

**MEMORANDUM**

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Public Hearing:** 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, was introduced on November 25, 2014. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.

Bill 61-14 would establish a Local Business Subcontracting Program requiring 10% of the dollars related to an initial procurement contract award that is estimated to be valued at more than \$10 million to be subcontracted to a Local Business. The Bill would define a local business as a for-profit business that has its principal place of business in the the County. The Bill would also require the Executive to adopt a regulation, by Method 2, further defining a local business and the certification process. The Director of the Department of General Services or his designee would be responsible for certifying a business as a local business. The Bill would also authorize the Director to waive all or part of the local subcontracting requirements for a specific contract.

The Office of Management and Budget (OMB) reports that the County currently has approximately 85 contracts valued at more than \$10 million for a total value of \$2.4 billion. (©8-12) Although OMB acknowledged that a bidder may increase the price of a bid due to the local subcontracting requirements, OMB was unable to estimate the potential cost of these increased bid prices. OMB estimated that the Bill would require the addition of 2 half-time employees to implement the Program at an annual recurring cost of \$79,220. The Finance Department indicated that the Program would target approximately \$270 million to local businesses, but they were unable to estimate the economic impact on County businesses. The Fiscal and Economic Impact Statement does not estimate the amount of high dollar value contracts currently being awarded to local businesses.

The Bill would take effect on July 1, 2015 and apply to a solicitation for a high dollar value contract issued after July 1, 2015.

This packet contains:

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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:*

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 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

\_\_\_\_\_  
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.



ROCKVILLE, MARYLAND

MEMORANDUM

December 15, 2014

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Council Bill 61-14, Local Business Subcontracting Program

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph F. Beach, Director, Department of Finance  
David Platt, Department of Finance  
David Dise, Director, Department of General Services  
Erika Lopez-Finn, Office of Management and Budget  
Alex Espinosa, Office of Management and Budget

**Fiscal Impact Statement**  
**Council Bill 61-14, Local Contracts and Procurement – Local Business**  
**Subcontracting Program**

**1. Legislative Summary**

Contracts valued at over \$10 million are currently exempt from the existing Local Small Business Reserve Program (LSBRP).

The proposed legislation establishes a goal for a Contractor to subcontract with local businesses in an initial contract award that is valued over \$10 million and for the local business to receive compensation of at least 10% of the value of the contract award.

There are approximately 85 contracts with each over \$10 million in value. The total current value of all contracts over \$10 million dollars is \$2.4 billion. The legislation stipulates that 10% of the dollars related to an initial procurement contract award that is valued above \$10 million should go to Local Businesses.

**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.**

No revenues are expected from the proposed legislation.

Expenditures related to the proposed legislation are difficult to estimate. There is a potential for bidders or offerors to build their increased costs resulting from use of local subcontractors into their rates or prices offered to the County. The cost increase to the County cannot be estimated at this time.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**  
See item #2.

**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's expenditures will not affect ERP systems.

**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.**

DGS estimates that one (1.0) FTE is necessary to implement this legislation for a total annual cost of \$79,220 per year<sup>1</sup> plus associated expenses of \$5,468, for a total first-year cost of approximately \$84,688.

One half (0.5) FTE is for a Local Business Program Manager (Grade 23) with a financial background is needed to review vendors' eligibility, conduct site visits, validate compliance, compile reports, and conduct outreach at \$42,813 per year. DGS estimates associated operating expenses for the position at \$2,734.<sup>2</sup>

One half (0.5) FTE for a Procurement Specialist (under-filled at Grade 16) to analyze bid and proposal submissions related to additional solicitation and contract compliance requirements, coordinate with the Office of Business Relations and Compliance (OBRC) and Contract Administrators (CA) related to local business eligibility and applicability, to issue, approve and track legally required determination and finding recommendations under the Procurement process, to report, as needed or required and CA training at \$30,940 per year. DGS estimates associated operating expenses for the position \$2,734.

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

The Program Manager is needed for OBRC to manage this new program to review vendors' eligibility, conduct site visits, validate compliance, review reports, conduct outreach; and provide training.

The Procurement Specialist (Expeditor) will solely focus on minimizing delays that the new program may cause. The existing Procurement resources will not be able to cover the new additional tasks for this program, including: review bid/proposal submissions, determine for variances in application of law, track and report, and train Contract Administrators.

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

An appropriation of \$79,220 is needed in the first year of the proposed bill's implementation. On-going personnel would require an appropriation of \$79,220 for the 1.0 combined FTE.

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

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<sup>1</sup> Assumes compensation (salary and benefits of 25%) at the mid-point of grade.

<sup>2</sup> Assumes a desktop computer with MS Office (\$1,074 one-time), phone expenses (\$660 per year), and initial furniture (\$1,000 one-time).

There is a potential for Bidders or Offerors to build their increased costs resulting from use of local subcontractors into their rates or offers to the County. The cost increase to the County cannot be estimated at this time.

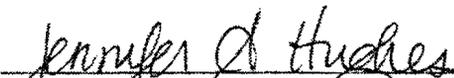
**11. Ranges of revenue or expenditures that are uncertain or difficult to project.**  
See item #2.

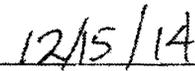
**12. If a bill is likely to have no fiscal impact, why that is the case.**  
Not applicable.

**13. Other fiscal impacts or comments.**  
None

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

Grace Denno, Office of Business Relations and Compliance, Department of General Services  
Pam Jones, Office of Procurement, Department of General Services  
Beryl Feinberg, Department of General Services  
Angela Dizelos, Department of General Services  
Erika Lopez-Finn, Office of Management and Budget

  
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Jennifer A. Hughes, Director  
Office of Management and Budget

  
\_\_\_\_\_  
Date

**Economic Impact Statement**  
**Bill 61-14, Local Business Subcontracting Program**

**Background:**

This legislation would establish a goal that ten percent (10%) of an initial procurement contract award above \$10 million should go to local businesses. Under the proposed legislation, therefore, the prime contractor would subcontract with local businesses in an initial award of the contract value over \$10 million and local businesses would receive compensation for at least ten percent (10%) of the value of the contract.

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

Source of information is the Office of Business Relations and Compliance (OBRC), Department of General Services (DGS). According to OBRC, there were eighty-four (84) contracts awarded with a value of over \$10 million. The total value of these contracts was \$2.37 billion. Based on the above data, approximately \$237.0 million is targeted to be awarded or subcontracted to local businesses.

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

The variables that could affect the economic impact estimates are the number of contracts awarded with a value of over \$10 million and the difference in contracts awarded to local businesses compared to previous years.

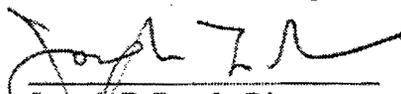
**3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

The legislation would have an economic impact on business revenues and a possible increase in local employment, incomes, and investments. However, without specificity of data regarding employment and business expansion by the local businesses and baseline data on current awards it is difficult to specifically quantify the change in the economic impact.

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

See paragraph #3.

**5. The following contributed to or concurred with this analysis:** David Platt and Rob Hagedoorn, Department of Finance; and Grace Denno, Office of Business Relations and Compliance, Department of General Services.

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

12/12/14  
\_\_\_\_\_  
Date