

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2020 Legislative Session

Bill No. CB-13-2020

Chapter No. 18

Proposed and Presented by The Chairman (by request – County Executive)

Introduced by Council Members Turner, Streeter, Glaros, Harrison, Hawkins, Davis,
Taveras, Ivey, Dernoga, Franklin and Anderson-Walker

Date of Introduction June 16, 2020

BILL

1 AN ACT concerning

2 Procurement Modernization

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

6 BY repealing and reenacting with amendments:

7 SUBTITLE 10A. PURCHASING.

8 Sections 10A-101, 10A-105, 10A-106, 10A-108, 10A

9 -112, 10A-113, 10A-114, 10A-115, 10A-137, 19A

10 -159.01, and 10A-174

11 The Prince George's County Code

12 (2019 Edition).

13 BY adding:

14 SUBTITLE 10A. PURCHASING.

15 Sections 10A-163.01

16 The Prince George's County Code

17 (2019 Edition).

18 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
19 Maryland, that Sections 10A-101, 10A-105, 10A-106, 10A-108, 10A-112, 10A-113, 10A-114,
20 10A-115, 10A-133, 10A-135, 10A-136, 10A-137, 10A-159.01, and 10A-174 of the Prince
21 George's County Code be and the same are hereby added repealed and reenacted with the

1 following amendments:

2 **SUBTITLE 10A. PURCHASING.**

3 **DIVISION 1. ADMINISTRATIVE PROCEDURES.**

4
5 **Sec. 10A-101. - Definitions.**

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

9 * * * * *

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

13 **2.1 Best value** means the basis for awarding contracts [for services] which optimizes weighted
14 factors such as quality, cost, diversity, and performance, among responsive and responsible
15 offerors. Such basis shall reflect, whenever possible, objective and quantifiable analysis and
16 “best value” criteria shall be prescribed and predetermined in the Request for Proposals [or
17 Invitation for Bids].

18 * * * * *

19 **10.1 Contract Compliance Unit** refers to the unit within the Office of Central Service that is
20 responsible for monitoring the contracting activity of all agencies that procure goods and
21 services through the Office of Central Services.

22 * * * * *

23 **13.4 County-located business** means a business, subject to certification by the Prince George’s
24 County Office of Central Services in accordance with Section 10-174, that;

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

26 (B) either:

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

29 (ii) has at least three (3) [FTE] employees or independent contractors, with at least two (2)
30 of the [FTE] employees or independent contractors being County Residents, for the full duration
31 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] (1) [(3)] 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)

1 calendar days after the procurement award is made.

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

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

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

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

21 * * * * *

22 **Sec. 10A-108. - Exemptions.**

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

25 * * * * *

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

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

29 * * * * *

30 (b) This Section does not excuse compliance with the basic policy of obtaining maximum
31 competition consistent with the needs of the occasion, to the end that all purchases will be made

1 in the best interest of the County, supplier diversity, [Minority Business Opportunities Program]
2 price, and other factors considered.

3 * * * * *

4 **DIVISION 2. AWARD OF CONTRACTS.**

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

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

- 13 (1) The cost of the purchase is estimated to exceed the sum of Thirty Thousand Dollars
- 14 (\$30,000) for goods or services; and
- 15 (2) Specifications exist or can be developed wherein analysis can be performed on an
- 16 equitable basis yielding an award to the responsive and responsible bidder offering the
- 17 best value to the County.
- 18 (3) Subject to regulations to be issued by the Purchasing Agent, competitive sealed bidding
- 19 may be used at dollar levels below the amounts specified in paragraph (1).]

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

- 27 (1) As a courtesy, the Purchasing Agent or responsible Procurement Officer shall also give
- 28 electronic public notice of any procurement conducted by competitive sealed bidding
- 29 [Invitation for Bids] to

1 (A) All County-based businesses and County-located businesses, as defined by this
 2 Subtitle, who provide services or supplies that would be responsive to the
 3 procurement; and

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

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

7 [(c) Best Value.

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

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

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

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

22 (d) [(e)] In the event that all bids exceed the funds available for the purchase or if the Purchasing
 23 Agent or the Procurement Officer [Purchasing Agent's designee] determines that all bids are
 24 unreasonable, the scope, specifications, or conditions of the purchase may be reduced or
 25 modified, and revised bids may be solicited from all responsive and responsible bidders that
 26 responded to the initial solicitation. In such instance, the revised solicitation is not subject to
 27 [Purchasing Agent or designee may waive] the public notice requirement of paragraph (b) of
 28 this Section. If either no bid or only one bid is received from a responsive and responsible
 29 bidder in response to solicitation conducted by competitive sealed bidding [an Invitation for
 30 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:

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

(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

1 “technical” has a broad connotation and includes, among other things; the approach and
2 methodology, qualifications and experience, and any special processes or techniques. It
3 is the proper step for clarification of questions relating to technical requirements.

4 Conformity to the technical requirement is resolved in this step.

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

8 * * * * *

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

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

- 13 (1) The cost of the purchase is estimated to exceed the sum of Thirty Thousand Dollars
- 14 (\$30,000) for goods and services; and
- 15 (2) Specifications cannot be prepared that permit an award on the basis of either the lowest
- 16 bid price or the lowest evaluated bid price; or
- 17 (3) Quality, availability, technical competence, and capability are of paramount importance
- 18 in relation to price; or
- 19 (4) The market place will respond better to a solicitation permitting a range of alternate
- 20 proposals, and negotiation; or
- 21 (5) The Purchasing Agent determines that the bid prices received by competitive sealed
- 22 bidding are unreasonable as to all or part of the requirements or when only one or no
- 23 responsive bid is received in response to an Invitation for Bids; or
- 24 (6) When the Purchasing Agent or his designee makes a written determination that
- 25 competitive sealed bidding is otherwise not advantageous to the County.]

26 (b) Competitive sealed proposals may [shall] be solicited by a Request for Proposals [which],
27 along with such additional content as may be deemed appropriate by the Purchasing Agent or
28 designee. The request for proposals may be awarded on a Best Value basis and may state the
29 relative importance of price and other evaluation factors. Price may not be the sole evaluation
30 factor. Numerical ratings may be used at the discretion of the Purchasing Agent. [, shall
31 include the following:

- 1 (1) A statement of the scope of services to be the subject of the contract; and
- 2 (2) A list of factors and the relative importance or weight of each factor, including price,
- 3 that will be used in evaluating proposals.]

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

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

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

13 * * * * *

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

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

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

21 * * * * *

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

24 * * * * *

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

- 28 (A) A public exigency will not permit a delay incident to advertising; or
- 29 (B) Services or goods are to be provided by [or under contract with] another
- 30 government agency or government.

1 (b) [(4)] Authority to negotiate a contract under any provision of this Subtitle does not excuse
 2 compliance with the basic policy of obtaining maximum competition consistent with the
 3 needs of the occasion, to the end that all purchases will be made to the best interest of the
 4 County, Minority Business Opportunities Program price and other factors considered. The
 5 authority to negotiate contracts in no way eliminates the need of the Purchasing Agent to exert
 6 reasonable efforts to obtain the most favorable prices possible.

7 (c) [(b)] Any contract authorized under this Section shall be awarded (including at renewal or
 8 extension) with at least forty percent (40%)_certified County-based small business
 9 participation or the procurement shall be rendered void and illegal, unless the Purchasing
 10 Agent exercises the waiver determination and procedure set forth in Section 10A-161 and
 11 10A-159.01. Contracts authorized under this Section are subject to the same provisions of
 12 Section 10A-164 applicable to contracts subject to County-based small business participation
 13 requirements under Section 10A-161.

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

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

26 * * * * *

27 **Sec. 10A-115. - Small Purchases.**

28 (a) Any contract not expected by the Purchasing Agent at the time price quotations are solicited
 29 to exceed an aggregate amount of One Hundred [Thirty] Thousand Dollars (\$100,000)
 30 [(\$30,000)] for goods and services or construction, may be entered into according to a
 31 simplified small purchase procedure set forth in regulations. Such regulations shall include

1 appropriate requirements for obtaining competition and County-based small business and
2 minority business participation. Any procurement for goods or services not expected to
3 exceed Ten Thousand Dollars (\$10,000) may be entered into according to a simplified micro-
4 purchase procedure set forth in regulations. Such regulations shall include appropriate
5 requirements for County-based small business and minority business participation but shall
6 not require competition.

7 * * * * *

8 **DIVISION 6. SPECIAL PROVISIONS.**

9 **Sec. 10A-137. - Contract monitoring.**

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

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

19 * * * * *

20 **DIVISION 7. ECONOMIC DEVELOPMENT.**

21 * * * * *

22 **Sec. 10A-159.01. - Waiver.**

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

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

29 (2) A contract with a total value greater than twenty-five hundred dollars and
30 less than five hundred thousand dollars shall be subject to a written waiver by
31 the Purchasing Agent or the Purchasing Agent's designee and will not be

1 subject to the participation requirements in Division 7 Economic Development
2 of this Subtitle.

3 * * * * *

4 **SUBDIVISION 3. BUSINESS PREFERENCE: COUNTY-LOCATED BUSINESS**
5 **ASSISTANCE.**

6 * * * * *

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

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

11 (1) Submits documentation requested by the Purchasing Agent verifying that the business
12 meets the definition of a County-located business as prescribed in Section 10A-
13 101[(13.3)], including

- 14 (A) Leasing or ownership documents,
- 15 (B) Payroll information,
- 16 (C) Property and income tax information, and
- 17 [(D) Information regarding office dimensions, and]

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

21 * * * * *

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

25 **DIVISION 7. ECONOMIC DEVELOPMENT.**

26 **SUBDIVISION 1. COUNTY-BASED SMALL BUSINESS ASSISTANCE.**

27 **Sec. 10A-163.01 - Temporary Certification**

28 (a)The Purchasing Agent may grant temporary certification to those who have submitted
29 applications to become certified as a County-based business, County-based small business,
30 County-located Business, and Minority Business Enterprise for a period not to exceed ninety
31 (90) days from the date the certification application is submitted to the County.

1 (b)The Purchasing Agent may promulgate rules and regulations for the implementation and
2 administration of temporary certification as a County-based business, County-based small
3 business, County-located Business, and Minority Business Enterprise.

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

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

15 SECTION 5. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
16 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.