AGENDA ITEM 6
March 2, 2010
Action

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Action**: Expedited Bill 45-09, Contracts and Procurement – Amendments

Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): approve the Bill with amendments.

Expedited Bill 45-09, Contracts and Procurement - Amendments, sponsored by the Council President at the request of the County Executive was introduced on December 1. The Council held a public hearing on January 19, 2010, and the T & E Committee held worksessions on January 21 and February 4.

Background

Expedited Bill 45-09 would:

- exempt contracts for media advertisement from the Procurement Law;
- exempt contracts for experts, consultants, and investigators for use in anticipation of litigation or preparation for trial from the Procurement Law;
- expand the coverage of the Wage Requirements Law;
- amend the time for contractors to submit information under the Wage Requirements Law;
- permit the Director to investigate and verify information provided by businesses under the Local Small Business Reserve Program;
- repeal a section restricting the use of County funds by contractors and grantees to influence union organizing;
- amend the Prevailing Wage Law to require contractors to pay the prevailing wage in effect when the solicitation is published;
- permit a using department to file a dispute under the administrative dispute resolution process; and
- generally amend the County Procurement Law.

An explanation of the changes to the Procurement law that this Bill would make is at ©13-14. After the Bill was forwarded to the Council by the Executive, Assistant Chief Administrative Officer, Kathleen Boucher, on behalf of the Executive, sent a request to Council staff that an amendment to the Prevailing Wage Law be added to the Bill that would require a contractor to pay the prevailing wage in effect when the solicitation is published. See ©15. Ms.

Boucher's memorandum explains this amendment. The amendment to the Prevailing Wage Law is on lines 138-144 of the Bill at ©7.

Public hearing

The sole speaker at the public hearing on January 19, Department of General Services (DGS) Director David Dise, testified in support of the Bill on behalf of the Executive. See ©23. Mr. Dise recommended that the effective date of the Bill be changed from January 1, 2010 to April 1, 2010.

January 21 Worksession

The Committee reviewed the Bill with Executive Branch representatives and Council staff, but did not vote on it. The Committee requested Council staff to obtain additional comments from members of the local small business community on the proposed increase in the dollar limits for direct purchases and informal solicitation.

February 4 Worksession

The Committee received additional comments from members of the local small business community supporting the increase in the dollar limits for direct purchases and informal solicitation. The Committee recommended approval (3-0) of Expedited Bill 45-09 with an amendment to change the effective date to April 1, 2010.

Issues

1. What is the fiscal and economic impact of the Bill?

The OMB fiscal impact statement (©16-17) concludes that the Bill would have neither fiscal impact on County expenditures nor any material financial or economic impact on the County.

The Bill contains several different amendments to the Procurement Law that must be looked at separately to determine the Bill's fiscal or economic impact. Exempting contracts retaining expert witnesses for litigation or for media advertising from the Procurement Law should not have a fiscal impact on the County or an economic impact on local business since the Chief Administrative Officer has already approved written waivers from competition for these contracts. Requiring a surety company to be licensed to do business in Maryland would similarly have no fiscal impact on the County or economic impact on local business. Code §11B-33B, which prohibits the use of County funds to either promote or oppose union activity, is unenforceable under a recent Supreme Court decision. The repeal of the law would therefore have no fiscal impact on the County or economic impact on local business. Permitting a using department to bring a dispute with a contractor to the administrative process is also unlikely to have a significant fiscal impact on the County or an economic impact on local business.

Increasing the dollar limits for informal solicitations from between $5000 and $25,000 to between $10,000 and $100,000 would increase the number of contracts that are awarded without competition or without formal solicitation, but is unlikely to result in significantly higher prices for these small contracts. The expansion of the contracts that would be subject to the Wage Requirements Law could have a fiscal impact on the County due to higher bid prices if the County's living wage is greater than the wages normally paid by contractors who are now exempt from this requirement. However, we do not have any information to determine this. Finally, the change in the Prevailing Wage Law to freeze the prevailing wage rates on a contract at the time of bid would either have little effect or reduce bid prices on large construction contracts.

2. What is the appropriate effective date?

The Bill contains an expedited effective date of January 1, 2010. However, the Bill was not introduced until December 1, 2009 and a public hearing was held on January 19. DGS Director David Dise, at the public hearing and at the February 4 worksession, requested that the effective date be changed to April 1 to give them time to implement these changes. **Committee recommendation (3-0):** amend the effective date to April 1.

3. Should contracts for expert witnesses and media advertising be exempt from the Procurement Law?

The Chief Administrative Officer (CAO) has waived competition for these contracts pursuant to §11B-14(a)(2). Exempting these contracts from the Procurement Law would simply eliminate the need for the using department to request, and the CAO to approve, a waiver from competition for these contracts.

The retention of an expert witness for litigation must normally be done quickly to comply with Court discovery deadlines. In addition, it is often counter-productive to advertise a solicitation for an expert witness in litigation because it is likely to be prematurely revealed to the opposing parties in the case. A contract for media advertising is often on a strict time deadline. The potential market for these contracts is small and constantly dwindling. **Committee recommendation (3-0):** approve the exemption for these contracts.

4. Should the coverage of the Wage Requirements Law be expanded to cover small businesses with 10 or fewer employees?

The Bill would expand the Wage Requirements Law to cover contractors with 10 or fewer employees. The Wage Requirements Law requires a covered contractor to pay all employees working on the contract a minimum of the County's living wage, currently set at $12.95 per hour. The Department of General Services, in response to questions from Council staff, indicated that it does not have statistics on the number and dollar value of County service contracts awarded to contractors in recent years with 10 or less employees. See January 18 email from David Dise at ©18-19. These contractors would be required to pay the living wage under the Bill. These small businesses may be able to build any increase in wage rates required by the Wage Requirements Law into their bid price. Although this extension of the Wage Requirements Law is consistent with the underlying policy of the law, it may eliminate a competitive edge currently enjoyed by some small businesses. However, absent statistics on the

number and dollar value of service contracts awarded to contractors with less than 10 employees, it is difficult to determine what, if any, effect this Bill would have on these contractors. Despite this lack of information, the County does have a strong interest in requiring a living wage for all employees working on a County service contract without regard to the size of the contractor. **Committee recommendation (3-0):** approve the amendment as introduced.

5. Should the law restricting the use of County funds by contractors and grantees to influence union activity be repealed?

The United States Supreme Court held that a California law restricting the use of State funds to influence union activity was preempted by the National Labor Relations Act (NLRA) in *Chamber of Commerce v. Brown,* 128 S. Ct. 2408 (2008). The County Attorney has issued an opinion that Code §11B-33B is similarly preempted by the NLRA. See ©20-22. Council staff agrees with this opinion. **Committee recommendation (3-0):** approve the repeal of §11B-33B.

6. Should the Prevailing Wage Law be amended to establish the prevailing wage rates for the entire contract at the time of the solicitation?

The County Attorney's Office has interpreted Code §11B-33C(c) to require a contractor to pay the current prevailing wage rates throughout the contract term even if the State changes the rates during contract performance. Since large construction contracts often require several years to complete, a contractor may be unable to anticipate future changes in the prevailing wage rates throughout contract performance. This uncertainty could require contractors to put unnecessary contingencies in their bids and ultimately raise bid prices. **Committee recommendation (3-0):** approve the amendment to the Prevailing Wage Law in the Bill.

7. Should the using department be able to submit a dispute with the contractor to the administrative process?

Code §11B-35 establishes an administrative process for a contractor to submit a dispute arising under the contract to the Director of DGS. The contractor can appeal the Director's decision to the CAO. The CAO may hold a hearing and must issue a decision within a time certain. The contractor may appeal the CAO's decision to the Circuit Court and the Court of Special Appeals. Section 11B-35 does not permit the using department to file this type of dispute. The Bill would permit the using department to file a dispute arising under the contract in the same manner as the contractor and appeal to the CAO. The using department would not be authorized to appeal the CAO's decision to the Circuit Court, but could appeal an adverse decision of the Circuit Court to the Court of Special Appeals.

David Dise provided some examples of the types of disputes that a using department could submit to the Director in a January 18 email at ©18-19. **Committee recommendation (3-0):** approve the amendment as introduced.

8. Should the maximum amount for a direct purchase be increased from $5000 to $10,000 and the maximum amount for an informal solicitation increased from $25,000 to $100,000?

Expedited Bill 45-09 and implementing Executive Regulation 19-09AM would increase the maximum amount for a direct purchase from $5000 to $10,000 and increase the maximum amount of a contract awarded through an informal solicitation from $25,000 to $100,000. The Bill, at lines 13-19 reflects these changes for posting informal solicitations. Executive Regulation 19-09AM, in COMCOR §11B-00.01.04.1, would make these changes in the Procurement Regulation and also raise the maximum amount for an abbreviated formal solicitation from $100,000 to $200,000. The current exemption for direct purchases from the base used to calculate Minority, Female, and Disabled (MFD) goals would also be increased from $5000 to $10,000 by COMCOR §11B-00.01.07.1.

According to the Executive, these increases reflect the gradual increase in contract values in the marketplace over time due to inflation. The Committee, during the January 21 worksession, requested Council staff to solicit comments from local small business owners on these proposed changes. Council staff solicited comments from 16 representatives of different local businesses who attended the December 2009 Montgomery County Chamber of Commerce Small Business Meeting by email on January 26. All 8 business representatives who responded believed that this change would help local small businesses win County contracts. The responses from Judy Stephenson of OfficePro, Inc. (©24-25) and Nick Brown of Affinity Network Solutions (©26) explain the reasons for this position. **Committee recommendation (3-0):** approve the increase in these dollar thresholds as introduced.

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Expedited Bill No. 45-09
Concerning: Contracts and Procurement - Amendments
Revised: February 25, 2010 Draft No. 6
Introduced: December 1, 2009
Expires: June 1, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

(1) exempt contracts for media advertisement from the Procurement Law;
(2) exempt contracts for experts, consultants, and investigators for use in anticipation of litigation or preparation for trial from the Procurement Law;
(3) expand the coverage of the Wage Requirements Law;
(4) amend the time for contractors to submit information under the Wage Requirements Law;
(5) permit the Director to investigate and verify information provided by businesses under the Local Small Business Reserve Program;
(6) repeal a section restricting the use of County funds by contractors and grantees to influence union organizing;
(7) amend the Prevailing Wage Law to require contractors to pay the prevailing wage in effect when the solicitation is published;
(8) permit a using department to file a dispute under the administrative dispute resolution process; and
(9) generally amend the County Procurement Law.

By amending
Montgomery County Code
Chapter 11B. Contracts and Procurement
Sections 11B-4, 11B-17A, 11B-18, 11B-33A, 11B-33C, 11B-35, and 11B-67.

By repealing
Montgomery County Code
Chapter 11B. Contracts and Procurement
Section 11B-33B

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 11B-4, 11B-17A, 11B-18, 11B-33A, 11B-33C, 11B-35, 11B-64, and 11B-67 are amended and Section 11B-33B is repealed as follows:

11B-4. Exemptions.

(a) This Chapter, other than Article XII, does not apply to:

* * *

(9) obtaining the services of experts, consultants, and investigators by the County Attorney, whether in anticipation of litigation or in preparation for trial;

(10) obtaining advertising services from media sources; and

(11) any other procurement exempted from this Chapter by another law.

* * *

11B-17A. Internet Posting Requirements.

(a) Each using department must post each [planed] planned informal solicitation to purchase [of] goods, services, and construction, [valued at $5,000 to $25,000], with a value greater than $10,000 and less than $100,000, on a County web site for 5 business days before making a purchase or entering into a contract. Each purchase must be made as provided under Section 11B-13.

* * *

11B-18. Bid security.

The Director may require bid security as a condition of submitting a competitive sealed bid. The Director [determines] must determine the amount of bid security. Bid security must be:

(a) a bond provided by a surety company authorized and licensed to do business in this State;

27 * * *

28 **11B-33A. Wage requirements.**

29 * * *

30 (b) *Exceptions to coverage.* This Section does not apply to:

31 (1) [a contractor who:

32 (A) employs fewer than 10 employees when the contractor
33 submits a bid or proposal, and

34 (B) does not employ 10 or more employees at any time the
35 contract is in effect as a result of performing the contract;]

36 [(2)] a contractor who, at the time a contract is signed:

37 (A) has received less than $50,000 from the County in the most
38 recent 12-month period; and

39 (B) will be entitled to receive less than $50,000 from the
40 County under that contract in the next 12-month period;

41 [(3)]<u>(2)</u> a contract with a public entity;

42 [(4)]<u>(3)</u> a contract with a nonprofit organization that has qualified
43 for an exemption from federal income taxes under Section
44 501(c)(3) of the Internal Revenue Code;

45 [(5)]<u>(4)</u> a non-competitive contract awarded under Section 11B-14
46 if the Chief Administrative Officer finds that the performance of
47 the contract would be significantly impaired if the wage
48 requirements of this Section applied;

49 [(6)]<u>(5)</u> a contract for electricity, telephone, cable television, water,
50 sewer, or similar service delivered by a regulated public utility;

51 [(7)]<u>(6)</u> a contract for services needed immediately to prevent or
52 respond to an imminent threat to public health or safety;

53 [(8)](7) an employer to the extent that the employer is expressly
54 precluded from complying with this Section by the terms of any
55 federal or state law, contract, or grant;
56 [(9)](8) a bridge contract entered into under Section 11B-42; or
57 [(10)](9) a contract entered into under a cooperative procurement
58 under Section 11B-40.
59 The Executive by regulation may increase the amount in subsection
60 (b)[[(2)]] (1) to reflect increases in the cost of living.
61 (c) *Solicitation requirements.*
62 (1) Each bid or proposal to provide services to the County must
63 specify how the contractor and each subcontractor will comply
64 with these wage requirements, and must include sufficient funds
65 to meet these requirements. The Director, for good cause shown,
66 may permit a bidder or proposer to provide this information after
67 the bid or proposal is submitted if:
68 (A) the information is provided before the time for evaluation
69 of the bid or proposal and no later than contract award;
70 (B) the original bid or proposal price does not change; and
71 (C) the Director approves the later submission in writing.
72 (2) Each bid or proposal to provide services to the County which is
73 submitted by an organization that is exempt from coverage under
74 subsection (b)[[(4)]] (3) must specify the wage the organization
75 intends to pay to those employees who will perform direct,
76 measurable work under the contract, and any health insurance the
77 organization intends to provide to those employees. In evaluating
78 the cost of a bid or proposal the County must disregard any
79 additional cost attributable to payment of the wage requirements

80 of this Section by any organization that is exempt from coverage
81 under subsection (b)[[(4)]] (3) when compared to a bid or
82 proposal submitted by another organization that is also exempt
83 from coverage under subsection (b)[[(4)]] (3).
84 (3) A contractor must not split or subdivide a contract, pay an
85 employee through a third party, or treat an employee as a
86 subcontractor or independent contractor, to avoid the imposition
87 of any requirement under this Section.
88 * * *
89 **11B-33B. [Use of County Funds] Reserved.**
90 [(a) Purpose. Sound fiscal management requires vigilance to ensure that
91 County funds appropriated for a service contract or a grant award to
92 participate in a County-funded program are expended solely for the
93 public purpose for which they are appropriated. If County funds are
94 appropriated for a service contract or a grant award to participate in a
95 County-funded program, and those funds are instead used to encourage,
96 discourage, or otherwise influence union activity or organization, the
97 proprietary interests of the County are adversely affected. The use of
98 County funds to encourage, discourage, or otherwise influence
99 employees from union activity or organizing constitutes a misuse of
100 County resources.
101 (b) Use of Funds. County funds appropriated for a service contract or a
102 grant award to participate in a County-funded program must not be
103 encumbered or used to assist, promote, deter, or otherwise influence
104 union activity or organizing. Nothing in this Section shall be construed
105 to prohibit the expenditure of County funds appropriated for a service

106 contract or a grant award from being used to perform another act
107 required by law.
108 (c) Specific Restrictions. County funds for a service contract or a grant
109 award to participate in a County-funded program must not be used to:
110 (1) prepare, mail, or otherwise distribute materials related to union
111 activity or organizing;
112 (2) hire an attorney or a consultant to assist, promote, deter, or
113 otherwise influence union activity or organizing;
114 (3) encourage, discourage, or otherwise influence an employee from
115 taking a position on union organizing in the workplace;
116 (4) prevent or facilitate access to an employer's facilities or property
117 by a labor organization or its representatives;
118 (5) encourage or discourage a program manager, policy council,
119 committee, or community or parent group from assisting or
120 participating in a union activity or organizing.
121 (d) Enforcement.
122 (1) The Chief Administrative Officer must require each contractor or
123 grantee to:
124 (A) Certify that the contractor or grantee will not expend
125 County funds to assist, promote, deter, or otherwise
126 influence union activity or organizing and will comply
127 with the requirements of this Section.
128 (B) Keep and submit any records associated with County funds
129 received for a service contract or a grant award to
130 participate in a County-program necessary to show
131 compliance. A contractor or grantee must provide these
132 records to the County upon request.

133 (2) The Chief Administrative Officer must enforce this Section and
134 investigate any complaint of a violation.
135 (e) Penalty. A contractor or grantee must pay the County the amount of
136 funds expended in violation of this Section.]
137 * * *
138 **11B-33C. Prevailing Wage Requirements — Construction Contracts.**
139 * * *
140 (c) Payment of prevailing wage. Any contractor and subcontractor that
141 performs direct and measurable construction work on a County financed
142 construction contract must pay each employee at a rate equal to or more
143 than the prevailing wage [currently] in effect when the solicitation is
144 published for the type of work performed.
145 * * *
146 **11B-35. Contract dispute resolution.**
147 (a) *Dispute submitted.* A contractor must submit any dispute arising under
148 a contract to the Director. The using department may submit a dispute
149 arising under the contract to the Director.
150 (b) *Decision by Director.* The Director must give the contractor and the
151 using department a written decision approving or denying the dispute in
152 whole or in part within 45 days after receiving the dispute. If the
153 Director does not resolve the dispute within 45 days, the dispute is
154 denied.
155 (c) *Appeal to Chief Administrative Officer.*
156 (1) The contractor or the using department may appeal the Director's
157 [denial of] decision resolving a dispute in writing to the Chief
158 Administrative Officer within 30 days after receiving the

159 Director's decision, or if no decision is rendered, within 75 days
160 after submitting the dispute.
161 (2) The Chief Administrative Officer must decide the appeal after
162 considering any written information submitted by the Director,
163 using department, and the contractor.
164 (3) The Chief Administrative Officer may hold a hearing on the
165 appeal. The Chief Administrative Officer must complete any
166 hearing on the appeal within:
167 (A) 60 days after receiving the appeal for disputes involving
168 [under $10,000] less than $50,000;
169 (B) 90 days after receiving the appeal for disputes involving
170 between [$10,000] $50,000 and $100,000; and
171 (C) 135 days after receiving the appeal for disputes involving
172 more than $100,000.
173 (4) The Chief Administrative Officer may require the contractor and
174 the using department to [produce] provide additional information
175 about the dispute.
176 (5) The Chief Administrative Officer must give the contractor and
177 the using department a written decision approving or denying the
178 dispute in whole or in part within 30 days after receiving the
179 appeal or, if a hearing is held, within 30 days after receiving the
180 hearing officer's report. If the Chief Administrative Officer does
181 not give the contractor and using department a written decision
182 on the appeal within the applicable period, the dispute is denied.
183 (d) *Appeal to court.*
184 (1) The contractor may appeal the Chief Administrative Officer's
185 decision to the Circuit Court under the Maryland Rules.

186 (2) The contractor or the County may appeal the decision of the
187 Circuit Court to the Court of Special Appeals under State law.
188 (3) In the event of a statutory denial under subsection (b), the
189 contractor or the County may file a legal action in a court of
190 appropriate jurisdiction. That court must hear the case *de novo*.
191 (e) *Consolidation of disputes.* The Director or the Chief Administrative
192 Officer may consolidate [a contractor's] multiple disputes if:
193 (1) the disputes have common questions of law or fact; and
194 (2) the contractor or using department requests consolidation.
195 The time limits in this Section for the last dispute filed apply to any
196 consolidated dispute.
197 * * *
198 **11B-67. Procedures.**
199 * * *
200 (d) A business must affirm and provide supporting documentation to the
201 Director to show that it is a local small business as defined in Section
202 11B-65(c). The Director may investigate and verify the information
203 provided on the application.
204 * * *
205 **Sec. 2. Expedited Effective Date.**
206 The Council declares that this legislation is necessary for the immediate
207 protection of the public interest. This Act takes effect on **[[**January 1, 2010**]]** April 1,
208 2010.

LEGISLATIVE REQUEST REPORT

Bill 45-09

Contracts and Procurement – Amendments

DESCRIPTION: Amends the County procurement law to add advertising and expert witnesses to the list of transactions that are exempt from the law. Expands the coverage of the County Wage Requirements Law. Authorizes the DGS Director to investigate and verify information supplied by contractors under the Local Small Business Reserve Program. Imposes additional requirements on bid security bond entities. Repeals Section 11B-33B based on a recent Supreme Court decision which held that a similar law was preempted by federal law. Raises certain dollar thresholds, permits the County to initiate the administrative process for dispute resolution, and amends the Prevailing Wage Law.

PROBLEM: The Office of Procurement now exists as a division of the Department of General Services, necessitating some general changes to the County procurement law. During recent years, issues involving advertising and expert witnesses have shown a need for these items to be exempt from the procurement law to facilitate timely and effective acquisitions of these services. In addition, the administrative dispute resolution process is currently available only to the contractors. For the County to raise similar issues, it must file suit in court. The bill gives the County the option of using the existing administrative dispute resolution process.

GOALS AND OBJECTIVES: Update the County procurement law to meet the changing needs of the County and to enhance the effectiveness of the procurement process.

COORDINATION: Department of General Services and Office of the County Attorney.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: Not applicable.

SOURCE OF INFORMATION: David E. Dise, Director, Department of General Services
Karen L. Federman Henry, Office of the County Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Not Applicable.

BILL

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052310

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

ENCL. IN FILE

November 3, 2009

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2009 NOV -4 AM 9:30

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett
County Executive

SUBJECT: Legislation to Amend the County Procurement Law

I am transmitting for Council's consideration a bill which amends the County procurement law (Chapter 11B – Contracts and Procurement) to meet the changing needs of the County and enhance the effectiveness of the procurement process. I am also submitting copies of proposed Executive Regulations governing the procurement process which were published in the October 2009 County Register and will be transmitted to Council soon. The bill and proposed Executive Regulations reflect a joint effort of the Department of General Services (DGS) and the Office of the County Attorney (OCA). A Legislative Request Report for the bill and a Summary of Key Changes proposed in both the bill and regulations are also attached.

The bill creates two new exemptions from the procurement process for: (1) services provided by experts, consultants, and investigators; and (2) advertising services. Both types of transactions typically involve short acquisition timeframes and often are not amenable to a formal competition. The bill imposes more stringent requirements on entities that provide a bond to the County so that available remedies may be obtained more expeditiously when necessary. The bill allows the County to use the administrative dispute resolution process which is currently available only to contractors. This will expedite the process and minimize the expense for both parties when the County has a dispute with one of its contractors.

The proposed regulations would implement the changes in the bill and also make a number of other changes to the current regulations governing the procurement process. Most significantly, the proposed regulations would modify the dollar thresholds for the various types of procurement methods. These modifications are long overdue and reflect the reality of the cost of goods, services, and construction in today's marketplace. The proposed regulations would also: (1) allow negotiations to occur concurrently with more than one vendor in an effort to obtain the best goods and services for the County; (2) give authority to the DGS Director to

11

obtain the best goods and services for the County; (2) give authority to the DGS Director to approve non-competitive contracts for maintenance and support of software under certain circumstances, without needing approval from the Contract Review Committee, which can be a timely process for the using departments; and (3) expand the ability of the County to use alternate methods to certify minority-owned businesses, rather than relying solely on the State certifications.

I look forward to working with Council as it considers this package. If you have any questions or require additional information, please do not hesitate to contact DGS Director David Dise at 240-777-9910.

Attachments (5)

cc: David Dise, DGS Director
Pam Jones, Procurement Director
Karen Federman-Henry, Associate County Attorney
Kathleen Boucher, Assistant Chief Administrative Officer

Summary of Key Changes
(Montgomery County Code, Chapter 11B,
Contracts and Procurement and related Executive Regulations)

The proposed revisions to Chapter 11B of the County Code and the related Executive Regulations reflect a joint effort of the Department of General Services and the Office of the County Attorney. In the following list, a parenthetical follows the items to show which agency requested the proposed change.

Proposed Amendments to Montgomery County Code, Chapter 11B, Contracts and Procurement

Section 11B-4

Add expert witnesses and advertising to the items that are exempt from the procurement law. Currently, both items are addressed through other mechanisms—the County Attorney has a written delegation of authority from the Director of the Department of General Services to retain expert witnesses, consultants, and investigators; and the Director of the Department of General Services has issued a written waiver for departments to purchase advertising services without using the competitive procurement methods. (County Attorney and Department of General Services)

Section 11B-17A

Modify the internet posting requirements to conform to the new threshold dollar amounts for informal solicitations established in the proposed Executive Regulations. (Department of General Services)

Section 11B-18

Require a surety company that provides bid security for a competitive sealed bid to be licensed to do business in Maryland. This change facilitates enforcement in the event that the bond needs to be called and ensures that the company has a registered agent in Maryland. (County Attorney)

Section 11B-33A

Repeal language that exempts contractors with fewer than 10 employees from the Wage Law. Allow a contractor to submit wage requirement information after submitting the bid, but before consideration of the bids, and only with written approval of the Director of the Department of General Services. (Department of General Services)

Section 11B-33B

Repeal this section based on the United States Supreme Court decision (*Chamber of Commerce v. Brown*, 128 S.Ct. 2408 (2008)), in which the Court reviewed a California law that prohibited the use of state funds either to promote or oppose union activities. The Court ruled that California could not legislate a general labor policy that did not have a clear purpose of ensuring the efficient procurement of goods and services. In enacting the law under review, California had interfered with the "congressional intent to encourage free debate on issues dividing labor and management." The Supreme Court

recognized the ability to provide similar restrictions if specifically tailored to a particular job or as a legitimate response to procurement constraints or local economic needs, but the global provision did not include those limitations. As a result of the case, the draft amendment to Chapter 11B of the Montgomery County Code includes the deletion of § 11B-33B, which contains a prohibition regarding use of County funds similar to that in the California law. [A copy of the opinion is attached.] (County Attorney)

Section 11B-35

Authorize the using department to proceed through the administrative process. Currently, the using department must file a suit in court if it cannot resolve a problem with a contractor—only the contractor may initiate the administrative process under the existing law. The administrative process provides a less expensive and more timely option for resolving claims and disputes than proceeding to court each time. (County Attorney)

Section 11B-67

Authorize the Director of the Department of General Services to investigate and verify the information received in a local small business application.

OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

November 23, 2009

TO: Bob Drummer, Senior Legislative Attorney

FROM: Kathleen Boucher, Assistant Chief Administrative Officer KWB

SUBJECT: Introduction of Legislation to Amend the Procurement Law

The County Executive recently forwarded a proposed bill to the County Council for introduction. The bill would amend various provisions of the County's procurement law (Chapter 11B of the County Code) to address changes in the marketplace. I would like to request an additional change to the bill on behalf of the County Executive before it is introduced.

The County's Prevailing Wage law needs a minor change in order to correct an oversight that was not addressed during initial deliberations on the bill. Section 11B-33C(c) currently reads as follows:

> (c) *Payment of prevailing wage.* Any contractor and subcontractor that performs direct and measurable construction work on a County financed construction contract must pay each employee at a rate equal to or more than the prevailing wage *currently* (emphasis added) in effect for the type of work performed.

The word "currently" can be interpreted to mean that, as the State changes its rates (the rates under the County law are those set by the State), the rates in County contracts would change accordingly.

In an effort to avoid confusion about the rate that must be used for particular contracts, we request that you include the following amendment to Section 11B-33C(c) in the proposed bill:

> (c) *Payment of prevailing wage.* Any contractor and subcontractor that performs direct and measurable construction work on a County financed construction contract must pay each employee at a rate equal to or more than the prevailing wage [currently] in effect <u>at the time public notice of the solicitation is given</u> for the type of work performed.

If you have any questions or require additional information, please do not hesitate to contact David Dise, Director, Department of General Services, at 240-777-6191, or Karen L. Federman Henry, Division Chief, Office of the County Attorney, at 240-777-6761.

cc: David Dise
Karen Federman-Henry

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

January 15, 2010

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 JAN 19 PM 2:13

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 45-09, Contracts and Procurement - Amendments

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The proposed bill, Expedited Bill 45-09, would:

- exempt contracts for media advertisement from the Procurement Law;
- exempt contracts for experts, consultants, and investigators for use in anticipation of litigation or preparation for trial from the Procurement Law;
- expand the coverage of the Wage Requirements Law;
- amend the time for contractors to submit information under the Wage Requirements Law;
- permit the Director to investigate and verify information provided by businesses under the Local Small Business Reserve Program;
- repeal a section restricting the use of County funds by contractors and grantees to influence union organizing;
- amend the Prevailing Wage Law to require contractors to pay the prevailing wage in effect when the solicitation is published;
- permit a using department to file a dispute under the administrative dispute resolution process; and
- generally amend the County Procurement Law.

FISCAL AND ECONOMIC SUMMARY

There will be no fiscal impact on County expenditures. There is no additional administrative burden anticipated from these changes, and it should expedite the procurement process.

(16)

The bill will not have any material financial or economic impact on the County.

The following contributed to and concurred with this analysis: Bruce Meier, Office of Management and Budget, David Platt, Department of Finance, and Mary Ellen Davis-Martin, Office of Procurement.

JFB:bm

c: Kathleen Boucher, Assistant Chief Administrative Officer
John Cuff, Office of Management and Budget
David Dise, Director, Department of General Services
Mary Ellen Davis-Martin, Department of General Services
David Platt, Department of Finance

Drummer, Bob

From: Dise, David E.
Sent: Monday, January 18, 2010 2:35 PM
To: Drummer, Bob
Cc: Boucher, Kathleen; Jones, Pam; Davis-Martin, Mary Ellen; Federman-Henry, Karen
Subject: FW: answers to Council questions

Bob,

Here are answers to your questions. Karen Federman-Henry provided input and while I am unfamiliar with the Heery case I assumed you are...figured this was one lawyer talking to another. I expect Karen will address questions pertaining to this during the committee hearing.

David

1. **Sec. 11B-4**. How many contracts were awarded in the last 2 years that would now be exempted from competition? What is the total dollar amount of these contracts?

No contracts were awarded in the last 2 years that would now be exempted from competition. Currently a contract for goods/services related to potential or pending litigation, condemnation, or collective bargaining, may be awarded on a non-competitive basis, under Section 11B-14(a)(2), so there should not be a change in the number of contracts that are exempt from competition as it relates to services in anticipation of litigation or in preparation for trial.

In most instances a waiver from competitive requirements is sought since the need for advertising is typically in response to an immediate need and has a focused audience. An informal competition may be issued for advertising but this is an unusual measure and has not been recently exercised. Advertising services are required by many County departments to further their client or service outreach, or to meet other requirements. This includes the need under Federal, State, and County law for public posting or public notice. The County usually meets its requirements through the case-by-case purchase of advertising space from multiple media sources, including newspapers, magazines, professional journals, periodicals, other publications, radio, Internet, etc.; and its advertising needs are usually immediate in nature. While many advertising needs fall under the direct purchase ceiling amount of $5,000, there are also advertising needs that exceed the direct purchase ceiling amount. The selection of an advertising source is generally by necessity, determined by the target audience, and the type of ad the County needs to place to achieve its legal or operational objectives. As a result, the purchase of advertising does not lend itself to the normal procurement processes. Furthermore, due to the necessary time involved, the use of a formal or informal solicitation method is impractical, and would not be an appropriate means for best meeting the County's minimum needs for advertising.

2. **Sec. 11B-33A.** How many contracts were awarded in the last 2 years that would no longer be exempt from the Wage Requirements law? What is the total dollar amount of the contracts?

The proposed amendment removes an existing exemption for small businesses and would now require that all contractors awarded wage-eligible contracts pay their employees, at a minimum, the hourly wage stipulated by the County. Therefore, instead of decreasing the number of contracts covered under the wage law, this amendment will result in an increase in eligible contracts. Accurate figures are not available on how many more contracts this would be.

Most businesses contracting with the County under wage contracts adjust their accounting systems to provide for the increase in wage for effected employees. Since businesses build this rate into their contract pricing and pass it through to the County, there is no reason why employees of small businesses should be excluded from receiving this benefit.

3. **Sec. 11B-35.** Can you give some examples of the types of disputes the Using Department is likely to bring under the administrative process? How many of these cases have been filed in court in the last 2 years by the County since it could not use the administrative process?

(18)

As you may know, the County Attorney's Office requested the change to the Code based on its experience with the construction of the Detention Center during the early 2000's. The County had engaged in contracts with two vendors to provide project and construction management services. After the County had paid the vendors, a number of subcontractors filed claims with the County for payments they did not receive for their work. The County had no ability to use the administrative process to resolve the claims, and instead asserted its arguments as a defense to Heery's attempts to assert claims for payment. Heery challenged the County's ability to assert a counterclaim, and the case traveled through the court system to the Court of Appeals of Maryland, where the Court ruled that the administrative hearing officer had the authority to decide whether it had jurisdiction to hear the issue in the first instance. The simpler approach would have been to use the administrative process--it would have saved time and expenses.

More recently, the County could have used the administrative process with A&M Concrete regarding the Forest Glen Pedestrian Path and Bridge. In that matter, the contractor had filed a dispute regarding a concrete abutment and it alleged that it had additional claims under the contract. The County had claims for overpayment related to borrow and fill used on the project in addition to the repair of the path and bridge concrete surfaces. The parties stayed the administrative proceeding initiated by the contractor to allow for negotiations. Had the negotiations been unsuccessful, the County would have had to wait until the completion of the administrative proceeding to bring its claims and do so in court.

Allowing the County to pursue its claims in the administrative proceeding is very good idea because it allows the County to assert a counterclaim and offset its claims against the contractor's claim without having to file a separate lawsuit that most likely would be stayed until the resolution of the administrative proceeding. The amendment is drafted as permissive so that the County still has the ability to go straight to court in appropriate cases, but the ability to use the more informal process provides a valuable resource that encourages more amicable resolutions of disputes without the enormous expense that accompanies litigation in the court system.

The change in the law to permit the County to use the administrative process for disputes also would allow the County to bring an affirmative 3rd party claim against another contractor involved in the project like the construction manager (e.g., Heery). In Heery, the County was able to assert a counterclaim, but that still required initiation of the process by the contractor.

4. What are the fiscal impact and the economic impact of this Bill?

There is no negative fiscal impact of this bill. Staff in Using Departments that have administered informal procurement at the current thresholds ($5,000-$25,000) would continue to do so under new thresholds ($10,000-$100,000). While this may result in some increased workload in the departments, it will be offset by more expeditious purchasing in these lower dollar procurements. This will enable Procurement staff to apply greater effort to formal procurements and consolidating more requirements into contracts that will result in savings to the County.

With the implementation of the new ERP system, departments will execute purchases off existing contracts directly without requiring support from Procurement staff. Procurement will be able to monitor compliance with purchasing laws and regulations through the ERP reporting and controls to ensure competition is sought and LSBRP and MFD policies are enforced.

Govt

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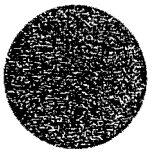


Isiah Leggett
County Executive

Leon Rodriguez
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Timothy L. Firestine
Chief Administrative Officer

David Dise, Director
Department of General Services

VIA: Leon Rodriguez
County Attorney

VIA: Marc P. Hansen Marc Hansen
Deputy County Attorney

FROM: Karen L. Federman Henry Karen L. Federman Henry
Chief, Division of Finance and Procurement

DATE: September 3, 2008

RE: Recent decision of the Supreme Court—Impact on use of County funds for union activities

In June of this year, the United States Supreme Court issued a decision in which the Court invalidated a California law that prohibited the use of State money by employers to promote or deter union activities. *Chamber of Commerce v. Brown*, 128 S. Ct. 2408 (2008). A similar provision appears in the Montgomery County Code at § 11B-33B. This Office has reviewed the County law in relation to the Supreme Court decision, and it is our opinion that §11B-33B has become unenforceable.

Issue Presented

Does federal law mandating that certain zones of labor activity be unregulated preempt a local law that prohibits the use of public funds to assist, promote, or deter union organizing?

(20)

101 Monroe Street, Third Floor, Rockville, Maryland 20850-2540
(240) 777-6700 • TTD (240) 777-2545 • FAX (240) 777-6705

Short Answer

In light of the reasoning presented in the recent Supreme Court decision, a local government cannot restrict the use of its funds in a manner that affects free debate regarding union organization.

Summary of Supreme Court Decision

California enacted a detailed law that prohibited employers from using state funds "to assist, promote, or deter union organizing." *See* Cal. Gov't Code Ann. §§ 16645-16649 (2007). Several organizations challenged the law as regulating employer speech about union organizing, which conflicts with the intent of Congress that free debate be permitted under the National Labor Relations Act. The Supreme Court focused on two sections of the California law—one section addressing grants and another involving private employers who receive more than $10,000 in State funds. *See* Cal. Gov't Code Ann. § 16645.2 and § 16645.7, respectively.

The Court acknowledged that the NLRA does not expressly preempt the law enacted by California, but that two types of implicit preemption exist. First, States must not "regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits." *Chamber of Commerce v. Brown*, 128 S. Ct. at 2412. Second, neither a State nor the National Labor Relations Board may regulate conduct that Congress intended to be unregulated and left to the control of the "free play of economic forces." *Id.* The Court found the California law to be preempted under these principles, because the provisions regulate within a zone protected and reserved for market freedom. *Id.* In doing so, the Court emphasized the policy of the NLRA to favor open debate regarding unionization, making any restriction on that discussion preempted, regardless of whether it promoted or deterred union activities. 128 S. Ct. at 2413-2414.

Comparison of California Law and Montgomery County Code

The provisions in the California law that the Supreme Court held to be unconstitutional are analogous to Montgomery County Code § 11B-33B. Where California law prohibits all recipients of state grants from using the funds "to assist, promote, or deter union organizing," the County's law states that "funds appropriated for . . . a grant award to participate in a County-funded program must not be . . . used to assist, promote, deter, or otherwise influence union activity or organizing." *Compare* Cal. Gov't Code Ann. § 16645.2(a) *with* Montg. Co. Code §11B-33B(b). Although the County law limits the scope of the prohibition to grants awarded "to participate in a County-funded program," the law also expands the prohibition to include a use of funds to "influence union activity." *Id.*

The other section of California law prohibits private employers who receive "state funds in excess of ten thousand dollars in any calendar year on account of participating in a state program" from using the funds in connection with union organizing. Cal. Gov't Code Ann. §16645.7(a). The County does not have a specific provision for private employers, nor does it identify a minimum amount of funds received to trigger application of the law. Montg. Co. Code § 11B-33B. This suggests that the County law may apply to more situations than the California law, which does not protect it from the same preemption analysis used by the Court.

The California and County statutes are sufficiently similar that the Supreme Court's analysis would almost certainly find the County's law to be preempted. The Court noted that "judicial concern has necessarily focused on the nature of the activities which the States have sought to regulate, rather than on the method of regulation adopted." *See Chamber of Commerce v. Brown*, 128 S. Ct. at 2414 (citing *Golden State Transit Corp. v. Los Angeles*, 475 U.S. 608, 614 n. 5 (1986)). Even though California did "not directly regulate noncoercive speech about unionization," the law "indirectly regulated such conduct by imposing spending restrictions on the use of state funds." *Id.* at 2414-2415. The real effect of California's law regulated noncoercive speech about unionization, which the NLRA pre-empts. *Id.* The same could be said of Montg. Co. Code § 11B-33B.

To survive the level of scrutiny that the Supreme Court recently applied, the law would need to find a safe harbor within those Supreme Court cases that have afforded latitude to laws that impinge upon free expression. Unfortunately, the law cannot do so, because it does not regulate in a field that has traditionally been subject to government control. Nor does the law seek to ensure the coherence or consistency of government speech. More importantly, the law is not narrowly tailored, but prohibits the use of County funds for a broad range of speech and speech-related activities regardless of the reason that the funds were granted or appropriated.

Conclusion

In light of the recent Supreme Court decision and the related constitutional issues, we conclude that the County law cannot survive legal scrutiny. The law is not narrowly tailored to serve a compelling, or documented, government interest. And the law cannot be justified as a mere exercise of the County's spending authority. As a result, we recommend that the County Code be amended to remove Montg. Co. Code § 11B-33B. In the meantime, §11B-33B should not be enforced.

If you have any questions or would like to discuss this matter, please do not hesitate to contact us.

Montgomery County Council Public Hearing on Bill 45-09,
Contracts and Procurement, Amendments

January 19, 2010

Good afternoon. I am David Dise, Director of Montgomery County's Department of General Services and I am here to present testimony on behalf of County Executive Isiah Leggett in support of Bill 45-09, Contracts and Procurement, Amendments.

Bill 45-09 amends the County procurement law (Chapter 11B Contracts and Procurement) to meet the changing needs of the County and enhance the effectiveness of the procurement process. The bill and related proposed Executive Regulations reflect a joint effort of the Department of General Services (DGS) and the Office of the County Attorney (OCA).

The bill creates two new exemptions from the formal procurement process for: (l) services provided by experts, consultants, and investigators; and (2) advertising services. Both types of transactions typically involve short acquisition timeframes and often are not amenable to formal competition. The bill imposes more stringent requirements on entities that provide a bond to the County so that available remedies may be obtained more expeditiously when necessary. The bill also allows the County to use the administrative dispute resolution process which is currently available only to contractors. This will expedite the process and minimize the expense for both parties when the County has a dispute with one of its contractors.

The proposed regulations would implement the changes in the bill and also make a number of other changes to the current regulations governing the procurement process. Most significantly, the proposed regulations would modify the dollar thresholds for the various types of procurement methods. These modifications are long overdue and reflect the reality of the cost of goods, services, and construction in today's marketplace. The proposed regulations would also: (1) allow negotiations to occur concurrently with more than one vendor in an effort to obtain the best goods and services for the County; (2) give authority to the DGS Director to approve non-competitive contracts for maintenance and support of software under certain circumstances, without needing approval from the Contract Review Committee, which can be a timely process for the using departments; and (3) expand the ability of the County to use alternate methods to certify minority-owned businesses, rather than relying solely on the State certifications.

The importance of Bill 45-09 and the related regulations warrant enactment at the earliest possible opportunity. However, as the Council will fully appreciate, procurement laws and regulations have an impact on numerous other county processes. For this reason, we request that the effective date of the bill be changed from January 1 to April 1. This timeframe provides for sufficient time to test and implement the changes in the County's systems and for training and communication to affected users.

The changes reflected in this procurement reform package represent a fundamental commitment by the County Executive to improve Montgomery County procurement by streamlining the processes followed to purchase goods and services, expand opportunities to and remove hurdles previously encountered by minority, female, disabled and locally owned businesses, and enable the County to operate with more efficiency and minimize expense. County Executive Leggett urges your prompt and favorable consideration.

Drummer, Bob

From: Judy Stephenson [judy.stephenson@officeproinc.com]
Sent: Thursday, January 28, 2010 1:31 PM
To: Drummer, Bob
Subject: RE: Expedited Bill 45-09, Contracts and Procurement - Amendments

Thank you for including OFFICEPRO in your request for comment on behalf of the County Council's T&E Committee.

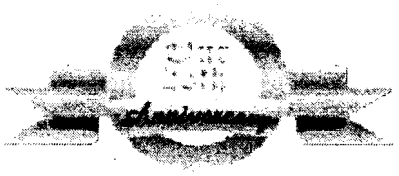
OFFICEPRO, Inc., is a software training company that has been a local small business in Montgomery County for 25 years. We feel that the County has made positive strides in encouraging the use of local small businesses in the County procurement process. We encourage the County Council to continue to expand opportunities for small businesses to provide valuable goods and services to County departments.

We feel that the proposed legislation would have a positive impact on the small business community by increasing the number of opportunities available for small businesses. In addition, decisions on these procurements are made more quickly than formal solicitations, which would have the effect of getting business moving more quickly. Intuitively, we would also expect that the requesting office would have more of an influence on the vendor selection and would hopefully exhibit less resistance to using local small businesses than is evident at the Department level.

One reason we feel comfortable with these changes is the dedication of the General Services staff in making opportunities available to local small businesses. If attention on this critical priority wavers, and if there is less oversight on how county departments are spending, the positive impacts of this change would be diminished.

Again, I appreciate the opportunity to provide input on this issue. Don't hesitate to contact me if additional information is required.

Judy Stephenson
OFFICEPRO, Inc.
8 Granite Place #26
Gaithersburg, MD 20878
301-468-3312 * 301-263-6879 (fax)



From: Drummer, Bob [mailto:Bob.Drummer@montgomerycountymd.gov]
Sent: Tuesday, January 26, 2010 11:31 AM
To: Naomi@worksitehealthandsafety.com; nick.brown@affinity-networks.com; jachirico@chevychasebank.net; dcoffey@therrienwaddell.com; teddy@herronprinting.com; info@dja-inc.com; afraser@sandglass.com; lfadden@mcccmd.com; ggodwin@mcccmd.com; Sylvia@springboardtraining.com; skramer@kramerfirmllc.com; info@digitalindustry.com; lnowak@pdr-usa.net; solomon.raphael@prudential.com; bobrodman@aol.com; ssimon@mcccmd.com; Judy Stephenson; david@membercar.com; rdyile@imageconsultinggroup.com
Cc: Dise, David E.; Taylor, Kenneth
Subject: Expedited Bill 45-09, Contracts and Procurement - Amendments

24

I am sending this request for comment on behalf of the Council's Transportation, Infrastructure, Energy, and Environment (T & E) Committee to each of you as an attendee of the County Chamber's December Small Business Committee meeting. Please feel free to share this email with other members of the small business community.

The attached Bill is currently pending before the County Council. The Bill would make a series of amendments to the County Procurement Law. The Council's T & E Committee reviewed this Bill at a worksession on January 21. The Committee would like to hear additional feedback on the Bill from members of the County's local small business community. Specifically, the Committee was interested in hearing comments about the potential positive or negative impact on local small businesses if the County increases the maximum amount for a direct purchase from $5000 to $10,000 and increases the maximum amount of a contract awarded through an informal solicitation from $25,000 to $100,000. The Bill, at lines 13-19 reflects these changes for posting informal solicitations. The Procurement regulation that would follow the Bill would formally make this change.

The T & E Committee has scheduled a second worksession on Bill 45-09 for February 4 at 2 pm in the Council's 7th Floor Hearing Room. The Committee would appreciate receiving your comments in writing on or before Monday, February 1. You may send your comments by replying to this email message. You may, of course, attend the T & E worksession on February 4.

If you have any questions, please do not hesitate to contact me.

Robert H. Drummer
Senior Legislative Attorney
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850
240-777-7895

Drummer, Bob

From: Nick Brown [Nick.Brown@affinity-networks.com]
Sent: Monday, February 01, 2010 5:30 PM
To: Drummer, Bob
Cc: Taylor, Kenneth; Dise, David E.
Subject: RE: Expedited Bill 45-09, Contracts and Procurement - Amendments

Hello Bob,

Thank you for taking the time to speak with me a short while ago, concerning my comments on the pending Bill. I appreciate you taking the time and your follow-up. As I shared with you on the telephone, I applaud the County for this effort. The increase in direct purchase from $5,000 to $10,000 and contract maximum for an informal solicitation from $25,000 to $100,000 is a tremendous win for the small businesses of the County.

I also believe that having this increase will create a more competitive environment, which is a positive, but could also possible generate some interests from the larger businesses; which may not be a positive for the smaller businesses. I don't believe that contracts should be awarded strictly based on the size of a company, but more so on the company's capabilities and ability to perform the work. But one inhibitor that I would like to caution on is that of the procurement process itself. What I mean by this is that most small businesses have very limited sales and marketing resources and therefore, one often find that the business owner is also the sales executive, the proposal writer, the researcher, the pricing analysts, etc. And on the contrary, a large business would typically have multiple teams, departments or divisions who would be involved in the solicitation response. So if the solicitation process is not streamlined, many small businesses are then faced with the challenge of wearing a thousand and one hats and the need to juggle all of them without incident. So when a solicitation comes out and if it requires us to jump through hoops just to respond, you often find that many small business owners will defer on responding, not because we do not have the capabilities to perform the work, but simply because we could not find enough time in the 24 hour day, to fulfill the enormous pre-procurement requirements.

So if we can also find a way to streamline the solicitation response process, that will aide us tremendously, and allow for a more level playing field; which I believe is one of the overall objectives.

Please let me know if you have any additional questions; I would be more than willing to discuss them with you further.

Thanks.

PLEASE NOTE: - We have recently moved our office. Please update my new telephone and fax numbers below.

Nick Brown
Affinity Network Solutions

www.affinity-networks.com
301-562-7840 - Main
240-292-1122 - Direct
888-856-2589 - eFax

Providing Quality IT Solutions to Growing Businesses!!!

From: Drummer, Bob [mailto:Bob.Drummer@montgomerycountymd.gov]
Sent: Tuesday, January 26, 2010 11:31 AM
To: Naomi@worksitehealthandsafety.com; nick.brown@affinity-networks.com; jachirico@chevychasebank.net; dcoffey@therrienwaddell.com; teddy@herronprinting.com; info@dja-inc.com; afraser@sandglass.com; lfadden@mcccmd.com; ggodwin@mcccmd.com; Sylvia@springboardtraining.com; skramer@kramerfirmllc.com; info@digitalindustry.com; lnowak@pdr-usa.net; solomon.raphael@prudential.com; bobrodman@aol.com; ssimon@mcccmd.com; judy.stephenson@officeproinc.com; david@membercar.com; rdyile@imageconsultinggroup.com
Cc: Dise, David E.; Taylor, Kenneth
Subject: Expedited Bill 45-09, Contracts and Procurement - Amendments

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If you have any questions, please do not hesitate to contact me.

Robert H. Drummer
Senior Legislative Attorney
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850
240-777-7895