GO Item 1
June 30, 2016
Worksession

MEMORANDUM

June 28, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 20-16, Purchases from Minority Owned Businesses – Enforcement of Subcontracting Plan - Request for Proposals - Amendments

Bill 20-16, Purchases from Minority Owned Businesses – Enforcement of Subcontracting Plan – Request for Proposals - Amendments, sponsored by Lead Sponsor Councilmember Rice and Co-Sponsors Councilmembers Leventhal, Navarro, Vice President Berliner, Councilmembers Elrich, Hucker, Katz, Riemer and Council President Floreen, was introduced on May 17, 2016. A public hearing was held on June 21.

Background

Bill 20-16 would clarify the method of awarding points for an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts and require a liquidated damages clause for failing to comply with a minority owned business subcontracting plan.

Bill 48-14, Purchases from Minority Owned Businesses – Procedures – Request for Proposals, was enacted on April 14, 2015 and signed into law on April 22, 2015. Bill 48-14 authorized the addition of an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts. The Director of the Office of Procurement is authorized to establish an evaluation factor in a request for proposals that would award additional points for a proposal from:

(1) a contractor for whom a goal has been set under the MFD program; and
(2) a contractor for whom a goal has not been set who proposes to exceed the minority owned business procurement subcontracting goal established for the contract.

The implementation of Bill 48-14 by the Executive has resulted in situations where a non-MFD prime contractor who agrees to subcontract more than the minimum MFD subcontracting goal can earn more points under this evaluation factor than an MFD prime contractor. This interpretation of the law by the Executive conflicts with the underlying purpose of Bill 48-14 – to increase the number of MFD primes awarded these contracts. Bill 20-16 would clarify the intent of this provision by requiring an MFD prime to be awarded the maximum number of points for this evaluation factor and a non-MFD prime who agrees to subcontract more than the minimum MFD subcontracting goal less than the maximum points.

Bill 20-16 would also require a contract with an MFD subcontracting goal to also include a liquidated damages clause for a contractor who fails to comply with an approved MFD subcontracting plan without a waiver. Under current law, a liquidated damages clause is optional.

The Purpose of Bill 48-14

Montgomery County has operated a voluntary affirmative action plan in its procurement policies based upon the race and gender of the owners of the business for more than 20 years (MFD Program). During this time, the MFD Program has included a requirement that a prime contractor on most County contracts subcontract a certain percentage of the work to MFD firms. Since the United States Supreme Court decided *City of Richmond v. Croson,* 488 US 469 (1989), a state or local government preference in contracting based upon race or gender must satisfy the Court's *strict scrutiny* test to survive a challenge under the Equal Protection Clause of the 14th Amendment. Under the strict scrutiny test, the government must show that the affirmative action program is based upon a compelling governmental interest and is narrowly tailored to achieve this interest. Eliminating the effects of past discrimination based upon race and gender in government contracting is a compelling governmental interest.

In May 2013, the County hired Griffin & Strong, PC (GSPC) to conduct a comprehensive disparity study. The goal of the study was to determine if there exists a statistically significant disparity between the number of available MFD firms in the relevant market and the number of MFD firms that have received work on County contracts. GSPC conducted a quantitative analysis of the County's contracting history between July 1, 2007 and June 30, 2012. This analysis started with a determination of the relevant geographic market area for each of the 4 categories of procurement contracts - Construction, Professional Services, Services, and Goods. GSPC concluded that the relevant market was the geographic area where 75-85% of the firms contracting with the County are located. Within each relevant market, GSPC compared the percentage of firms in each race, ethnicity, gender, and disability group that are qualified, willing and able to perform services used by the County with the percentage of dollars spent by the County on firms in each MFD group. GSPC used this analysis to determine if each MFD group was underutilized or overutilized in each relevant market. GSPC looked at both prime contractor utilization and subcontractor utilization.

GSPC further analyzed the results to determine if the underutilization observed was statistically significant and if the underutilization could be attributed to the MFD status of the firms through both a regression analysis that controlled for other possible explanations, such as business size or experience, and anecdotal evidence. The complete report can be found at: http://www.montgomerycountymd.gov/cat/services/disparitystudy.html.

GSPC found a statistically significant underutilization of some MFD groups in each procurement category that can be attributed to discrimination in the marketplace. Although GSPC did not find a statistically significant underutilization for all MFD groups in each category, they did find that African American owned firms were underutilized in each procurement category each year of the study. GSPC concluded that the "evidence suggests that absent affirmative measures the County would be a passive participant in a pattern of exclusion of MFD firms." See Report, page 235.

The principal component of the County's MFD Program for the past 20 years has been a subcontracting requirement. The County operates a Local Small Business Reserve Program that results in awards of prime contracts to local small businesses[1], but the MFD program has concentrated on subcontracting goals. DGS found that in FY14, MFD firms submitted only 32% of the bids, but received an award 57% of the time they bid. In contrast, non-MFD firms submitted 68% of the bids, but received an award only 42% of the time they bid. Here are the FY14 statistics from DGS:

FY14 prime minority contractors responses and awards

	# of bids/proposals submitted	% of bids/proposals submitted	# of Awards	% of awards resulting from submitted
Non-MFD	**208**	**68% (208/305)**	**88**	**42% (88/208)**
African American	25	8%	7	28%
Hispanic American	28	9%	19	68%
Asian American	8	3%	5	63%
Native American	0	0%	0	0%
Female	27	9%	16	59%
Persons with Disabilities	9	3%	4	44%
Total MFD	**97**	**32%**	**51**	**57% (51/97)**
Total	**305**	**100%**	**139**	**47%**

Therefore, part of the remedy for the statistical underutilization may be increasing the number of MFD firms that bid on County contracts. Bill 48-14 was enacted as an additional tool that could be used to directly increase the number of MFD firms bidding and ultimately winning awards of County contracts. Bill 20-16 would encourage MFD firms to bid on these contracts by ensuring that an MFD firm would receive the maximum points for this evaluation factor.

Public Hearing

Procurement Director Cherri Branson, testifying on behalf of the Executive, opposed the Bill. See ©7-9. Ms. Branson was concerned that the Bill could limit opportunities for small MFD firms to gain work as subcontractors by favoring MFD prime contractors. MFD business owners, Fekadu Megersa (©10), Steve DeVoe (©11-12), and Toby Studley (©13), each opposed the Bill because it would reduce the incentive for MFD prime contractors to subcontract to MFD businesses. Juan Holcomb, representing the Minority Business Economic Council echoed these concerns.

[1] Many local small businesses are also MFD firms. A small business reserve program based only on the size of the firm is often considered a race and gender neutral program that can increase the utilization of MFD businesses without satisfying the strict scrutiny test.

Issues

1. The County Attorney Bill Review.

The County Attorney's Office bill review memorandum is at ©14-17. The County Attorney opined that the requirement in the Bill that an MFD prime receive the maximum points, although not free from doubt, does not violate the Equal Protection Clause of the United States Constitution. Council staff agrees with this analysis.

The County Attorney raised some concern about requiring the Director to withhold payments and impose liquidated damages against a contractor who fails to comply with an approved MFD subcontracting plan. Council staff believes that the proper construction of this provision is for the Director to withhold payments in order to satisfy the liquidated damages that are assessed against the contractor, not in addition to imposing liquidated damages. The policy of this provision is discussed in greater detail below.

2. Should the Bill mandate the imposition of liquidated damages against a contractor who fails to comply with an approved MFD subcontracting plan without a waiver?

Most County contracts require the prime contractor to subcontract a certain percentage of the work to one or more MFD firms. The prime contractor must submit a subcontracting plan showing the MFD subcontractors and the portion of the work to be subcontracted before the notice of award is issued. Problems arise when the prime contractor does not comply with an approved MFD subcontracting plan. Current law authorizes the Procurement Director to withhold any remaining payment or assess liquidated damages unless the contractor receives a waiver or successfully defends a claim for non-payment from the MFD subcontractor in arbitration. The Bill would permit the Director to withhold payment **and** impose liquidated damages. The current law requires the liquidated damages to be based upon the difference between the money the prime contractor agreed to pay to MFD subcontractors and the amounts actually paid. Current law also authorizes the Director to find a contractor who has failed to comply with an approved subcontracting plan non-responsible for future procurements during the next 3 years.

Council staff met with the Director and representatives of the County Attorney's Office to discuss this Bill. The Director has not imposed liquidated damages or found a contractor non-responsible under this provision in recent years. Instead, Procurement staff has generally succeeded in increasing compliance by threatening to impose sanctions against contractors who are not complying with a subcontracting plan and helping them find MFD subcontractors. The general conditions applicable to all procurement contracts with an MFD subcontracting goal already include the required liquidated damages provision. Therefore, the change on line 61 of Bill 20-16 would not change current enforcement procedures. The Committee may want to discuss the need for other amendments to the procurement law that may assist the Director to enforce these provisions. **Council staff recommendation:** amend the Bill to remove the change of "or" to "and" as unnecessary.

3. Should an MFD prime always receive more points than a non-MFD prime?

The Director implemented the authority granted in Bill 48-14 by amending the general conditions for contracts. The formula used by Procurement to calculate points for the MFD evaluation factor is shown on ©18-20. Assuming a total of 100 points, the MFD evaluation factor is worth 10 points. An MFD prime receives 5 points for being a certified MFD. The MFD prime receives an additional 5 points if they submit an MFD subcontracting plan that meets the MFD subcontracting goal for a total of 10 points. An MFD prime who submits a subcontracting plan with less than the goal receives a percentage of the second 5 points and a total of less than the maximum 10 points. A non-MFD prime receives 0 points as a prime, but can receive the maximum 10 points for submitting a subcontracting plan that exceeds the MFD goal by as little as 1 percent. For example, a non-MFD prime with a subcontracting plan of 16% on a contract that has a 15% goal receives the maximum 10 points.

Director Branson, in her testimony at ©7-9, included a chart showing that the implementation of Bill 48-14 has significantly increased the percentage of work subcontracted to MFD firms. It appears that the extra incentives for non-MFD primes to submit an MFD subcontracting plan that exceeds the contract goal has succeeded in motivating this result. This would explain the testimony from the owners of small MFD firms who have succeeded in obtaining additional subcontracting work since the implementation of Bill 48-14. However, this was not the fundamental goal of Bill 48-14. The County's MFD program has been concentrated on encouraging prime contractors to share a portion of the work with MFD firms for many years. Based upon the GSPC study, the County has made significant progress in this area. However, Bill 48-14 was designed to encourage MFD firms to bid as a prime contractor by awarding them additional points under an RFP. The formula created by Procurement can result in a non-MFD prime receiving more points under the MFD evaluation factor than an MFD prime based upon the MFD subcontracting plan.

Bill 20-16 would require that an MFD prime receive the maximum points and a non-MFD prime who submits an MFD subcontracting plan that exceeds the contract goal with less than the maximum points. The Bill would therefore require the Director to change the formula used to calculate points for this factor. Bill 48-14 gave the Director discretion to create a formula that awarded the maximum points to an MFD prime as long as additional points were awarded to both an MFD prime and a non-MFD prime who exceeds the contract goals. There are different ways to create a formula that both encourages MFD primes to submit an offer and still encourages a non-MFD prime to exceed the contract goals. An alternative to defining the formula in the law would be to require the Executive to adopt a method 2 regulation establishing a formula to implement this provision. This would give the Director some discretion in re-calculating the formula, but still require Council approval of the regulation establishing the formula. **Council staff recommendation:** amend the Bill to require the Executive to adopt a method 2 regulation establishing the formula. This could be accomplished with the following amendment:

Amend lines 75-83 as follows:

(5) an evaluation factor with a value of no more than 10% of the total available points in a request for proposals issued under Section 11B-10 awarding [additional points for a proposal from] <u>additional points for a proposal from</u>:

(A) [[the maximum points for]] a contractor for whom a goal has been set under subsection (a); and

(B) [[less than the maximum points for]] a contractor for whom a goal has not been set who proposes to exceed the minority owned business procurement subcontracting goal established for the contract.

The Executive must adopt a method 2 regulation defining how the points awarded under paragraph (5) must be calculated.

This packet contains:

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Bill No. 20-16
Concerning: Purchases from Minority Owned Businesses – Enforcement of Subcontracting Plan - Request for Proposals - Amendments
Revised: May 24, 2016 Draft No. 4
Introduced: May 17, 2016
Enacted: November 17, 2017
Executive:
Effective:
Sunset Date: None
Ch. _____, Laws of Mont. Co.

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Rice
Co-Sponsors: Councilmembers Leventhal, Navarro, Vice President Berliner, Councilmembers Elrich, Hucker, Katz, Riemer, and Council President Floreen

AN ACT to:
(1) clarify the method of awarding points for an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts;
(2) require a liquidated damages clause for failing to comply with an approved minority owned subcontracting plan; 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

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 11B-60 is amended as follows:

11B-60. Procedures.

(a) By September 30 of each year, the Chief Administrative Officer must set for the following calendar year percentage goals of the dollar value of purchases subject to this Article for each socially or economically disadvantaged group. The goals must correspond to the availability of that group by source selection method and purchasing category in the relevant geographic market area as determined by the most recent report that the County Executive must submit to the County Council under Section 11B-61(b) to perform work under County contracts. The Chief Administrative Officer must set separate goals for each socially or economically disadvantaged group in the County's purchases of goods, construction, professional services, and other services. The Chief Administrative Officer must not set goals for a socially or economically disadvantaged group unless the Chief Administrative Officer determines that the value of purchases made during the previous fiscal year from that group in each category of purchases under a particular source selection method, compared with the availability of that group to perform work in that category, shows a significant under-utilization of the group.

(b) The Chief Administrative Officer must adopt procedures to certify and decertify minority owned businesses.

(c) The Office of Procurement must publicly notify businesses of prospective procurement opportunities.

(d) For those procurements where a goal has been set under subsection (a), the Office of Procurement must encourage minority owned business participation in procurement. These activities should include:

(1) distribution to potential contractors for whom a goal has not been set of a list of potential minority owned business contractors for whom a goal has been set with a requirement that one or more be contacted if any work subject to a goal is being subcontracted;

(2) a provision in all solicitations for procurements in excess of $50,000 that requires, subject to the waiver provisions of subsection (h), businesses for whom a goal has not been set acting as prime contractors to subcontract to minority owned businesses for whom a goal has been set a percentage of the total dollar value of the contract that is consistent with the numerical goals established under subsection (a);

(3) a requirement that a contractor for whom a goal has not been set:

(A) agree to a plan showing how the contractor proposes to meet its minority owned business procurement subcontracting goal; and

(B) identify, before a notice to proceed is issued or performance of a contract begins, whichever occurs first, each minority owned business that the contractor intends to subcontract with and the projected dollar amount of each subcontract, and promptly notify the using department of any change in either item;

(4) contract requirements that minority owned business participation goals be maintained by prime contractors throughout the life of the contract, including modifications and renewals, subject to the waiver provisions of subsection (h). Contract requirements:

(A) may include obligating contractors subject to the minority owned business procurement goals to provide in each subcontract with a minority owned business a provision requiring the use of binding arbitration to resolve disputes between the contractor and the minority owned business subcontractor; and

(B) must make failure to submit documentation showing compliance with a minority owned business subcontracting plan under paragraph (3) grounds for withholding any remaining payment [or] <u>and</u> imposing liquidated damages unless failure to comply with the plan is the result of an arbitration decision under subparagraph (A) or a waiver granted under subsection (h). Liquidated damages under this provision must equal the difference between all amounts the contractor has agreed under its plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors under the contract, considering any relevant waiver or arbitrator's decision. Failure to show compliance with a minority owned business subcontracting plan must also result in finding the contractor non-responsible for purposes of future procurements with the County during the next 3 years; and

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

(A) <u>the maximum points for</u> a contractor for whom a goal has been set under subsection (a); and

(B) less than the maximum points for a contractor for whom a goal has not been set who proposes to exceed the minority owned business procurement subcontracting goal established for the contract.

*   *   *

Sec. 2. Transition.

The amendments in Section 1 apply to any contract awarded after the date this Act takes effect.

Approved:

____
Nancy Floreen, 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

Bill 20-16
Purchases from Minority Owned Businesses – Enforcement of Subcontracting Plan - Request for Proposals - Amendments

DESCRIPTION:	Bill 20-16 would clarify the method of awarding points for an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts and require a liquidated damages clause for failing to comply with a minority owned business subcontracting plan.
PROBLEM:	The implementation of Bill 48-14 by the Executive has resulted in situations where a non-MFD prime contractor who agrees to subcontract more than the minimum MFD subcontracting goal can earn more points under this evaluation factor than an MFD prime contractor. This interpretation of the law by the Executive conflicts with the underlying purpose of Bill 48-14 – to increase the number of MFD primes awarded these contracts.
GOALS AND OBJECTIVES:	The goal is to increase the number of contracts awarded to MFD primes to remedy the effects of past discrimination.
COORDINATION:	Procurement, County Attorney
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Contractual penalties.

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TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT

On Bill 20-16 MFD Enforcement - Subcontracting Plan

June 21, 2016

Good afternoon Council President Floreen and members of the County Council.

I am Cherri Branson, Director of Procurement. I am pleased to be here on behalf of County Executive Isiah Leggett to testify on Bill 20-16, Purchases from Minority Owned Businesses – Enforcement of Subcontracting Plan – RFPs - Amendments, introduced on May 17, 2016 by Councilmember Rice and Councilmember Leventhal.

Mr. Leggett supports the Council's efforts to increase access to County contracting opportunities for businesses owned by Minority, Female and Disabled Persons (MFD). He is concerned, however, that the proposed change to the current system of rewards will have unintended consequences. Under Bill 20-16, an MFD will receive 10 points for being an MFD. There will be no need or incentive for it to subcontract to achieve additional points. Further, a Non-MFD firm will not be able to reach full points regardless of the number of MFD subcontractors it may use.

In 2014, a Montgomery County Disparity Study conducted by Griffin and Strong, P.C. and commissioned by the County Executive found that "**a business owner's race, ethnicity, gender and disability status has a statistically significant and adverse effect on ...securing public contracting and subcontracting opportunities** relative to Non-MFD business owners".

In response to those findings, the Council passed and the Executive signed Bill 48-14. It went into effect on July 22, 2015. Bill 48-14 established a point system to evaluate subcontracting of MFD and Non-MFD businesses bidding on Request for Proposals (RFPs). The language of Bill 48-14 expressly permitted the award of 10% of the total available points in an RFP to both an MFD contractor and a Non-MFD contractor. A non-MFD, however, may only obtain maximum points **by "propos[ing] to exceed the minority owned business procurement subcontracting goal."**

As we approach the one year anniversary of Bill 48-14, we want to share the data we have gathered on the bill's implementation. The attached chart includes pre- and post- Bill 48-14 data. While Bill 48-14 is new, and the data is limited, the early data is promising. Bill 48-14 increased MFD subcontractors' opportunities, in the following ways:

1. On average, each offer contained more than 1 MFD subcontractor. Before Bill 48-14, MFD subcontractors were rare. There was less than 1 subcontractor in every 5 offers.
2. After Bill 48-14, MFD plans submitted by the offerors usually exceeded the category goals. Exceeding the goals did not happen often before Bill 48-14.

3. After Bill 48-14, 50% of contract awards went to MFD prime contractors. Before Bill 48-14, MFD prime contractors were awarded about 20% of contracts.

One concern that Bill 20-16 attempts to address is that under Bill 48-14, a Non-MFD prime contractor can earn more points under the evaluation factor than an MFD prime contractor. This is so because an MFD firm receives 5 points for being an MFD firm while a Non-MFD prime contractor that exceeds the MFD subcontracting goal will receive 10 points, in essence being rewarded for embracing the county's attempt to address disparity in contracting opportunities. But to be clear, this outcome will only occur if the MFD prime contractor does not subcontract with any MFD firms. But, in fact, the MFD contractor can receive additional points (up to 5 additional points for a total of 10) if it meets just half of the MFD subcontracting goal, also being rewarded for embracing MFD subcontracting.

Another unintended consequence of Bill 20-16 is that it may have a negative economic and business impact on smaller MFD businesses whose main avenue for obtaining government contracting opportunities is through subcontracting. These MFD companies may have fewer subcontracting opportunities from both the MFD and non-MFD prime contractors, because Bill 20-16 removes or reduces the incentives for the MFD and non-MFD prime contractors to bring MFD subcontractors along when they submit their proposals.

At this point, the data on Bill 48-14 does not indicate that MFD prime contractors are harmed. Additionally, the data does not indicate that MFD subcontractors are harmed. To the contrary, our current data indicates that MFD prime contractors and subcontractors have obtained more opportunities under Bill 48-14. It may be best to allow sufficient time to determine whether Bill 48-14, working in conjunction with other procurement reforms have increased contracting and subcontracting opportunities for prime and subcontractors in the MFD business community.

Montgomery County is the proud home for a diverse, vibrant, minority-majority population. Our vendor base must reflect this diversity. The County Executive applauds the Council's recognition of the need to support the MFD business community and has made strengthening the County's MFD program a priority. We look forward to continuing our collaboration on this issue of vital importance.

	FY15 (Oct-May) before 48-14	FY16 (Oct – May) after 48-14	Notes
Number of RFPs issued	44	25	
Total offerors (primes who submitted a proposal)	163	84	
MFD offerors (MFD primes who submitted a proposal)	46 (= 28%)	26 (= 31%)	
Resulting contract awards	10 (total value $8.5m)	4 (total value $55.8m)	
Contracts awarded to MFD prime	2 (= 20%) total value $546K	2 (= 50%) total value $50m	More MFD primes got the contract awards after Bill 48-14 implementation, the $ amount is significantly higher.
Total MFD sub opportunities submitted by primes	26 (average less than 1 sub out of every 5 offerors = 16%)	89 (average more than 1 sub every offeror =106%)	Bill 48-14 brought many more MFD subcontractors when the primes submitted their proposals

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Montgomery County Council
Third Floor Hearing Room
100 Maryland Avenue
Rockville, MD 20850

Fekadu Megersa,
President and CEO
NextGen IT Solutions
2 Valleyfield Court
Silver Spring, MD 2016

June 21, 2016 @ 1:30 pm – 3:30 pm EDT

My name is Fekadu Megersa, I am the owner of NextGen IT Solutions providing IT and supporting services based in Silver Spring, MD.

I am a participant in the County's Minority Business Program (MFD Program) as an African American firm, certified by the Maryland Department of Transportation that is recognized by Montgomery County.

Currently I am a minority subcontractor on the County's MCCATs contract working with two prime contractors (MFD prime, other non-MFD prime) through the MFD program that gave me the opportunity to compete for the work I am now doing.

This opportunity would not be made possible if the MFD office did not have legislation in place (current bill 48-14) to provide the incentive for the primes to engage me and seek the participation and support of minority businesses, be that prime minority or non-minority.

Bill 20-16 would remove any possible incentive for a prime (minority or non-minority) to do business with a minority business and widen the gap of opportunity for minority businesses to sustain and economically empower in building their business and communities.

To this end bill 20-16 would having the devastating affects with the MFD program moving forward:

- Lack the incentive to engage the participation of minority firms
- Established goals set by the County would be severely challenged or not met
- Only minority primes would benefit by not given the incentive to subcontract to minority firms.
- A perception of bias in fair distribution of points award over non-minority primes
- Comes into questions as to best practice of procurement regulations: discrimination and evaluations being fair and reasonable
- Some will benefit while many may not have opportunity to do business with the County in any subcontracting capacity.
- A reflection of the County's old way of doing business with minority firms by continuing ways to create barriers.

Bill 20-16 will further distant the minority business communities in gaining access in seeking opportunities in doing business with the County for which this County cannot risk. Above all, the life of minority business owners and families depends on MFD.

Finally, I would like thank the Office of Montgomery County Business Relations and Compliance, specially Alvin Boss, for guiding and encouraging me to approach prime contractors of MCCAT and LCAT.

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TPSI
Tiger Personnel Services, Inc.
Temporary & Permanent Staffing

8730 Georgia Avenue, Suite 412
Silver Spring, Maryland 20910
Phone: 301-578-8585
Fax: 301-578-8698
URL: www.tigerpersonnelinc.com

June 21, 2016

TO: Montgomery County Council
FROM: Steve DeVoe, VP
SUBJECT: Bill 20-16, Minority Owned Business Procurement Amendments

SUMMARY
Tiger Personnel Services opposes the proposed changes to the Minority Owned Business (MFD) subcontracting plan through amendments. We believe the amendments will have a detrimental/chilling effect on MFD participation in/by Montgomery County MFD businesses.

Who We Are:
Tiger Personnel Services, Inc. (TPSI) is a Montgomery County based, minority (African-American), woman-owned small business. We are headquartered in Silver Spring, Maryland and have been an active business in the County since our inception in August 2000. We feel compelled to respond to the proposed changes to the MFD Plan since we are a company that the current Plan seeks to assist. In addition to being certified as a Minority Business Enterprise (MBE) by the Maryland Department of Transportation, we are certified as a LSBRP by Montgomery County – CVRS Vendor ID is TGR08014.

As a Montgomery County MFD we have benefited from the current program. On two occasions, we were included as a MFD in the Subtracting Plan of the Prime contractor that won a County Construction bid. On both occasions the Primes responded to our marketing efforts by adding us as a subcontractor to their bid to the County. Without the requirement of presenting qualified MFDs in their plan, we are sure that we would have missed those opportunities since they had not used us in previous construction projects. (On both occasions, we were told to ensure that our certifications were up-to-date so they could get credit on their Plan). Because of the effectiveness of the current program, the County has opened a much needed revenue stream for minority owned businesses as well as created opportunities for us to add more jobs to the County tax base.

From the prospective of this Montgomery County small business, the proposed amendments to the current Subcontracting Plan would have a "chilling" effect on MFD participation rather than act as encouragement for more participation.

1) MFD firms have the opportunity to earn the maximum amount of points under the current bidding structure. For example, there is no hindrance from an MFD firm in formulating a Subcontracting Plan that incorporates other MFD firms. MFD firms should communicate with each other and establish business relationships for the benefit of all. This lack of association

each other and establish business relationships for the benefit of all. This lack of association between businesses hinders the business partnerships that "grow" both companies. The State of Maryland has promoted a Plan for many years that require Minority Owned firms to add subcontracting plans for certain procurements. Their program succeeded because the minority firms learned that to get the maximum amount of points, they had to involve other MBE firms with/in their bid. With a little more education to Montgomery County MFD firms, they will recognize that they can win more contracts by adding other MFD firms with their bids.

2) Also, the County should not discourage Primes who exceed County suggested MFD participation goals by limiting points allowable under the current Plan. To provide evaluation criteria that allows "less than maximum points" for a contractor for whom a goal has not been set, who proposes to exceed the minority owned business procurement subcontracting goal established for the contract, may appear on its face to benefit MFD firms. However, history has taught us that Primes who surpass requirements bring many more MFDs to the table of business opportunity. Primes should be encouraged and applauded who go beyond the call of duty and submit Plans that exhibit excellent MFD participation. If Primes do not receive the points as currently established, many less MFDs are brought to the table of opportunity.

Sincerely,

Steve DeVoe

Steve DeVoe
Vice President, Contract Administrator
Tiger Personnel Services, Inc.
(301) 578-8585, ext 203
sdevoe@tigerpersonnelinc.com

SPS
CONSULTING

June 21, 2016

To: County Council

Subject Bill 20-16

Purchases from Minority Owned Businesses-Enforcement of Subcontracting Plan-Requests for Proposal

My name is Toby Studley and I am the owner of an MFD certified firm here in Rockville. I have been in business for 20 years and I feel it is important for Minority firms to sub to other minority firms as often as possible.

Encouraging minority owned firms to subcontract to other minority owned firms will benefit the community by creating more jobs, which in turn will create more consumer spending and ultimately help drive the local economy. In addition, subcontracting to minority owned firms will bring people together to share ideas and become a more cohesive community.

Successful companies did not become that way all by themselves. We became that way through thoughtful people helping us and giving us opportunities to grow. I want to help companies the same way a few took the time to help me. All too often, it has been my experience that few companies want to take the time to help one another. I feel that if a requirement and/or incentive is put in place for minority firms to sub to other minority firms not only will it help everyone succeed but also the prime will see the personal satisfaction from the sincere appreciation of the recipient firm!!

There is enough business out here for everyone and if people would take the time to help one another by meeting or exceeding the subcontracting goals set for minority firms regardless if there is an incentive to the prime contractor or not, I think the primes would benefit in ways they would never have imagined.

Please reconsider requiring MFD Primes to sub to other minority owned companies. I think we should be required to share our good fortune with other minority owned companies.

Thanks for your time,

Toby

1901 Research Boulevard, Suite 320 • Rockville, MD 20850 • (301) 652-9112 Phone • (301) 652-9114 Fax

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

June 16, 2016

To: Cherri Branson, Director
Office of Procurement

From: Edward B. Lattner EBL

Re: **Bill 20-16, Procurement – Purchases from Minority Owned Businesses-Enforcement of Subcontractors Plan-Request for Proposals-Amendments**

Summary

This Office is forwarding to you its comments concerning Bill 20-16. The Bill's long title states that it will: (a) clarify the method of awarding points for an "evaluation factor" as part of determining the highest-ranked offeror in a request for proposals ("RFP"), to increase the participation of minority-owned firms as contractors, as opposed to subcontractors and (b) require a liquidated damages clause in a contract arising from an RFP, for failure by the contractor to comply with an approved minority-owned business subcontracting plan. We believe this Bill is valid and lawful, although we have concerns about the mandatory imposition of liquidated damages.

As to the first aspect of the Bill, the courts have upheld governmental affirmative action programs establishing an MFD (minority, female, disabled) participation goal in the face of challenges under the U.S. Constitution's Equal Protection Clause. In all these programs, a non-MFD prime contractor could still successfully compete and meet the participation goal through MFD subcontracting. Bill 20-16 would require that the County award more points to a prime contractor (for whom a goal has been set under the MFD program) than to a prime contractor (for whom a goal has not been set), even if that contractor proposes to exceed the participation goal through MFD subcontracting. Although we are unware of any case upholding such a program, we believe that the Bill's use of MBE status as a "plus factor," in the context of individualized consideration of each proposal and in the absence of inflexible quotas, although not entirely free from doubt, will pass constitutional muster.

As to the second aspect of the Bill, we are concerned that the mandated use of liquidated damages, in addition to withholding any remaining payment owed to the contractor, may be

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Street, Rockville, Maryland 20850-2580

viewed as an impermissible penalty.

MFD Participation

Bill 48-14, which preceded Bill 20-16 and has been enacted into law, stated that the activities through which the Office of Procurement "must" encourage MFD participation in procurement "should" include, in an RFP: "an evaluation factor with a value of no more that 10% of the total available points" awarded to: "(A) a contractor for whom [an MFD] goal has been set, and (B) a contractor for whom [an MFD] goal has not been set who proposes to exceed the MFD goal established for the contract." Bill 20-16 now seeks to amend that legislation to require that an MFD prime contractor receive the "maximum points," while a non-MFD prime contractor receive "less than the maximum points," for this evaluation factor.

The U.S. Supreme Court has held that legislation establishing benefits or incentives based on race-based classifications, including those involving affirmative action programs related to government contracting with MFD businesses, must be subjected to strict scrutiny by the courts. In other words, these classifications are constitutional only if they further a **compelling government interest** and are **narrowly tailored** measures to meet that interest. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 2097 (1995); *City of Richmond v. J. A. Croson*, 488 U.S. 469 (1989). The Supreme Court went on to state the "the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification, and that the single standard of review for a racial classification should be strict scrutiny." *Adarand*, 515 U.S. at 222; *Croson*, 488 U.S. at 493. While the Court has established that strict scrutiny is the appropriate standard to apply when reviewing legislation that establishes race-based classifications, and has highlighted the need to analyze the legislation's constitutionality with "skepticism," "consistency," and "congruence," the actual application of the standard to a given set of facts has been less certain. *See id.*

The County has established a compelling governmental interest to support the use of MBE status in the award of contracts. The County Council seeks to remedy a compelling government interest related to past historic discrimination, and the underutilization of MFD firms as prime contractors or subcontractors in County construction, professional services, services, and goods contracts. The May 13, 2016, memorandum that introduces the Bill notes that the Griffin & Strong, P.C., disparity study found a statistically significant underutilization of some, but not all, MFD groups in each contract category, and that African American owned firms were underutilized in each contract category. The disparity study supports that a compelling government interest exists regarding the MFD groups for whom it established a participation goal in each contract category.

In determining whether legislation is narrowly tailored, courts will, among other factors, consider whether it places an unfair burden on innocent third parties, *Grutter*, 539 U.S. at 324 & 341, and it is here that we have some concerns. A court may view the Bill as placing an unfair burden on a contractor for whom a goal has not been set under the MFD program (but proposes to exceed the participation goal through MFD subcontracting), because the Bill would require the County to award the maximum number of points to a contractor for whom a goal has been set. For example, a Hispanic owned construction firm (for whom a goal has not been set in the construction category) that proposes to exceed the participation goal through MFD subcontracting cannot earn as many points as afemale owned construction firm (for whom a goal has been set) with no proposed MFD subcontracting. We are unware of any case upholding such a program.

Nonetheless, we believe the Bill is constitutional because it uses MFD status as a "plus factor," within the larger context of individualized consideration of each proposal on a variety of factors. MFD status amounts to only 10% of the available points to be awarded by the County. Thus, the County will award the vast majority of the available points without regard to MFD status. Thus the Bill retains flexibility to ensure that each proposal is not evaluated in a way that makes a contractor's race or ethnicity the defining feature of its proposal. *Grutter v. Bollinger*, 539 U.S. 306, 333-43 (2003). We note, however, that the Court's approval of using race as a "plus factor" occurred in the context of an educational setting where diversity was viewed as an enhancement of the education experience offered by the university. Therefore, it is uncertain how this "plus factor" might be analyzed by the courts in the context of a procurement. Accordingly, our conclusion that Bill 20-16 is constitutional is not free from doubt.

Penalty Provision

The Bill also seeks to clarify that a contract must include language that makes the contractor's failure to submit documentation showing its compliance with a minority-owned business subcontracting plan grounds for **both**: withholding any remaining payment, "and" (rather than "or") imposing liquidated damages. We are concerned that the imposition of liquidated damages, when combined with withholding payment, will lead a court to conclude that the liquidated damages are an impermissible penalty. Therefore, we recommend that the Bill retain the flexibility provided under current law.

Conclusion

If you have any questions regarding this memorandum, please let us know.

cc: Bonnie Kirkland, Office of the County Executive

Marc P. Hansen, County Attorney
Robert H. Drummer, Legislative Attorney
Richard Melnick, Associate County Attorney
Terrilyn Brooks, Associate County Attorney

Evaluation Criteria- Additional MFD Points in RFPs

I. Overview

Montgomery County Code, §§ 11B-57 through 11B-64, as amended by Bill 48-14, requires that a minority-owned business (MFD) be encouraged to participate in a procurement where a MFD percentage goal has been set under §11B-60 (a).

Consistent with this law, the Office of Procurement has included an evaluation factor that awards additional points (up to ten percent (10%) of the total available points assigned to the Request For Proposals), to an offeror that: (1) has a County-recognized MFD certification; or (2) has no County-recognized MFD certification, but through subcontracting with MFD certified firms, exceeds the set, aggregate fiscal year (FY) percentage goal related to the applicable purchasing category (i.e. professional services; nonprofessional services; goods; or construction) (referenced herein as "set percentage purchasing category goal" or "participation goal").

Additional points will be awarded in the following manner:

(a) to an offeror that has a County-recognized MFD certification- Additional points, up to a total of 10% of the evaluation points, may be awarded for both (i) its MFD status, and (ii) its MFD subcontractor participation, as shown in its MFD Performance Plan, in proportion to the applicable set percentage purchasing category goal, regardless of whether the participation exceeds the set percentage goal for MFD participation; or,

(b) to an offeror that has no County-recognized MFD certification- Additional points, equal to 10% of the evaluation points, may be awarded if the MFD Performance Plan submitted by Offeror with its proposal shows that its MFD subcontractor participation **exceeds** the set percentage purchasing category goal.

Consistent with, and subject to, the methodology noted in (a) and (b) above, an Offeror may receive additional MFD points only if it has a County-recognized MFD certification or submits an MFD Performance Plan with its proposal that supports the additional MFD points. For a list of County--recognized MFD certifications, please see: www.montgomerycountymd.gov/mfd.

II. Calculation Criteria

The calculation for additional evaluation points awarded under the above-stated criteria for this solicitation is as follows:

1. Additional points must not exceed 10% of the total evaluation points.

2. For a listing of current FY set percentage purchasing category goals, please refer to www.montgomerycountymd.gov/mfd.

III. Eligible Categories

A. <u>If the Offeror has a County-recognized MFD certification</u>, it will receive additional points that equal 5% (.05) of the total evaluation points, as well as additional points based on its MFD subcontracting participation percentage compared to the set percentage purchasing category goal (regardless of whether the Offeror's MFD participation exceeds the set percentage purchasing category goal), in proportion to the total evaluation points. In this circumstance, additional points are calculated as follow:

1) Add points equal to 5% of the evaluation points (for having a County-recognized MFD certification).
2) Add further additional points based on the MFD subcontracting percentage submitted by the Offeror, divided by the set percentage purchasing category goal, the result of which is then divided by 10, to determine the percentage of the total evaluation points to award.
3) Total additional points is the sum of items 1) and 2) above, up to a maximum of 10% of the total evaluation points.

B. <u>If the Offeror has no County-recognized MFD certification</u>, it will receive no points for its own MFD participation. However, if that Offeror's MFD subcontracting participation percentage exceeds the set percentage purchasing category goal, it will receive additional points equal to 10% (.10) of the total evaluation points. The Offeror will not receive additional points if its MFD subcontracting percentage does not exceed the set percentage purchasing category goal.

IV. Examples

The following scenarios may provide helpful illustrations of the process. For each scenario, assume the solicitation is for professional services. In the professional services category, the goal for MFD participation is 15%. Additionally, assume that the total possible evaluation points are 100, so that the10% maximum for additional MFD points corresponds to no more than 10 total possible points.

- **<u>Scenario 1</u>**: The Offeror has a County-recognized MFD certification, and submitted an MFD subcontracting plan with 16% (.16) participation (which exceeds the set 15% (.15) MFD participation goal).
  Result: **<u>10</u>** additional points are awarded.
  <u>Calculations</u>: <u>5</u> [=.05 x 100] additional points for the Offeror having a County-recognized MFD certification, and <u>10</u> points for exceeding the set participation goal: [5 + 10 =] 15 points. Accordingly, the Offeror would receive the maximum allowable 10 additional points.

- **<u>Scenario 2</u>**: The Offeror has a County-recognized MFD certification, and submitted an MFD subcontracting plan with 6% (.06) participation (which is less than the 15% (.15) set participation goal).
  <u>Result</u>: **<u>9</u>** additional points are awarded.
  <u>Calculations</u>: <u>5</u> [=.05 x 100] additional points for the Offeror having a County-recognized MFD certification. Because its MFD subcontracting percentage partially meets the set participation goal, the Offeror receives [(.06 ÷ .15) = .40 ÷ 10 = .040 x 100 evaluation points=] <u>4</u> additional points. The Offeror receives a combined [5 +4=] 9 additional points.

- **Scenario 3**: The Offeror has a County-recognized MFD certification, and submitted no MFD subcontracting plan.
  Result: **5** additional points are awarded.
  Calculations: 5 [=.05 x 100] additional points for the Offeror having a County-recognized MFD certification, and 0 points for MFD subcontracting.

- **Scenario 4**: The Offeror has no County-recognized MFD certification, and submitted an MFD plan with 20% (.20) MFD subcontracting participation (which exceeds the 15% (.15) set participation goal).
  Result: **10** additional points are awarded.
  Calculations: Although the Offeror has no County-recognized MFD certification, it receives 10 additional points because its MFD subcontracting exceeds the 15% set percentage purchasing category goal.

- **Scenario 5**: The Offeror has no County-recognized MFD certification, and submitted an MFD plan with 13% (.13) minority subcontracting participation (which is less than the 15% (.15) set percentage purchasing category goal).
  Result: **0** additional points are awarded.
  Calculations: Offeror has no County-recognized MFD certification, and its proposal does not exceed the 15% (.15) set percentage participation goal. It receives 0 additional points.

- **Scenario 6**: The Offeror has no County-recognized MFD certification, and either submitted: (i) no MFD plan, or (ii) an MFD plan with a percentage of MFD participation that does not exceed the set percentage purchasing category goal.
  Result: **0** additional points are awarded. (See "Calculations" in Scenario 5 above).

Scenario: (with MFD goal of 15%, and total of 100 points)	**Prime: MFD**	**Prime: Non-MFD**
Submits MFD plan with 16% participation	5 points for Prime being MFD 10 points for exceeding MFD goal	10 points for exceeding MFD goal
	Total: 10 points (Ceiling)	**Total: 10 points**
Submits MFD plan with 6% participation	5 points for Prime being MFD 4 points for partial MFD participation	0 points for NOT exceeding MFD participation goal
	Total: 9 points	**Total: 0 points**
Submits NO MFD plan, or an MFD plan with 0% to 15% participation	5 points for Prime being MFD	0 points for NOT exceeding MFD participation goal
	Total: 5 points	**Total: 0 points**

V. Waiver Provisions

Prior to Contract Award, the Director, Office of Procurement, or his/her designee, may determine whether an offeror has demonstrated good faith efforts to meet the subcontracting requirements under County law. The Director, upon a finding that the Offeror demonstrated good faith efforts to comply with the subcontracting requirements, has the authority to waive, in whole or in part, the MFD requirement in order to permit the Offeror to remain eligible for a Contract Award.

Fiscal Impact Statement
Bill 20-16 - & Purchases from Minority Owned Businesses—
Enforcement of Subcontracting Plan- Request for Proposals- Amendments

1. **Legislative Summary**

   The proposed legislation will clarify the method for awarding points for an evaluation factor in a request for proposals to increase the participation of minority owned first in certain procurement contracts and require a liquidated damages clause for failing to comply with a minority owned business subcontracting 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.**

   The proposed legislation does not influence revenues or expenditures.

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

   The proposed legislation does not influence revenues or expenditures.

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

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

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

   The proposed legislation does not affect the County's IT systems or ERP.

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

   The proposed legislation does not authorize future spending.

7. **An estimate of the staff time needed to implement the bill.**

   The Office of Procurement estimates that no additional staff time is necessary to implement the proposed legislation. Procurement staff will review request for proposal documentation and ensure that non-MFD contractors cannot be awarded more points than certified MDF contractors during the bidding process. This evaluation can be absorbed with existing staff.

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

Not applicable. See #7.

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

The proposed legislation does not need additional appropriation and has no fiscal impact.

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

Not applicable. See #9.

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

Not applicable. See #9.

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

The proposed legislation states that non-MFD contractors cannot earn more points under a request for proposal than a certified MFD contractor. Procurement staff will review request for proposal documentation and ensure that non-MFD contractors cannot be awarded more points than certified MDF contractors during the bidding process. This evaluation can be absorbed with existing staff.

13. Other fiscal impacts or comments.

None

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

Pam Jones, Office of Procurement
Grace Denno, Office of Procurement
Erika Lopez-Finn, Office of Management and Budget

Jennifer A. Hughes
Jennifer A. Hughes, Director
Office of Management and Budget

6/3/16
Date

Economic Impact Statement
Bill 20-16, Purchases from Minority Owned Businesses – Enforcement of Subcontracting Plan – Request for Proposals – Amendments

Background:

This legislation would:

- clarify the method of awarding points for an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts, and
- require a liquidated damages clause for failing to comply with an approved minority owner subcontracting plan.

Essentially, Bill 20-16 would clarify the implementation of Bill 48-14 by the Executive that has resulted in situations where a non-MFD (Minority, Female, and Disabled groups) prime contractor who agrees to subcontract more than the minimum MFP subcontracting goal can earn more points under this evaluation factor than an MFD prime contractor. According to the memorandum prepared by County Council staff dated May 13, 2016, Bill 20-16 would require an MFD prime to be awarded the maximum number of points for this evaluation factor and a non-MFD prime who agrees to subcontract more than the minimum MFD subcontracting goals less than the maximum points.

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

Source of information include the Office of Procurement (Procurement). Data provided by Procurement compares data between October 2014 and May 2015 (FY2015) before the enactment of Bill 48-14 and data between October 2015 and May 2016 (FY2016) after enactment of Bill 48-14. Data include the following:

- Number of Requests for Proposals (RFPs) issued,
- Total number of offerors or primes who submitted a proposal,
- Number of MFD offerors, i.e., the number of MFDs who submitted a proposal,
- Number of awards,
- Number of contracts awarded to MFD prime, and
- Total MFD sub opportunities submitted by primes.

According to the data, "more MFD primes were awarded contracts after Bill 48-14 implementation." Secondly, Bill 48-14 increased the number of MFD subcontractors when the primes submitted proposals. Data from Procurement show that the number of subcontractors increased from 26 (or 1 subcontractor out of every 5 offerors) prior to Bill 48-14, to 89 subcontractors for every offeror after the enactment of Bill 48-14.

Bill 20-16 focuses on prime contractors rather than subcontractors and prevents non-MFD contractors from receiving five award points and requires an MFD offeror the full allotment of points of 10 and reverses non-MFD offeror full allotment of points.

Economic Impact Statement
Bill 20-16, Purchases from Minority Owned Businesses – Enforcement of Subcontracting Plan – Request for Proposals – Amendments

The unintended consequence of Bill 20-16 is that it may have a negative economic and business impact on smaller MFD businesses whose main opportunity for receiving government contracts is through sub-contracting. These MFD subcontractors will have less subcontracting opportunities from both the MFD and non-MFD prime contractors, because Bill 20-16 removes or at least reduces the incentives for the MFD and non-MFD prime contractors to include MFD subcontractors when they submit their proposals.

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

   The variable that could affect the economic impact estimates are the number of awards to MFD prime and MFD subcontractors under Bill 20-16 compared to the number of awards under Bill 48-14. At this time, it is difficult to measure the impact from Bill 20-16 and the difference between current law and the proposed legislation.

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

   It is uncertain at this time without specific data to determine whether Bill 20-16 would have a positive or negative impact on employment, spending, investment, and incomes in the County.

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

   It is uncertain whether Bill 20-16 would have an economic impact. Please see paragraph #3.

5. **The following contributed to or concurred with this analysis:** David Platt and Robert Hagedoorn, Finance; Grace Denno, Procurement.

Joseph F. Beach, Director
Department of Finance

6/16/16
Date