AN ACT concerning
Procurement Modernization
For the purpose of amending provision of Subtitle 10A regarding administrative procedures,
award of contracts, bid and contract security, sales transactions, special provisions and economic
development; generally relating to procurements subject to Subtitle 10A.

BY repealing and reenacting with amendments:

SUBTITLE 10A. PURCHASING.
-159.01, and 10A-174
The Prince George's County Code

BY adding:

SUBTITLE 10A. PURCHASING.
Sections 10A-163.01
The Prince George's County Code

SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
Maryland, that Sections 10A-101, 10A-105, 10A-106, 10A-108, 10A-112, 10A-113, 10A-114,
10A-115, 10A-133, 10A-135, 10A-136, 10A-137, 10A-159.01, and 10A-174 of the Prince
George's County Code be and the same are hereby added repealed and reenacted with the
following amendments:

**SUBTITLE 10A. PURCHASING.**

**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.

2. **Award** means the decision by the Purchasing Agent or the Purchasing Agent’s designee to execute a purchase agreement or contract after all necessary approvals have been obtained[...], including final approval and signature by the authorized signatory for the County.

2.1 **Best value** means the basis for awarding contracts [for services] which optimizes weighted factors such as quality, cost, diversity, and performance, among responsive and responsible offerors. Such basis shall reflect, whenever possible, objective and quantifiable analysis and “best value” criteria shall be prescribed and predetermined in the Request for Proposals [or Invitation for Bids].

10.1 **Contract Compliance Unit** refers to the unit within the Office of Central Service that is responsible for monitoring the contracting activity of all agencies that procure goods and services through the Office of Central Services.

13.4 **County-located business** means a business, subject to certification by the Prince George’s County Office of Central Services in accordance with Section 10-174, that;

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

(B) either:

(i) has at least five (5) [FTE (“Full-time equivalent”)] employees or independent contractors in the County Office for the full duration of the County Office’s lease; or

(ii) has at least three (3) [FTE] employees or independent contractors, with at least two (2) of the [FTE] employees or independent contractors being County Residents, for the full duration of the County Office’s lease.;or
(iii) if such business has an ownership interest in the building containing the County Office, has at least three (3) FTE employees in the County Office for the full duration of the business’s ownership interest in the building].

14.1 **County Office** means a place of operation of a business which is physically located within the County as evidenced by proof of ownership interest or a lease. [that:

(a) has a lease] in which the business is obligated for at least one [three] year [years; or
(b) has a lease in which the business is obligated for at least one (1) year and the place of operation is at least three thousand (3,000) square feet in size or
(c) has an ownership interest in such place of operation.]

[20 **Evaluated bid price** means the dollar amount of a bid, after bid adjustments are made pursuant to the evaluation factors set forth in the Invitation For Bids, which measure the effective price to the County. Such price shall take into account factors which contribute to economy and effectiveness in the operation or use of the item being purchased, such as reliability, maintainability, useful life, and residual value. ]

21 **Executive Director** means the Executive Director of the Supplier Development and Diversity Division of the Office of Central Services.

[38 **Responsive bidder or offeror** means one who has submitted a bid or proposal [under Sections 10A-112 of this Subtitle] which conforms in all material respects to the solicitation[Invitation For Bid] and [whose bid] complies with the applicable provisions of Division 7 of this Subtitle.

Sec. 10A-106. - Determinations, Award Notice and Debriefings.

(a) Each determination or decision on any matter required by the provisions of this Subtitle to be in writing shall be based upon written findings of the officer making the determination or decision, and shall be retained in the official contract file.
(b) Every bidder or offeror shall be given written notice of the procurement award [decision] from the responsible Procurement Officer or the Purchasing Agent for every procurement awarded pursuant to Sections 10A-112, and 10A-113[, 10A-115] of this Subtitle within seven (7)
calendar days after the procurement award is made.

(c) No later than forty five days after notice of the procurement award, [Every] an unsuccessful bidder or offeror, upon written request to the Purchasing Agent or the responsible Procurement Officer, is entitled to a [mandatory] post-award debriefing for a procurement awarded pursuant to Section 10A-112 or 10A-113 of this Subtitle. The responsible Procurement Officer or the Purchasing Agent shall make a good faith effort to schedule such a debriefing within forty-five (45) calendar days after receipt of the written request for debriefing, provided that the responsible Procurement Officer or Purchasing Agent may schedule the debriefing beyond forty-five (45) calendar days of the request [where the responsible Procurement Officer or the Purchasing Agent makes a good faith effort] to accommodate[ing] a large number of concurrent requests.

(d) All notices of award decisions for procurements subject to Sections 10A-112 or 10A-113 of this Subtitle shall contain a notice informing bidders or offerors of the right to a debriefing in accordance with the time constraints of this Section.

(e) Notwithstanding the foregoing, no request for debriefing may be made prior to the contract award as defined in 10A-101 of this Subtitle.

(f) The Purchasing Agent may adopt regulations, subject to approval of such regulations by resolution of the County Council, to further implement this Section. The Purchasing Agent may also require vendors to register with the County's enterprise resource planning (ERP) system to facilitate compliance reporting and general data management.

Sec. 10A-108. - Exemptions.

(a) Unless otherwise ordered by the Purchasing Agent, the acquisition of the following supplies and services shall not be subject to Divisions 2, 6 and 7.

(17) Services or goods that are to be provided by another government agency or government.

(18) The Purchasing Agent determines that competitive solicitation procedures are not applicable to the requirements or are impracticable for the particular supplier and/or services.

(b) This Section does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases will be made
in the best interest of the County, supplier diversity, [Minority Business Opportunities Program] price, and other factors considered.

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DIVISION 2. AWARD OF CONTRACTS.

Sec. 10A-112. - Competitive sealed bidding.

(a) Except as provided otherwise by this subtitle, the purchase of supplies or services may be accomplished through competitive sealed bidding when the Purchasing Agent or designee determines that competitive sealed bidding is a reasonable method of awarding a contract, with the contract being awarded to the lowest responsive, responsible bidder. [Competitive sealed bidding shall be the primary method used to acquire materials, equipment, services, supplies, or construction wherein the following conditions exist as determined by the Purchasing Agent or designee:

(1) The cost of the purchase is estimated to exceed the sum of Thirty Thousand Dollars ($30,000) for goods or services; and

(2) Specifications exist or can be developed wherein analysis can be performed on an equitable basis yielding an award to the responsive and responsible bidder offering the best value to the County.

(3) Subject to regulations to be issued by the Purchasing Agent, competitive sealed bidding may be used at dollar levels below the amounts specified in paragraph (1).]

(b) The Purchasing Agent shall give public notice of procurements conducted by competitive sealed bidding through any means deemed reasonably acceptable by the Purchasing Agent, which may include, but not be limited to, advertising in a County newspaper or posting on a website, for [an Invitation for Bid in at least one County newspaper of record and on a central website designated by the Purchasing Agent for] a sufficient time prior to the date set forth therein for the public opening of bids or the procurement [Invitation for Bids] shall be rendered void [and illegal].

(1) As a courtesy, the Purchasing Agent or responsible Procurement Officer shall also give electronic public notice of any procurement conducted by competitive sealed bidding [Invitation for Bids] to
(A) All County-based businesses and County-located businesses, as defined by this Subtitle, who provide services or supplies that would be responsive to the procurement; and

(B) A designated representative of the Prince George's Chamber of Commerce, Greater Prince George's Business Roundtable, and the Prince George's Community College.

(2) The Purchasing Agent shall set forth procedures for public notices in regulations.

[(c) Best Value.

(1) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid is determined to deliver the best value to the County, as defined in Section 10A-101(a)(2.1) of this Subtitle, based on predetermined criteria specified in the Invitation for Bids.

(2) Commodity-only purchases. A procurement contract solely for the purchase of a commodity, excluding any procurement of services (including, but not limited to, construction and professional services), shall be awarded to the responsive and responsible bidder with the lowest evaluated bid.

(3) No purchase or contract shall be made or awarded within two (2) weeks from the date of the public opening of bids].

[(c) [(d)] Nothing in this Subtitle shall preclude the County from accepting a voluntary reduction in price from the successful bidder [bid]; in such an instance, terms, conditions, specifications, or quantities from the solicitation [in the Invitation for Bids] shall remain binding upon the bidder.

(d) [(e)] In the event that all bids exceed the funds available for the purchase or if the Purchasing Agent or the Procurement Officer [Purchasing Agent's designee] determines that all bids are unreasonable, the scope, specifications, or conditions of the purchase may be reduced or modified, and revised bids may be solicited from all responsive and responsible bidders that responded to the initial solicitation. In such instance, the revised solicitation is not subject to [Purchasing Agent or designee may waive] the public notice requirement of paragraph (b) of this Section. If either no bid or only one bid is received from a responsive and responsible bidder in response to solicitation conducted by competitive sealed bidding [an Invitation for Bids] the scope, specifications, or conditions of the purchase may be modified and new
[revised] bids may be solicited. In this instance public notice shall be given pursuant to paragraph (b) of this Section.

(f) When it is considered not advantageous to prepare specifications to support an award based on price alone, an Invitation for Bids may be issued requesting the submission of unpriced technical offers, or samples, or both, and a separate sealed submission of price bids. Bidders whose technical submissions or samples, or both, have been found to be acceptable under the criteria set forth in the Invitation for Bids, shall then have their prices considered. When this method is used, only bidders submitting acceptable technical offers or samples, or both, shall have their price bids opened and considered.]

(e) [(g)] In determining the lowest responsible and responsive bidder for a procurement contract solely for the purchase of a commodity, excluding any procurement of services (including, but not limited to, construction and professional services), the Purchasing Agent shall adjust the bid or proposal price(s) submitted by a County-based minority business 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:

<table>
<thead>
<tr>
<th>BID OF LOWEST RESPONSIVE BIDDER</th>
<th>MINORITY BUSINESS ENTERPRISE</th>
<th>PRINCE GEORGE'S BASED MINORITY BUSINESS ENTERPRISE BONUS FACTOR</th>
</tr>
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<tbody>
<tr>
<td>Factored by:</td>
<td>.05</td>
<td>.15</td>
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(f) *Multi-Step Bid.*

(1) Competitive procurements may be awarded using a Multi-Step method consisting of a combination of competitive procedures designed to obtain the benefits of sealed bidding when the Purchasing Agent or designee determines that a Multi-Step method is a reasonable or practical method of awarding a contract:

(2) A Multi-Step solicitation shall request separately sealed technical and price proposals.

(3) The Multi-Step method is conducted in two steps:

(A) Step one consists of the request for submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word
“technical” has a broad connotation and includes, among other things; the approach and methodology, qualifications and experience, and any special processes or techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirement is resolved in this step.

(B) Step two involves the evaluation of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with this Section 10A-112.

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Sec. 10A-113.- Competitive sealed proposal.

(a) When the Purchasing Agent determines that competitive sealed bidding is not practical or not advantageous to the County, a contract may be awarded based upon competitive sealed proposal. [The competitive sealed proposal method may be used when:

(1) The cost of the purchase is estimated to exceed the sum of Thirty Thousand Dollars ($30,000) for goods and services; and
(2) Specifications cannot be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price; or
(3) Quality, availability, technical competence, and capability are of paramount importance in relation to price; or
(4) The marketplace will respond better to a solicitation permitting a range of alternate proposals, and negotiation; or
(5) The Purchasing Agent determines that the bid prices received by competitive sealed bidding are unreasonable as to all or part of the requirements or when only one or no responsive bid is received in response to an Invitation for Bids; or
(6) When the Purchasing Agent or his designee makes a written determination that competitive sealed bidding is otherwise not advantageous to the County.]

(b) Competitive sealed proposals may [shall] be solicited by a Request for Proposals [which], along with such additional content as may be deemed appropriate by the Purchasing Agent or designee. The request for proposals may be awarded on a Best Value basis and may state the relative importance of price and other evaluation factors. Price may not be the sole evaluation factor. Numerical ratings may be used at the discretion of the Purchasing Agent. [, shall include the following:
(1) A statement of the scope of services to be the subject of the contract; and
(2) A list of factors and the relative importance or weight of each factor, including price, that will be used in evaluating proposals.]

(c) Public notice of the requests for proposals shall be given in the same manner as public notice for competitive sealed bids.

(d) [(c)] The Purchasing Agent may request of the head of the using agency and any other County agency that a representative of such agency be designated to serve on a Proposal Analysis Group (PAG) to assist the Purchasing Agent in the evaluation of proposals in response to the Request for Proposals and to make recommendations to the Purchasing Agent as to which proposal is most advantageous to the County.

[(d) A Request for Proposals shall be given adequate public notice in the same manner as provided in Section 10A-112(b).]

 Sec. 10A-114. - Contract negotiation.

(a) A contract may be made by negotiation under the following circumstances:

(1) If it is determined that competitive sealed bidding or competitive sealed proposal cannot be used in awarding a contract because there is only one available or practical source for the subject contract, the Purchasing Agent is authorized to award a contract by noncompetitive negotiation. The following circumstances shall be sufficient to determine that only one source for the contract is available or practical:

(F) When only one product or service will meet the technical and performance requirements for the procurement.

(3) Upon written certification by the using agency that any of the following circumstances exists, the Purchasing Agent or the Purchasing Agent's designee may negotiate a contract:

(A) A public exigency will not permit a delay incident to advertising; or
(B) Services or goods are to be provided by [or under contract with] another government agency or government.
(b) [(4)] Authority to negotiate a contract under any provision of this Subtitle does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases will be made to the best interest of the County, Minority Business Opportunities Program price and other factors considered. The authority to negotiate contracts in no way eliminates the need of the Purchasing Agent to exert reasonable efforts to obtain the most favorable prices possible.

(c) [(b)] Any contract authorized under this Section shall be awarded (including at renewal or extension) with at least forty percent (40%) certified County-based small business participation or the procurement shall be rendered void and illegal, unless the Purchasing Agent exercises the waiver determination and procedure set forth in Section 10A-161 and 10A-159.01. Contracts authorized under this Section are subject to the same provisions of Section 10A-164 applicable to contracts subject to County-based small business participation requirements under Section 10A-161.

(d) [(c)] The purchase of goods or services through a contract between the County and a third party fiscal agent, such as an escrow agent, is a public procurement subject to the requirements of this Subtitle.

(e) [(d)] A procurement contract deemed necessary by the Purchasing Agent in writing, with notice to the County Executive and Clerk of the County Council, due to a temporary public emergency or other liability exposure may be awarded under this Section and shall not be subject to the requirements of Subsection (b), above, or Division 7 of this Subtitle, provided that the duration of the contract does not exceed one year and is not eligible for renewal or extension. A "temporary public emergency" in this Section is "an unforeseen occurrence or condition of limited duration that requires immediate action to protect public health, safety, or welfare from actual or threatened harm." A "liability exposure" in this Section is an action or inaction that exposes Prince George's County to greater liability.

Sec. 10A-115. - Small Purchases.

(a) Any contract not expected by the Purchasing Agent at the time price quotations are solicited to exceed an aggregate amount of One Hundred [Thirty] Thousand Dollars ($100,000) [($30,000)] for goods and services or construction, may be entered into according to a simplified small purchase procedure set forth in regulations. Such regulations shall include
appropriate requirements for obtaining competition and County-based small business and minority business participation. Any procurement for goods or services not expected to exceed Ten Thousand Dollars ($10,000) may be entered into according to a simplified micro-purchase procedure set forth in regulations. Such regulations shall include appropriate requirements for County-based small business and minority business participation but shall not require competition.

DIVISION 6. SPECIAL PROVISIONS.

Sec. 10A-137. - Contract monitoring.

(a) The Purchasing Agent and the Contract Compliance Unit [Commission] shall have the right to periodically monitor work performed under a contract awarded under this Subtitle to ensure compliance with all applicable provisions of the contract. All contractors and subcontractors shall grant the Purchasing Agent, the Contract Compliance Unit [Commission], and any authorized representative access to the contractor's or subcontractor's work site place of business, and applicable business records.

(b) The Purchasing Agent and the Contract Compliance Unit [Commission] may perform a contract to perform periodic or random compliance audits of contracts awarded under this Subtitle.

DIVISION 7. ECONOMIC DEVELOPMENT.

Sec. 10A-159.01. - Waiver.

(a) A waiver from the participation requirements set forth in this Division, in accordance with the waiver procedures prescribed in this Division, shall be granted for contracts as follows:

(1) A contract valued five hundred thousand dollars or more shall be subject to a written waiver from the Purchasing Agent that is approved by the Chief Administrative Officer or his designee and will not be subject to the participation requirements in Division 7 Economic Development in this Subtitle;

(2) A contract with a total value greater than twenty-five hundred dollars and less than five hundred thousand dollars shall be subject to a written waiver by the Purchasing Agent or the Purchasing Agent’s designee and will not be
subject to the participation requirements in Division 7 Economic Development
of this Subtitle.

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SUBDIVISION 3. BUSINESS PREFERENCE: COUNTY-LOCATED BUSINESS
ASSISTANCE.

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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, and
[(D) Information regarding office dimensions, and]
[(D) [(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)];

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SECTION 2. BE IT ENACTED by the County Council of Prince George's County,
Maryland, that Sections 10A-163.01 of the Prince George's County Code be and the same is
hereby added:

DIVISION 7. ECONOMIC DEVELOPMENT.

SUBDIVISION 1. COUNTY-BASED SMALL BUSINESS ASSISTANCE.

Sec. 10A-163.01 - Temporary Certification

(a) The Purchasing Agent may grant temporary certification to those who have submitted
applications to become certified as a County-based business, County-based small business,
County-located Business, and Minority Business Enterprise for a period not to exceed ninety
(90) days from the date the certification application is submitted to the County.
(b) The Purchasing Agent may promulgate rules and regulations for the implementation and administration of temporary certification as a County-based business, County-based small business, County-located Business, and Minority Business Enterprise.

SECTION 3. BE IT FURTHER ENACTED that the Director of Central Services shall provide a report to the County Council and County Executive that details the impact of the Procurement Modernization Act a year from the effective date of CB-13-2020.

SECTION 4. BE IT FURTHER ENACTED that the provisions of this Act are hereby declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since the same would have been enacted without the incorporation in this Act of any such invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection, or section.

SECTION 5. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.
Adopted this 14th day of July, 2020.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: ______________________________
    Todd M. Turner
    Council Chair

ATTEST:

______________________________
Donna J. Brown
Clerk of the Council

APPROVED:

DATE: ________________________    BY: ______________________________
    Angela D. Alsobrooks
    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.