



# Montgomery County Government

## AN EVALUATION OF THE REPORTING REQUIREMENT FOR CONTRACTS WITH PUBLIC ENTITIES

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### EXHIBITS

A - Section 11B-42, Cooperative Purchasing, Public Entity Contracting, and Grants

B - Section 11B-9, Emergency Purchases  
Section 11B-27A, Report of Procurement Actions Involving Noncompetitive Negotiations



AN EVALUATION OF THE REPORTING REQUIREMENT  
FOR CONTRACTS WITH PUBLIC ENTITIES

I. SUMMARY AND MAJOR CONCLUSIONS AND RECOMMENDATIONS

1. Summary

Section 11B-42, Cooperative Purchasing, Public Entity Contracting, and Grants, of the Montgomery County Code, became effective November 14, 1985. This legislation defines public entities, provides for cooperative purchasing with other public entities, provides for contracts with or leases from other public entities, clarifies the ability of the County to provide grants to various persons or organizations, and requires the County Executive to submit Quarterly Reports to the Council identifying contracts which were awarded to specific types of public entities. The sunset provision, which only applies to the quarterly reporting requirement, is scheduled for December 31, 1988.

2. The requirement for Quarterly Reports was added to the fifth and final draft of the legislation in response to concern over the vagueness of two of the six definitions of a public entity in Section 11B-42(a) of the Code.

"(5) Any organization or association of the federal government, state governments, or political subdivisions of state governments; and

(6) Any other entity that is:

(i) Qualified as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code, as amended; and

(ii) Incorporated by an entity under paragraphs (1) through (5) of this subsection for the exclusive purpose of supporting or benefiting an entity under paragraphs (1) through (5) of this subsection."

The reporting requirement was intended to provide Council oversight of these noncompetitive procurement actions in order to identify possible abuse.

2. Major Conclusions

The Chief Administrative Officer has prepared and submitted Quarterly Reports as required by Section 11B-42(e) to the Council in a timely and consistent manner every quarter. Copies of the Quarterly Reports have been distributed to each Councilmember.

The Office of Legislative Oversight's review of the contracts identified in the FY87 and FY88 Quarterly Reports and the individual contract files did not show any abuse of the provision of noncompetitive procurements due to the vagueness of the public entity definitions in Section 11B(a) (5) and (6).

In addition to the requirement for Quarterly Reports, Chapter 11B, Contracts, Procurement Matters and Public Ethics, includes requirements for annual reports on procurement actions involving emergency purchases and noncompetitive negotiations. This report provides detailed information on each contract with a dollar value over \$10,000, including the name of the contractor, the goods or services to be provided, the dollar amount, the department responsible for administering the contract, and the type of procurement action. The Chief Administrative Officer submits an Annual Report of Emergency and Noncompetitive Procurements to the Council. Copies of this report are distributed to each Councilmember.

### 3. Major Recommendations

The requirement in Section 11B-42(e) for the County Executive to submit quarterly reports to the Council identifying contracts which were awarded to public entities defined in Section 11B-42(a) (5) and (6) should not be extended beyond the December 31, 1988 sunset date.

The County Council should enact a new Section 11B-42(e) which requires the County Executive to submit an annual report to the County Council on contracts and grants awarded under the provisions of Section 11B-42, with entities under subsection (a) (5) and (6). The report should include the name of the entity, the amount of the contract or grant, the purpose of the contract or grant and the provision of the Code that authorized the award of the contract or grant.

## II. AUTHORITY, SCOPE, METHODOLOGY, AND ACKNOWLEDGMENT

1. Authority. Council Resolution 11-738, adopted March 29, 1988, CY 1988 Work Program of the Office of Legislative Oversight.

2. Scope. The purpose of this project was to evaluate the need to continue Quarterly Reports to the Council on contracts and grants awarded under the provisions of Montgomery County Code, Section 11B-42, Cooperative Purchasing, Public Entity Contracting, and Grants. The legal requirement for these quarterly reports is scheduled to sunset on December 31, 1988.

Included in this evaluation was a review of the policies, procedures, and practices of the Division of Purchasing and Materiel Management related to contracts with public entities and an analysis of the following reports: the Quarterly Reports, the Weekly Activity Reports, the Annual Report of Emergency and Noncompetitive Procurements, and the Schedule of Grants for Fiscal Years 1987 and 1988.

3. Methodology. This project was conducted from July through September 1988 by Deborah Snead, Legislative Oversight Program Evaluator, with assistance from David Kubacki, Public Administration Intern. The following fact-finding techniques were used:

- Reviewing Montgomery County Code, Chapter 11B, especially Section 11B-42 and the Council minutes pertaining to the enactment of this legislation.
- Reviewing policies and procedures relating to noncompetitive procurements in general and specifically contracts with public entities.
- Reviewing the myriad documents in selected contract files.
- Interviewing present and former representatives of the Executive and Legislative branch concerning the legislative background and intent of Section 11B-42.
- Interviewing employees from various County departments that are responsible for reporting and administering contracts with public entities.

4. Acknowledgment. The Office of Legislative Oversight (OLO) acknowledges the full cooperation of the staff of the Division of Purchasing and Materiel Management and the employees from the various County departments that were interviewed. Interviews were candid and all requests for information were honored expeditiously.

### III. DEFINITIONS

Procurement terms are technical and have unique meanings whenever they appear in the Montgomery County procurement regulations and guidelines. The following specific terms are used in this report and have the meanings indicated:

1. Contracts with Public Entities. For the purpose of this report, this term means a purchase of goods or services from a public entity as defined in Section 11B-42(a). The original procurement is a noncompetitive procurement (see definition #3 below). For example, a contract with Montgomery College to study a specific program.
2. Competitive Procurement. The process by which more than one source of supply for goods or services is solicited through the submission of offers which are evaluated in a comparative way for the purpose of selecting the source or sources most advantageous to the needs of the government.
3. Noncompetitive Procurement. A purchase that is not advertised and is not subject to competition between two or more offerors. All contract modifications and sole source procurements are noncompetitive procurements. A noncompetitive procurement may also, under certain circumstances prescribed by these regulations, include emergency purchases.
4. Professional Services. The services of attorneys, physicians, architects, engineers, consultants, and other recognized professional individuals, associations, corporations and groups.
5. Other-Than-Professional Services. Supplies, materials, equipment, and tangible commodities, including the construction, alteration, or rehabilitation of roads, public buildings, structures, or other improvements to real properties.
6. Modifications. Any written alteration in the specification, delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision (change order), or by mutual action of the parties to the contract (contract amendment). It also includes administrative changes, notices of termination, and notices of exercise of a contract option and contract extensions.
7. Renewals. Contracts entered into with an original term of one year subject to renewal options of a specified maximum period of time, one year at a time.

#### IV. BACKGROUND

The Montgomery County Code, Section 11B-42, Cooperative Purchasing, Public Entity Contracting, and Grants, became effective November 14, 1985. A copy of Section 11B-42 is at Exhibit A. The purpose of this legislation was: to define public entities; to provide for cooperative purchasing with other public entities and contracts with or leases from other public entities; to clarify the ability of the County to provide grants to various persons and organizations; and to require the County Executive to submit quarterly reports to the Council identifying contracts which were awarded to specific types of public entities. Also, included was a sunset provision which only applied to the quarterly reporting requirement. The reporting requirement is scheduled to sunset on December 31, 1988, and is the subject of this OLO report.

To fully understand the requirement for the Executive to submit quarterly reports to the Council, it is necessary to briefly review the history of the legislation. The Council, at the request of the Executive, introduced Bill 64-84, Cooperative Purchasing - Public Entities, on November 20, 1984. The bill was assigned to the Council's Finance and Intergovernmental Affairs (FIN) Committee, was discussed at three separate Committee meetings, and was revised a total of five times before it was enacted almost one year later. One of the major concerns of the Council involved the overly broad definition of public entities. The bill identified six types of public entities. It was the wording of definitions (5) and (6) which the Council considered particularly vague:

"Sec. 11B-42

- (a) Public entity defined. In this section, "public entity" means:
- (1) The federal government;
  - (2) A state government and any of its agencies;
  - (3) Any political subdivision of a state government and any of its agencies;
  - (4) Any board, commission, or committee established by federal, state, or local law;
  - (5) Any organization or association of the federal government, state governments, or political subdivisions of state governments; and
  - (6) Any other entity that is:
    - (i) Qualified as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code, as amended; and
    - (ii) Incorporated by an entity under paragraphs (1) through (5) of this subsection for the exclusive purpose of supporting or benefiting an entity under paragraphs (1) through (5) of this subsection (emphasis added)."

Without discussion, the quarterly reporting requirement was added to the fifth and final draft of Bill 64-84. Although the reporting requirement was not mentioned in any of the Council or FIN Committee minutes, interviews by OLO with persons who participated in the discussions of Bill 64-84 indicated that the quarterly reporting requirement was intended to provide Council oversight of these specific noncompetitive procurement actions because of the vagueness of the two definitions. The Council added the quarterly reporting requirement to identify possible abuse. If abuse was observed the Council could then amend the law to address the specific public entity definition.

## V. DESCRIPTION OF EXECUTIVE BRANCH RESPONSIBILITIES

1. Division of Purchasing and Materiel Management. The Division of Purchasing and Materiel Management (DPMM), in the Department of Finance, provides purchasing and contract administration services to all departments of County government. The following specific responsibilities are directly related to contracts with public entities.

- Developing and reviewing of purchasing policies and procedures;
- Processing all contracts and maintaining a central depository for official contract files; and
- Maintaining and refining a computerized data base on all procurement actions.

The DPMM compiles information on procurement actions, issues a Weekly Activity Report (WAR), and identifies the specific contracts included in the Quarterly Reports and the Annual Report of Emergency and Noncompetitive Procurements. If the contracts are for other-than-professional services, the information in the computerized data base is entered by DPMM from internal source documents. If the contracts are for professional services, the information in the computerized data base is entered by the DPMM from data provided by departments.

The DPMM has guidelines for identifying contracts with public entities. These guidelines reference the legislation and include forms to be completed by the departments or DPMM. The information on the forms is entered into the computer by DPMM staff. Specific guidance is provided to emphasize that a not-for-profit corporation qualifies as a public entity only if it qualifies as a not-for-profit corporation under the U. S. Internal Revenue Code and is incorporated by a public entity for the exclusive purpose of supporting or benefiting a public entity as defined in the law. Additionally, a list of public entities has been developed for DPMM staff responsible for other-than-professional services contracts. A detailed discussion of the identification of public entities is presented in the next section of this report.



2. Executive Branch Departments. Each individual department is responsible for specific aspects of the procurement process. The following responsibilities are directly related to contracts with public entities:

- Defining the department's specific need and identifying the procurement process to meet the need.
- Developing all documentation that is needed to process a procurement action, to include writing the contractual document.
- Submitting all required documents through various levels of review and approval.
- Identifying public entities in accordance with the law and guidelines established by DPMM.

## VI. DESCRIPTION OF PROCUREMENT REPORTING REQUIREMENTS

1. General. The Montgomery County Code, Chapter 11B, Contracts, Procurement Matters and Public Ethics, and Executive Regulation No. 130-85, Procurement Regulations, include various requirements for reports. Specifically, the Code requires reports on emergency purchases, purchases from minority businesses, procurement actions involving noncompetitive negotiation and the quarterly reports required by Section 11B-42. The Procurement Regulations further stipulate that the DPMM must prepare and submit a weekly contract award report to the Chief Administrative Officer. The following paragraphs briefly describe these reports to show and emphasize their relationship to each other.

2. Weekly Activity Report. In accordance with the Procurement Regulations, Section C.5.4, the DPMM prepares Weekly Activity Reports (WAR) from information maintained in a computerized data base. This computerized data base was developed during FY86 and DPMM has actively monitored and refined the data to meet continuing demands for more information. The WAR summarizes all procurement actions (contracts/purchase orders, modifications and renewals) on a weekly basis. Each report includes the name of contractors, description of the goods or services to be provided, the dollar amount of each contract, the department responsible for contract administration, and the specific codes which identify the type of procurement action and type of public entity. Table 1 identifies the specific codes that are applicable to contracts with public entities.

Table 1

Procurement Weekly Activity Report Codes

(Source: Division of Purchasing and Materiel Management,  
Legends for Procurement Weekly Activity Report, 12/23/87 Rev.)

Type of Procurement Action

<u>Code</u>	<u>Meaning</u>
r	Professional Service FORMAL RFP/REOI (\$10,000+over)
f	Other FORMAL IFB (\$7,000+over)
j	JOINT Formal Solicitation (\$7,000+over) with a Public Entity (1 thru 6 below)
p	Professional Service INFORMAL
o	Other INFORMAL
s	Sole Source (\$3,000+over)
c	County Council Appropriation to Specific Grantee

Type of Public Entity

<u>Code</u>	<u>Meaning</u>
1	Federal Government
2	State Government and Any of Its Agencies
3	State Subdivision and Any of Its Agencies
4	Board, Commission or Committee of 1, 2 or 3
5	Organization or Association of 1, 2 or 3
6	Certain Non-Profit Public Corporations

The DPMM staff enters these codes into the computer data base from source documents prepared by departments for professional services contracts and by the DPMM staff for other-than-professional services contracts.

3. Quarterly Reports. In accordance with Section 11B-42(e) the County Executive must submit a report to the County Council on contracts and grants awarded to the following public entities defined in Section 11B-42(a) (5) and (6):

- any organization or association of the federal government, state governments, or political subdivisions of state governments; and
- any other entity that is qualified as a not-for-profit corporation under the United States Internal Revenue Code, and incorporated by an entity as defined by this subsection for the exclusive purpose of supporting or benefiting an entity as defined in this subsection.

Since the intent of these two specific types of public entities was never fully clarified during discussions of the legislation, but were considered to be a potential for abuse, the legislation was amended to include the quarterly reporting requirement. The amendment required the Executive to report the name of the entity, the amount of the contract or grant, and the provision under the Code that authorized the contract or grant.

The DPMM has prepared Quarterly Reports from the WAR data base and the Chief Administrative Officer has submitted these reports quarterly to the Council since December 1986. Copies of all Quarterly Reports have been distributed to each Councilmember. An analyses of these Quarterly Reports and a discussion of the specific contracts identified in the Quarterly Reports is provided in Section VII. Evaluation of the Quarterly Reports.

4. The Annual Report of Emergency and Noncompetitive Procurements. In accordance with the Code Section 11B-9, Emergency Purchases, the Chief, DPMM, is also required to submit a complete record of emergency purchases to the Chief Administrative Officer within 60 days of the close of the fiscal year. In addition, Section 11B-27A, Report of Procurement Actions Involving Noncompetitive Negotiations, requires the Chief Administrative Officer to submit to the Council an annual report on all contracts and modifications in excess of ten thousand dollars (\$10,000) involving noncompetitive procurements. Copies of Section 11B-9 and 11B-27A are at Exhibit B.

The law specifically requires that the Annual Report of Emergency and Noncompetitive Procurements (Annual Report) include the name of the contractor, describe the contract's purpose, identify the type of procurement and dollar amount. The DPMM prepares the Annual Report from the WAR data base and the Chief Administrative Officer submits the report to the Council. Copies of these reports are also distributed to each Councilmember.

While not specifically within the scope of this evaluation, it should be noted that OLO's examination of the FY87 and FY88 Annual Reports reveals that these reports include all new contracts, modifications and renewals, and provide detailed information on each contract, including the name of the contractor, the goods or services to be provided, the dollar amount, the department responsible for administering the contract, and the type of procurement action. In OLO's opinion, these reports provide adequate and sufficient information for the review of exceptions to the competitive bidding requirement for contracts with a dollar value over \$10,000.

5. Schedule of Grants. As discussed in Section IV, Background, one of the specific intents of Bill 64-84 was to allow the County government to award contracts noncompetitively to entities which were specifically named in grants. During the numerous Council discussions of Bill 64-84, there was concern over the language used in the subsection which provides for grants. As a result of these concerns, a policy was established that the Office of Management and Budget would develop a Schedule of Grants.

A Schedule of Grants is developed annually and submitted to the Council during its deliberations on the annual Operating Budget. The schedule identifies the specific entity, the dollar amount of the grant, and a brief description of the purpose of the grant. The dollar amounts are designated in the individual department budgets and are approved when the Council adopts the annual Operating Budget Resolution.

While not specifically within the scope of this evaluation, it should be noted that OLO's examination of the FY87 and FY88 Schedule of Grants indicated that the majority of the contracts awarded under the provision for grants are for services required by two departments, the Department of Family Resources and the Department of Housing and Community Development. The Council, through its review and discussion of the Schedule of Grants provides the necessary oversight to assure integrity and prevent abuse. Since the majority of these entities are not established for the exclusive purpose of supporting or benefiting a specific public entity, they were not included on the Quarterly Reports, but would be included in the Annual Report of Emergency and Noncompetitive Procurements if the dollar amount exceeded \$10,000.

## VII. EVALUATION OF THE QUARTERLY REPORTS

1. General. Section 11B-42, Cooperative Purchasing, Public Entity Contracting, and Grants, of the Montgomery County Code, became effective on November 14, 1985 and, in accordance with guidelines issued by the Chief Administrative Officer, the first Quarterly Report was submitted to the Council on January 7, 1987, for the quarter ending December 31, 1986 (2nd Quarter FY86). Quarterly Reports have been prepared and submitted to the Council in a timely and consistent manner every quarter since the effective

date of Section 11B-42, and copies have been distributed to each Councilmember. As discussed in Section IV, Background, the reporting requirement was apparently added in response to concerns over the vagueness of the public entity definitions in Section 11B-42(a) (5) and (6), and was intended to provide Council oversight of these specific noncompetitive procurement actions. Although the Council has never formally reviewed or discussed the Quarterly Reports, the fact that copies have been distributed to each Councilmember provides oversight of these noncompetitive procurement actions.

2. Contracts with Public Entities. Since the computerized data base was developed during FY86 and the reporting requirement became effective in the 2nd Quarter FY86, OLO's evaluation concentrated on the FY87 and FY88 Quarterly Reports. Table 2 identifies each contract that was listed in the FY87 and FY88 Quarterly Reports and provides the information that was specifically required by Section 11B-42(e).

The total dollar value of the twelve contracts identified in the Quarterly Reports for FY87 was \$1,273,370; which represents less than one percent of the FY87 total procurement dollars (\$137,760,213). For FY88 the total dollar value of the thirteen contracts was \$14,579,496 and this amount represents 9.5 percent of the FY88 total procurement dollars (\$153,011,265). It should be noted that two of the contracts in the FY88 Quarterly Reports accounted for a combined total value of \$14,203,823.

A description of the contracts identified in the FY87 and FY88 Quarterly Reports is presented in the following paragraphs. The additional information on the contracts was developed by OLO through review of the Weekly Activity Reports and selected contract files.

- The contract with Dustin Construction, Inc., in the amount of \$6,354,000 for the construction of the Regional Indoor Swim Center and the contract with Gillig Corporation in the amount of \$7,849,823 for the purchase of transit buses were awarded in accordance with Montgomery County's competitive procurement process. They were included in the FY88-Fourth Quarter Quarterly Report because they were considered cooperative procurements with the Revenue Authority. The actual contracts were between the Revenue Authority and the contractor.

- The contracts with Petron Trading Co., for diesel fuel (\$500,000), Phoenix Petroleum Co., for heating oil (\$7,000), Steuart Petroleum Co., for heating oil (\$70,500 and \$100,000), and G & M Petroleum Co., for heating oil (\$3,280), were awarded through a competitive process which was conducted by the Washington Metropolitan Area Transit Authority (WMATA) or Fairfax County, Virginia, under the aegis of the Council of Governments (COG). In accordance with the DPMM's list of public entities, COG is considered a not-for-profit corporation, incorporated for the exclusive purpose of supporting or benefiting other public entities.

TABLE 2

Contracts to Public Entities as defined in Sec. 11B-42a(5) and (6)  
 Source: Quarterly Reports from FY87 and FY88

Fiscal Year	Quarter Ending	Name of Entity	Dollar Amount	Code Provision	
FY87	9-30-86	Flower-Piney Branch Local Development Corp.	\$19,500	11B-42(a)6	
		Montgomery County Extension Advisory Council	\$40,500	11B-42(a)6	
		Montgomery County Extension Advisory Council	\$155,000	11B-42(a)6	
		Montgomery College	\$5,950	11B-42(a)5	
		Montgomery Weed Control Inc.	\$13,000	11B-42(a)6	
		Montgomery College	\$59,520	11B-42(a)5	
	12-31-86	Friends of the Library Montgomery County Inc.	\$825	11B-42(a)6	
		Sandy Spring Museum	\$975	11B-42(a)6	
		Montgomery County Historical Society	\$600	11B-42(a)6	
	3-31-87	Petron Trading Co.	\$900,000	11B-42(a)6	
	6-30-87	Phoenix Petroleum Co.	\$7,000	11B-42(a)6	
		Steuart Petroleum Co.	\$70,500	11B-42(a)6	
	FY88	9-30-87	Montgomery County Extension Advisory Council	\$41,420	11B-42(a)6
			Montgomery County Extension Advisory Council	\$130,000	11B-42(a)6
Metro Washington Council of Governments			\$26,276	11B-42(a)5	
12-31-87		Montgomery Weed Control Inc.	\$13,000	11B-42(a)6	
		GAM Petroleum Sales Co.(C.O.G.)	\$3,280	11B-42(a)6	
		Montgomery Preservation Inc.	\$5,000	11B-42(a)6	
		Montgomery County Historical Society	\$35,000	11B-42(a)6	
		Steuart Petroleum Co.(C.O.G.)	\$100,000	11B-42(a)6	
3-31-88		Interlibrary Users Association	\$1,700	11B-42(a)5	
6-30-88		Gillig Corporation	\$7,849,823	11B-42(a)6	
		Dustin Construction	\$6,354,000	11B-42(a)6	
		Metro Washington Council of Governments	\$10,000	11B-42(a)5	
		Montgomery College	\$9,997	11B-42(a)5	

- Two professional services contracts between Montgomery County and COG are identified. One of these contracts provides engineering services for Stormwater Management Facilities (\$26,276); the other contract represents a \$10,000 contribution to the COG Child Care Network. These contracts were not awarded through a competitive process. In these two examples, COG is considered an organization or association in the federal government, state governments or political subdivisions of state governments.

- The contract with the Friends of the Library Montgomery County, Inc., in the amount of \$825, the contract with Sandy Spring Museum in the amount of \$975, and the contract with Montgomery County Historical Society in the amount of \$600 were for services rendered to the Commission on Humanities and were awarded at the request of the County Council. Each of these contracts represent noncompetitive procurements with public entities as defined in Section 11B-42(a) (5) and (6).

- The contract with the Interlibrary User Association in the amount of \$1,700 represents a renewal and modification to a three-year contract for producing a computerized data base for identifying all of the Department of Libraries' periodicals. The Interlibrary Users Association is a not-for-profit organization that provides this service to jurisdictions in the Washington Metropolitan area. The original contract was awarded in accordance with Montgomery County's competitive procurement process.

- The contracts with Montgomery County Extension Advisory Council, the Montgomery County Historical Society, the Montgomery Weed Control, Inc., the Flower-Piney Branch Local Development Corporation, and the Montgomery Preservation, Inc., all represent noncompetitive procurements with public entities as defined in Section 11B-42(a) (5) and (6). Since the amount of the majority of these contracts exceeded \$10,000, these contracts were also identified in the Annual Report on Emergency and Noncompetitive Procurements.

- The identification of three contracts with Montgomery College in the Quarterly Reports are the result of coding errors. Montgomery College better fits the public entity definition in Section 11B-42(a) (3): "Any political subdivision of a state government and any of its agencies"; and should not have been included in the Quarterly Reports.

3. Summary. OLO's examination of the individual contract files did not show any abuse of the provision for noncompetitive procurements due to the apparent vagueness of Section 11B-42(a) (5) and (6) public entity definitions. However, the use of two different public entity definitions for the Council of Governments illustrates the vagueness of these definitions. Also, during OLO interviews with persons who are responsible for reporting and administering contracts with public entities, it was apparent that most of the definitions of a public entity in Section 11B-42(a) are subject to interpretation. For example, the Montgomery County Board of Education/Montgomery County Public School System could be considered either under definition (3) "Any political subdivision of a state government and any of its agencies" or definition (4) "Any board, commission or committee established by federal, state, or local law."

Finally, OLO's evaluation identified the fact that noncompetitive procurement actions to public entities defined in Section 11B-42(a) (5) and (6) were also included in the Annual Report of Emergency and Noncompetitive Procurements if their dollar value exceeded \$10,000. However, since the Annual Report does not identify the provision under the Code that authorized the noncompetitive award of the contract, and does not include contracts with dollar values of \$10,000 or less, it cannot be considered a substitute for the Quarterly Reports which provide Council oversight of noncompetitive procurements to public entities defined in Section 11B-42(a) (5) and (6). There is also a potential for abuse for contracts with low dollar values.

### VIII. CONCLUSIONS

1. Section 11B-42, Cooperative Purchasing, Public Entity Contracting, and Grants, of the Montgomery County Code, became effective November 14, 1985. This legislation defines public entities, provides for cooperative purchasing with other public entities, provides for contracts with or leases from other public entities, clarifies the ability of the County to provide grants to various persons or organizations, and requires the County Executive to submit Quarterly Reports to the Council identifying contracts which were awarded to specific types of public entities. The sunset provision, which only applies to the quarterly reporting requirement, is scheduled for sunset December 31, 1988.

2. The requirement for Quarterly Reports was added to the fifth and final draft of the legislation in response to concern over the vagueness of the following two of the six definitions of a public entity in Section 11B-42(a) of the Code.

"(5) Any organization or association of the federal government, state governments, or political subdivisions of state governments; and

(6) Any other entity that is:

(i) Qualified as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code, as amended; and

(ii) Incorporated by an entity under paragraphs (1) through (5) of this subsection for the exclusive purpose of supporting or benefiting an entity under paragraphs (1) through (5) of this subsection."



3. The law only requires that the Quarterly Reports identify the name of the entity, the amount of the contract or grant, and the provision in the Code that authorized the contract or grant. The reporting requirement was intended to provide Council oversight of these noncompetitive procurement actions in order to identify possible abuse.

4. The Chief Administrative Officer has prepared and submitted Quarterly Reports as required by Section 11B-42(e) to the Council in a timely and consistent manner every quarter. Copies of the Quarterly Reports have been distributed to each Councilmember.

5. In addition to the requirement for Quarterly Reports, Chapter 11B, Contracts, Procurement Matters and Public Ethics, includes requirements for annual reports on procurement actions involving emergency purchases and noncompetitive negotiations. The Division of Purchasing and Materiel Management (DPMM) maintains a computerized data base on all procurement actions and actively monitors and refines the data to meet continuing demands for information. The Chief Administrative Officer submits an Annual Report of Emergency and Noncompetitive Procurements to the Council. This report provides detailed information on each contract with a dollar value over \$10,000, including the name of the contractor, the goods or services to be provided, the dollar amount, the department responsible for administering the contract, and the type of procurement action. Copies of this report are distributed to each Councilmember.

6. The Office of Legislative Oversight's review of the contracts identified in the FY87 and FY88 Quarterly Reports and the individual contract files did not show any abuse of the provision of noncompetitive procurements due to the vagueness of the public entity definitions in Section 11B(a) (5) and (6). However, the use of two definitions for the Council of Governments illustrates the vagueness of these definitions. Further, interviews by OLO with persons who are responsible for reporting and administering contracts with public entities indicated that most of the definitions of a public entity in Section 11B-42(a) are subject to interpretation.

7. The noncompetitive procurement actions to public entities defined in Section 11B-42(a) (5) and (6) were also included in the Annual Report of Emergency and Noncompetitive Procurements if their dollar value exceeded \$10,000. However, the Annual Report of Emergency and Noncompetitive Procurements neither identifies the provision under the Code that authorized the noncompetitive award of the contract, nor includes contracts with a value of \$10,000 or less. Consequently, the Annual Report of Emergency and Noncompetitive Procurements cannot be considered a substitute for the Quarterly Reports which provide Council oversight of noncompetitive procurements to public entities defined in Section 11B-42(a) (5) and (6). There is also a potential for abuse for contracts with low dollar values.

## IX. RECOMMENDATIONS

It is recommended that:

1. The requirement in Section 11B-42(e) for the County Executive to submit quarterly reports to the Council identifying contracts which were awarded to public entities defined in Section 11B-42(a) (5) and (6) should not be extended beyond the December 31, 1988 sunset date.

2. The County Council should enact a new Section 11B-42(e) which requires the County Executive to submit an annual report to the County Council on contracts and grants awarded under the provisions of Section 11B-42, with entities under subsection (a) (5) and (6). The report should include the name of the entity, the amount of the contract or grant, the purpose of the contract or grant and the provision of the Code that authorized the award of the contract or grant.

3. The Council assign responsibility for reviewing all emergency and noncompetitive procurements to the Finance and Intergovernmental Affairs (FIN) Committee. Further, that the FIN Committee schedule annually a discussion of all emergency and noncompetitive procurements with representatives of the Executive branch to ensure the integrity of the County's procurement process.

4. The Division of Purchasing and Materiel Management clarify the public entity definitions to be used for specific public entities and issue appropriate guidelines to all departments.

5. The County Council approve this report for public release.

X. AGENCY COMMENTS

Before submitting this report to the County Council, a draft copy was sent to the Chief Administrative Officer, the County Attorney, the Chief, Division of Purchasing and Materiel Management and the Council Staff Director. Comments of a technical nature have been included in this final report. Comments from the Chief Administrative Officer are presented below.



Montgomery County Government

ROCKVILLE, MARYLAND 20850

MEMORANDUM

November 18, 1988

TO: Andrew Mansinne, Director  
Office of Legislative Oversight

FROM: Lewis T. Roberts, Chief Administrative Officer *Lewis T. Roberts*

SUBJECT: Draft OLO Report No. 88-6, An Evaluation of the  
Reporting Requirement for Contracts with  
Public Entities

Thank you for the opportunity to comment on the above-mentioned draft report. The Executive Branch has no comments to offer at this time.

LTR:jp



**Sec. 11B-42. Cooperative purchasing, public entity contracting, and grants.**

(a) *Public entity defined.* In this section, "public entity" means:

- (1) The federal government;
- (2) A state government and any of its agencies;
- (3) Any political subdivision of a state government and any of its agencies;
- (4) Any board, commission, or committee established by federal, state, or local law;
- (5) any organization or association of the federal government, state governments, or political subdivisions of state governments; and
- (6) Any other entity that is:
  - (i) Qualified as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code, as amended; and
  - (ii) Incorporated by an entity under paragraphs (1) through (5) of this subsection for the exclusive purpose of supporting or benefiting an entity under paragraphs (1) through (5) of this subsection.

(b) *Cooperative purchasing.* Notwithstanding any other provision of this chapter, the chief administrative officer shall have the authority and is encouraged to join with other public entities in cooperative purchasing plans when the best interests of the county would be served thereby. The facilities and services of the purchasing office may be made available to other public entities. As a condition precedent to receiving such service, the public entity shall provide for payment as required by the director for any purchases made on its behalf. The director may establish a schedule of service fees, subject to the approval of the chief administrative officer.

(c) *Public entity contracting.* Notwithstanding any other provision of this chapter, the chief administrative officer may enter into a contract to sell, acquire, lease, or use any supplies, goods, services, equipment, facilities, or property with any public entity upon the terms and conditions that will be in the best interest of the county as the chief administrative officer determines.

(d) *Grants.* Notwithstanding any other provision of this chapter, the chief administrative officer may enter into a contract or lease with any entity that is named or designated in a grant or resolution of a public entity or selected pursuant to a grant or resolution of a public entity named in an appropriation resolution of the county council or a subsequent resolution of the county council, provided that the chief administrative officer determines that the contract or lease serves a public purpose.

(e) (1) Every three (3) months, the county executive must submit a report to the county council on the contracts and grants entered into under this section with entities under subsection (a)(5) and (6) of this section to include:

- (i) The name of the entity;
- (ii) The amount of the contract or grant; and
- (iii) The provision under this Code that authorizes the contract or grant.

(2) This subsection expires on December 31, 1988. (1977 L.M.C., ch. 39, § 2; 1986 L.M.C., ch. 7, § 1.)

**Sec. 11B-9. Emergency purchases.**

(a) If an emergency occurs during regular county business hours, the using agency shall immediately notify the director, who shall either purchase the required goods or services, or authorize the agency to do so.

(b) If an emergency occurs at times other than regular business hours, the using agency may directly purchase the required goods or services after receiving the approval of the head of the using agency or his or her designee. If possible, the agency shall secure competitive bids by telephone or written bids or estimates and order from the lowest responsible bidder.

(c) Within thirty (30) days after such authorization, the individual who authorized the emergency purchase shall submit to the chief administrative officer a written determination and finding setting forth the facts and circumstances of the emergency purchase authorized. A complete record of such purchases shall be maintained by the director and the information contained in this record shall be used as the basis of an annual report to the chief administrative officer which shall be prepared by the director within sixty (60) days following the close of the fiscal year. Copies of this report shall be available to the public. (1977 L.M.C., ch. 39, § 2.)

**Sec. 11B-27A. Report of procurement actions involving non-competitive negotiations.**

(a) The chief administrative officer shall submit to the county executive and the county council a report on September 1 of each year on all contracts, change orders or contract modifications in excess of ten thousand dollars (\$10,000.00) involving noncompetitive procurements made during the preceding fiscal year. The report shall specify the contractor and describe the contract's purpose, type and amount.

(b) The director shall attach to the appropriate contract documents any written determinations and findings required hereunder or by implementing regulations.

(c) Such reports and supporting documentation shall be retained for a period of three (3) years after the expiration of the contract and shall be available to the public upon request. (1977 L.M.C., ch. 39, § 2.)

*Editor's note*—This section, originally numbered 11B-27, has been renumbered as section 11B-27A since section 11B-27 is already in existence.