

Bill No. 5-02
Concerning: Procurement - Service
Contracts - Wage Requirements
Revised: 6-11-02 Draft No. 11
Introduced: March 5, 2002
Enacted: June 11, 2002
Executive: June 20, 2002
Effective: July 1, 2003
Sunset Date: None
Ch. 17, Laws of Mont. Co. 2002

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Andrews, Council President Silverman, and Councilmembers Ewing,
Leggett, and Berlage

AN ACT to:

- (1) require the payment of certain wages by certain contractors with the County, and the inclusion in certain bids[[,]] and proposals[[, and offers]] of funds to pay certain wages;
- (2) specify the process for setting and enforcing contractual wage requirements, including treating certain private employees as third-party beneficiaries of certain contracts; and
- (3) generally amend County law regarding wages paid by persons who contract with the County.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-33A

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-33A is added as follows:**

2 **11B-33A. Wage Requirements.**

3 (a) *Scope.* Any **contract** for **procurement** of **services** by a County
 4 department or office must require the **contractor** and any
 5 subcontractor to comply with the wage requirements of this Section.
 6 As used in this Section, “covered employer” refers to any **contractor**
 7 or subcontractor that is subject to this Section.

8 (b) *Exceptions to coverage.* This Section does not apply to:

9 (1) a **contractor** who:

10 (A) employs fewer than 10 employees when the **contractor**
 11 submits a bid or proposal, and

12 (B) does not employ 10 or more employees at [[all times]]
 13 any time the **contract** is in effect as a result of
 14 performing the **contract**;

15 (2) a [[prime]] **contractor** who, at the time a **contract** is signed:

16 (A) has received less than \$50,000 from the County in the
 17 most recent 12-month period; [[or]] and

18 (B) will be entitled to receive less than \$50,000 from the
 19 County under that contract in the next 12-month period;

20 (3) a **contract** with a **public entity**;

21 (4) a **contract** with a nonprofit organization that has qualified for
 22 an exemption from federal income taxes under Section
 23 501(c)(3) of the Internal Revenue Code;

24 (5) a [[sole source]] **non-competitive contract**[[, as defined in the
 25 regulations implementing this Chapter]] awarded under Section
 26 11B-14 if the Chief Administrative Officer finds that the

27 performance of the contract would be significantly impaired if
 28 the wage requirements of this Section applied;

29 (6) a **contract** for electricity, telephone, cable television, water,
 30 sewer, or similar service delivered by a regulated public utility;

31 (7) a **contract** for **services** needed immediately to prevent or
 32 respond to an imminent threat to public health or safety; [[or]]

33 (8) an employer to the extent that the employer is expressly
 34 precluded from complying with this Section by the terms of any
 35 federal or state law, contract, or grant;

36 (9) a bridge contract entered into under Section 11B-42; or

37 (10) a contract entered into under a cooperative procurement under
 38 Section 11B-40.

39 The Executive by regulation may increase the amount in subsection
 40 (b)(2) to reflect increases in the cost of living.

41 (c) [[Bid]] *Solicitation requirements.*

42 (1) Each bid[[, offer,]] or proposal to provide **services** to the
 43 County must specify how the **contractor** and each
 44 subcontractor will comply with these wage requirements, and
 45 must include sufficient funds to meet these requirements.

46 (2) Each bid[[, offer,]] or proposal to provide **services** to the
 47 County which is submitted by an organization that is exempt
 48 from coverage under subsection (b)(4) must specify the wage
 49 the organization intends to pay to those employees who will
 50 perform direct, measurable work under the **contract**, and any
 51 health insurance the organization intends to provide to those
 52 employees. In evaluating the cost of a bid[[, offer,]] or proposal
 53 the County must disregard any additional cost attributable to

54 payment of the wage requirements of this Section by any
 55 organization that is exempt from coverage under subsection
 56 (b)(4) when compared to a bid or proposal submitted by another
 57 organization that is also exempt from coverage under
 58 subsection (b)(4).

59 (3) A **contractor** must not split or subdivide a **contract**, pay an
 60 employee through a third party, or treat an employee as a
 61 subcontractor or independent contractor, to avoid the
 62 imposition of any requirement under this Section.

63 (d) *Health insurance.* If a **contractor** or subcontractor commits in its
 64 bid[[, offer,]] or proposal to provide health insurance to any employee
 65 who provides services to the County, the **contractor** or subcontractor
 66 may:

67 (1) [[estimate]] certify in its bid[[, offer,]] or proposal the per-
 68 employee hourly cost of the employer's share of the premium
 69 for that insurance, and

70 (2) reduce the wage paid under subsection (e) to [[employees]] any
 71 employee covered by the insurance by all or part of the per-
 72 employee hourly cost of the employer's share of the premium
 73 [[unless the Director finds that the cost of the insurance is
 74 substantially lower than estimated or is excessive in relation to
 75 the coverage provided]].

76 (e) *Wage requirement.*

77 (1) Except as permitted under subsection (d)(2), each covered
 78 employer must pay each employee who is not exempt under
 79 subsection (f) at least \$10.50 per hour during the time the
 80 employee actually provides services to the County.

81 (2) The Chief Administrative Officer must adjust the wage rate
 82 required under this subsection, effective July 1 of each year, by
 83 the annual average increase, if any, in the Consumer Price
 84 Index for all urban consumers for the Washington-Baltimore
 85 metropolitan area, or any successor index, for the previous
 86 calendar year. The Chief Administrative Officer must calculate
 87 the adjustment to the nearest multiple of 5 cents, and must
 88 publish the amount of this adjustment not later than March 1 of
 89 each year. Each adjustment under this paragraph applies to any
 90 contract covered by this Section which:

91 (A) is in effect when the adjustment takes effect, or

92 (B) takes effect during the next 12 months.

93 (f) Exceptions to wage requirement. The wage requirements of this
 94 Section do not apply to any employee:

95 (1) who performs no measurable work related to any **contract** with
 96 the County;

97 (2) who participates in a government-operated or -sponsored
 98 program that restricts the earnings of or wages paid to
 99 employees to a level below the wage required under this
 100 Section;

101 (3) who participates for no longer than 120 days in any calendar
 102 year in a government-operated or -sponsored summer youth
 103 employment program; or

104 (4) for whom a lower wage rate is expressly set in a bona fide
 105 collective bargaining agreement.

106 (g) Conflicting requirements. If any federal, state, or County law or
 107 regulation requires payment of a higher wage, that law or regulation

108 controls. If any applicable collective bargaining agreement requires
109 payment of a higher wage, that agreement controls.

110 (h) Enforcement.

111 (1) The Chief Administrative Officer must require each covered
112 employer to:

113 (A) certify that the employer and each subcontractor is aware
114 of and will comply with the applicable wage
115 requirements of this Section;

116 (B) keep and submit any records necessary to show
117 compliance; and

118 (C) conspicuously post notices informing employees of the
119 requirements of this Section, and send a copy of each
120 such notice to the Chief Administrative Officer's
121 designee.

122 (2) The Chief Administrative Officer must enforce this Section,
123 perform random audits and any other audit necessary to do so,
124 and investigate any complaint of a violation.

125 (3) An employer must not discharge or otherwise retaliate against
126 an employee for asserting any right under this Section or filing
127 a complaint of a violation. Any retaliation is subject to all
128 sanctions for noncompliance with this Section.

129 (4) The sanctions of Section 11B-33(b) which apply to
130 noncompliance with nondiscrimination requirements apply with
131 equal force and scope to noncompliance with the wage
132 requirements of this Section.

133 (5) Each contract may specify that liquidated damages for any
134 noncompliance with this Section includes the amount of any

135 unpaid wages, with interest, and that the contractor is jointly
 136 and severally liable for any noncompliance by a subcontractor.
 137 In addition, each contract must specify that an aggrieved
 138 employee, as a third-party beneficiary, may by civil action
 139 enforce the payment of wages due under this Section and
 140 recover any unpaid wages with interest, a reasonable attorney's
 141 fee, and damages for any retaliation for asserting any right
 142 under this Section.

143 (i) Report.

144 ~~[(5)]~~ ~~[(6)]~~ The Chief Administrative Officer must report annually to the
 145 Council and Executive on the operation of and compliance with this
 146 Section. In addition, the report filed under Section 11B-61(a) each
 147 year must compute the number of contracts and subcontracts with
 148 minority-owned businesses that are subject to the requirements of this
 149 Section, and how that number has changed since the year before those
 150 requirements took effect.

151 **Sec. 2. Effective Date.** Section 11B-33A, inserted by Section 1 of this Act,
 152 applies, effective July 1, 2003, to any contract ~~[[that takes effect]]~~ for which the
 153 County government released a solicitation on or after ~~[[July]]~~ January 1, 2003,
 154 [[including]] and to any renewal or extension of a previously-effective contract
 155 [[that]] which takes effect on or after July 1, 2003, and incorporates any material
 156 alteration to a provision of that contract. The Chief Administrative Officer must
 157 offer to renegotiate any multi-year contract which took effect before July 1, 2003,
 158 if the contractor agrees to apply the wage requirements of Section 11B-33A to
 159 employees who provide services under that contract. The first annual wage
 160 adjustment required by Section 11B-33A(e)(2) must take effect on July 1, 2004.

161 *Approved:*

162

163 /S/ June 12, 2002

Steven A. Silverman, President, County Council Date

164 *Approved:*

165

166 /S/ June 20, 2002

Douglas M. Duncan, County Executive Date

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

168

169 /S/ June 24, 2002

Mary A. Edgar, CMC, Clerk of the Council Date