

Bill No. 23-04
Concerning: Contracts and
Procurement—Local Small Business
Reserve Program
Revised: 4-12-05 Draft No. 6
Introduced: July 13, 2004
Enacted: April 12, 2005
Executive: April 25, 2005
Effective: July 25, 2005
Sunset Date: Dec. 31, ~~[[2008]] 2009~~
Ch. 3, Laws of Mont. Co. 2005

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Silverman and Councilmembers Leventhal, Perez, and Floreen

AN ACT to:

- (1) establish a Local Small Business Reserve Program;
- (2) designate the types of procurements subject to the requirements of the Program;
- (3) require using departments to achieve a certain percentage of local small business procurement contracts under the Program;
- (4) require certain procedures to assist local small businesses;
- (5) require using departments to report to the ~~[[Office of Procurement]]~~ Department of Economic Development by a certain date;
- (6) require the Director of Economic Development to report to the Council by a certain date;
- (7) implement Internet posting requirements for certain purchases;
- (8) provide a sunset date for the Program; and
- (9) generally amend the law governing contracts and procurement.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-17A. Internet Posting Requirements and
Article XV. Local Small Business Reserve Program
Sections 11B-65 through ~~[[11B-71]]~~ 11B-70

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:

Section 1. Section 11B-17A is added as follows:

11B-17A. Internet Posting Requirements.

(a) Each using department must post each planned purchase of
[[construction, goods, or professional and non-professional services,]]
goods, services, and construction valued at [[(\$1,000)] \$5,000 to
\$25,000, on a County web site for 5 business days before making a
purchase or entering into a contract. Each purchase must be made as
provided under Section 11B-13.

(b) Each posting must contain:

(1) the name and a brief description of the [[construction, goods or
services]] goods, services, or construction being procured;

[[~~(2)~~] (2) the dollar amount and quantity of the potential purchase or
contract;]]

[[~~(3)~~] (2) the delivery schedule;

[[~~(4)~~] (3) contact information for the department employee responsible for
the purchasing; and

[[~~(5)~~] (4) any other applicable performance requirement.

(c) The Director may waive this posting requirement when a purchase is
necessary to meet an imminent threat to public health, welfare, or
safety. The Director must keep records on the number of waivers issued
and the reason for each waiver, and must report this information to the
Director of Economic Development, who must include this information
in [[Council with]] the annual report on the Local Small Business
Reserve Program under Section 11B-69(b).

* * *

28 **Section 2. Sections 11B-65 through 11B-70 are added as follows:**

29 **Article XV. Local Small Business Reserve Program.**

30 **11B-65. Definitions.**

31 In this Article the following words have the meanings indicated.

32 (a) **Department** means the Department of Economic Development.

33 (b) **Director** means the Director of the Department of Economic
 34 Development.

35 [(a)] (c) **Local Small Business** means a [[minority owned]] business, other than
 36 a broker, that:

37 (1) generates a significant amount of economic activity in the
 38 County;

39 (2) is independently owned and operated;

40 (3) is not a subsidiary of another business; and

41 (4) meets [[the]] criteria, size limits, and gross sales amounts [[as]]
 42 established by method 2 regulations,[[as defined in Section 11B-
 43 58(a) that meets the criteria in paragraph (1) and the size limits in
 44 paragraph (2), or a business, other than a broker, that meets the
 45 criteria in paragraph (1) and the size limits in paragraph (2).]]

46 [(1) **A small business must meet the following criteria:**

47 (A) The business is independently owned and operated;

48 (B) The business is not a subsidiary of another business;

49 (C) The business is not dominant in its field of operation;

50 (D) The business has a principal place of business in the
 51 County;

52 (E) At least 50 percent of its employees work in the County;
 53 and

54 (F) The business [[paid]] pays personal property taxes to the

55 County for the fiscal year [[before receiving]] in which it
 56 receives a contract award under the Program and continues
 57 to pay personal property taxes for the term of the contract;

58 (2) A small business must meet the following size
 59 requirements:

60 (A) The wholesale operations of the business, if any, did not
 61 employ more than 50 persons, and the gross sales of the
 62 business did not exceed an average of \$2,000,000 in its
 63 most recently completed 3 fiscal years;

64 (B) The retail operations of the business, if any, did not
 65 employ more than 25 persons, and the gross sales of the
 66 business did not exceed an average of \$2,000,000 in its
 67 most recently completed 3 fiscal years;

68 (C) The manufacturing operations of the business, if any, did
 69 not employ more than 100 persons, and the gross sales of
 70 the business did not exceed an average of \$2,000,000 in its
 71 most recently completed 3 fiscal years;

72 (D) The service operations of the business, if any, did not
 73 employ more than 100 persons, and the gross sales of the
 74 business did not exceed an average of \$2,000,000 in its
 75 most recently completed 3 fiscal years; and

76 (E) The construction operations of the business, if any, did not
 77 employ more than 50 persons, and the gross sales of the
 78 business did not exceed an average of \$7,000,000 in its
 79 most recently completed 3 fiscal years.]]

80 [[b)] (d) **Local Small Business Reserve** means any procurement that is
 81 limited to responses from local small businesses.

82 **11B-66. Local Small Business Reserve Program.**

- 83 (a) Except as provided in Subsection (c), this Article applies to all
 84 procurements by a using department.
- 85 (b) A using department’s procurement procedures must [[achieve]] award a
 86 minimum of 10 percent of the using department’s [[combined total
 87 dollar value for all]] combined dollar value of contracts issued for
 88 goods, [[supplies, services, maintenance, construction, construction-
 89 related services, architectural service, and engineering service
 90 contracts]] services, or construction to [[be made directly to]] local
 91 small businesses, subject to method 2 regulations.
- 92 (c) The total dollar value of procurements by a using department does not
 93 include:
- 94 (1) the value of any contract to which this Article does not apply
 95 because of a conflict with state or federal law or a grant
 96 requirement[.];
- 97 (2) a preexisting contract executed by the County;
- 98 (3) a non-competitive contract award made under Section 11B-14;
 99 [[4]][[a sole source selection approved by the Contract Review
 100 Committee; or]]
- 101 [[5]] (4) a public entity or emergency procurement;
- 102 (5) any waiver[[s]] made under Section 11B-67(f); [[or]]
- 103 (6) any procurement where no local small business is qualified or
 104 able to perform the contract; or
- 105 (7) any single procurement that is estimated to exceed \$10 million.
 106 [[would cause the using department to exceed the dollar limit set
 107 under 11B-68(a)(3).]]

109 **11B-67. Procedures.**

- 110 (a) Any procurement by a using department of goods, [[supplies,]] services,
111 or [[maintenance,]] construction[[, construction-related services,
112 architectural services, and engineering services]] is eligible for
113 designation for the local small business reserve by the using department
114 director or a designee, except any procurement that would be excluded
115 under Section 11B-66(c).
- 116 (b) A solicitation for a procurement that has been designated for a local
117 small business reserve must be published in the same manner as
118 required for other solicitations under Article III.
- 119 (c) The procurement officer of a designated procurement unit must award a
120 procurement contract designated for a local small business reserve to the
121 responsible local small business that submits an [[responsible bid]] offer
122 that:
- 123 (1) is the lowest bid price;
124 (2) if the invitation for bids so provides, is the lowest evaluated bid
125 price; or
126 (3) is the bid or proposal most favorable to the County within the
127 local small business reserve.
- 128 (d) A business must affirm and provide supporting documentation to the
129 Director to show that it is a local small business as defined in Section
130 11B-65[[a]](c).
- 131 (e) A local small business is no longer eligible for a procurement under this
132 Article if the business has been awarded \$10 million in County
133 contracts and at least 10 separate contracts, as either a prime contractor
134 or a subcontractor, since January 1, [[2005]] 2006. The Director must
135 provide written notice to the business when it is no longer eligible.

136 (f) The Chief Administrative Officer may waive the application of this
 137 Article to a specific contract if the Chief Administrative Officer finds
 138 that the application of this Article conflicts with the overall objectives
 139 and responsibilities of the Chapter. The Chief Administrative Officer
 140 must keep records on the number of waivers issued and the reason for
 141 each waiver. This information must be reported to the Council in the
 142 annual report on the Program under Section 11B-69(b).

143 (g) This Article does not give any person, including a local small business,
 144 any right or status, including standing, to challenge the award of a
 145 contract or subcontract under the County procurement system. This
 146 Article is enforceable only through the oversight function of the Chief
 147 Administrative Officer and the Council.

148 **11B-68. Regulations.**

149 (a) The County Executive must adopt method 2 regulations to implement
 150 this Article.

151 The regulations must:

- 152 (1) require the Director to compile and maintain a comprehensive
 153 bidder’s list of qualified local small businesses and post that list
 154 on the appropriate website[.];
- 155 (2) specify the criteria, size requirements, and gross sales amounts
 156 for a local small business; [[and]]
- 157 (3) [[limit the total dollar amount of individual contract awards that
 158 are eligible for the program.]] define what constitutes a
 159 significant amount of economic activity; and
- 160 (4) identify outreach methods and marketing strategies to inform
 161 local small businesses of the program.[; and
- 162 (5) limit the total dollar amount of individual contract awards that are

163 eligible for the program.]]

164 (b) Each using department must comply with the regulations.

165 **11B-69. Reports.**

166 (a) By September 30 each year, each using department must submit to the
 167 Director a report on the number, type, and dollar amount of contracts
 168 issued under this Article.

169 (b) By November 30 each year, the Director must report to the Council on
 170 the Local Small Business Reserve Program. This report must include
 171 the number, type, and dollar amount of contracts awarded under this
 172 Article during the preceding fiscal year, the number, type, and dollar
 173 amount of each waiver, [[and]] information about how these numbers
 174 have changed from the preceding fiscal year, and the extent of outreach
 175 efforts.

176 **11B-70. Penalty.**

177 (a) A person must not:

- 178 (1) willfully make a false statement to a County official or employee
- 179 for the purpose of influencing participation in the Program; or
- 180 (2) fraudulently obtain, attempt to obtain, or aid another person in
- 181 fraudulently obtaining or attempting to obtain funds to which the
- 182 person is not entitled to under this article.

183 (b) A violation of this Section:

- 184 (1) is a class A violation; and
- 185 (2) disqualifies the violator from doing business with the County for
- 186 2 years.

187 **Section 3.** This Act takes effect no later than January 1, ~~[[2005]]~~ 2006.

188 ~~[[Unless the Council takes action to extend this Act, this]]~~ This Act and any
 189 regulations adopted under it~~[[,]]~~ expires on December 31, ~~[[2008]]~~ 2009. The Office

190 of Legislative Oversight must begin a review of the Program one year after its
191 implementation begins and must report to the Council about the effectiveness of the
192 Program [[no later than July 1, 2007]].

193 *Approved:*

194	/s/	4/14/05
Thomas E. Perez, President, County Council		Date

195 *Approved:*

196	/s/	4/25/05
Douglas M. Duncan, County Executive		Date

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

198	/s/	4/26/05
Linda M. Lauer, Clerk of the Council		Date