

**MEMORANDUM**

November 21, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Bill 61-14, Contracts and Procurement - Local Business Subcontracting Program

Bill 61-14, Contracts and Procurement - Local Business Subcontracting Program, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on November 25, 2014. A public hearing is tentatively scheduled for January 13, 2015 at 1:30 p.m.

Bill 61-14 would establish a Local Business Subcontracting Program requiring 10% of the dollars related to an initial procurement contract award that is valued above \$10 million to be subcontracted to a Local Business.

This packet contains:

Bill 61-14

Legislative Request Report

Circle #

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Bill No. 61-14  
Concerning: Contracts and Procurement  
- Local Business Subcontracting  
Program  
Revised: 11/20/14 Draft No. 3  
Introduced: November 25, 2014  
Expires: May 25, 2016  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**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

<b>Boldface</b>	<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-78, 11B-79, 11B-80, 11B-81, 11B-82, and 11B-83 are added as follows:**

**Article XVII. Local Business Subcontracting Program**

**11B-78. Definitions.**

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

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

(1) a supplier of goods who:

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

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

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

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

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

High Dollar Value Contract means an initial Contract Award that is estimated 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 and applies to any High Dollar Value  
124 Contract arising from a solicitation issued on or after July 1, 2015.

125 *Approved:*

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Craig L. Rice, President, County Council

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Date

127 *Approved:*

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Isiah Leggett, County Executive

\_\_\_\_\_  
Date

## LEGISLATIVE REQUEST REPORT

Bill 61- 14

### *Contracts and Procurement - Local Business Subcontracting Program*

- DESCRIPTION:** Establish a goal that 10% of the dollars related to an initial procurement contract award that is valued above \$10 million should go to a local business.
- PROBLEM:** Contracts that are over \$10 million are exempted from the Local Small Business Reserve Program (LSBRP). This Bill would reserve a portion of those contracts dollars to local businesses.
- GOALS AND OBJECTIVES:** This Bill would establish a program to require each prime contractor of a High Dollar Value Contract to subcontract to a Local Business to perform and receive compensation for at least 10% of the value of the initial Contract Award.
- COORDINATION:** CEX, DGS, OCA, DED
- FISCAL IMPACT:** DGS personnel cost to support this program: \$153,000
- ECONOMIC IMPACT:** No economic impact
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be requested.
- SOURCE OF INFORMATION:** Grace Denno and Pam Jones, DGS
- APPLICATION WITHIN MUNICIPALITIES:** Not applicable.
- PENALTIES:** Violation of this program may cause liquidated damages assessment against the contractor.