



# THE PRINCE GEORGE'S COUNTY GOVERNMENT

## Office of Audits and Investigations

October 21, 2022

### FISCAL AND POLICY NOTE

TO: Robert J. Williams, Jr.  
Council Administrator

William M. Hunt  
Deputy Council Administrator

FROM: Josh Hamlin   
Director of Budget and Policy Analysis

RE: Policy Analysis and Fiscal Impact Statement  
CB-101-2022, Expanding Equity in Local Procurement Opportunities (DR-2)

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**CB-101-2022** (*Proposed and presented by: Council Members Franklin and Hawkins*)

Assigned to the Committee of the Whole

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**AN ACT CONCERNING EXPANDING EQUITY IN LOCAL PROCUREMENT OPPORTUNITIES** for the purpose of implementing recommendations of the 2019 Prince George's County Utilization and Availability Study, known as a Disparity Study, implementing policies to expand opportunities in county government contracting for local, small, and minority-owned businesses, and generally relating to procurement.

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### **Fiscal Summary**

#### **Direct Impact:**

*Expenditures:* Increased expenditures required.

*Revenues:* No impact on revenues likely.

#### **Indirect Impact:**

Likely favorable.

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### **Legislative Summary:**

CB-102-2022 proposed by Council Member Franklin and Chair Hawkins, and sponsored by Council Members Franklin, Hawkins, Dernoga, Taveras, Turner, Streeter, Ivey, Glaros, Harrison, and Medlock, was presented on September 20, 2022, and referred to the Committee of the Whole (COW). A proposed Draft 2 of the Bill was discussed by the COW on September 27, 2022 and voted out of committee (10-0) with a favorable recommendation and Draft 2 was introduced. The Bill is scheduled for public hearing and enactment on October 24, 2022.

CB-102-2022 would make several amendments to the County's procurement law as set forth in County Code, Subtitle 10A<sup>1</sup> to establish policies in furtherance of the recommendations of the 2019 Prince George's County Utilization and Availability Study (the "Disparity Study"). These changes are generally aimed at increasing participation by local, small, and minority-owned businesses in County contracting.

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### **Current Law/Background:**

#### *Existing County M/WBE Programs*

Subtitle 10A of the County Code currently contains a County MBE program and several County-based business programs. Some of the key components of these programs include:

- M/WBE and County-based business certification:
  - MBEs<sup>2</sup>;
  - County-based businesses<sup>3</sup>
- Participation goals and requirements:
  - County-based minority business or minority business: 30 percent of total dollar value (*goal*)<sup>4</sup>;
  - County-based small business: 40 percent on procurements greater than \$500,000 (*requirement*)<sup>5</sup>;
- Minority and County-based business incentives;
- Waiver provisions<sup>6</sup>;
- Reporting requirements:
  - MBE goals<sup>7</sup>;
  - Annual local business participation report<sup>8</sup>;

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<sup>1</sup> [Prince George's County Code, Subtitle 10A](#)

<sup>2</sup> [County Code §10A-136](#)

<sup>3</sup> [County Code §10A-163](#)

<sup>4</sup> [County Code §10A-136](#)

<sup>5</sup> [County Code §10A-161](#)

<sup>6</sup> [County Code §10A-159.01](#)

<sup>7</sup> [County Code §10A-138](#)

<sup>8</sup> [County Code §10A-176](#)

### *2019 Disparity Study*

In 2014, the County contracted with MGT Consulting Group to conduct and deliver the 2019 Disparity Study. The purposes of the Study were to:

- determine whether the County, either in the past or currently, engages in discriminatory practices in the solicitation and award of contracts in Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies to minority and women-owned business enterprises (M/WBEs); and
- determine if a legally justified need exists for the establishment of a M/WBE program in accordance with the law as established by the U.S. Supreme Court and refined in subsequent lower court cases.

The Study analyzed whether a disparity exists between the number of available M/WBEs providing goods or services in the above categories (availability) and the number who are contracting with the County as prime contractors (utilization).<sup>9</sup> MGT found evidence of disparities across categories and different types of M/WBEs, and generally recommended that the County continue and expand its M/WBE program to address the identified disparities.

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#### **Resource Personnel:**

- Brendon Laster, Chief of Staff/Legislative Aide, At-Large (Franklin)

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#### **Discussion/Policy Analysis:**

##### *Key Substantive Changes Made by CB-101-2022*

CB-101-2022 would make several substantive changes to the existing County programs in accordance with the recommendations of the 2019 Disparity Study. These changes are summarized below.

- Definitions: CB-101-2022 would add specific definitions for several different types of business enterprises that would be the subjects of the County program to §10A-101. Each definition is similar, requiring: (1) at least fifty-one percent (51%) ownership by the subject group; (2) managerial and operational control by the subject group; and (3) certification by the Supplier Development and Diversity Division (SDDD). The newly defined business types are the following:
  - African American Business Enterprise (“AABE”)
  - Asian-American and Pacific Islander Business Enterprise (“AAPIBE”)
  - Latino Business Enterprise (“LBE”)
  - Locally-owned and Operated Business means any County-based business

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<sup>9</sup> A subcontractor utilization analysis was conducted in the Construction category.

- Native American Business Enterprise (“NABE”)
- Veteran Business Enterprise (“VBE”)
- Women’s Business Enterprise (“WBE”)
- Increased participation requirements and overall goal: The Bill would amend §10A-114 and §10A-161 to increase the existing forty percent (40%) County-based small business participation requirement to participation to fifty percent (50%) participation by certified County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Businesses. CB-101-2022 would also §10A-136 to require the Purchasing Agent to structure the procurement procedures and activities of the County to facilitate and encourage the award thirty-four percent (34%) of the total dollar value of all County contracts awarded, directly or indirectly, to County-based minority business enterprises or minority business enterprises. This is an increase from the current requirement from at least thirty percent (30%).
- Bonding assistance and bid security: The Bill would cap bond requirements for County-based small business or Locally-owned and Operated Businesses set forth in §10A-132 as follows:
  - Contracts of \$250,000 or less in value – no bond shall be required;
  - Contracts valued at more than \$250,000 up to \$10,000,000 - required bonding shall be no more than 40% of the value of the contract; and
  - Contracts of more than \$10,000,000 in value - required bonding shall be no more than 75% of the value of the contract.

Also, the Bill would amend §10A-133 to increase the minimum County-estimated value of a contract price in a construction contract for which a bid security shall be required from \$100,000 to \$250,000.

- Waiver provisions for Division 7 requirements: The Bill would amend the waiver provisions in §10A-159.01 to provide that:
  - where a waiver is proposed in accordance with this Section, the Purchasing Agent or the Purchasing Agent’s designee shall consider in the written waiver whether a Mentor-Protégé Program Requirement should be included in the contract or procurement; and
  - the Purchasing Agent shall provide to the Clerk of the Council for distribution to the members of the County Council, a quarterly written summary of the waivers granted in accordance with this Section every three months detailing the contract value, contract awardee, address of the contract awardee’s principal place of business, and industry area of the contract for each waiver granted in the prior three month period.
- MBE goals and subgoals: The Bill would add a new subsection (c) to §10A-161, requiring, on a procurement-by-procurement basis, the Purchasing Agent or the Purchasing Agent’s designee to establish an overall Minority Business Enterprise (“MBE”) goal and MBE goals for the contract, consistent with the findings of availability and disparities in the most

recent Prince George's County Disparity Study. A process for establishing the overall goal and MBE subgoals, provision for waivers, and the "Disparity Study Recommended MBE goals and MBE subgoals" by contract type, are set forth in this new subsection.

- Mentor-Protégé Program requirement: The Bill would add new language empowering the Purchasing Agent or the Purchasing Agent's Designee to require any Subtitle 10A procurement or contract to include a Mentor-Protégé Program Requirement.
- Employee performance considerations: The Bill includes an uncodified Section 2 which encourages the Director of Central Services and County Agencies to consider the effective and accurate application of program requirements when considering the retention, promotion, and/or merit pay increases for procurement officers

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## **Fiscal Impact:**

### *Direct Impact*

The enactment of CB-101-2022 will have an adverse direct fiscal impact in the form of additional risk management costs, and may also result in somewhat higher costs for certain contracts.

First, the bonding provisions that CB-101-2022 would add to Division 4 of Subtitle 10A will have an adverse fiscal impact. The Office of Management and Budget has noted that the provision of additional bonding assistance for County-based small businesses and locally-owned and operated businesses will require the County to function in a manner similar to a bonding agency. These provisions will effectively require the County to assume a portion of the risk on County contracts as follows: (1) 100% of risk on contracts of \$250,000 or less in value; (2) at least 60% of the risk on contracts valued between \$250,000 and \$10,000,000; and (3) at least 25% of the risk on contracts of more than \$10,000,000 in value. The precise amount of the impact is impossible to ascertain, but the change will require additional risk management analysis and the establishment of a fund into which the County will need to pay approximately three percent (3%) of the dollar amount of each risk assumed by the County.

Second, the increase in overall minority business enterprise participation goals and subgoals established in Division 7, Subdivision 1 of Subtitle 10A may have the effect of increasing contract costs as a result of altering the competitive landscape in County contracting. The amount of any such impact is difficult, if not impossible to estimate.

### *Indirect Impact*

Enactment of CB-101-2022 will likely have a favorable indirect fiscal impact in the form of increased vitality of County-based small businesses, County-based minority business enterprises, and locally-owned and operated businesses. This favorable impact, which may be significant, will likely manifest itself in the form of increased tax revenues associated with business activity and greater levels of employment and incomes among County residents.

*Appropriated in the Current Fiscal Year Budget*

No.

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**Effective Date of Proposed Legislation:**

The proposed Bill shall take effect on February 1, 2023.

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