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 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

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 11B-33A is added as follows:

11B-33A. Wage Requirements.

(a) Scope. Any contract for procurement of services by a County department or office must require the contractor and any subcontractor to comply with the wage requirements of this Section.

As used in this Section, “covered employer” refers to any contractor or subcontractor that is subject to this Section.

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

(1) a contractor who:

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

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

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

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

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

(3) a contract with a public entity;

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

(5) a [[sole source]] non-competitive contract[, as defined in the regulations implementing this Chapter] awarded under Section 11B-14 if the Chief Administrative Officer finds that the
performance of the contract would be significantly impaired if
the wage requirements of this Section applied;

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

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

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

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

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

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

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

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

(2) Each bid[[], offer,] or proposal to provide services to the
County which is submitted by an organization that is exempt
from coverage under subsection (b)(4) must specify the wage
the organization intends to pay to those employees who will
perform direct, measurable work under the **contract**, and any
health insurance the organization intends to provide to those
employees. In evaluating the cost of a bid[[], offer,] or proposal
the County must disregard any additional cost attributable to
payment of the wage requirements of this Section by any organization that is exempt from coverage under subsection (b)(4) when compared to a bid or proposal submitted by another organization that is also exempt from coverage under subsection (b)(4).

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

(d) Health insurance. If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the County, the contractor or subcontractor may:

(1) certify in its bid or proposal the per-employee hourly cost of the employer's share of the premium for that insurance, and

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

(e) Wage requirement.

(1) Except as permitted under subsection (d)(2), each covered employer must pay each employee who is not exempt under subsection (f) at least $10.50 per hour during the time the employee actually provides services to the County.
The Chief Administrative Officer must adjust the wage rate required under this subsection, effective July 1 of each year, by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the previous calendar year. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of 5 cents, and must publish the amount of this adjustment not later than March 1 of each year. Each adjustment under this paragraph applies to any contract covered by this Section which:

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

(B) takes effect during the next 12 months.

Exceptions to wage requirement. The wage requirements of this Section do not apply to any employee:

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

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

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

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

Conflicting requirements. If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation
controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.

(h) Enforcement.

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

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

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

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

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

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

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

(5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any
unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation for asserting any right under this Section.

(i) Report.

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

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

/S/ June 12, 2002

Steven A. Silverman, President, County Council

Approved:

/S/ June 20, 2002

Douglas M. Duncan, County Executive

This is a correct copy of Council action.

/S/ June 24, 2002

Mary A. Edgar, CMC, Clerk of the Council