



THE PRINCE GEORGE'S COUNTY GOVERNMENT
Office of Audits and Investigations

October 12, 2016

MEMORANDUM

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: David H. Van Dyke *DHV*
County Auditor

FROM: Inez N. Claggett *INC*
Senior Legislative Auditor

RE: Fiscal Impact Statement
CB-074-2016 Local Economic Opportunity and Employment

Pursuant to your request, we have reviewed CB-074-2016 to estimate its fiscal impact on Prince George's County, Maryland.

CB-074-2016 (the "Jobs and Opportunity Act of 2016") seeks to improve the public procurement process to enhance access to local economic opportunities through various modifications and additions to regulations within Section 10A of the Prince George's County Code.

The Jobs and Opportunity Act of 2016 proposes to improve opportunities for local, small, minority businesses, and residents as described on pages 3 and 4 of the memorandum addressed to Community Stakeholders from Councilman Mel Franklin and dated September 20, 2016 (see Attachment A).

CB-74-2016 should have an overall positive fiscal impact on the County by providing opportunities for County business expansion, and employment for County residents. As a result, County commercial base revenues and personal income taxes revenues may increase. The overall positive fiscal impact cannot be determined at this time due to unknown factors regarding business expansion, and the number of residents gaining employment. Some County agencies may also incur additional costs for staff and related operating expenses for monitoring, tracking and administering these requirements, as well as being subject to a temporary, or permanent, reduction in its proposed budget allocation in the annual County budget process.

If you require additional information, or have questions about this fiscal impact statement, please call me.

Attachment

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Attachment A
THE PRINCE GEORGE'S COUNTY GOVERNMENT
(301) 952-3820

Mel Franklin
Council Member, District 9

MEMORANDUM

TO: Community Stakeholders
FROM: Mel Franklin, Council Member, District 9 *Mel Franklin*
DATE: September 20, 2016
RE: The Jobs and Opportunity Act of 2016 CB-074-2016

In the fall of 2011, the County Council adopted and the County Executive signed the Jobs First Act, formally Council Bill 17 2011 (CB-17-2011), in order to address longstanding concerns of the local business community, especially small and minority firms, about the lack of procurement opportunities for local businesses in their own County. Data collected in 2011 from the Office of Central Services indicated that between FY2008 and FY2011, County-based businesses were awarded approximately 12% (in contract value) of county procurement contracts, with County-based minority firms being awarded only 5%. This situation was determined to be unacceptable to the County Council.

The Jobs First Act established several landmark changes in county law including:

- Establishing a County-based business and County-based small business certification program
- Awarding and increasing bonus points in contracting opportunities for County-based businesses
- Establishing a 40% minimum participation for contracts in excess of \$100,000
- Establishing a 50% local hiring goals and a first source hiring program for county contracts
- Enforcement authority for the Office of Central Services, with the authority to impose significant penalties
- Requiring regular reporting by agencies and contractors on County-based business participation and local hiring

Because the County had no recent history of doing its own certification in-house, the law went into effect on July 1, 2013 for new bids and January 1, 2014 for renewals and extensions (prior to this time, the County had a pervasive practice of simply renewing and extending existing contracts or riding other contracts instead of bidding them, which tended to shut many local firms out of the process).

After the adoption of the Jobs First Act, the Council continued to listen to the local business community and adopted supplemental legislation, including:

- CB-23-2012, which raised the threshold for requiring contract bonds to \$100,000;
- CB-108-2012, which requires the posting of all county procurement opportunities to a central county website;

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Council Member, District 9

- CB-78-2013, which established the Special Assistance for Local Entrepreneurship (SALE) Program for providing funding for locally owned and operated firms;
- CB-67-2014, which removed a longstanding limitation on bonus points to County-based minority firms, applied the 40% county-based business contract requirement to sole sourced contracts, and established the County-located business certification for rewarding firms that locate a significant office in the County;
- CR-100-2014, which established the Local Business Participation Advisory Committee; and
- CB-30-2015, which established a requirement for an annual Local Business Participation Procurement Report and required the rebidding of most county contracts that were initially bid before the effective date of the original Jobs First Act.

Earlier this spring, the Council received its first Local Business Participation Procurement Report from the Office of Central Services, a verbal briefing on the general progress of the Jobs First Act, and conducted follow-up inquiries with the following results for Fiscal Year 2015:

- Approximately 22% of County contracts were awarded to County-based businesses;
- Approximately 14% of County contracts were awarded to County-based minority firms;
- Nearly every agency failed to make their quarterly reports on County-based business participation as required by law, without consequence;
- Vendors with county contracts were not required and did not report County-based business participation or local hiring percentages, without consequence;
- The local hiring goals for county contracts as required in the Jobs First Act have gone virtually unenforced;
- Use of the low bid standard (instead of 'best value') in much of county contracting disadvantages small and minority firms and undermines quality performance;
- Continuing challenges with 'prompt payment' fall especially hard on small and minority firms; and
- The delegation of procurement authority to various county agencies has hampered the ability of the Office of Central Services to enforce the Jobs First Act and subsequent legislation.

Needless to say, the current state of local business and hiring opportunities in County procurement are far below what the local business community and our residents deserve. Our history of having our tax dollars working more to serve the interests of other jurisdictions instead of our own continues to be a troubling state of affairs in our County and impedes our ability to create local wealth and opportunities for our residents. This situation calls for significant and decisive legislative action. For the foregoing reasons, here presented is the Jobs and Opportunity Act of 2016.

Enclosures

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Council Member, District 9

THE JOBS AND OPPORTUNITY ACT OF 2016 CB-074-2016

The Jobs and Opportunity Act of 2016 (“Jobs First II”) seeks to enhance opportunities for local small and minority firms and residents in the following ways:

- (1) **Streamline certifications for minority certified firms** - Automatically consider county-based firms with MBE certification (CMBEs) to be county-based small business enterprises (CBSBEs). Currently, CMBEs are automatically considered to be county-based business enterprises (CBBEs), but since minority business certifications typically include a size test, like MDOT’s MBE program, there is justification for automatically considering CMBEs to be CBSBEs as well. (Note: This also benefits certified woman-owned businesses because they are minority-owned firms under county law.)
- (2) **Target the 40% local requirement to benefit local small and minority businesses** - Whether competitively bid or sole-sourced, modify the existing 40% contract local participation requirement to require 40% utilization of county-based small business enterprises (CBSBEs) (which, per Proposal #1, includes all CMBEs). Require any waiver or modification of this 40% requirement for a procurement to require Council approval.
- (3) **Require mandatory subcontracting plans to govern the 40% local participation requirement to protect subcontractors** - Require the 40% local participation requirement in Proposal #2 to be governed by a mandatory subcontracting plan submitted at the time of bidding (or the bid shall be deemed nonresponsive) where the prime bidder is not a CBSBE. Any change in subcontractors in the subcontracting plan for cause must be approved by the Purchasing Agent and cannot modify meeting the 40% CBSBE requirement.
- (4) **Use the “best value” standard instead of “lowest bid”** - Modify the standard for professional and construction services contract awards to “best value” instead of technically acceptable “lowest bid” in order to improve performance quality and give local small and minority businesses fairer opportunities in bid competitions. This would become effective as of July 1, 2017.
- (5) **Create a Prince George’s County Supply Schedule for “local-only” bidding** (similar to the District of Columbia Supply Schedule) -- to be proposed by the Director of Central Services in the annual budget, subject to amendment and budget adoption by the County Council -- consisting of industry product and services (NAICS codes) where we have sufficient local saturation for contracting opportunities, which will be purchased by county agencies in a streamlined process only among CBBEs (which includes all CBSBEs). Require any waivers to get County Council approval.
- (6) **Increase the value of contracts solely for local small and minority businesses** - Change the existing \$100,000 contract threshold for only bidding procurements to CBSBEs to \$500,000 in contract value and require contracts below this threshold to be only bid among CBSBEs. Require any waivers to get County Council approval.
- (7) **Establish a stronger prompt payment law** - Require timely payment of subcontractors for completed work (within 7 days after the prime vendor has been paid by the county) as a condition of the any contract award and significantly increase penalties on the county for delayed payments to prime vendors.

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- (8) **Strengthen BDRP capacity building program for local small and minority businesses** - Require, as a part of the annual budget proposal, the Director of Office of Central Services to identify and reserve at least \$5 million in annual contracting and subcontracting opportunities for businesses enrolled in the Business Development Reserve Program subject to Council amendment and approval.
- (9) **Employ interim “last chance” bid opportunities for local small and minority businesses** - Until the “best value” standard is fully implemented on July 1, 2017, for all competitively bid proposals, where a CBSBE prime bid is not initially the lowest bid due to pricing, allow the lowest technically acceptable bidding CBSBE a last opportunity to match and defeat the most competitive bid on price.
- (10) **Strengthen contract debriefing policies** - Strengthen the policy in the county for mandatory debriefings after contract awards.
- (11) **Require contract enforcement clause** - Require a specifically worded clause to be included in all contracts (including purchasing orders) that asserts the responsibility of the vendor to comply with the local business participation requirements and first source/local hiring provisions of our procurement laws under penalty of losing the contract and not being in good standing with the county for eligibility for future procurement opportunities.
- (12) **Bid notice to stakeholders** - Have courtesy notice of any bid opportunities be electronically sent to the Chamber of Commerce, Business Roundtable, and Center for Entrepreneurial Development.
- (13) **Mandatory publication of agency forecasts in advance of the fiscal year** - Publishing of agency annual procurement forecasts shall be mandatory in advance of each fiscal year and shall be transmitted to the Chamber of Commerce, Business Roundtable, and Center for Entrepreneurial Development.
- (14) **Final contracts maintained by OCS** - Require the final version of any executed contracts (including purchasing orders and contract amendments) to be maintained (electronically or in hard copy) by the Office of Central Services.
- (15) **OCS Certification** - Require the Director of Central Services to sign a certification that each contract award has been made in full compliance with our local business participation laws prior to the contract award being made.
- (16) **Hold agencies accountable for enforcement** - Create budget consequences for county agencies for failure to cooperate with OCS and lack of compliance with the Jobs First Act.