

MEMORANDUM

October 10, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 42-14, Contracts and Procurement – Minority-Owned Businesses – Sunset Date - Amendments

Government Operations and Fiscal Policy Committee recommendation: (3-0) enact Bill with amendments.

Expedited Bill 42-14, Contracts and Procurement – Minority-Owned Businesses – Sunset Date - Amendments, sponsored by the Council President at the request of the County Executive, was introduced on September 16, 2014. A Government Operations and Fiscal Policy Committee worksession was held on September 29 and a public hearing was held on October 7.

Bill 42-14 would establish the deadline for submission to the Council by the Executive of a report that evaluates the minority owned business purchasing program. The Bill would also extend the sunset date for the program until December 31, 2019.

Background

The Supreme Court in *City of Richmond v. J. A. Croson Company*, 488 U.S. 469 (1989), established a framework for a local government to implement a program that provides a preference for minority owned businesses. The Court held that there must be substantial evidence of past or ongoing discrimination in order to show a compelling government interest to justify the program. The Program must be narrowly tailored to remedy the past or ongoing discrimination. For this reason, local governments that have this type of program must evaluate the continuing need for it every few years. The County Executive submitted a Disparity Study to the Council on July 1, 2014 prepared by Griffin and Strong that supports the continuation of the program.

2014 Disparity Study

In May 2013, the County retained Griffin & Strong, P.C. (GSPC) to conduct a comprehensive disparity study. GSPC examined and analyzed the procurement policies and practices of the County and its prime contractors regarding the use of Minority, Female, and Disabled owned businesses (MFD) on County contracts for goods and services. The goal was to determine if there was a statistically significant disparity between the number of MFD firms in the relevant market and the dollars awarded to MFD firms through County contracts. GSPC

divided County contracts into 4 categories – Construction, Professional Services, Services, and Goods.

GSPC conducted a quantitative analysis of the County’s contracting history between July 1, 2007 and June 30, 2012. This analysis started with a determination of the relevant geographic market area for each of the 4 categories of procurement contracts. GSPC concluded that the relevant market was the geographic area where 75-85% of the firms contracting with the County are located. Within each relevant market, GSPC compared the percentage of firms in each race, ethnicity, gender, and disability group that are qualified, willing and able to perform services used by the County with the percentage of dollars spent by the County on firms in each MFD group. GSPC used this analysis to determine if each MFD group was underutilized or overutilized in each relevant market. GSPC looked at both prime contractor utilization and subcontractor utilization.

GSPC further analyzed the results to determine if the underutilization observed was statistically significant and if the underutilization could be attributed to the MFD status of the firms through both a regression analysis that controlled for other possible explanations, such as business size or experience, and anecdotal evidence. A summary of the statistically significant underutilization found by GSPC is at ©9-10. The complete report can be found at: <http://www.montgomerycountymd.gov/cat/services/disparitystudy.html>.

GO Committee Worksession

The Committee discussed Expedited Bill 42-14 at a September 29 worksession. Councilmember Navarro suggested that the Council create 2 task forces, by resolution, to study the procurement system and the MFD/Local Small Business Reserve Program and make recommendations for improvements. Councilmember Navarro also moved to amend the Bill to reduce the extension of the MFD Program from 5 years to 1 year in order to permit the Council to consider possible amendments to the MFD and Procurement laws based upon the Task Force recommendations. See Councilmember Navarro’s memorandum at ©11-12.

The Committee (3-0) approved the Navarro amendment to reduce the extension to 1 year along with 2 technical amendments subject to the upcoming public hearing.

Public Hearing

DGS Director David Dise, testifying on behalf of the Executive at the October 7 public hearing, supported the Bill. ©13. Herman Taylor, representing the Minority Business Economic Council, Linda Moore (©14-16), Julian Haffner (©17-20), Leon Hollins, and Javel Wilson (©21) each testified in support of the Bill.

Issues

1. How does the MFD program work?

Section 11B-60 provides:

- (a) By September 30 of each year, the Chief Administrative Officer must set for the following calendar year percentage goals of the dollar value of purchases subject to this Article for each socially or economically disadvantaged group. The goals must correspond to the availability of that group by source selection method and purchasing category in the relevant geographic market area as determined by the most recent report that the County Executive must submit to the County Council under Section 11B-61(b) to perform work under County contracts. The Chief Administrative Officer must set separate goals for each socially or economically disadvantaged group in the County's purchases of goods, construction, professional services, and other services. The Chief Administrative Officer must not set goals for a socially or economically disadvantaged group unless the Chief Administrative Officer determines that the value of purchases made during the previous fiscal year from that group in each category of purchases under a particular source selection method, compared with the availability of that group to perform work in that category, shows a significant under-utilization of the group.

A prime contractor awarded a contract subject to the MFD program must subcontract a defined percentage of the work to an MFD firm. The prime contractor must use one or more MFD firms belonging to an MFD group for which the CAO has established a percentage goal for that year. For example, if the CAO determines that Hispanic-American firms were not underutilized in the past year, the CAO will not set a goal for Hispanic-American firms and a prime contractor will not get credit for using a Hispanic-American firm toward the MFD goal for that contract. The DGS Director may waive all or part of the MFD goals for a contract upon a finding that the prime contractor was unable to find sufficient MFD firms after making a good faith effort to do so.

2. Does the Disparity Study support the extension of the law?

GSPC found a statistically significant underutilization of some MFD groups in each procurement category that can be attributed to discrimination in the marketplace. Although GSPC did not find a statistically significant underutilization for all MFD groups in each category, they did find that African American owned firms were underutilized in each procurement category each year of the study. GSPC concluded that the "evidence suggests that absent affirmative measures the County would be a passive participant in a pattern of exclusion of MFD firms." See Study, page 235.

The Disparity Study supports the extension of the MFD program because GSPC found a statistically significant underutilization due to the MFD status of the owner for some MFD groups in each procurement category. The MFD program requires the CAO to compare the prior year utilization for each MFD group in each procurement category each year with the availability found in the Study before setting a goal for an MFD group. **Committee recommendation (3-0):** approve the extension of the program, but amend the Bill to reduce the extension of the MFD

Program from 5 years to 1 year in order to permit the Council to consider possible amendments to the MFD and Procurement laws based upon the Task Force recommendations.

3. Technical amendments.

(a) Relevant Geographic Market.

The definition of *relevant geographic market area* in the law refers to the 2005 Disparity Study. The definition should refer to the most recent Disparity Study, which is now the 2014 Disparity Study described above. **Committee recommendation (3-0):** amend the definition of relevant geographic market as follows:

11B-58. Definitions.

* * *

- (b) *Relevant geographic market area* means the geographic market area identified by the County Executive in [[a]] the most recent report [[dated July 1, 2005]] that evaluates the need to continue the program and is issued in accordance with Section 11B-61(b).

(b) Time Period Between Evaluations.

Section 11B-57(e) states that a 4-year period is reasonable to continue the Program before evaluating it. This is inconsistent with the provision in the Bill that would require the next Disparity Study to be completed in 5 years. To be consistent, §11B-57(e) should be amended to require a 5-year period. **Committee recommendation (3-0):** approve the change in §11B-57(e) to a 5-year period. See line 5 at ©2.

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Expedited Bill No. 42-14
Concerning: Contracts and Procurement
- Minority-Owned Businesses -
Sunset Date - Amendments
Revised: October 1, 2014 Draft No. 2
Introduced: September 16, 2014
Expires: March 16, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: December 31, ~~[[2019]]2015~~
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- 1) establish the deadline for submission to the Council by the Executive of a report that evaluates the minority owned business purchasing program;
- 2) extend the sunset date for the County's minority owned business purchasing program;
and
- 3) generally amend the County's minority owned business purchasing program.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Sections 11B-57, 11B-58, 11B-61 and 11B-64

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:

LEGISLATIVE REQUEST REPORT

Expedited Bill 42-14

Contracts and Procurement – Minority-Owned Businesses – Sunset Date - Amendments

DESCRIPTION:	Establishes the deadline for submission to the County Council of a report that evaluates the minority owned business purchasing program and extends the sunset date for the program.
PROBLEM:	The Supreme Court in <i>City of Richmond v. J. A. Croson Company</i> , 488 U.S. 469 (1989), established a framework for a local government to implement a program that provides a preference for minority owned businesses. According to the Court, there must be substantial evidence of past or ongoing discrimination in order to justify the program. For this reason, local governments that have this type of program must evaluate the continuing need for it every few years. The County Executive submitted a Disparity Study to the Council on July 1, 2014, that supports the continuation of the program.
GOALS AND OBJECTIVES:	Fair opportunities for minority owned businesses to obtain County contracts and business.
COORDINATION:	Office of the County Attorney, Department of General Services.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Not applicable.
SOURCE OF INFORMATION:	Marc P. Hansen, County Attorney 240-777-6700
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Not Applicable.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

August 12, 2014

TO: Craig Rice, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Extension of Minority-Owned Business Purchasing Program

In accordance with Section 11B-61(b) of the County Code, I transmitted to the County Council the Montgomery County Disparity Study, which evaluated the need to extend Montgomery County's Minority-Owned Business Purchasing Program.

The Disparity Study concluded that Montgomery County has "made great efforts to establish a fine-tuned procurement process that is set up to provide equal access to all firms." Nevertheless, the Disparity Study concluded that there is a "significant basis for an inference of passive participation and discrimination and/or evidence of past discrimination against minority, female, and disabled-owned businesses in Montgomery County." Therefore, work remains to be done to eradicate the under-utilization of minority-owned businesses in Montgomery County's procurement program.

Consequently, I am transmitting to the Council legislation to extend the County's Minority-Owned Business Purchasing Program. In addition, I have asked Executive staff to review other recommendations made by Griffin & Strong, the consultants who prepared the study to increase the effectiveness of the County's Minority-Owned Business Purchasing Program.

I look forward to working with the Council to pass this important legislation

cc: Timothy Firestine, Chief Administrative Officer
Marc Hansen, County Attorney
David Dise, Director, Department of General Services
Bonnie Kirkland, Assistant Chief Administrative Officer

Fiscal Impact Statement

Bill #-#, Contracts and Procurement – Minority-Owned Business - Amendments

1. Legislative Summary

The proposed legislation establishes the deadline of July 1, 2019, for submission to the County Council by the County Executive of a report that evaluates the minority-owned business purchasing program. The legislation would also extend the sunset date from December 31, 2004, to December 31, 2019, for the County's minority-owned business purchasing program.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No revenues or expenditures are expected from the proposed legislation.

The Department of General Services does not require any additional resources to extend this program for another 5 years. The current cost of this program to the County is \$251,883 per year.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See item #2.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

The legislation does not affect retiree pension or group insurance costs.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The legislation does not authorize future spending.

6. An estimate of the staff time needed to implement the bill.

Not applicable.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.

Not applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

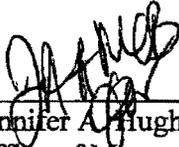
The Department of General Services does not require any additional resources to extend this program for another 5 years. The current cost of this program to the County is \$ 251,883 per year.

12. Other fiscal impacts or comments.

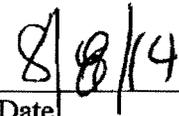
None

13. The following contributed to and concurred with this analysis:

Grace Denno, Office of Business Relations and Compliance, Department of General Services
Pam Jones, Office of Procurement, Department of General Services
Erika Lopez-Finn, Office of Management and Budget
Naeem Mia, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget



Date

Economic Impact Statement
Bill #-#, Contracts and Procurement – Minority-Owned Business - Amendments

Background:

This legislation would establish the deadline of July 1, 2019, for submission to the County Council by the County Executive of a report that evaluates the minority-owned business purchasing program. The legislation would also extend the sunset date from December 31, 2014, to December 31, 2019, for the County's minority-owned business purchasing program.

1. The sources of information, assumptions, and methodologies used.

Source of information is the Office of Business Relations and Compliance, Department of General Services. Information and data in the preparation of the economic impact statement come from various annual reports from the Office of Business Relations and Compliance.

2. A description of any variable that could affect the economic impact estimates.

The variables that could affect the economic impact estimates are the total revenues/dollars subject to the Minority, Female, and Disabled Person Owned Business Program (MFD) and the revenues/dollars spent to certified MFD contractors.

Based on data provided in the MFD annual reports from fiscal year 2011 to fiscal year 2013, the average total dollars subject to MFD requirements was slightly above \$746.5 million and the average total dollars for MFD procurement was slightly above \$144.7 million or 19.4 percent.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

The extension of the minority-owned business purchasing program (MFD) would have a positive economic effect of business income to minority-owned businesses. Based on data for the past three fiscal years through FY2013, the average number of contractors was nearly 1,900 (including both prime and sub-contractors) with an average contract award over \$77,000 per contractor. The bill could also have an effect on employment by minority-owned contractors.

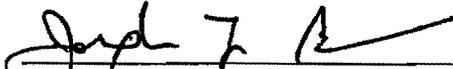
4. If a Bill is likely to have no economic impact, why is that the case?

The bill would have a positive economic impact on minority-owned businesses – see paragraph #3.

Economic Impact Statement

Bill #-#, Contracts and Procurement – Minority-Owned Business - Amendments

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Grace Denno and Alvin Boss, Office of Business Relations and Compliance, DGS; Naeem Mia, Office of Management and Budget.



Joseph F. Beach, Director
Department of Finance

7-25-14
Date

II. SUMMARY OF FINDINGS

The Study found a statistically significant disparity between the number of available MFDs in the relevant markets in each work category throughout the term and the utilization, measured by dollars awarded by the County, of those same MFD groups. GSPC also determined that when the disparity was broken down by each race/gender/ethnicity group, on average, over the entire Study, the following significant underutilizations were found.

Table 1: Summary of Statistically Significant Underutilization in Prime Contracting

Montgomery County, Maryland
Disparity Study
(Over Entire Study Period – July 1, 2007 through June 30, 2012)
From P.O., DPO, and P-Card Purchases

Griffin & Strong, P.C. 2014

Construction	Professional Services	Services	Goods
African American	African American	African American	African American
Asian American	Asian American	Asian American (DPO and P-card purchases only)	Asian American
Hispanic American (DPO and P-card purchases only)	Hispanic American (DPO and P-card purchases only)	Hispanic American (DPO and P-card purchases only)	Hispanic American
Native American	Native American	Native American (DPO and P-card purchases only)	Native American
Female (PO and P-Card purchases only)	Female	Female	Female
Disabled	Disabled	Disabled (PO and P-card only)	Disabled

With regard to subcontractors, GSPC found that the following MFD groups in the following business categories showed significant underutilization:

Table 2: Summary of Statistically Significant Underutilization in Subcontracting

Montgomery County, Maryland
 Disparity Study
 (Over Entire Study Period – July 1, 2007 through June 30, 2012)
 From Prime Vendor Questionnaire

<i>Construction</i>	<i>Professional Services</i>	<i>Services</i>	<i>Goods</i>
African American	African American	African American	
Asian American		Asian American	Asian American
Hispanic American	Hispanic American	Hispanic American	Hispanic American
Native American	Native American	Native American	Native American
Female			
Disabled	Disabled	Disabled	Disabled

Griffin & Strong, P.C. 2014

GSPC then tested the disparities for likely cause through a regression analysis and determined that Montgomery County, Maryland may be an active or passive participant in past or present discrimination in its vendor marketplace. Notwithstanding this general finding, the County has made some improvements in the inclusion of MFDs in its procurement process since the last, 2005 Disparity Study and the enactment of the Local Small Business Reserve Program in all areas except Construction which decrease by a minimal .1%.

Table 3: Summary of MFD Prime Utilization Comparison Between 2001-03 and 2007-12

Montgomery County, Maryland
 Disparity Study
 From P.O.s

Griffin & Strong, P.C. 2014

	<i>2001-2003</i> %	<i>2007-2012</i> %	<i>% Change</i>
Construction	26.11	26.01	- .10
Professional Services	7.08	8.94	+1.86
Services	19.61	31.95	+12.34 ¹
Goods	6.19	7.13	+ .94

Detailed findings are included in Section VIII of this report.

¹ Substantial increase is primarily due to jump in Asian American utilization from .68 in 2001-3 to 14.69 in 2007-2012.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

NANCY NAVARRO
COUNCILMEMBER, DISTRICT 4
CHAIR, GOVERNMENT OPERATIONS & FISCAL POLICY COMMITTEE

MEMORANDUM

September 26, 2014

TO: Councilmembers

FROM: Nancy Navarro, Chair 
Government Operations & Fiscal Policy Committee

SUBJECT: Procurement Process & Disparity Study

On Monday, the Government Operations & Fiscal Policy Committee will discuss three items related to the County's procurement process. We will receive a briefing from the Office of Legislative Oversight (OLO) regarding a survey of businesses, hear from Griffin & Strong, P.C. and the County Attorney regarding the 2014 Disparity Study, and review legislation proposed by the County Executive to extend the sunset date of the Minority, Female, and Disabled-owned business program (MFD).

The overall theme of the OLO survey and Disparity Study is that the current procurement process is not working for businesses. In general, businesses feel the procurement process in Montgomery County is difficult to navigate, confusing, and lacks clear communication between the County and prospective bidders. In particular, minority, female, and disabled owned businesses are not bidding on contracts, in part, because they are not familiar with procurement opportunities with the County.

OLO offers three recommendations based on the survey findings:

1. Ask the County Executive to strengthen and expand current outreach efforts—particularly to Local Small Business Reserve Program (LSBRP) and MFD businesses—to increase businesses' awareness of County contracting opportunities.
2. Ask the County Executive to develop a consistent set of follow-up procures for all bid submissions for County contracts to inform businesses about the status of their bid.

3. Ask the County Executive to closely examine the promotion and administration of the Minority, Female, and Disabled-Owned Program.

Based on the 2014 Disparity Study, the County Executive is recommending Expedited Bill 42-14. This legislation would extend the sunset of the current MFD program until December 31, 2019 and require the County Executive to submit a new disparity study to the Council by July 1, 2019.

While I agree that the Council should extend the current MFD program temporarily so it does not expire at the end of the year, I strongly oppose simply maintaining the status quo. Montgomery County has had an MFD program for more than three decades, yet the 2014 Disparity Study found “statistically significant underutilization of some MFD groups in each procurement category that can be attributed to discrimination in the marketplace.”¹

In light of the OLO survey and 2014 Disparity Study, I propose establishing two Task Forces by Council Resolution.

First, the Procurement Reform Task Force would be comprised of business owners, procurement experts, and County officials. The objectives of the Task Force would be to:

- Review and evaluate current procurement practices, office structure, and funding; offer recommendations to increase outreach, streamlining and improved processes;
- Review national industry standards and best practices for procurement; offer recommendations to align County practices with best practices.

Second, the MFD Program Task Force would be comprised of minority, women, and disabled-owned business owners and County officials, such as representatives from the Department of General Services and the Office of the County Attorney. The objective of this Task Force would be to:

- Review and evaluate the current MFD program; offer recommendations for improvement;

Both task forces would work in parallel tracks during a similar time period. After they complete their work, Council Staff will integrate the reports into a single set of recommendations for the GO Committee to consider in a comprehensive way.

On Monday, I propose the GO Committee recommends the appointment of these task forces to the full Council. In addition, I support approving Expedited Bill 42-14, but amending it to sunset the MFD program after one year—on December 31, 2015. This will provide the task forces with a full year to offer recommendations to the Council that will enhance the current MFD program and improve the procurement process more generally.

¹http://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2014/140929/20140929_G03.pdf

**Testimony on behalf of County Executive Isiah Leggett
Bill 42-14, Contracts and Procurement - Minority-Owned Businesses - Sunset
Date - Amendments**

October 7, 2014

I am David Dise, Director of Montgomery County's Department of General Services, and I am here to testify on behalf of County Executive Isiah Leggett in support of Expedited Bill 42-14, Contracts and Procurement – Minority-Owned Businesses-Sunset Date, which extends the sunset provision of the County's minority owned business purchasing program.

County Executive Leggett recently transmitted to the Council the 2014 Disparity Study prepared by the firm of Griffin & Strong, PC. That report states that, "Montgomery County has made great efforts to establish a fine-tuned procurement process that is set up to provide equal access to all firms," adding that "the Local Small Business Reserve Program was a significant attempt to benefit MFDs and all small business owners in obtaining contracts with the County." However, the consultant's analysis indicates that with the exception of Hispanic American owned businesses, what it terms "statistically significant" underutilization of MFD businesses still exists. The report acknowledges there may be a "disconnect" between the County's true efforts and the perception of the business community and recommends several measures that may serve to "bridge the gap between MFD availability and utilization in future years."

County Executive Leggett has made clear his commitment to expanding County contracting opportunities to small, local and minority businesses. Far from a "status quo" approach, he lead efforts resulting in the creation of the Local Small Business Reserve, a program that ensures 20 percent of eligible County purchases of goods, services, and construction go to local small businesses. He also has directed the unbundling of large contracts and required all County departments to increase contracting opportunities to minority and local businesses and promote business development so that minority sub-contractors may become prime contractors on County contracts. Further, directors of county departments must report to the Executive annually on the level of MFD and LSBRP contracting awarded by their department. The County Executive also introduced legislation enacted in 2012 that created the Emerging Investment Managers Program to provide equal opportunity for emerging investment managers to provide services to the Board of Investment Trustees and the Consolidate Retirees Health Benefit Fund.

Nevertheless, it is clear that more work is required; particularly in making sure minority businesses are more aware of contracting opportunities, are better prepared to submit successful bids and proposals, and can do so in a procurement process that is not overly complex. Overcoming the disparity evidenced through the recent study warrants an extension of the sunset provision of the County Code. The Executive also supports Ms. Navarro's recommendation to limit this extension to one year in order that a task force may be formed to review and evaluate the MFD program. Mr. Leggett looks forward to the positive outcome resulting from this joint effort among executive branch, legislative branch and private sector leaders.

Thank you for allowing me to testify today.

Testimony for Public Hearing
Montgomery County Council
October 7, 2014

Linda Moore, AAE
9632 Duffer Way
Montgomery Village, MD 20886

Good afternoon Members of the Montgomery County Council. My name is Linda Moore and I am President of Animer Consulting, LLC (Animer) a management consulting firm located in Montgomery County, Maryland. Animer is certified as a minority business (MBE) and an airport concession disadvantaged business enterprise (ACDBE) by the Maryland Department of Transportation (DOT). The firm is also registered with the Montgomery County Local Small Business Reserve Program (LSBRP). Animer specializes in people, program and business development.

I appreciate the opportunity to offer testimony in support of Expedited Bill 42-14, Contracts and Procurement - Minority Owned Businesses - Sunset Date - Amendments. I am in favor of an extensive evaluation of the MFD program with a focus on the procurement process and extending the sunset date of the program until December 31, 2019. I would like to suggest that the accomplishments and an updated plan for continuing to improve the program be presented the Council annually.

I was delighted to learn that the Disparity Study prepared by Griffin & Strong, P.C. and submitted by the County Executive to the County Council on July 1, 2014 supports the continuation of the program.

Having first hand experience in developing and administering small business programs and first hand experience with the Montgomery County procurement process, my comments will primarily focus on my firm's experiences along with some suggestions for achieving better participation by minority, female, and disabled business owners.

I have submitted proposals for three contracts with different departments in Montgomery County. The first time my firm was short-listed and interviewed and not selected. A post award interview was requested and was provided after many calls and months of waiting. There did not seem to be an established procedure for these interviews and I did not find the process very useful.

The second proposal I submitted also resulted in being short-listed and interviewed but not selected. It took numerous calls to determine that our firm was not selected. An interview was not requested.

The third proposal submitted by my firm resulted in a contract but no work. What I want to highlight about this experience is that the insurance requirement was beyond what my firm normally carried and due to the nearly six months it took to get a signed contract, the policy had only six months remaining when the opportunity for work was presented. The decision to renew the coverage to be eligible for opportunities that had not occurred in the first six months was not attractive option.

These three examples highlight some of policies, procedures and practices that can be addressed in building a program of the caliber one would expect from Montgomery County.

As a subject matter expert with first hand experience in developing, administering and both local and federally funded projects, the success of the program may benefit from review and consideration of the following:

Training for all stakeholders that touch the procurement process to ensure that the goals of the program are communicated;

Review the procurement process and identify opportunities to make contracting opportunities more accessible while meeting the necessary requirements;

Standardize the process for post selection/award interviews with bidders/proposers not selected/awarded a contract and monitor compliance;

Ensure that there is standardization and more depth to the policies and procedures that impact businesses in the MFD program;

Conduct audit of standard procedures for solicitations, notifications, post award interview opportunities;

Increase the number of businesses eligible to participate in the program;

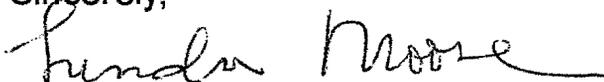
Establish standardized compliance monitoring with monthly reporting by contractors, suppliers and service providers; and

Require more than pro forma documentation and acceptance of Good Faith Efforts (GFE) when participation in contract opportunities by MFD businesses is not achieved.

I commend the County Executive and County Council for retaining Griffin & Strong to conduct a comprehensive disparity study and for proposing measures that will increase access to procurement opportunities in Montgomery County government by businesses owned by minorities, women and disabled individuals. These and other initiatives are necessary to ensure that there is competition in public procurement.

Thank you for your valuable time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Linda Morse". The signature is written in black ink and is positioned below the word "Sincerely,".



HAFFNER LAW GROUP LLC

Creative Counsel for Creative Minds

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Julian Haffner Testimony in Support of Montgomery County Council Expedited Bill 42-14

TO: Montgomery County Council

FROM: Julian A. Haffner, Esquire, Haffner Law Group LLC

DATE: October 7, 2014

Good afternoon Mr. President and Council members, and thank you for allowing me to share some thoughts on bill 42-14.

It is well known that small businesses are leaders in innovation and drivers of the economy. Indeed small businesses create two thirds of all net new private sector jobs, employing half of all working Americans. According to the most recent data published by the U.S. Census Bureau, minority-owned businesses now comprise approximately 21% of the 27 million U.S. businesses and that number grows everyday. Consider, between 2002 and 2007, the number of black-owned firms grew at over *four times* the rate as that of whites. Without question, this rapidly changing business

demographic profile mirrors our County's own changing demographics. Simply stated, minority and women-owned businesses play a pivotal role in supporting our county's economy, and are and will continue to be an essential part of growing our County's economic base.

Yet despite this growth, minority-owned businesses are faced with substantial hurdles which tend to impact them far more severely than white-owned businesses including less access to financing, increased offshoring, outsourcing, and global competition.

Therefore, as an African American business attorney representing several minority small business owners, and as one who has consciously chosen to locate my practice and family in this wonderfully progressive County, it is extremely disappointing to learn that despite a growing pool of eligible minority-owned business candidates, minority businesses are being systematically underutilized in this County. As the now infamous Griffin &

Strong study points out, African American-owned firms were underutilized in every procurement category in every year the study was conducted, and that that underutilization was attributable to discrimination in the marketplace.

While Montgomery County has certainly made great strides in its efforts to establish a fine-tuned procurement process, the study makes painfully clear that discrimination against black-owned businesses is a reality Montgomery County. In a jurisdiction where three-quarters of a billion dollars is spent annually, the systematic or unintentional exclusion of black-owner firms is shameful and unacceptable.

Accordingly, I would urge the Council to not only extend the MFD program as provided in 42-14, but also commit to bring the full power of government to bear to empower our MFD businesses.

Among other improvements, I would suggest:

- Hiring more staff specifically to provide overall direction to the MFD Program

- Requiring Prime Contractors to engage in more external outreach to MFD businesses
- Encouraging the active engagement with minority organizations
- Providing timely and detailed information to unsuccessful MFD bidders on why such bidders were rejected
- Providing MFDs with information regarding the most viable Purchase and Procurement Categories
- Unbundling contracts wherever possible and identifying and eliminating of other market entry barriers
- Encouraging the development of diverse contractors relationships; and
- Establishing substantial and verifiable Short-Term, Mid-Term and Long-Term Goals for the utilization of MFD-owned businesses

I thank you for your time and attention and look forward to working with you all to ensure the viability of and success of our County's Minority owned business in the future.

Bill 42-14 Contracts & Procurement - Minority Owned Businesses
Public Testimony
October 7, 2014

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Good afternoon council members. My name is Jay Wilson and I am testifying today as a concerned community advocate. Many of the findings in the Office of Legislative Affairs (OLO) report 2014-11 gravely concern me. However I am hopeful you will take the necessary steps to address the disparities in the number of Montgomery County procurement opportunities and contracts awarded to minority, female and disabled owned firms, also known as MFD firms.

After reading the findings and suggestions in the report, I strongly encourage the council to consider the following recommendations to address the contracting disparities:

1. **Create specific measurable goals for the MFD program** – One of the items mentioned in the OLO report was that the MFD Program did not have specific goals for the percentage of contracts awarded to minority businesses. Prior to 2005 the county had a 20% contract allocation goal for minority owned businesses. I strongly believe if the MFD program had tangible allocation and contract award goals the program would be more effective in serving MFD businesses located in Montgomery County
2. **Institute a bi-annual review of MFD outreach efforts by the Office of Business Relations and Compliance of the Department of General Services** – MFD businesses who responded to the OLO survey consistently ranked the promotion of county business opportunities among the lowest scores.
3. **Establish timely bid follow up as a component of Department of General Services employee evaluations** – Businesses rated follow ups from the county with the lowest score in the survey provided by the Office of Legislative Oversight. Change is greatly needed in this area.

The OLO report and related Montgomery County Disparity study conducted by Griffin & Strong show that there is significant work that needs to be done to ensure Montgomery County has a more equitable contracting and procurement process for MFD firms. Of particular note African American owned firms are the only group that was underutilized in every procurement category. I am optimistic that the council will take a thorough look at the potential recommendations and enact the necessary changes.

Thank you for taking the time to hear my testimony and have a happy Tuesday.