

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**  
**2014 Legislative Session**

Bill No. CB-67-2014  
 Chapter No. 64  
 Proposed and Presented by Council Members Franklin, Davis, and Turner  
 Introduced by Council Members Franklin, Davis, Turner and Harrison  
 Co-Sponsors \_\_\_\_\_  
 Date of Introduction October 7, 2014

**BILL**

1 AN ACT concerning

2 Local Economic Opportunity

3 For the purpose of enhancing the County's economic development by expanding the  
 4 applicability of procurement assistance for County-based minority businesses, County-based  
 5 businesses, and minority businesses; establishing a "County-located business" certification; and  
 6 prescribing requirements and assistance for certified County-located businesses.

7 BY repealing and reenacting with amendments:

8 SUBTITLE 10A. PURCHASING.

9 Sections 10A-101, 10A-114, 10A-115, 10A-136, 10A-  
 10 160, and 10A-164,

11 The Prince George's County Code  
 12 (2011 Edition; 2013 Supplement).

13 BY adding:

14 SUBTITLE 10A. PURCHASING.

15 Sections 10A-173, 10A-174, and 10A-175,

16 The Prince George's County Code  
 17 (2011 Edition; 2013 Supplement).

18 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,  
 19 Maryland, that Section 10A-101, 10A-114, 10A-115, 10A-136, 10A-160, and 10A-164 of the  
 20 Prince George's County Code be and the same are hereby repealed and reenacted with the  
 21 following amendments:

## DIVISION 1. ADMINISTRATIVE PROCEDURES.

### Sec. 10A-101. Definitions.

(a) The words defined in this Section shall have the meanings set forth below whenever they appear in this Subtitle unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular provision.

\* \* \* \* \*

(4.3) **Certified County-based minority business enterprise participation** means the percentage of total contract dollars paid to County-based businesses certified as minority business enterprises by the Supplier Development and Diversity Division.

(4.4) **Certified County-located business participation** means the percentage of total contract dollars paid to businesses certified as County-located businesses.

(4.5) **Certified minority business enterprise participation** means the percentage of total contract dollars paid to businesses certified as minority business enterprises by the Supplier Development and Diversity Division.

(4.6)[(4.3)] **Certified sheltered workshop** means an agency that is:

(A) Organized under the laws of the United States or the State of Maryland;

(B) Certified as a sheltered workshop by the Wage and Hour Division of the United States Department of Labor;

(C) Accredited by the Division of Vocational Rehabilitation of the Maryland Department of Education;

(D) Operated in the interest of individuals who have a mental or physical disability, including blindness, that constitutes a substantial handicap to employment and prevents the individual from engaging in normal competitive employment; and

(E) The net income of which does not inure wholly or partially to the benefit of any shareholder or other non-disabled individual.

\* \* \* \* \*

(13.2) **County-based minority business enterprise** means a business that is both:

(A) a minority business enterprise as certified by the Supplier Development and Diversity Division; and

(B) a County-based business.

1           (13.3)[(13.2)] **County-based small business** means a business that meets the  
 2 requirements of Section 10A-161(b) and whose application for certification as a County-based  
 3 small business is approved by the Purchasing Agent.

4           (13.4) **County-located business** means a business, subject to certification by  
 5 the Prince George's County Office of Central Services in accordance with Section 10A-174,  
 6 that:

7                   (A) has a County Office, but is not a County-based business; and

8                   (B) either:

9                           (i) has at least five (5) FTE ("full-time equivalent") employees in the  
 10 County Office for the full duration of the County Office's lease; or

11                           (ii) has at least three (3) FTE employees in the County Office, with at  
 12 least two (2) of the FTE employees being County Residents, for the full duration of the  
 13 County Office's lease; or

14                           (iii) if such business has an ownership interest in the building containing  
 15 the County Office, has at least three (3) FTE employees in the County Office for the full  
 16 duration of the business's ownership interest in the building.

17           (13.5)[(13.3)] **County or The County** means Prince George's County, Maryland.

18           (13.6)[(13.4)] **County agency** means any department, office, division, administrative  
 19 unit, or agency of the Prince George's County government or any other entity created or  
 20 authorized to be created, whether expressed or implied, by the Charter or the Code, including any  
 21 council, board, bureau, commission, institution, tribunal, government corporation, public  
 22 authority, or other instrumentality thereof or thereunder.

23           (14) **County funds** means any monies received by the County or appropriated or  
 24 approved by the Council or to which the County may at any time have legal or equitable title.

25           (14.1) **County Office** means a place of operation of a business physically located  
 26 within the County that:

27                   (a) has a lease in which the business is obligated for at least three (3) years; or

28                   (b) has a lease in which the business is obligated for at least one (1) year and the  
 29 place of operation is at least three thousand (3,000) square feet in size; or

30                   (c) has an ownership interest in such place of operation.

(14.2)[(14.1)] **County resident** means a person whose domicile is located in Prince George's County, Maryland, as determined by standards set forth by the Purchasing Agent, and who either:

(A) Filed a Maryland state income tax return that establishes a Prince George's County domicile for the most recent full calendar year;

(B) Is claimed as a dependent on a Maryland state income tax return that establishes a Prince George's County domicile for the most recent full calendar year filed by the person's parent, legal guardian, or spouse; or

(C) Was not required to file a federal or Maryland state income tax return for the most recent calendar year because the person was not legally liable for income tax pursuant to Section 10-809, Tax-General Article, Annotated Code of Maryland, but was legally domiciled in Prince George's County for the most recent full calendar year, and signs an attestation under oath to this effect on a form provided by the Purchasing Agent.

The County Executive, the County Executive's designee, and the Purchasing Agent are authorized to verify a person's County residency status pursuant to this definition in relation to Division 7 of this Subtitle.

\* \* \* \* \*

## **DIVISION 2. AWARD OF CONTRACTS.**

### **Sec. 10A-114. Contract negotiation.**

\* \* \* \* \*

(b) Any contract authorized under this Section shall be awarded (including at renewal or extension) with at least forty percent (40%) certified County-based business participation, unless the Purchasing Agent exercises the waiver determination and procedure set forth in Section 10A-161(b). Contracts authorized under this Section are subject to the same provisions of Section 10A-164 applicable to contracts subject to County-based business participation requirements under Section 10A-161.

\* \* \* \* \*

### **Sec. 10A-115. Small purchases.**

\* \* \* \* \*

(d) For contracts that use a simplified purchase procedure prescribed in Subsection (a), the Purchasing Agent or the Purchasing Agent's designee shall reserve such contracts for County-

based businesses, provided, that the Purchasing Agent or the Purchasing Agent's designee shall not be required to reserve the contract if the Purchasing Agent or the Purchasing Agent's designee determines in writing that

\* \* \* \* \*

(2) a County-based business cannot offer a reasonable price for the contract. In this Section, "reasonable price" means within twelve percent (12%) above the best price on the open market. Prior to this determination being made, the lowest bidding County-based business shall be given the opportunity to win the procurement by offering a bid or proposal price less than twelve percent (12%) higher than the best price on the open market identified by the Purchasing Agent or the Purchasing Agent's designee. In determining bid or proposal price in this Section, applicable bid or price preferences authorized under this Subtitle shall be applied.

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## DIVISION 6. SPECIAL PROVISIONS.

### SUBDIVISION 1. MINORITY BUSINESS OPPORTUNITIES PROGRAM.

#### **Sec. 10A-136. Assistance to minority business enterprises; certification and decertification.**

\* \* \* \* \*

(c) In determining the lowest responsible and responsive bidder, [for contracts valued at One Million Dollars (\$1,000,000) or less,] the Purchasing Agent shall adjust the bid or proposal price(s) submitted by a County-based [M]minority [B]business [E]enterprise or a minority business enterprise as certified by the Supplier Development and Diversity Division, for the purposes of evaluation and award only, by reducing the bid price(s) of such firm by the application of bonus factors according to the following schedule:

BID OF LOWEST RESPONSIVE BIDDER	MINORITY BUSINESS ENTERPRISE	PRINCE GEORGE'S BASED MINORITY BUSINESS ENTERPRISE BONUS FACTOR
Factored by:	.05	.15

[(d) For contracts valued greater than One Million Dollars (\$1,000,000), the Purchasing Agent shall adjust the bid price submitted by a County-based Minority Business Enterprise or a Minority Business Enterprise for the purpose of evaluation and award only by reducing the bid price(s) of such firm by the application of an Evaluation Bonus according to the following schedule:]

	[MINORITY BUSINESS ENTERPRISE]	[PRINCE GEORGE'S BASED MINORITY BUSINESS ENTERPRISE BONUS FACTOR]
[Bid Price Subtracted by:]	[\$50,000.00]	[\$150,000.00]

(d) For bids or proposals that are not made entirely by County-based minority business enterprises or minority business enterprises as certified by the Supplier Development and Diversity Division, the Purchasing Agent shall reduce the bid price(s) submitted, for evaluation and award purposes only, at an increasing bonus factor of one and a half percent (1.5%) for every ten percent (10%) increment of certified County-based minority business enterprise participation and one half of one percent (0.5%) for every ten percent (10%) increment of certified minority business enterprise participation. Bids or proposals with one hundred percent (100%) of certified County-based minority business enterprise participation shall receive the maximum fifteen percent (15%) bid price reduction (bonus factor) and bids or proposals with one hundred percent (100%) of certified minority business enterprise participation shall receive the maximum five percent (5%) bid price reduction (bonus factor). Bids or proposals awarded a price reduction or bonus factor for certified County-based minority business enterprise participation or certified minority business enterprise participation are subject to the same provisions in Section 10A-164 applicable to bids or proposals that receive preferences for certified County-based business participation.

(e) Bids or proposals are entitled to receive the greater of the preference points or percentages allowed for a business under either this Section, [or] Section 10A-160, or Section 10A-173, as applicable. The preferences allowed under this Section, [and] Section 10A-160, and Section 10A-173 shall not be applied cumulatively for the same business.

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## **DIVISION 7. ECONOMIC DEVELOPMENT**

### **SUBDIVISION 1. COUNTY-BASED BUSINESS ASSISTANCE.**

#### **Sec. 10A-160. County-based business preferences.**

(a) On any procurement for which a County agency or the County government secures competitive bids or proposals, including, but not limited to, competitive bids secured pursuant to Section 10A-112, [or] competitive proposals pursuant to Section 10A-113, or small purchases pursuant to Section 10A-115, the Purchasing Agent shall:

(1) Apply a bid or proposal preference of ten percent (10%) to any County-based business that submits an approved certification as set forth in Section 10A-163(a) and fifteen (15%) percent to any County-based small business that submits an approved certification as set forth in Section 10A-163(b).

(2) For bids or proposals that are not made entirely by County-based businesses, apply a bid or proposal preference at an increasing rate of one percent (1%) for every ten percent (10%) increment of certified County-based business participation. Bids or proposals with one hundred percent (100%) certified County-based business participation shall receive the maximum ten percent (10%) bid preference.

(3) For bids or proposals that are not made entirely by County-based small businesses, apply a bid or proposal preference at an increasing rate of one and a half percent (1.5%) for every ten percent (10%) increment of certified County-based small business participation. Bids or proposals with one hundred percent (100%) certified County-based small business participation shall receive the maximum fifteen percent (15%) bid preference.

(4) Award [B]bids or proposals [are entitled to receive] the greater of the preference points or percentages allowed for a business under either this Section or Section 10A-136, as applicable. The preferences allowed under this Section and Section 10A-136 shall not be applied cumulatively for the same business.

\* \* \* \* \*

#### **Sec. 10A-164. Enforcement of County-based business assistance.**

\* \* \* \* \*

(d) The Purchasing Agent shall make compliance with this Subdivision a condition of any contract or agreement for a procurement funded by a County agency or the County government or any such contract or agreement shall be void. [This requirement does not apply to procurements awarded pursuant to Section 10A-114.]

\* \* \* \* \*

SECTION 2. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 10A-173, 10A-174, and 10A-175 of the Prince George's County Code be and the same are hereby added:

### **DIVISION 7. ECONOMIC DEVELOPMENT**

**SUBDIVISION 3. COUNTY-LOCATED BUSINESS ASSISTANCE.**

**Sec. 10A-173. County-located business preferences.**

(a) On any procurement for which a County agency or the County government secures competitive bids or proposals, including, but not limited to, competitive bids secured pursuant to Section 10A-112, competitive proposals pursuant to Section 10A-113, or small purchases pursuant to Section 10A-115, the Purchasing Agent shall:

(1) Apply a bid or proposal preference of seven percent (7%) to any County-located business that submits an approved certification as set forth in Section 10A-174.

(2) For bids or proposals that are not made entirely by County-located businesses, apply a bid or proposal preference at an increasing rate of seven tenths of one percent (0.7%) for every ten percent (10%) increment of certified County-located business participation. Bids or proposals with one hundred percent (100%) certified County-located business participation shall receive the maximum seven percent (7%) bid preference.

(3) Award bids or proposals the greater of the preference points or percentages allowed for a business under either this Section or Section 10A-136, as applicable. The preferences allowed under this Section and Section 10A-136 shall not be applied cumulatively for the same business.

(b) The Purchasing Agent may determine not to apply a bid or proposal preference under this Section if the Purchasing Agent certifies that such a preference would result in the loss of federal or state funds, subject to the approval of the County Executive. The Purchasing Agent shall transmit a copy of any such determination to the County Council no later than thirty (30) calendar days following the date of the procurement award.

(c) The requirements of this Section shall apply to the procurement of vendors retained by a County agency or the County government to assist in the financing and sale of County government debt. The requirements of this Section shall also apply to the procurement of brokerage firms, investment banking firms, investment management firms, consultants, and other vendors retained to manage or invest funds controlled or administered by a County agency or the County government. The application of this Subsection is subject to the requirements and restrictions of federal and state law.

(d) A business may opt to not receive a County-located business preference under this Section.



(e) For the purposes of this Division, the term “competitive bids or proposals” means any bids or proposals for procurement funded or administered by a County agency or the County government except for procurement awards made pursuant to Section 10A-114.

(f) Bids or proposals awarded preferences for certified County-located business participation are subject to the same provisions in Section 10A-164 applicable to bids or proposals that receive preferences for certified County-based business participation.

**Sec. 10A-174 – County-located business certification requirements.**

(a) A business that seeks to be certified as a County-located business shall make application to the Purchasing Agent on a form provided by the Purchasing Agent. Such an application shall not be approved by the Purchasing Agent unless the business

(1) Submits documentation requested by the Purchasing Agent verifying that the business meets the definition of a County-located business as prescribed in Section 10A-101(13.3), including

(A) Leasing or ownership documents,

(B) Payroll information,

(C) Property and income tax information,

(D) Information regarding office dimensions, and

(E) Any other documentation or information requested by the Purchasing Agent to verify compliance with the definition of County-located business set forth in Section 10A-101(13.3);

(2) Files a written certificate that the business is not delinquent in the payment of any County taxes, charges, fees, rents or claims; and

(3) Files documentation showing that during the preceding twelve (12) months the business has continuously maintained a valid business license or permit.

(b) Once an application for certification is approved under this Section by the Purchasing Agent, a copy of the approved application shall be expeditiously transmitted to the County Auditor.

(c) Nonprofit entities that satisfy the applicable requirements of this Section are eligible to be certified as County-located businesses.

(d) A business that is certified as a County-located business shall meet the requirements of certification under this Section continuously after the date the business’s application for

1 certification is approved by the Purchasing Agent or the business's certification shall be void. In  
2 such instances, the business must re-apply pursuant to the requirements of this Section to be  
3 certified as a County-located business.

4 **Sec. 10A-175. Regulations authorized.**

5 The County Executive may promulgate regulations to govern the implementation of this  
6 Subdivision, provided that such regulations are consistent with the provisions of this  
7 Subdivision. Any such regulations must be approved by the County Council.

8 SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby  
9 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,  
10 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of  
11 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining  
12 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this  
13 Act, since the same would have been enacted without the incorporation in this Act of any such  
14 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

15 SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)  
16 calendar days after it becomes law.

Adopted this 12<sup>th</sup> day of November, 2014.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY: \_\_\_\_\_  
Mel Franklin  
Chairman

ATTEST:

\_\_\_\_\_  
Redis C. Floyd  
Clerk of the Council

APPROVED:

DATE: \_\_\_\_\_ BY: \_\_\_\_\_  
Rushern L. Baker, III  
County Executive

KEY:  
Underscoring indicates language added to existing law.  
[Brackets] indicate language deleted from existing law.  
Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.