

MEMORANDUM

November 25, 2015

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing-Action:** Expedited Bill 48-15, Contracts and Procurement - Minority-Owned Businesses – Sunset Date - Amendments

Expedited Bill 48-15, Contracts and Procurement - Minority-Owned Businesses – Sunset Date - Amendments, sponsored by Lead Sponsor Government Operations and Fiscal Policy Committee, was introduced on November 17, 2015. Action is scheduled following this hearing.

Background

The Supreme Court in *City of Richmond v. J. A. Croson Company*, 488 U.S. 469 (1989), established a framework for a local government to implement a program that provides a preference for minority owned businesses. The Court held that there must be substantial evidence of past or ongoing discrimination in order to show a compelling government interest to justify the program. The Program must be narrowly tailored to remedy the past or ongoing discrimination. For this reason, local governments that have this type of program must evaluate the continuing need for it every few years. The County Executive submitted a Disparity Study to the Council on July 1, 2014 prepared by Griffin and Strong that supports the continuation of the program.

2014 Disparity Study

In May 2013, the County retained Griffin & Strong, P.C. (GSPC) to conduct a comprehensive disparity study. GSPC examined and analyzed the procurement policies and practices of the County and its prime contractors regarding the use of Minority, Female, and Disabled owned businesses (MFD) on County contracts for goods and services. The objective was to determine if there was a statistically significant disparity between the number of MFD firms in the relevant market and the dollars awarded to MFD firms through County contracts. GSPC divided County contracts into 4 categories – Construction, Professional Services, Services, and Goods.

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. 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>.

Expedited Bill 42-14

Based upon the 2014 Disparity Study, the Council extended the sunset date for the MFD Program until December 31, 2015 by enacting Expedited Bill 42-14 on October 21, 2014. The Council subsequently created 2 task forces to study the MFD Program and the overall Procurement System. Each of these task forces presented their recommendations to the Council last month. The 2014 Disparity Study supports an extension of the MFD Program while the Council considers the recommendations of the 2 task forces. Expedited Bill 48-15 would extend the sunset date for the MFD Program until December 31, 2016 to give the Council time to analyze the recommendations of the 2 task forces and decide if any changes to the legislation authorizing the MFD Program should be made.

This packet contains:

Expedited Bill 48-15
Legislative Request Report

Circle #

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Expedited Bill No. 48-15
Concerning: Contracts and Procurement
- Minority-Owned Businesses -
Sunset Date - Amendments
Revised: November 10, 2015 Draft No. 1
Introduced: November 17, 2015
Expires: May 17, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: December 31, 2016
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Government Operations and Fiscal Policy Committee

AN EXPEDITED ACT to:

- 1) extend the sunset date for the County's minority owned business purchasing program;
and
- 2) generally amend the County's minority owned business purchasing program.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Sections 11B-64

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:

LEGISLATIVE REQUEST REPORT

Expedited Bill 48-15

Contracts and Procurement - Minority-Owned Businesses – Sunset Date - Amendments

DESCRIPTION: Expedited Bill 48-15 would extend the sunset date for the MFD Program until December 31, 2016.

PROBLEM: The MFD Program would sunset on December 31, 2015 absent Council action.

GOALS AND OBJECTIVES: Continue the MFD Program to remedy the effects of past discrimination against women and minority-owned businesses in County procurement.

COORDINATION: Office of 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 remedies.