



THE PRINCE GEORGE'S COUNTY GOVERNMENT

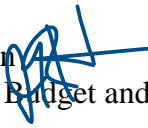
Office of Audits and Investigations


January 11, 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-001-2023 Responsible Contractor Requirements

CB-001-2023 (*Proposed and presented by:* Council Members Burroughs, Blegay, Dernoga, Ivey, Olson, and Oriadha)

Assigned to the Government Operations and Fiscal Policy Committee

AN ACT CONCERNING RESPONSIBLE CONTRACTOR REQUIREMENTS 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 certification for public contractors and subcontractors to public construction contracts; providing for assurance on the use of properly trained construction personnel; providing Responsible Contractor eligibility criteria and requiring the use of a Responsible Contractor in certain County construction projects under certain circumstances.

Fiscal Summary

Direct Impact

Expenditures: Additional expenditures in the form of increased administrative costs to certify Responsible Contractors.

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Revenue: None.

Indirect Impact

Potentially increased expenditures in the form of higher contract costs, possibly offset by savings related to improved quality of work.

Legislative Summary:

CB-001-2023, proposed and sponsored by Council Members Burroughs, Blegay, Dernoga, Ivey, Olson, and Oriadha was presented on December 7, 2022, and was referred to the Government Operations and Fiscal Policy Committee. The Bill would amend provisions related to solicitation and award of public construction contracts.

Background/Current Law:

Authority:

Subtitle 10A, Purchasing, governs County contracting generally.¹ 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).

Relevant Prior County Legislation:

The County Council previously considered CB-020-2022² which was similar in intent to CB-001-2023. That bill was sponsored Councilmembers Davis, Hawkins, and Harrison that failed to be

¹ [Prince George’s County Code, Subtitle 10A, Purchasing.](#)

² Prince George's County Council - [Reference No. CB-020-2022](#)

enacted. CB-020-2022 would have amended provisions of the Prince George's County Code related to the solicitation and award of public construction contracts. The bill would have provided certification to public contractors and subcontractors for public construction contracts, provided assurance on the use properly trained construction personnel, and provided Responsible Contractor eligibility criteria and requiring the use of Responsible Contractor in certain County construction projects under certain circumstances.

The County Council previously enacted CB-013-2020³ which aimed to amend a provision of Subtitle 10A that dealt with administrative procedures, award of contracts, bid and contract security, sales transactions, and special provisions and economic development.

Resource Personnel:

- Brandon Cooper, Chief of Staff/Legislative Aide, District 8

Discussion/Policy Analysis:

Provisions of CB-001-2023:

In general terms, CB-001-2023 would require the County to award certain contracts to “responsible contractors,” as defined therein. As such, the definition of “responsible contractor” is the most critical component of the Bill. The Bill would add §10A-101(a)(37.1) to define “Responsible Contractor” as follows:

- (i) Any contractor or subcontractor engaged in the construction, erection, alteration, remodeling, demolition and all repair of buildings, real property, highways, roads, bridges or other construction work performed pursuant to a construction contract for the public benefit valued at or above \$50,000 and has received a Responsible Contractor Certification. (page 2, lines 9-14)

Under a new §10A-101(a)(37.2), the Bill would set forth the requirements for “Responsible Contractor Certification,” which generally mandates that the firm:

- A. has all required licenses;
- B. meets the contracts bonding requirements;
- C. complies with workers’ compensation and unemployment insurance requirements and is registered with appropriate State and federal entities;
- D. has not been found in violation of wage and workplace protection laws in the last five years;
- E. has not failed to meet targeted group business, disadvantaged business enterprise, or veteran- owned business goals due to a lack of good-faith effort for the last five years;
- F. uses skilled construction workers that have graduated from a State-registered apprenticeship program;

³ Prince George's County Council - [Reference No. CB-013-2020](#)

- G. is not currently debarred or suspended by the State or federal government; and
- H. understands that the certification must be made person who has sufficient knowledge to address all matters in the certification. (page 2, line 15 through page 4, line 8)

As for the process of consideration and award of contracts subject to the Responsible Contractor requirements, CB-001-2023 would also add Sections 10A-118.01 through 10A-118.09, which generally provide as follows:

- §10A-118.01: sets forth the Responsible Contractor Certification requirement (page 4, line 16 through page 5, line 16);
- §10A-118.02: sets forth the mandate that “each firm subject to the requirement of Section 10A-118.01 must submit a Responsible Contractor Certification at least fourteen (14) calendar days before the specified bid submission deadline” (page 5, lines 17-27);
- §10A-118.03: provides for a limited exception to the Responsible Contractor requirement “if only one prime contractor bids a project” (page 5, line 28 through page 6, line 5);
- §10A-118.04: provides for a Notice of Intent to Award Contract (page 6, lines 6-12);
- §10A-118.05: requires a prospective awardee to submit to the Purchasing Agent a Subcontractor List containing the names of any subcontractors that will be used on the project(s) along with Subcontractor Responsible Contractor Certifications (page 6, lines 13-26);
- §10A-118.06: requires the Purchasing Agent to conduct a Contractor Responsibility Review and Determination after the issuance of a Notice of Intent to Award Contract (page 6, line 27 through page 7, line 23).
- §10A-118.07: requires a Subcontractor Responsibility Review and Determination by the Purchasing Agent prior to the use of a subcontractor on the project(s) (page 7, line 24 through page 8, line 12);
- §10A-118.08: provides for sanctions when Purchasing Agent determines that a Contractor or Subcontractor Responsible Contractor Certification contains false or misleading material information (page 8, lines 13-21); and
- §10A-118.09: mandates compliance with all Responsible Contractor and Subcontractor requirements, and all required certifications, prior to the execution of a contract subject to the law (page 8, lines 22-29).

Responsible Contracting Policies Generally:

It is estimated that State and local governments spend around \$2 trillion in goods or services every year.⁴ In general, responsible contracting policies require contractors to demonstrate that they meet certain standards in order to obtain government contracts. They often require evidence of regulatory compliance, adequate training, and fair wages, and allow governments to avoid awarding contracts to the lowest bidder, which may not offer the best value. Responsible contractor policies result in better wages and protections for workers employed by a company’s contractors and subcontractors.⁵

⁴ [Responsible Contracting Policies and Practices](#)

⁵ [Responsible Contracting: Best Practices](#)

Advocates for responsible contractor policies say they allow governments to control costs and promote good jobs while also delivering the best value for money to taxpayers. One example of this is a study conducted at more than 300 school construction projects in Ohio that found “no discernible statistical impact on construction bid costs” through responsible contractors.⁶ Responsible contractor policies are also associated with more work for contractors that pay their workers family-supporting wages, which help attract and keep qualified workers.⁷ Council staff did not identify any evidence supporting the notion that such policies result in increased contract costs, though that remains a possibility should the policy result in diminished competition.

Other Jurisdictions:

Bucks County, Pennsylvania enacted Ordinance No. 162,⁸ similar in substance to CB-001-2023, on March 4, 2020. The key difference is the dollar amount threshold on public works projects. Bucks County’s legislation requirements applies to all public works projects such as construction, demolition, alteration, renovation, repair, service and maintenance work and places the threshold amount at **\$250,000.00** (See §2(a) on page 2 of the ordinance). It requires that all responsible contractors or subcontractors are qualified, experienced, and have the resources and personnel to complete the awarded projects, and show proof of a satisfactory record of past performance, law compliance and business ethics. The requirements for certification are very similar to those in CB-001-2023) (see §3(c) on page 2 of the ordinance).

The City of Jackson, Michigan enacted Ordinance No. 2021-06 that sets all work on public construction and maintenance contracts to be performed by qualified and responsible contractors that also have the experience and personnel to complete projects in a timely, reliable, and cost-effective manner (Page 2, Sec. 5-152)⁹. The threshold for contracts awarded for public works projects subject to the requirement is \$50,000.00 or more, but the Jackson ordinance does not include the specific criteria for certification as a “responsible contractor.” Instead, it mandates that the Purchasing Department establish the criteria.

Possible Issues for Committee Consideration:

- Is the dollar threshold (\$50,000) appropriate?
- Are the prequalification requirements – i.e., the fourteen (14) calendar days before the specified bid submission deadline requirement – too onerous, particularly for small businesses?
- Are any of the particular requirements for certification unnecessarily burdensome?

⁶ [The Impact of Responsible Bidder Ordinances on Union Contractors in Illinois and Indiana](#)

⁷ [The Impact of Responsible Bidder Ordinances on Union Contractors in Illinois and Indiana](#)

⁸ [Ordinance NO. 162 - Bucks County, PA](#)

⁹ [Ordinance NO. 2021-06 - City of Jackson, MI](#)

Fiscal Impact:

- *Direct Impact*

Enactment of CB-001-2023 will have a adverse impact on the County in the form of additional expenditures due to increased administrative costs due to the Purchasing Agent’s additional review and certification requirements.

- *Indirect Impact*

Contract costs may increase as a result of diminished competition due to a likely reduced pool of bidders, but these increases may be offset to some extent by savings associated with higher quality work on subject contracts.

In attempting to ascertain the fiscal impacts of the legislation, Council staff posed the following questions to the Administration. The Committee may wish to explore these inquiries to better assess the impact of CB-001-2023:

1. How many contracts does the agency anticipate will be subject to responsible contractor requirements of CB-001-2023 (*i.e.*, how many construction contracts valued at or above \$50,000)?
2. What are the administrative burdens of certifying and awarding contracts to responsible contractors? Will more staff be required to assist with certifying and bidding process?
3. What will be the likely impact of requiring the award of contracts to responsible contractors under the provisions of CB-001-2023?

Specifically, does the agency expect

- the number of bidders for such contracts to decrease?
- the projects to be completed more efficiently and in a more timely manner?

- *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.