



Prince George's County, Maryland

Inter-Office Memorandum

Office of Law

LEGISLATIVE COMMENT

DATE: March 14, 2023

TO: Howard Stone, Director
Government Operations and Fiscal Policy (GOFP) Committee

CC: Rhonda L. Weaver, County Attorney

THRU: Joseph C. Ruddy, Deputy County Attorney

FROM: Office of Law

RE: CB-30-2023

The Office of Law has reviewed the above referenced bill as it was presented on March 7, 2023 and finds it to be in proper legislative form. However, the Office of Law has identified legal impediments to its enactment.

CB-30-2023 would be duplicative of a current law, specifically, County Code Section 10A-162(c). That law provides that “[f]or any procurement subject to [competitive sealed bidding, competitive sealed proposals, or negotiated contracts] with a total value equal to or less than Five Hundred Thousand Dollars (\$500,000), each County agency or the Purchasing Agent shall set-aside the procurement only for award to County-based small businesses.” Like CB-30-2023, 10A-162(c) also contains caveats to the requirement if there are not enough County-based small businesses that can sufficiently provide the goods/services and, for competitive sealed bidding, if the price is 12% or more above the likely price on the open market. Thus, County law already requires that procurements valued under \$150,000 be set-aside for County-based small businesses.

Also, be advised that the word “invoice” in CB-30-2023 is misplaced as it is not a measure of the value of the contract. The contract value assessment for set-aside purposes is made by the Purchasing Agent or designee *before* a procurement is conducted rather than after contract execution, the performance of work and invoicing therefore. Thus, the CB-30-2023 erroneously references invoices rather than estimated contract value.

Finally, also be advised that there is a conflict in the current law that will be exacerbated if CB-30-2023 is enacted as written. The conflict is with the category of businesses and the participation requirements under 10A-114 and 10A-162(c). Under County Code Section 10A-114 negotiated contracts (sometime referred to as “sole source” contracts), the contract must have “at least fifty percent (50%) certified County-based small business, County-based minority business enterprise, and/or Locally-owned and Operated Business participation.” This conflicts with 10A-162(c) with respect to sole source contracts valued under \$500,000, as 10A-162(c) requires a set-aside only to County-based small businesses. The enactment of CB-30-2023 would add yet another provision to the Code that conflicts with those two laws since it references only County-based small business.

For the foregoing reasons, and to eliminate any possible redundancy and/or confusion regarding County-based small business participation requirements in the County Code, the Office of Law recommends withdrawal of the bill.