

Expedited Bill No. 45-09
 Concerning: Contracts and Procurement
- Amendments
 Revised: March 10, 2010 Draft No. 7
 Introduced: December 1, 2009
 Enacted: March 16, 2010
 Executive: March 26, 2010
 Effective: April 1, 2010
 Sunset Date: None
 Ch. 7, Laws of Mont. Co. 2010

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) exempt contracts for media advertisement from the Procurement Law;
- (2) exempt contracts for experts, consultants, and investigators for use in anticipation of litigation or preparation for trial from the Procurement Law;
- (3) expand the coverage of the Wage Requirements Law;
- (4) amend the time for contractors to submit information under the Wage Requirements Law;
- (5) permit the Director to investigate and verify information provided by businesses under the Local Small Business Reserve Program;
- (6) ~~[[repeal a section restricting the use of County funds by contractors and grantees to influence union organizing;~~
- (7)]] amend the Prevailing Wage Law to require contractors to pay the prevailing wage in effect when the solicitation is published;
- ~~[[8)]] (7)~~ permit a using department to file a dispute under the administrative dispute resolution process; and
- ~~[[9)]] (8)~~ generally amend the County Procurement Law.

By amending

Montgomery County Code
 Chapter 11B. Contracts and Procurement
 Sections 11B-4, 11B-17A, 11B-18, 11B-33A, 11B-33C, 11B-35, and 11B-67.

~~[[By repealing~~

~~Montgomery County Code
 Chapter 11B. Contracts and Procurement
 Section 11B-33B]]~~

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>

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* * *

28 **11B-33A. Wage requirements.**

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* * *

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

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(1) [a contractor who:

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

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

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

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

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

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[[3)](2) a contract with a public entity;

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[[4)](3) 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;

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[[5)](4) a non-competitive contract 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;

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

50

51

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

52

53 ~~[(8)]~~(7) an employer to the extent that the employer is expressly
54 precluded from complying with this Section by the terms of any
55 federal or state law, contract, or grant;

56 ~~[(9)]~~(8) a bridge contract entered into under Section 11B-42; or

57 ~~[(10)]~~(9) a contract entered into under a cooperative procurement
58 under Section 11B-40.

59 The Executive by regulation may increase the amount in subsection
60 ~~(b)[(2)]~~ (1) to reflect increases in the cost of living.

61 (c) *Solicitation requirements.*

62 (1) Each bid or proposal to provide services to the County must
63 specify how the contractor and each subcontractor will comply
64 with these wage requirements, and must include sufficient funds
65 to meet these requirements. The Director, for good cause shown,
66 may permit a bidder or proposer to provide this information after
67 the bid or proposal is submitted if:

68 (A) the information is provided before the time for evaluation
69 of the bid or proposal and no later than contract award;

70 (B) the original bid or proposal price does not change; and

71 (C) the Director approves the later submission in writing.

72 (2) Each bid or proposal to provide services to the County which is
73 submitted by an organization that is exempt from coverage under
74 subsection ~~(b)[(4)]~~ (3) must specify the wage the organization
75 intends to pay to those employees who will perform direct,
76 measurable work under the contract, and any health insurance the
77 organization intends to provide to those employees. In evaluating
78 the cost of a bid or proposal the County must disregard any
79 additional cost attributable to payment of the wage requirements

80 of this Section by any organization that is exempt from coverage
 81 under subsection (b)~~[(4)]~~ (3) when compared to a bid or
 82 proposal submitted by another organization that is also exempt
 83 from coverage under subsection (b)~~[(4)]~~ (3).

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

88 * * *

89 **11B-33B. [Use of County Funds] ~~[[Reserved]]~~ Use of County Funds.**

90 [(a) Purpose. Sound fiscal management requires vigilance to ensure that
 91 County funds appropriated for a service contract or a grant award to
 92 participate in a County-funded program are expended solely for the
 93 public purpose for which they are appropriated. If County funds are
 94 appropriated for a service contract or a grant award to participate in a
 95 County-funded program, and those funds are instead used to encourage,
 96 discourage, or otherwise influence union activity or organization, the
 97 proprietary interests of the County are adversely affected. The use of
 98 County funds to encourage, discourage, or otherwise influence
 99 employees from union activity or organizing constitutes a misuse of
 100 County resources.

101 (b) Use of Funds. County funds appropriated for a service contract or a
 102 grant award to participate in a County-funded program must not be
 103 encumbered or used to assist, promote, deter, or otherwise influence
 104 union activity or organizing. Nothing in this Section shall be construed
 105 to prohibit the expenditure of County funds appropriated for a service

106 contract or a grant award from being used to perform another act
107 required by law.

108 (c) Specific Restrictions. County funds for a service contract or a grant
109 award to participate in a County-funded program must not be used to:

110 (1) prepare, mail, or otherwise distribute materials related to union
111 activity or organizing;

112 (2) hire an attorney or a consultant to assist, promote, deter, or
113 otherwise influence union activity or organizing;

114 (3) encourage, discourage, or otherwise influence an employee from
115 taking a position on union organizing in the workplace;

116 (4) prevent or facilitate access to an employer's facilities or property
117 by a labor organization or its representatives;

118 (5) encourage or discourage a program manager, policy council,
119 committee, or community or parent group from assisting or
120 participating in a union activity or organizing.

121 (d) Enforcement.

122 (1) The Chief Administrative Officer must require each contractor or
123 grantee to:

124 (A) Certify that the contractor or grantee will not expend
125 County funds to assist, promote, deter, or otherwise
126 influence union activity or organizing and will comply
127 with the requirements of this Section.

128 (B) Keep and submit any records associated with County funds
129 received for a service contract or a grant award to
130 participate in a County-program necessary to show
131 compliance. A contractor or grantee must provide these
132 records to the County upon request.

- 133 (2) The Chief Administrative Officer must enforce this Section and
134 investigate any complaint of a violation.
- 135 (e) Penalty. A contractor or grantee must pay the County the amount of
136 funds expended in violation of this Section.]
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138 County funds appropriated for a service contract or a grant award to
139 participate in a County-funded program are expended solely for the
140 public purpose for which they are appropriated. If County funds are
141 appropriated for a service contract or a grant award to participate in a
142 County-funded program, and those funds are instead used to encourage,
143 discourage, or otherwise influence union activity or organization, the
144 proprietary interests of the County are adversely affected. The use of
145 County funds to encourage, discourage, or otherwise influence
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152 to prohibit the expenditure of County funds appropriated for a service
153 contract or a grant award from being used to perform another act
154 required by law.
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156 award to participate in a County-funded program must not be used to:
- 157 (1) prepare, mail, or otherwise distribute materials related to union
158 activity or organizing;

- 159 (2) hire an attorney or a consultant to assist, promote, deter, or
- 160 otherwise influence union activity or organizing;
- 161 (3) encourage, discourage, or otherwise influence an employee from
- 162 taking a position on union organizing in the workplace;
- 163 (4) prevent or facilitate access to an employer’s facilities or property
- 164 by a labor organization or its representatives;
- 165 (5) encourage or discourage a program manager, policy council,
- 166 committee, or community or parent group from assisting or
- 167 participating in a union activity or organizing.

168 (d) Enforcement.

169 (1) The Chief Administrative Officer must require each contractor or

170 grantee to:

171 (A) Certify that the contractor or grantee will not expend

172 County funds to assist, promote, deter, or otherwise

173 influence union activity or organizing and will comply

174 with the requirements of this Section.

175 (B) Keep and submit any records associated with County funds

176 received for a service contract or a grant award to

177 participate in a County-program necessary to show

178 compliance. A contractor or grantee must provide these

179 records to the County upon request.

180 (2) The Chief Administrative Officer must enforce this Section and

181 investigate any complaint of a violation.

182 (e) Penalty. A contractor or grantee must pay the County the amount of

183 funds expended in violation of this Section.

184 **11B-33C. Prevailing Wage Requirements — Construction Contracts.**

185 * * *

186 (c) Payment of prevailing wage. Any contractor and subcontractor that
 187 performs direct and measurable construction work on a County financed
 188 construction contract must pay each employee at a rate equal to or more
 189 than the prevailing wage [currently] in effect when the solicitation is
 190 published for the type of work performed.

191 * * *

192 **11B-35. Contract dispute resolution.**

193 (a) *Dispute submitted.* A contractor must submit any dispute arising under
 194 a contract to the Director. The using department may submit a dispute
 195 arising under the contract to the Director.

196 (b) *Decision by Director.* The Director must give the contractor and the
 197 using department a written decision approving or denying the dispute in
 198 whole or in part within 45 days after receiving the dispute. If the
 199 Director does not resolve the dispute within 45 days, the dispute is
 200 denied.

201 (c) *Appeal to Chief Administrative Officer.*

202 (1) The contractor or the using department may appeal the Director's
 203 [denial of] decision resolving a dispute in writing to the Chief
 204 Administrative Officer within 30 days after receiving the
 205 Director's decision, or if no decision is rendered, within 75 days
 206 after submitting the dispute.

207 (2) The Chief Administrative Officer must decide the appeal after
 208 considering any written information submitted by the Director,
 209 using department, and the contractor.

210 (3) The Chief Administrative Officer may hold a hearing on the
 211 appeal. The Chief Administrative Officer must complete any
 212 hearing on the appeal within:

- 213 (A) 60 days after receiving the appeal for disputes involving
 214 [under \$10,000] less than \$50,000;
- 215 (B) 90 days after receiving the appeal for disputes involving
 216 between [\$10,000] \$50,000 and \$100,000; and
- 217 (C) 135 days after receiving the appeal for disputes involving
 218 more than \$100,000.
- 219 (4) The Chief Administrative Officer may require the contractor and
 220 the using department to [produce] provide additional information
 221 about the dispute.
- 222 (5) The Chief Administrative Officer must give the contractor and
 223 the using department a written decision approving or denying the
 224 dispute in whole or in part within 30 days after receiving the
 225 appeal or, if a hearing is held, within 30 days after receiving the
 226 hearing officer's report. If the Chief Administrative Officer does
 227 not give the contractor and using department a written decision
 228 on the appeal within the applicable period, the dispute is denied.
- 229 (d) *Appeal to court.*
- 230 (1) The contractor may appeal the Chief Administrative Officer's
 231 decision to the Circuit Court under the Maryland Rules.
- 232 (2) The contractor or the County may appeal the decision of the
 233 Circuit Court to the Court of Special Appeals under State law.
- 234 (3) In the event of a statutory denial under subsection (b), the
 235 contractor or the County may file a legal action in a court of
 236 appropriate jurisdiction. That court must hear the case *de novo*.
- 237 (e) *Consolidation of disputes.* The Director or the Chief Administrative
 238 Officer may consolidate [a contractor's] multiple disputes if:
- 239 (1) the disputes have common questions of law or fact; and

240 (2) the contractor or using department requests consolidation.

241 The time limits in this Section for the last dispute filed apply to any
242 consolidated dispute.

243 * * *

244 **11B-67. Procedures.**

245 * * *

246 (d) A business must affirm and provide supporting documentation to the
247 Director to show that it is a local small business as defined in Section
248 11B-65(c). The Director may investigate and verify the information
249 provided on the application.

250 * * *

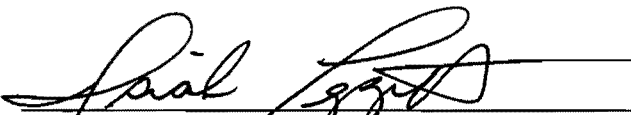
251 **Sec. 2. Expedited Effective Date.**

252 The Council declares that this legislation is necessary for the immediate
253 protection of the public interest. This Act takes effect on ~~[[January 1, 2010]]~~ April 1,
254 2010.

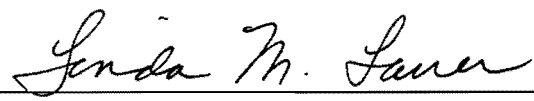
255 *Approved:*

256  3/17/10
Nancy Floreen, President, County Council Date

257 *Approved:*

258  3/26/10
Isiah Leggett, County Executive Date

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

260  3/29/10
Linda Lauer, Clerk of the Council Date