Bill No. 43-15

Concerning: Contracts and Procurement – Wage Requirements – Amendments

Revised: 1/28/2016 Draft No. 5

Introduced: October 20, 2015

Enacted: February 2, 2016

Executive: February 9, 2016

Effective: May 10, 2016

Sunset Date: None

Ch. 1 , Laws of Mont. Co. 2016

**County Council**

**For Montgomery County, Maryland**

Lead Sponsor: Councilmembers Elrich and Navarro

Co-Sponsors: Council President Leventhal and Councilmember Riemer

**AN ACT** to:

1. require certain contractors or subcontractors to submit certain payroll records to the Chief Administrative Officer;
2. specify the remedies for a violation of the wage or records requirements;
3. amend the causes for debarment or suspension; **[[**and**]]**
4. prohibit certain contractors or subcontracts from deducting certain amounts from an employee’s paycheck; and

(5) generally amend the County procurement laws.

By amending

 Montgomery County Code

Chapter 11B, Contracts and Procurement

Section 11B-33A and 11B-37

**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. [[Section]] Sections 11B-33A and 11B-37 [[is]] are amended as follows:**

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

 \* \* \*

(e) *Wage requirement*.

(1) Each covered employer must pay each employee who is not exempt under subsection (f) a gross wage of at least $10.50 per hour during the time the employee actually provides services to the County. For employees who are not paid an hourly wage, compliance with the wage requirement must be measured by dividing the amount paid to the employee each pay period by the number of hours worked each pay period.

(2) The Chief Administrative Officer must adjust the wage rate required under this subsection, effective July 1 of each year, by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington- Baltimore metropolitan area, or any successor index, for the previous calendar year. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of 5 cents, and must publish the amount of this adjustment not later than March 1 of each year. Each adjustment under this paragraph applies to any contract covered by this Section which:

 (A) is in effect when the adjustment takes effect, or

 (B) takes effect during the next 12 months.

(3) A covered employer must not make any deduction for any item necessary for an employee to perform the essential job function unless the deduction is permitted by Executive regulation.

 \* \* \*

(f) *Exceptions to wage requirement*. The wage requirements of this Section do not apply to any employee:

(1) who performs no measurable work related to any contract with the County;

(2) who participates in a government-operated or -sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this Section; or

(3) who participates for no longer than 120 days in any calendar year in a government-operated or -sponsored summer youth employment program**[[**; or

(4) for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement**]]**.

(g) *Wage reporting*.

(1) The Director must insert into each contract subject to this Section a provision that requires a covered employer to submit to the Director a report (on a schedule determined by the Director) showing a summary of the wages paid to its employees, who performed direct, measurable work under the contract, by gender and race.

(2) Each contractor and subcontractor must submit a complete copy of its payroll records for work performed on a contract covered by this Section to the Chief Administrative Officer or a designee within 14 days after the end of each **[[**payroll period**]]** quarter.

(3) The payroll records must contain a statement signed by the contractor or subcontractor certifying that:

 (A) the payroll records are correct; and

(B) the wage rates paid are not less than those required by this Section.

(4) Each payroll record must include:

(A) the name, address, and telephone number of the contractor or subcontractor;

 (B) the name and location of the job; and

 (C) each employee’s:

 (i) name;

 (ii) current home address, unless previously reported;

 (iii) daily straight time and overtime hours;

(iv) total straight time and overtime hours for the payroll period;

 (v) rate of pay;

 (vi) fringe benefits by type and amount;

 (vii) gross wages; and

(viii) the employer and the employee share of any health insurance premium provided to the employee.

(5) Each contractor or subcontractor must:

(A) keep payroll records covering work performed on a contract covered by this Section for not less than 5 years after the work is completed; and

(B) subject to reasonable notice, permit the Chief Administrative Officer or a designee to inspect the payroll records at any reasonable time and as often as the Chief Administrative Officer deems necessary.

(6) The Chief Administrative Officer or a designee must make payroll records obtained from contractors or subcontractors under this Section available for public inspection during regular business hours for 5 years after the Chief Administrative Officer receives the records, unless disclosure of a record is prohibited under federal or state law.

 **[**(2)**]** (7) \* \* \*

 **[**(3)**]** (8) \* \* \*

 **[**(4)**]** (9) \* \* \*

 **[**(5)**]** (10) \* \* \*

 \* \* \*

 (i) *Enforcement*.

(1) The Chief Administrative Officer must require each covered employer to:

(A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;

(B) keep and submit any records necessary to show compliance; and

(C) conspicuously post notices informing employees of the requirements of this Section, and send a copy of each such notice to the Chief Administrative Officer’s designee.

(2) The Chief Administrative Officer or a designee must **[**enforce this Section,**]** perform random or regular audits **[**and any other audit necessary to do so,**]** and investigate any complaint of a violation of this Section. If the Director determines that a provision of this Section has been violated, the Director must issue a written decision, including imposing appropriate sanctions, and may withhold from payment due the contractor, pending a final decision, an amount sufficient to:

**[[**(i)**]]** (A) pay each employee of the contractor or subcontractor the full amount of wages due under this Section; **[[**and**]]**

**[[**(ii)**]]** (B) satisfy a liability of a contractor for liquidated damages as provided in this Section; and

(C) reimburse the County for the cost of the audit.

(3) An employer must not discharge or otherwise retaliate against an employee for asserting any right under this Section or filing a complaint of violation. Any retaliation is subject to all sanctions for noncompliance with this Section.

(4) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage requirements of this Section.

(5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify:

(A) that liquidated damages may be imposed on the contractor in the event that a **[**a**]** covered employer violates the wage reporting or payroll records reporting requirement in subsection (g), including for providing late or inaccurate payroll records; and

 (B) that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation for asserting any right under this Section.

 (6) If a contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under this Section, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records or reports, and may postpone processing payments due under the contract or under an agreement to finance the contract.

**11B-37. Debarment or suspension.**

 \* \* \*

(c) *Causes for debarment or suspension*. The causes for debarment or suspension may include:

(1) conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

(2) conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, kickbacks or any other offense indicating a lack of business integrity;

(3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) violation of County contract provisions of a character which is regarded by the Director to be so serious as to justify debarment action. These provisions may include:

(A) deliberate failure without good cause to perform under the specifications or within the time limit provided in the contract; or

(B) a record of failure to perform or of unsatisfactory performance under the provisions of one or more contracts; however, failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor are not a basis for debarment;

(5) violation of the wage requirements in Section 11B-33A;

(6) any other serious cause the Director determines to be so compelling as to affect the competency or integrity of a potential contractor, including debarment by another public entity; or

**[**(6)**]** (7) violation of the ethical standards set forth in this Chapter or Chapter 19A.

(d) *Decision*. The Director must issue a written decision to debar or suspend. The decision must:

 (1) state the reasons for the action taken; and

(2) inform the debarred or suspended person of the right to an administrative appeal, after the decision becomes final, to the Circuit Court under the Maryland Rules.

(e) The Director must send a copy of the decision to the person involved and the Chief Administrative Officer who may approve, revise, or remand the decision. If the Chief Administrative Officer takes no action within 5 working days, the decision of the Director becomes final.

(f) *Appeal to court.* The debarred or suspended person may appeal the decision to debar or suspend to the Circuit Court under the Maryland Rules governing administrative appeals. The debarred or suspended person and the County may appeal the decision of the Circuit Court to the Court of Special Appeals.

*Approved:*

/s/ 2/3/16

Nancy Floreen, President, County Council Date

*Approved:*

/s/ 2/9/16

Isiah Leggett, County Executive Date

*This is a correct copy of Council action.*

/s/ 2/10/16

Linda M. Lauer, Clerk of the Council Date