

MEMORANDUM

September 12, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney



SUBJECT: **Introduction:** Expedited Bill 42-14, Contracts and Procurement – Minority-Owned Businesses – Sunset Date - Amendments

Expedited Bill 42-14, Contracts and Procurement – Minority-Owned Businesses – Sunset Date - Amendments, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on September 16, 2014. A public hearing is tentatively scheduled for October 7 at 1:30 p.m.

Bill 42-14 would establish the deadline for submission to the Council by the Executive of a report that evaluates the minority owned business purchasing program. The Bill would also extend the sunset date for the program until December 31, 2019.

Background

The Supreme Court in *City of Richmond v. J. A. Croson Company*, 488 U.S. 469 (1989), established a framework for a local government to implement a program that provides a preference for minority owned businesses. The Court held that there must be substantial evidence of past or ongoing discrimination in order to show a compelling government interest to justify the program. The Program must be narrowly tailored to remedy the past or ongoing discrimination. For this reason, local governments that have this type of program must evaluate the continuing need for it every few years. The County Executive submitted a Disparity Study to the Council on July 1, 2014 prepared by Griffin and Strong that supports the continuation of the program.

This packet contains:

Expedited Bill 42-14
Legislative Request Report
Memo from County Executive
Fiscal and Economic Impact statement

Circle #

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Expedited Bill No. 42-14
Concerning: Contracts and Procurement
- Minority-Owned Businesses -
Sunset Date - Amendments
Revised: September 9, 2014 Draft No. 1
Introduced: September 16, 2014
Expires: March 16, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: December 31, 2019
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) establish the deadline for submission to the Council by the Executive of a report that evaluates the minority owned business purchasing program;
- 2) extend the sunset date for the County's minority owned business purchasing program; and
- 3) generally amend the County's minority owned business purchasing program.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Sections 11B-61 and 11B-64

Boldface	<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:

Sec. 1. Sections 11B-61 and 11B-64 are amended as follows:

11B-61. Reports.

* * *

(b) By July 1, [2014] 2019, the County Executive must submit a report to the County Council evaluating the need to extend the minority owned business purchasing program.

11B-64. Sunset date.

This Article is not effective after December 31, [2014] 2019.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on January 1, 2015.

Approved:

Craig L. Rice, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 42-14

Contracts and Procurement – Minority-Owned Businesses – Sunset Date - Amendments

DESCRIPTION:	Establishes the deadline for submission to the County Council of a report that evaluates the minority owned business purchasing program and extends the sunset date for the program.
PROBLEM:	The Supreme Court in <i>City of Richmond v. J. A. Croson Company</i> , 488 U.S. 469 (1989), established a framework for a local government to implement a program that provides a preference for minority owned businesses. According to the Court, there must be substantial evidence of past or ongoing discrimination in order to justify the program. For this reason, local governments that have this type of program must evaluate the continuing need for it every few years. The County Executive submitted a Disparity Study to the Council on July 1, 2014, that supports the continuation of the program.
GOALS AND OBJECTIVES:	Fair opportunities for minority owned businesses to obtain County contracts and business.
COORDINATION:	Office of the County Attorney, Department of General Services.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Not applicable.
SOURCE OF INFORMATION:	Marc P. Hansen, County Attorney 240-777-6700
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Not Applicable.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

August 12, 2014

TO: Craig Rice, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Extension of Minority-Owned Business Purchasing Program

In accordance with Section 11B-61(b) of the County Code, I transmitted to the County Council the Montgomery County Disparity Study, which evaluated the need to extend Montgomery County's Minority-Owned Business Purchasing Program.

The Disparity Study concluded that Montgomery County has "made great efforts to establish a fine-tuned procurement process that is set up to provide equal access to all firms." Nevertheless, the Disparity Study concluded that there is a "significant basis for an inference of passive participation and discrimination and/or evidence of past discrimination against minority, female, and disabled-owned businesses in Montgomery County." Therefore, work remains to be done to eradicate the under-utilization of minority-owned businesses in Montgomery County's procurement program.

Consequently, I am transmitting to the Council legislation to extend the County's Minority-Owned Business Purchasing Program. In addition, I have asked Executive staff to review other recommendations made by Griffin & Strong, the consultants who prepared the study to increase the effectiveness of the County's Minority-Owned Business Purchasing Program.

I look forward to working with the Council to pass this important legislation

cc: Timothy Firestine, Chief Administrative Officer
Marc Hansen, County Attorney
David Dise, Director, Department of General Services
Bonnie Kirkland, Assistant Chief Administrative Officer

Fiscal Impact Statement

Bill #-#, Contracts and Procurement – Minority-Owned Business - Amendments

1. Legislative Summary

The proposed legislation establishes the deadline of July 1, 2019, for submission to the County Council by the County Executive of a report that evaluates the minority-owned business purchasing program. The legislation would also extend the sunset date from December 31, 2004, to December 31, 2019, for the County's minority-owned business purchasing program.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No revenues or expenditures are expected from the proposed legislation.

The Department of General Services does not require any additional resources to extend this program for another 5 years. The current cost of this program to the County is \$251,883 per year.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See item #2.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

The legislation does not affect retiree pension or group insurance costs.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The legislation does not authorize future spending.

6. An estimate of the staff time needed to implement the bill.

Not applicable.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.

Not applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

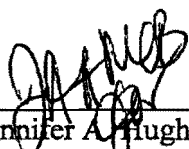
The Department of General Services does not require any additional resources to extend this program for another 5 years. The current cost of this program to the County is \$ 251,883 per year.

12. Other fiscal impacts or comments.

None

13. The following contributed to and concurred with this analysis:

Grace Denno, Office of Business Relations and Compliance, Department of General Services
Pam Jones, Office of Procurement, Department of General Services
Erika Lopez-Finn, Office of Management and Budget
Naeem Mia, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

8/8/14

Date

Economic Impact Statement
Bill #-#, Contracts and Procurement – Minority-Owned Business - Amendments

Background:

This legislation would establish the deadline of July 1, 2019, for submission to the County Council by the County Executive of a report that evaluates the minority-owned business purchasing program. The legislation would also extend the sunset date from December 31, 2014, to December 31, 2019, for the County's minority-owned business purchasing program.

1. The sources of information, assumptions, and methodologies used.

Source of information is the Office of Business Relations and Compliance, Department of General Services. Information and data in the preparation of the economic impact statement come from various annual reports from the Office of Business Relations and Compliance.

2. A description of any variable that could affect the economic impact estimates.

The variables that could affect the economic impact estimates are the total revenues/dollars subject to the Minority, Female, and Disabled Person Owned Business Program (MFD) and the revenues/dollars spent to certified MFD contractors.

Based on data provided in the MFD annual reports from fiscal year 2011 to fiscal year 2013, the average total dollars subject to MFD requirements was slightly above \$746.5 million and the average total dollars for MFD procurement was slightly above \$144.7 million or 19.4 percent.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

The extension of the minority-owned business purchasing program (MFD) would have a positive economic effect of business income to minority-owned businesses. Based on data for the past three fiscal years through FY2013, the average number of contractors was nearly 1,900 (including both prime and sub-contractors) with an average contract award over \$77,000 per contractor. The bill could also have an effect on employment by minority-owned contractors.

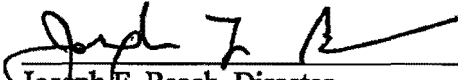
4. If a Bill is likely to have no economic impact, why is that the case?

The bill would have a positive economic impact on minority-owned businesses – see paragraph #3.

Economic Impact Statement

Bill #-#, Contracts and Procurement – Minority-Owned Business - Amendments

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Grace Denno and Alvin Boss, Office of Business Relations and Compliance, DGS; Naeem Mia, Office of Management and Budget.



Joseph F. Beach, Director
Department of Finance

7-25-14
Date