

MEMORANDUM

November 26, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 48-14, Purchases from Minority Owned Businesses – Procedures – Request for Proposals

Bill 48-14, Purchases from Minority Owned Businesses – Procedures – Request for Proposals, sponsored by Council President Rice, Council Vice President Leventhal, and Councilmembers Elrich and Branson, was introduced on October 21, 2014. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.

The 2014 Disparity Study found a statistically significant underutilization of some Minority, Female, and Disabled (MFD) groups in each procurement category that can be attributed to discrimination in the marketplace. Although the County's current MFD subcontracting requirement has increased the utilization of MFD firms, new ideas and remedies are necessary. The goal of this Bill is to authorize an additional tool to remedy the significant underutilization of some MFD groups in County procurement.

Bill 48-14 would permit an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts. The Department of General Services Director would be 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.

This packet contains:

Bill 48-14

Legislative Request Report

Circle #

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Bill No. 48-14
Concerning: Purchases from Minority
Owned Businesses – Procedures –
Request for Proposals
Revised: October 10, 2014 Draft No. 4
Introduced: October 21, 2014
Expires: April 21, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Rice, Council Vice President Leventhal, and Councilmembers Elrich and
Branson

AN ACT to:

- (1) establish an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts;
- (2) add additional tools for increasing the participation of minority owned firms in certain procurement contracts; 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 | <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. Section 11B-60 is amended as follows:**

2 **11B-60. Procedures.**

- 3 (a) By September 30 of each year, the Chief Administrative Officer must
4 set for the following calendar year percentage goals of the dollar value
5 of purchases subject to this Article for each socially or economically
6 disadvantaged group. The goals must correspond to the availability of
7 that group by source selection method and purchasing category in the
8 relevant geographic market area as determined by the most recent report
9 that the County Executive must submit to the County Council under
10 Section 11B-61(b) to perform work under County contracts. The Chief
11 Administrative Officer must set separate goals for each socially or
12 economically disadvantaged group in the County's purchases of goods,
13 construction, professional services, and other services. The Chief
14 Administrative Officer must not set goals for a socially or economically
15 disadvantaged group unless the Chief Administrative Officer determines
16 that the value of purchases made during the previous fiscal year from
17 that group in each category of purchases under a particular source
18 selection method, compared with the availability of that group to
19 perform work in that category, shows a significant under-utilization of
20 the group.
- 21 (b) The Chief Administrative Officer must adopt procedures to certify and
22 decertify minority owned businesses.
- 23 (c) The Office of Procurement must publicly notify businesses of
24 prospective procurement opportunities.
- 25 (d) For those procurements where a goal has been set under subsection (a),
26 the Office of Procurement must encourage minority owned business
27 participation in procurement. These activities should include:

- 28 (1) distribution to potential contractors for whom a goal has not been
29 set of a list of potential minority owned business contractors for
30 whom a goal has been set with a requirement that one or more be
31 contacted if any work subject to a goal is being subcontracted;
- 32 (2) a provision in all solicitations for procurements in excess of
33 \$50,000 that requires, subject to the waiver provisions of
34 subsection (h), businesses for whom a goal has not been set
35 acting as prime contractors to subcontract to minority owned
36 businesses for whom a goal has been set a percentage of the total
37 dollar value of the contract that is consistent with the numerical
38 goals established under subsection (a);
- 39 (3) a requirement that a contractor for whom a goal has not been set:
40 (A) agree to a plan showing how the contractor proposes to
41 meet its minority owned business procurement
42 subcontracting goal; and
43 (B) identify, before a notice to proceed is issued or
44 performance of a contract begins, whichever occurs first,
45 each minority owned business that the contractor intends to
46 subcontract with and the projected dollar amount of each
47 subcontract, and promptly notify the using department of
48 any change in either item; [and]
- 49 (4) contract requirements that minority owned business participation
50 goals be maintained by prime contractors throughout the life of
51 the contract, including modifications and renewals, subject to the
52 waiver provisions of subsection (h). Contract requirements:
53 (A) may include obligating contractors subject to the minority
54 owned business procurement goals to provide in each

55 subcontract with a minority owned business a provision
 56 requiring the use of binding arbitration to resolve disputes
 57 between the contractor and the minority owned business
 58 subcontractor; and

59 (B) must make failure to submit documentation showing
 60 compliance with a minority owned business subcontracting
 61 plan under paragraph (3) grounds for withholding any
 62 remaining payment or imposing liquidated damages unless
 63 failure to comply with the plan is the result of an
 64 arbitration decision under subparagraph (A) or a waiver
 65 granted under subsection (h). Liquidated damages under
 66 this provision must equal the difference between all
 67 amounts the contractor has agreed under its plan to pay
 68 minority owned business subcontractors and all amounts
 69 actually paid minority owned business subcontractors
 70 under the contract, considering any relevant waiver or
 71 arbitrator's decision. Failure to show compliance with a
 72 minority owned business subcontracting plan must also
 73 result in finding the contractor non-responsible for
 74 purposes of future procurements with the County during
 75 the next 3 years; and

76 (5) an evaluation factor with a value of at least 10%, but no more
 77 than 20%, of the total available points in a request for proposals
 78 issued under Section 11B-10 awarding additional points for a
 79 proposal from:

80 (A) a contractor for whom a goal has been set under subsection
 81 (a); and

82 (B) a contractor for whom a goal has not been set who
83 proposes to exceed the minority owned business
84 procurement subcontracting goal established for the
85 contract.

86 * * *

87 *Approved:*

88 _____
Craig L. Rice, President, County Council Date

89 *Approved:*

90 _____
Isiah Leggett, County Executive Date

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

92 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 48-14

Purchases from Minority Owned Businesses-Procedures-Request for Proposals

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|---|---|
| DESCRIPTION: | Bill 48-14 would establish an evaluation factor in a request for proposals to increase the participation of minority owned firms in certain procurement contracts. The Department of General Services Director would be authorized to establish an evaluation factor in a request for proposals that would award additional points for a proposal from: <ol style="list-style-type: none">(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. |
| PROBLEM: | The 2014 Disparity Study found a statistically significant underutilization of some MFD groups in each procurement category that can be attributed to discrimination in the marketplace. Although the County's current MFD subcontracting requirement has increased the utilization of MFD firms, new ideas and remedies are necessary. |
| GOALS AND OBJECTIVES: | The goal is to authorize an additional tool to remedy the significant underutilization of some MFD groups in County procurement. |
| COORDINATION: | County Attorney, Department of General Services |
| 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: | None |

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