

Bill No. 61-14
Concerning: Contracts and Procurement
- Local Business Subcontracting
Program
Revised: May 2, 2016 Draft No. 4
Introduced: November 25, 2014
Enacted: May 17, 2016
Executive: May 25, 2016
Effective: January 1, 2017
Sunset Date: None
Ch. 16, Laws of Mont. Co. 2016

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN ACT to:

- (1) increase the participation of local businesses in certain large County procurement contracts;
- (2) establish a subcontracting goal for local businesses in certain large County procurement contracts;
- (3) establish a Local Business Subcontracting Program for certain County procurement contracts; and
- (4) generally amend the law governing County procurement.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XVII. Local Business Subcontracting Program
Sections 11B-78 through 11B-83

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:

1 Sec. 1. Sections 11B-78, 11B-79, 11B-80, 11B-81, 11B-82, and 11B-83 are
2 added as follows:

3 Article XVII. Local Business Subcontracting Program

4 11B-78. Definitions.

5 In this Section, the following words have the meanings indicated:

6 Broker means a person that provides goods or services (other than real estate,
7 investment, or insurance sales) on a pass-through basis as follows:

8 (1) a supplier of goods who:

9 (A) does not own, operate, or maintain a place of business in
10 which goods of the general character required under the
11 contract are kept in stock in the regular course of
12 business;

13 (B) does not regularly assume physical custody or possession
14 of goods of comparable character to those offered to the
15 County, or

16 (C) exclusively acts as a middleman in the sale of goods to
17 the County; or

18 (2) a supplier of services who does not regularly maintain the
19 capability, capacity, training, experience, and applicable
20 regulatory licensing to directly perform the principal tasks of a
21 contract with the County and must provide the principal tasks
22 through a subcontract with a third party.

23 Contract Award means the delivery by the County of a fully executed contract
24 to an offeror.

25 High Dollar Value Contract means an initial Contract Award that is estimated
26 to exceed \$10 million.

27 Local Business means a for-profit business other than a broker that has its
 28 principal place of business in the County, as further defined by Executive
 29 Regulation, and that is certified by the Director as a Local Business under the
 30 provisions of this Article.

31 Local Business Program Manager means a person designated by the Director
 32 to administer and monitor the Local Business Subcontracting Program.

33 Local Business Subcontractor means a Local Business that enters into a
 34 contract with a Contractor to perform work related to a High Dollar Value
 35 Contract for that Contractor.

36 **11B-79. Goals; applicability.**

37 (a) Local Business Subcontracting Goals. This subsection establishes the
 38 following Local Small Business subcontracting goals:

- 39 (1) at least 10% of the contract dollars awarded for each High Dollar
 40 Value Contract should be awarded to a Local Business; and
 41 (2) at least 10% of the total dollar value of all High Dollar Value
 42 Contracts in the aggregate should be awarded to Local
 43 Businesses.

44 (b) Applicability. The Local Business Subcontracting Program goals apply
 45 to each High Dollar Value Contract except:

- 46 (1) grants or appropriations under Section 11B-14 (a) (3) and (4);
 47 (2) cooperative procurements under Section 11B-40;
 48 (3) public entity contracts under Section 11B-41;
 49 (4) emergency procurements under Section 11B-16; or
 50 (5) bridge contracts, under Section 11B-42, if the Director
 51 determines in writing that compliance with this Article is
 52 impractical or is outweighed by the benefits to the County of
 53 entering into a bridge contract.

54 **11B-80. Procedures.**

55 (a) The Director, at the time of a solicitation, must publish notification to
56 businesses when the solicitation may result in a High Dollar Value
57 Contract.

58 (b) The Director must encourage Local Business participation in applicable
59 High Dollar Value Contract opportunities by:

60 (1) adding a provision in a solicitation for a High Dollar Value
61 Contract that requires a Contractor to exercise good faith in its
62 effort to subcontract 10% of the dollar value of the contract to
63 one or more Local Businesses;

64 (2) requiring a Contractor on a High Dollar Value Contract to:

65 (A) submit a Local Business subcontracting plan describing
66 how the Contractor proposes to meet the 10% Local
67 Business Subcontracting Program goal;

68 (B) identify, before initial Contract Award, each Local
69 Business with which the Contractor intends to subcontract
70 and the projected dollar amount of each subcontract or
71 percentage of the contract dollar amount allocated to each
72 subcontract; and

73 (C) promptly notify the Using Department of any change in the
74 information required under (A) and (B) of this subsection
75 during the contract term.

76 (3) requiring the Contractor to comply with Local Business
77 Subcontracting Program goals throughout the contract term.

78 (c) A Contractor's failure to satisfy the requirements of the Local Business
79 Subcontracting Program, including a failure to submit documentation
80 required by the Director to show compliance, may constitute a breach of

81 the contract for which the County may withhold payment or impose
 82 liquidated damages, in addition to any other remedies available to the
 83 County.

84 (d) The Director may waive all or part of the Local Business subcontracting
 85 requirements for a specific contract under appropriate circumstances as
 86 established by Executive Regulation.

87 (e) The Director may require each Contractor and Local Business that
 88 participates in the Local Business Subcontracting Program to provide
 89 information concerning utilization by the Contractor of Local
 90 Businesses in a High Dollar Value Contract.

91 **11B-81. Regulations.**

92 The County Executive must adopt a regulation, by Method 2, to implement
 93 this Article. The regulation must include:

94 (a) monitoring procedures to assist a contract administrator and the Local
 95 Business Program Manager to determine compliance by a Contractor
 96 with the Local Business Subcontracting Program;

97 (b) certification requirements for a business to qualify as a Local Business
 98 under this Article; and

99 (c) procedures to certify or decertify a Local Business.

100 **11B-82. No Standing to Challenge Contract Award.**

101 This Article does not give any person, including a Local Business, any right or
 102 status, including standing, to challenge the award of a contract or subcontract arising
 103 from the County procurement system. The provisions of this Article are enforceable
 104 only through the oversight function of the Chief Administrative Officer or his
 105 designee.

106 **11B-83. Penalty.**

107 (a) A person must not:

108 (1) fraudulently obtain or retain, attempt to obtain or retain, or aid
109 another person in fraudulently obtaining or retaining, or
110 attempting to obtain or retain, certification as a Local Business
111 for the purpose of this Article;

112 (2) willfully make a false statement to a County official or employee
113 for the purpose of influencing the certification of an entity as a
114 Local Business; or

115 (3) fraudulently obtain, attempt to obtain, or aid another person in
116 fraudulently obtaining, or attempting to obtain, public monies to
117 which the person is not entitled under this Article.

118 (b) A violation of this Article:

119 (1) is a class A violation; and

120 (2) may disqualify the violator from doing business with the County
121 for up to 2 years.

122 **Sec. 2. Effective Date**

123 This Act takes effect on ~~[[July 1, 2015]]~~ January 1, 2017 and applies to any
124 High Dollar Value Contract arising from a solicitation issued on or after ~~[[July 1,~~
125 ~~2015]]~~ January 1, 2017.

