

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2023 Legislative Session

Bill No. CB-001-2023

Chapter No. _____

Proposed and Presented by Council Member Burroughs, Blegay, Dernoga, Ivey, Olson, Oriadha

Introduced by _____

Co-Sponsors _____

Date of Introduction _____

BILL

1 AN ACT concerning

2 Responsible Contractor Requirements

3 For the purpose of amending provisions of the Prince George’s County Code related to the
4 solicitation and award of public construction contracts; providing for certification for public
5 contractors and subcontractors to public construction contracts; providing for assurance on the
6 use of properly trained construction personnel; providing Responsible Contractor eligibility
7 criteria and requiring the use of a Responsible Contractor in certain County construction projects
8 under certain circumstances.

9 BY repealing and reenacting with amendments:

10 SUBTITLE 10A. PURCHASING.

11 Section 10A-101

12 The Prince George's County Code
13 (2019 Edition; 2022 Supplement).

14 BY adding:

15 SUBTITLE 10A. PURCHASING.

16 Sections 10-118.01, 10-118.02, 10-118.03, 10-118.04,
17 10-118.05, 10-118.06, 10-118.07, 10-118.08 and 10-118.09

18 The Prince George's County Code
19 (2019 Edition; 2022 Supplement).

20 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
21 Maryland, that Section 10A-101 of the Prince George's County Code be and the same is hereby

1 repealed and reenacted with the following amendments:

2 **SUBTITLE 10A. PURCHASING.**

3 **DIVISION 1. ADMINISTRATIVE PROCEDURES.**

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

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

8 * * * * *

9 (37.1) **Responsible Contractor** means any contractor or subcontractor engaged in
10 the construction, erection, alteration, remodeling, demolition and all repair of buildings, real
11 property, highways, roads, bridges or other construction work performed pursuant to a
12 construction contract for the public benefit valued at or above \$50,000 and has received a
13 Responsible Contractor Certification. This requirement shall apply to all contractors and
14 subcontractors at any tier of such projects.

15 (37.2) **Responsible Contractor Certification** means a certification by the
16 construction manager, general contractor or other lead or prime contractor whereby they shall
17 confirm and certify the following facts regarding its past performance and work history and its
18 current qualifications and performance capabilities:

19 (A) The firm and its employees have all valid, effective licenses,
20 registrations or certificates required by federal, state, county, or local law, including, but not
21 limited to, licenses, registrations or certificates required to: (a) do business in the designated
22 locale; and (b) perform the contract work it seeks to perform. These shall include, but not
23 limited to, licenses, registrations or certificates for any type of construction or maintenance trade
24 work or specialty work which the firm proposes to self-perform; and

25 (B) The firm meets the bonding requirements for the contract, as required
26 by applicable law or contract specifications and any insurance requirements, as required by
27 applicable law or contract specifications, including general liability insurance, workers
28 compensation insurance and unemployment insurance; and

29 (C) The firm is in compliance with all administrative filing and registration
30 requirements as follows:

- 1 (i) compliance with workers' compensation and
- 2 unemployment insurance requirements; and
- 3 (ii) currently registered with the Maryland Department of
- 4 Assessment and Taxation; and
- 5 (iii) has not at any time had its registration forfeited by the State
- 6 Comptroller; and
- 7 (iv) has a valid federal tax I.D. number or a valid Social
- 8 Security number if an individual.

9 _____ (D) The firm has not received an administrative merits determination,
10 arbitral award or civil judgment rendered against it, any of its contractors or subcontractors or
11 its related entities, including businesses substantially under its control, subsidiaries,
12 predecessors, principals, and people or businesses that substantially control the firm, in the
13 preceding 5 years for violations of the following:

- 14 (i) Wage violations and misclassification
- 15 (ii) Prevailing Wage laws of the State of Maryland and any of
- 16 its counties, or of any other State, including the District of Columbia
- 17 (iii) Wage & Hour laws of the State of Maryland or any other
- 18 State, including the District of Columbia
- 19 (iv) Maryland Workplace Fraud Act
- 20 (v) Maryland Minority Business Enterprise Program
- 21 (vi) Federal Fair Labor Standards Act or
- 22 (vii) Federal Davis Bacon Act

23 Where the contractor, subcontractor or related entity has agreed to settle a dispute concerning
24 any of the above-referenced laws, such settlement shall be reported to the contracting agency;
25 and

26 _____ (E) The firm and its related entities have not received a final determination
27 assessing a sanction for failure to meet targeted group business, disadvantaged business
28 enterprise, or veteran- owned business goals, due to a lack of good faith effort, more than once
29 during the five- year period before submitting the verification; and

30 _____ (F) The firm and its related entities utilize skilled construction workers that
31 have graduated from an apprenticeship program registered with Maryland Department of Labor,

1 Certification.

2 (d) The submitting firm shall stipulate in its Responsible Contractor Certification that, if it
3 receives a Notice of Intent to Award Contract, it will provide a Subcontractor List and required
4 subcontractor information as specified in Section 10A-118.05 of this Act verifying that all
5 subcontractors it intends to use have verified that they meet the minimum standard of a
6 Responsible Contractor.

7 (e) If a submitting firm has ever operated under another name or is controlled by another
8 company or business entity or in the past five years controlled or was controlled by another
9 company or business entity, whether as a parent company, subsidiary or any other business
10 relation, it shall attach a separate statement to its Responsible Contractor Certification that
11 explains in detail the nature of any such relationship. Additional information may be required
12 from such an entity if the relationship in question could potentially impact contract performance.

13 (f) If a firm fails to provide a Responsible Contract Certification required by this Section,
14 it shall be disqualified from bidding. No action of any nature shall lie against the County or
15 Purchasing Agent because of the refusal to accept a bid for failing to provide information
16 required by this section.

17 **Sec. 10A-118.02. Pre-Qualification Requirements.**

18 (a) Each firm subject to the requirement of Section 10A-118.01 must submit a Responsible
19 Contractor Certification at least fourteen (14) calendar days before the specified bid submission
20 deadline. Failure to submit a Responsible Contractor Certification by the aforesaid deadline will
21 automatically disqualify any firm from submitting a bid or proposal for a contract.

22 (b) Upon the receipt of the Responsible Contractor Certification during the pre-
23 qualification phase, the Purchasing Agent shall determine whether the firm meets the
24 requirements set forth in Section 10A-118.01. Notice of the Purchasing Agent's determination
25 shall be sent to the proposed firm no less than seven (7) calendar days before the specified bid
26 submission deadline. All firms that are determined by the Purchasing Agent to meet the
27 qualification requirements of this Act shall be entitled to submit a bid or proposal for the project.

28 **Sec. 10A-118.03. Waiver of Requirements.**

29 (a) A limited exception to the Responsible Contractor Requirement may be granted if only
30 one prime contractor bids a project. In that instance only, the Purchasing Agent may award the
31 prime contractor the contract even if that contractor does not meet the minimum criteria above.

1 All other contractors and subcontractors working on the project shall nevertheless be required to
2 meet the Responsible Contractor Requirement.

3 (b) Upon a determination by the Purchasing Agent that any public funding requirement for
4 a specific project, limits or precludes the application of any specific provisions of Section 10A-
5 118.01, such provisions may be waived by the Purchasing Agent.

6 **Sec. 10A-118.04. Notice of Intent to Award Contract.**

7 (a) After it has received bids for a project, the Purchasing Agent shall issue a Notice of
8 Intent to Award Contract to the firm offering the lowest responsible bid.

9 (b) Such Notice shall be issued immediately or as soon as practical after bids are opened
10 and Notice of Intent to Award Contract. The Notice shall stipulate that the contract award is
11 conditioned on the issuance of a written Responsible Contractor Determination, as required by
12 Section 10A-118.02 and any other conditions deemed appropriate by the County.

13 **Sec. 10A-118.05. Subcontractor Lists and Subcontractor Responsibility Certifications.**

14 (a) A prospective awardee shall submit to the Purchasing Agent a Subcontractor List
15 containing the names of any subcontractors that will be used for the referenced projects, their
16 addresses and a description of the work each listed subcontractor will perform on the project.

17 (b) At the time a perspective awardee submits the Subcontractor List it shall also submit
18 Subcontractor Responsible Contractor Certifications for the respective subcontractors on forms
19 prepared by the Purchasing Agent and shall contain the same information and representations
20 required in Responsible Contractor Certifications, including verifications of apprenticeship
21 qualifications (where applicable) as required by Section 10A-118.01, for each trade or
22 classification of craft workers it will employ on the project.

23 (c) Subcontractor Responsible Contractor Certifications shall be executed by a person
24 having sufficient knowledge to address all matters in the certification and shall include an
25 attestation stating, under the penalty of perjury, that all information submitted is true, complete
26 and accurate.

27 **Sec. 10A-118.06. Contractor Responsibility Review and Determination.**

28 (a) After a Notice of Intent to Award Contract has been issued, the Purchasing Agent shall
29 undertake a review process to determine whether the prospective awardee is a qualified,
30 Responsible Contractor in accordance with the requirements of Section 10A-101(a)(37.1), 10A-
31 101(37.2) and other applicable laws and regulations and has the resources and capabilities to

1 successfully perform the contract. The time of the review process shall be as determined
 2 necessary by the Purchasing Agent.

3 (b) As part of this review process, the Purchasing Agent shall ensure the Responsible
 4 Contractor Certification, the Subcontractor List and the Subcontractor Responsible Contractor
 5 Certifications, as required by this ordinance, have been submitted and properly executed.

6 (c) The Purchasing Agent may conduct any additional inquiries to verify that the
 7 prospective awardee and its subcontractors have the technical qualifications and performance
 8 capabilities necessary to successfully perform the contract and that the firms have a sufficient
 9 record of law compliance and business integrity to justify the award of a public contract. In
 10 conducting such inquiries, the Purchasing Agent may seek relevant information from the firm, its
 11 prior clients or customers, its subcontractors or any other relevant source.

12 (d) If at the conclusion of the review process the Purchasing Agent determines that all
 13 responsibility certifications have been properly completed and executed and if they conclude that
 14 the qualifications, background and responsibility of the prospective awardee and the firms on
 15 their Subcontractor List are satisfactory, they may issue a formal written Contractor
 16 Responsibility Determination verifying that the prospective awardee is a qualified, responsible
 17 contractor. In the event a firm is determined to be non-responsible, the Purchasing Agent shall
 18 proceed to conduct a responsibility review of the next lowest, responsible bidder or, if necessary,
 19 rebid the project.

20 (e) A Contractor Responsibility Determination may be issued after the conclusion of the
 21 review process under this Section. A Responsibility Determination may be revoked or revised
 22 in any manner at any time if the Purchasing Agent obtains relevant information warranting any
 23 such revocation or revisions.

24 **Sec. 10A-118.07. Subcontractor Responsibility Review and Determination.**

25 (a) A construction manager, general contractor or other lead or prime contractor shall not
 26 be permitted to use a subcontractor on any work performed for the County unless it has identified
 27 the subcontractor on its Subcontractor List and provided a Subcontractor Responsible Contractor
 28 Certification in accordance with the requirements of Section 10A-118.05.

29 (b) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless
 30 written authorization is obtained from Purchasing Agent and a Subcontractor Responsible
 31 Contractor Certification is provided for the substitute subcontractor.

1 (c) In the event the Purchasing Agent determines that a prospective subcontractor listed by
2 the apparent low bidder does not meet the responsibility standards of this Section, they may,
3 after informing the prospective awardee, exercise one of the following options:

- 4 (1) Permit the awardee to substitute a qualified, responsible, subcontractor in accordance
5 with the requirements of this Section; or
- 6 (2) Require the awardee to self-perform the work in question if the firm has the required
7 experience, licenses and other qualifications to perform the work in question; or
- 8 (3) Disqualify the prospective awardee.

9 In the event a subcontractor is disqualified under this Section, the general contractor,
10 construction manager or other lead or prime contractor shall not be permitted to make any type
11 of contractual claim against the County or Purchasing Agent the basis of a subcontractor
12 disqualification.

13 **Sec. 10A-118.08. False or Misleading Responsibility Certifications.**

14 (a) If the Purchasing Agent determines that a Contractor or Subcontractor Responsible
15 Contractor Certification contains false or misleading material information that was provided
16 knowingly or with reckless disregard for the truth or omits material information knowingly or
17 with reckless disregard of the truth, the firm for which the certification was submitted shall be
18 prohibited from performing work for the County for a period of three years and shall be subject
19 to any other penalties and sanctions, including contract termination, available to the County
20 under law. A contract terminated under these circumstances shall further entitle the County to
21 withhold payment of any monies due to the firm as damages.

22 **Sec. 10A-118.09. Execution of Final Contract.**

23 (a) A contract subject to Section 10A-118.01 shall not be executed until all requirements
24 of that Section have been fulfilled and until Contractor and Subcontractor Responsible
25 Contractor Certifications have been issued by the County under that Section. The Purchasing
26 Agent may execute a final contract based upon the Notice of Intent to Award, Contractor and
27 Subcontractor Responsible Contractor Certifications, Subcontractor Lists and Contractor
28 Responsibility Determination on the County website for public inspection for a period of five
29 (5) calendar days after the issuance of the Contractor Responsibility Determination.

30 * * * * * * * * *

31 SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby

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

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

Adopted this ____ day of _____, 2023.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Insert Name
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.

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