a penalty, there may be a possibility of revenues to be collected from the fines issued.

- *Indirect Impact*

Enactment of CB-102-2023 may have a favorable indirect fiscal impact on the County to the extent that employees in the County will have more protection from employers that violate County laws.

⁵ [CR-101-2023](#)

⁶ [CB-001-2023](#)

- *Appropriated in the Current Fiscal Year Budget*

No.

Effective Date of Proposed Legislation:

The Act shall take effect forty-five (45) days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please reach out to me via phone or email.