

Bill No. 32-05
 Concerning: Contracts and
Procurement – Service Contracts
 Revised: 7-31-06 Draft No. 3
 Introduced: October 11, 2005
 Enacted: August 1, 2006
 Executive: August 10, 2006
 Effective: [[November 1, 2005]]
January 1, 2007
 Sunset Date: None
 Ch. 28, Laws of Mont. Co. 2006

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Leventhal

AN ACT to:

- (1) establish a savings threshold that must be met before soliciting or awarding certain contracts for services if the contract will have an adverse effect on certain public employees;
- (2) require certain contracting actions to be subject to collective bargaining;
- (3) require certain County Departments and the Chief Administrative Officer to take certain actions; and
- (4) generally amend the law regarding contracts and procurement.

By adding

Montgomery County Code
 Chapter 11B, Contracts and Procurement
 Article XVI, Service Contracts
 Sections 11B-71 through 11B-75

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 **Section 1. Sections 11B-71 through 11B-75 are added, as follows:**

2 **Article XVI. Service Contracts.**

3 **11B-71. Definitions.**

4 In this Article, the following words have the meanings indicated.

5 (a) **Adversely affect** means:

- 6 (1) loss of County employment;
 7 (2) reduction in pay or benefits;
 8 (3) reduction in pay grade; or
 9 (4) loss of bargaining unit work.

10 (b) **Public employee** means:

- 11 (1) a County merit system employee who is a member of the
 12 Office, Professional, and Technical (OPT) or Service, Labor,
 13 and Trades (SLT) bargaining unit; or
 14 (2) a temporary, seasonal, or substitute employee who is a limited
 15 scope member of the OPT or SLT bargaining unit under
 16 Section 33-105(c)(2).

17 **11B-72. Scope of Article.**

18 (a) This Article applies to a service contract that the Director finds will, if
 19 awarded:

- 20 (1) exceed an estimated annualized cost of \$75, 000; and
 21 (2) adversely affect a public employee, as defined in Section 11B-
 22 71(b), by reducing or eliminating work already performed by
 23 County employees when the contract is solicited.

24 The Director must adjust the amount in paragraph (1) every 2 years to
 25 reflect the aggregate increase, if any, in the Consumer Price Index for

26 all urban consumers for the Washington-Baltimore metropolitan area,
27 or any successor index, for the previous 2 years. The Director must
28 calculate the adjustment to the nearest multiple of \$100.

29 (b) This Article does not apply to:

30 (1) a contract that is primarily to obtain goods or construction, but
31 includes services related to the procurement of the goods or
32 construction;

33 (2) a contract that the Director finds is necessary to meet an
34 imminent threat to public health, welfare, or safety;

35 (3) a [[contact]] contract for services provided by a public entity;

36 (4) a [[contact]] contract for services provided by a local small
37 business under the Local Small Business Reserve Program; or

38 (5) a non-competitive contract awarded by the Chief Administrative
39 Officer under Section 11B-14(a)(4).

40 (c) This Article does not apply to or limit the authority of a Department
41 or Office Director to abolish a bargaining unit position or conduct a
42 reduction-in-force.

43 (d) This Article does not apply to or limit any contract for:

44 (1) any service that the County Council authorizes or requires to be
45 provided by an independent contractor;

46 (2) any service by a consultant; or

47 (3) any professional service, unless that service is provided by
48 bargaining unit employees when the contract is solicited.

49 **11B-73. Approval of solicitation for service contract.**

50 The Director must not issue a solicitation for a service contract under this
51 Article unless the Chief Administrative Officer has certified that the contract
52 complies with Section 11B-74.

53 **11B-74. Certification by Chief Administrative Officer.**

54 (a) The Chief Administrative Officer may certify that the Director may
55 solicit a service contract under this Article if the using department
56 has:

57 (1) taken steps to consider alternatives to the service contract,
58 including reorganization, reevaluation of service, and
59 reevaluation of performance;

60 (2) consulted with the certified representative of public employees
61 who will be adversely affected if the County enters into the
62 service contract; and

63 (3) demonstrated, based on a cost comparison analysis, that the
64 County will save, over the term of the contract, at least 25
65 percent of the value of the contract.

66 (b) The using department must compare at least the following items in its
67 cost analysis:

68 (1) direct costs, including fringe benefits, and an assumption that
69 the contractor will meet the wage requirements of Section 11B-
70 33A for the employees who perform work under the contract;

71 (2) indirect overhead costs, including a proportional share of
72 administrative salaries and benefits, rent, equipment costs,
73 utilities, and materials; and

74 (3) any continuing or transitional costs directly related to
75 contracting for the service, including unemployment
76 compensation and the cost of transitional services.

77 (c) (1) The using department must develop a plan of assistance for
78 each public employee who will be adversely affected by the
79 service contract. The plan of assistance must include:

80 (A) efforts to place each adversely affected public employee
 81 in a vacant County position;

82 (B) inclusion in the service contract, if feasible, of a
 83 requirement that the contractor [[will]] must:

84 (i) notify the County of any vacant position for which
 85 displaced County employees may apply; and

86 (ii) consider hiring displaced public employees; and

87 (C) written notice of the anticipated adverse effect to each
 88 adversely affected public employee and the certified
 89 bargaining representative 120 days before the anticipated
 90 adverse effect will occur.

91 (2) The using department must bargain with the certified
 92 representative before adopting a final plan of assistance.

93 **11B-75. Enforcement.**

94 (a) Noncompliance with this Article does not invalidate a contract award
 95 or proposed contract award that the County has otherwise validly
 96 awarded or issued.

97 (b) A public employee who is adversely affected by noncompliance with
 98 this Article may file an action in the Circuit Court for the County or
 99 the District Court of Maryland, depending on the amount in
 100 controversy. If the Court enters a judgment in favor of the employee,
 101 the County must reimburse the employee for any actual loss the
 102 employee incurred.

103 **11B-76. Right of certified representative.**

104 The certified representative of an adversely affected employee may submit
 105 [[a proposal]] an offer in response to a solicitation, under applicable procurement

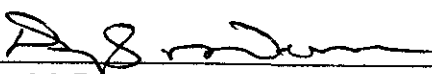
106 regulations, to have bargaining unit employees perform the services while
 107 achieving the targeted savings.

108 **Section 2. [[Effective Date]] Applicability.** This Act applies to any
 109 solicitation issued and any covered service contract awarded on or after
 110 [[November 1, 2005]] January 1, 2007.

111 **Section 3. Report and evaluation.** The County Executive must report to
 112 the Council President, not later than January 1, 2009, on the Executive branch's
 113 experience, if any to that point, with the process required by Article XVI of
 114 Chapter 11B, inserted by Section 1 of this Act, including any savings realized or
 115 costs added and any other effect on Executive branch performance. The Office of
 116 Legislative Oversight must evaluate the effect of the process required by Article
 117 XVI of Chapter 11B on the performance of Executive branch departments and
 118 offices, including any savings realized or costs added, by July 1, 2009, or any later
 119 date approved by Council resolution.

120 *Approved:*

121  August 1, 2006
 George L. Leventhal, President, County Council Date

122  8/10/06
 Douglas M. Duncan, County Executive Date

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

124  8/21/06
 Linda M. Lauer, Clerk of the Council Date

CLERK'S NOTE: Corrected misspelling of words on lines 35 and 36.