Bill No. 5-15
Concerning: Contracts and Procurement – Health Insurance Preference
Revised: September 17, 2015 Draft No. 5
Introduced: February 3, 2015
Enacted: September 15, 2015
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Navarro

AN ACT to:

(1) create a preference in the procurement of services by the County for a small business that provides health insurance for its employees;
(2) require the County Executive to adopt a regulation implementing the preference for a small business that provides health insurance for its employees; and
(2) generally amend the law governing the County's procurement of services.

By adding
Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XVII
Section 11B-77

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. Article XVII is added to Chapter 11B as follows:

Article XVII. Preference for a Small Business With Health Insurance.

11B-77. Preference for a Small Business With Health Insurance.

(a) *Definitions.* In this Article the following terms have the following meanings:

[[*Business With Health Insurance* means a business that provides health insurance for each employee who provides services to the County under a contract.]]

Certified Small Business With Health Insurance means a business certified by the Director as meeting the standards established by regulation for a Small Business With Health Insurance.

Contract means a contract for procurement services subject to the Wage Requirements Law in Section 11B-33A.

Director means the Director of the Department of Health and Human Services or the Director's designee.

Health insurance means insurance coverage [[that is part of an employer benefit package]] that pays for medical expenses incurred by an employee and an employee's family either by reimbursing the employee or by paying the care provider directly and provides the minimum essential health benefits required under the Patient Protection and Affordable Care Act, 26 U.S.C. §5000A, as amended.

Health insurance evaluation factor means an evaluation factor in a request for proposals that gives an offeror credit for being a certified Business With Health Insurance.

Percentage price preference means the percent by which a responsive bid from a responsible bidder who is a certified Business With Health

27 Insurance may exceed the lowest responsive bid submitted by a
28 responsible bidder who is not a certified Business With Health Insurance.
29 *Small Business With Health Insurance* means a business that:
30 (1) has 50 or fewer full-time equivalent employees; and
31 (2) provides an employer benefit package that includes health
32 insurance for each employee who provides services to the County
33 under a contract; or
34 (3) demonstrates that each employee who provides services to the
35 County has health insurance from another source.
36 (b) *Regulation.* The County Executive must adopt a regulation under
37 Method 2 that **[[**includes**]]** establishes:
38 (1) an application process for a business to be certified as a Small
39 Business With Health Insurance;
40 (2) standards for a business to meet to be certified as a Small Business
41 With Health Insurance;
42 (3) the amount of a percentage price preference for a Small Business
43 With Health Insurance under a solicitation for competitive sealed
44 bidding; and
45 (4) a Small Business With Health Insurance evaluation factor for use
46 in a request for proposals.
47 (c) *Certification.* The Director must certify a business that meets the
48 standards established by regulation as a Small Business With Health
49 Insurance. A false statement on an application for certification is a Class
50 A violation.
51 (d) *Role of Office of Procurement and Department of Health and Human*
52 *Services.*

53 (1) The Office of Procurement must review all specifications of each
54 using department [[and each cooperative purchasing agreement]]
55 to assure compliance with this Section, appropriate use of a
56 percentage price preference or an evaluation factor, and
57 consistency among using departments procuring similar services.
58 (2) The Department of Health and Human Services must:
59 (A) operate the certification process;
60 (B) permit pre-certification as a Small Business With Health
61 Insurance; and
62 (C) maintain a list of businesses that have been certified as a
63 Small Business With Health Insurance.
64 (e) *Denial or revocation of certification.* The Director may refuse to certify
65 a business under this Section, and may suspend or revoke a certification
66 issued under this Section, after a hearing for which reasonable notice has
67 been given, if the business or applicant does not meet the standards for
68 certification as a Small Business With Health Insurance.
69 (f) *Notice and opportunity for hearing.*
70 (1) *Notice.* After finding that one or more grounds for denial,
71 suspension, or revocation of a certification could exist, the Director
72 may serve a written notice on the business or applicant in person
73 or by regular mail, postage prepaid, addressed to the person's last
74 known address as maintained in the Director's file. Service on that
75 person by mail is effective 3 days after mailing. The written notice
76 must, at a minimum:
77 (A) state that the Director has found that the business or
78 applicant may be subject to denial, suspension, or
79 revocation of the certification;

80 (B) identify the specific grounds for the Director's findings; and
81 (C) set a date for a hearing on denial of the application or
82 suspension or revocation of the certification.
83 (2) *Hearing.* The Director or a designee may conduct the hearing. At
84 the hearing, the business or applicant may present evidence and
85 witnesses to refute the grounds cited by the Director for denying
86 the application or suspending or revoking the certification, and the
87 County and any other person may submit relevant evidence. The
88 relevant records of the [[Department]] Office are part of the
89 hearing record. The person conducting the hearing must render a
90 decision in writing, giving the reasons for the decision. That
91 decision is final, subject to judicial review under the Maryland
92 Rules for review of administrative decisions in the Circuit Court
93 and the Court of Special Appeals.
94 (3) *Failure to appear.* A business or applicant who after notice does
95 not appear at a hearing waives the right to a hearing and consents
96 to the action that the Director proposed in the notice. The Director
97 may deny the application or suspend or revoke the certification as
98 proposed in the notice.
99 (g) *Appeals.* Any person aggrieved by the denial, suspension, or revocation
100 of any certification under this Section may seek judicial review under the
101 Maryland Rules for review of administrative decisions in the Circuit
102 Court and the Court of Special Appeals.
103 (h) *Report by Office of Procurement.* The Director of the Office of
104 Procurement, after consulting with the Director of Health and Human
105 Services, must submit a report to the County Council and County

106 Executive by September 30 each year after implementation of this
107 Section for the prior fiscal year. The report should include:
108 (1) the dollar value of services purchased from a certified Small
109 Business With Health Insurance;
110 (2) the dollar value of services purchased from a business that is not a
111 certified Small Business With Health Insurance;
112 (3) to the extent ascertainable, the additional cost of any contracts
113 awarded to a certified Small Business With Health Insurance under
114 a percentage price preference;
115 (4) a summary of applications for certification as a Small Business
116 With Health Insurance made during the year, including the results
117 of each application;
118 (5) a list of certified Small Businesses With Health Insurance;
119 (6) suggested legislative or administrative changes; and
120 (7) any other relevant information.
121 **Sec. 2. Effective Date.**
122 This Act takes effect on July 1, 2016 and applies to any solicitation issued on
123 or after July 1, 2016.

124

125 *Approved:*

126 George Leventhal 9/15/2015

George Leventhal, President, County Council — Date

127 *Approved:*

128

Isiah Leggett, County Executive — Date

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

130

Linda M. Lauer, Clerk of the Council — Date