



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

Policy Analysis and Fiscal Impact Statement
CR-101-2023 County Procurement Regulations

CR-101-2023 (*Proposed by:* Council Member Burroughs; *Sponsored by:* Council Members Blegay, Dernoga, Ivey, Olson, Oriadha, and Hawkins)

Government Operations and Fiscal Policy (GOFP) Committee

A RESOLUTION for the purpose of amending the County Procurement Regulations related to the solicitation and award of public construction contracts; providing for certification of contractors and subcontractors bidding on public works construction contracts; providing for assurance on the use of properly trained construction personnel; providing Responsible Contractor eligibility criteria and requiring the use of Responsible Contractors in certain County construction projects under certain circumstances.

Fiscal Summary

Direct Impact:

Expenditures: Minimal additional expenditures are likely.

Revenues: No direct revenue impact.

Indirect Impact:

Potentially favorable.

Legislative Summary:

CR-101-2023¹, proposed by Council Member Burroughs and sponsored by Council Members Blegay, Dernoga, Ivey, Olson, Oriadha, and Hawkins, was introduced on October 17, 2023, and referred to the Government Operations and Fiscal Policy (GOFP) Committee on October 24, 2023, after being discharged from Committee of the Whole (COW). The Resolution aims to amend the County procurement regulations related to the solicitation and award of public construction contracts.

Current Law/Background:

Section 602², *Duties of the County Purchasing Agent*, of the Charter of Prince George’s County Code provides that the County Purchasing Agent shall prepare, for action by the County Council, reasonable rules and regulations governing emergency purchases, contracts, and services or material and equipment of an unusual or noncompetitive nature not subject to competitive bidding.

Subtitle 10A, Purchasing, governs County contracting generally.³ Section 10A-111 defines the methods of awarding all County contracts as:

- (1) Competitive sealed bidding;
- (2) Competitive sealed proposal;
- (3) Contract negotiation; or
- (4) Small purchase procedures.

The term “responsible bidder or offeror” is defined in §10A-101 to mean “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good-faith performance.” Section 10A-117 permits the Purchasing Agent to conduct a “reasonable inquiry to determine the responsibility of a bidder or offeror” and indicates that upon request from a Purchasing Agent, a bidder or offeror must promptly supply the requested information in order to determine their eligibility of responsibility on County contracts. Section 10A-118 further provides that “the County may, on a limited basis, employ a method whereby suppliers seeking to provide a particular type of *purchased item* may prequalify as responsible prospective contractors for such *purchased item*” (emphasis supplied).

¹ [CR-101-2023](#)

² [Section 602 of the Prince George's County Code](#)

³ [Prince George’s County Code, Subtitle 10A, Purchasing.](#)

Relevant Prior County Legislation

CR-003-1992⁴ adopted the Procurement Regulations of the County that govern emergency procurement procedures, sole source procurement procedures, special circumstance procurements, and the minority business opportunities program.

CB-102-2023 aims to make additional changes to the already proposed changes under CB-001-2023⁵. CB-001-2023 would also amend provisions related to the solicitation and award of public construction contracts. In general terms, CB-001-2023 would require the County to award certain contracts to “Responsible Contractors”. Also, The County Council previously enacted CB-013-2020,⁶ which amended a provision of Subtitle 10A that dealt with administrative procedures, award of contracts, bid and contract security, sales transactions, special provisions, and economic development.

Resource Personnel:

- Jonathan R. Butler, Director, Office of Central Services
- Tracy M. Benjamin, Principal Associate County Attorney, Office of Law

Discussion/Policy Analysis:

CR-101-2023 would approve the proposed changes to the County Procurement Regulations related to the solicitation and award of public construction contracts. The County Council has previously proposed CB-001-2023 to make the same necessary changes but has run into issues with satisfying the demands and needs of stakeholders who are employed or own businesses in the County. The proposed Resolution ensures that requirements for Responsible Contractors in certain County construction projects are met by the eligibility criteria set in CB-001-2023. Section 10A-105⁷ of the Prince George’s County Code states that the Purchasing Agent is empowered to issue such procurement regulations and procedures as the Purchasing Agent may deem necessary or appropriate to implement any provision of Subtitle 10A of the County Code.

Attachment A introduces changes to Chapter XIII (13) of the Prince George’s County Procurement Regulations and Law by adding section C. Responsibility of Bidders or Offerors on Public Works Contracts. The key requirements of this section are that all contractors and subcontractors bidding on Public Works will need to confirm and certify information about their past performance, work history, current qualifications, and performance capabilities, such as the firm and its employees all having valid, effective licenses, registrations, or certificates by federal, state, county, or local law that confirm that they are able to do business in the State of Maryland

⁴ [CR-003-1992](#)

⁵ [CB-001-2023](#)

⁶ Prince George's County Council - [Reference No. CB-013-2020](#)

⁷ [Sec. 10A-105 of the Prince George's County Code](#)

and perform the contract work it seeks to perform. The additional requirements include but are not limited to the firm being registered with the Maryland Department of Assessment and Taxation with good standing, and the firm not having any violations filed against it in the form of wage violations and misclassification, Prevailing Wage laws of the State of Maryland and any of its counties, or of any State, including the District of Columbia, Wage and Hour laws, Maryland Workplace Fraud Act, Maryland Minority Business Enterprise Program, Federal Fair Labor Standards Act, or Federal Davis Bacon Act.

The proposed Resolution, combined with CB-102-2023,⁸ is constructed to achieve many of the objectives of CB-001-2023: 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*

The adoption of CR-101-2023 may have an adverse fiscal impact on the County in the form of additional expenditures for administrative costs to certify Responsible Contractors.

- *Indirect Impact*

The adoption of CR-101-2023 is likely to have a potentially favorable indirect impact on the County if certified Responsible Contractors comply with the regulations and attract more local workers as Wage violations and workplace fraud are penalized.

- *Appropriated in the Current Fiscal Year Budget*

No.

Effective Date of Proposed Legislation:

This Resolution goes into effect upon the date of its adoption.

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

⁸ [CB-102-2023](#)