

Bill No. 48-14  
Concerning: Purchases from Minority  
Owned Businesses – Procedures –  
Request for Proposals  
Revised: March 19, 2015 Draft No. 5  
Introduced: October 21, 2014  
Enacted: April 14, 2015  
Executive: April 22, 2015  
Effective: July 22, 2015  
Sunset Date: December 31, 2015  
Ch. 20, Laws of Mont. Co. 2015

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President Rice, Council Vice President Leventhal, and Councilmembers Elrich,  
Branson, Navarro, and Riemer

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**AN ACT** to:

- (1) establish an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts;
- (2) add additional tools for increasing the participation of minority owned firms in certain procurement contracts; and
- (3) generally amend the County's minority owned business purchasing program.

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-60

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

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

1           **Sec. 1. Section 11B-60 is amended as follows:**

2           **11B-60. Procedures.**

- 3           (a) By September 30 of each year, the Chief Administrative Officer must  
4           set for the following calendar year percentage goals of the dollar value  
5           of purchases subject to this Article for each socially or economically  
6           disadvantaged group. The goals must correspond to the availability of  
7           that group by source selection method and purchasing category in the  
8           relevant geographic market area as determined by the most recent report  
9           that the County Executive must submit to the County Council under  
10           Section 11B-61(b) to perform work under County contracts. The Chief  
11           Administrative Officer must set separate goals for each socially or  
12           economically disadvantaged group in the County's purchases of goods,  
13           construction, professional services, and other services. The Chief  
14           Administrative Officer must not set goals for a socially or economically  
15           disadvantaged group unless the Chief Administrative Officer determines  
16           that the value of purchases made during the previous fiscal year from  
17           that group in each category of purchases under a particular source  
18           selection method, compared with the availability of that group to  
19           perform work in that category, shows a significant under-utilization of  
20           the group.
- 21           (b) The Chief Administrative Officer must adopt procedures to certify and  
22           decertify minority owned businesses.
- 23           (c) The Office of Procurement must publicly notify businesses of  
24           prospective procurement opportunities.
- 25           (d) For those procurements where a goal has been set under subsection (a),  
26           the Office of Procurement must encourage minority owned business  
27           participation in procurement. These activities should include:

- 28 (1) distribution to potential contractors for whom a goal has not been  
 29 set of a list of potential minority owned business contractors for  
 30 whom a goal has been set with a requirement that one or more be  
 31 contacted if any work subject to a goal is being subcontracted;
- 32 (2) a provision in all solicitations for procurements in excess of  
 33 \$50,000 that requires, subject to the waiver provisions of  
 34 subsection (h), businesses for whom a goal has not been set  
 35 acting as prime contractors to subcontract to minority owned  
 36 businesses for whom a goal has been set a percentage of the total  
 37 dollar value of the contract that is consistent with the numerical  
 38 goals established under subsection (a);
- 39 (3) a requirement that a contractor for whom a goal has not been set:  
 40 (A) agree to a plan showing how the contractor proposes to  
 41 ~~meet its minority owned business procurement~~  
 42 ~~subcontracting goal; and~~
- 43 (B) identify, before a notice to proceed is issued or  
 44 performance of a contract begins, whichever occurs first,  
 45 each minority owned business that the contractor intends to  
 46 subcontract with and the projected dollar amount of each  
 47 subcontract, and promptly notify the using department of  
 48 any change in either item; [and]
- 49 (4) contract requirements that minority owned business participation  
 50 goals be maintained by prime contractors throughout the life of  
 51 the contract, including modifications and renewals, subject to the  
 52 waiver provisions of subsection (h). Contract requirements:  
 53 (A) may include obligating contractors subject to the minority  
 54 owned business procurement goals to provide in each

55 subcontract with a minority owned business a provision  
 56 requiring the use of binding arbitration to resolve disputes  
 57 between the contractor and the minority owned business  
 58 subcontractor; and

59 (B) must make failure to submit documentation showing  
 60 compliance with a minority owned business subcontracting  
 61 plan under paragraph (3) grounds for withholding any  
 62 remaining payment or imposing liquidated damages unless  
 63 failure to comply with the plan is the result of an  
 64 arbitration decision under subparagraph (A) or a waiver  
 65 granted under subsection (h). Liquidated damages under  
 66 this provision must equal the difference between all  
 67 amounts the contractor has agreed under its plan to pay  
 68 ~~minority owned business subcontractors and all amounts~~  
 69 actually paid minority owned business subcontractors  
 70 under the contract, considering any relevant waiver or  
 71 arbitrator's decision. Failure to show compliance with a  
 72 minority owned business subcontracting plan must also  
 73 result in finding the contractor non-responsible for  
 74 purposes of future procurements with the County during  
 75 the next 3 years; and

76 (5) an evaluation factor with a value of [[at least 10%, but]] no more  
 77 than [[20%,]] 10% of the total available points in a request for  
 78 proposals issued under Section 11B-10 awarding additional  
 79 points for a proposal from:

80 (A) a contractor for whom a goal has been set under subsection  
 81 (a); and

82 (B) a contractor for whom a goal has not been set who  
83 proposes to exceed the minority owned business  
84 procurement subcontracting goal established for the  
85 contract.

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87 *Approved:*

88 George Leventhal 4/16/15  
George Leventhal, President, County Council Date

89 *Approved:*

90 Isiah Leggett April 30, 2015  
Isiah Leggett, County Executive Date

91 *This is a correct copy of Council action.*

92 Linda M. Lauer 4/22/15  
Linda M. Lauer, Clerk of the Council Date