



**Committee:** GO  
**Committee Review:** At a future date  
**Staff:** Jim Ogorzalek, Legislative Attorney  
**Purpose:** To introduce agenda item – no vote expected

AGENDA ITEM #1B  
June 17, 2025  
**Introduction**

## SUBJECT

Bill 17-25, Contracts and Procurement – General Provisions – Exemptions – Internet Access Service

Lead Sponsor: Council President at the Request of the County Executive

## EXPECTED ATTENDEES

None

## DESCRIPTION/ISSUE

Bill 17-25 would exempt the acquisition of internet access service from procurement law.

## SUMMARY OF KEY DISCUSSION POINTS

N/A

### This report contains:

Staff Report	Pages 1–2
Bill 17-25	© 1
County Executive Transmittal Letter	© 3
Fiscal Impact Statement	© 5
Legislative Request Report	© 7

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## **MEMORANDUM**

June 12, 2025

TO: County Council

FROM: Jim Ogorzalek, Legislative Attorney

SUBJECT: Bill 17-25, Contracts and Procurement – General Provisions – Exemptions – Internet Access Service

PURPOSE: Introduction – no Council votes required

Bill 17-25, Contracts and Procurement – General Provisions – Exemptions – Internet Access Service, is scheduled for introduction on June 17, 2025. Its Lead Sponsor is the Council President at the Request of the County Executive. A public hearing is tentatively scheduled for July 8, 2025, at 1:30 p.m.

Bill 17-25 would exempt the acquisition of internet access service from procurement law.

### **Background**

Chapter 11B of the Montgomery County Code dictates that every expenditure of funds by the County to acquire goods, services, or construction is a procurement and must comply with Chapters 11B of the Montgomery County Code and Code of Montgomery County Regulations. According to the County Executive, the County has been unsuccessful in procuring internet access service by competitive solicitation because internet service providers are unwilling to engage in the County's process. The County Executive informs the County Council in his transmittal letter to Bill 17-25 that the relevant potential vendors have business models based upon purchasing entities agreeing to the vendor's standard service agreements, which conflict with the County's procurement laws.

As a result, while the Department of Technology and Enterprise Business Solutions has sought to expand its services to include the sale and resale of internet access to Public, Education, and Government entities, it has been forced to procure its internet service under a waiver by the Chief Administrative Officer.

## **Bill Specifics**

The bill would exempt from County procurement law the obtaining of internet access service. The bill, as introduced at the request of the County Executive, would require “procedures approved by the Chief Administrative Officer” in lieu of the procurement requirements set forth in County Code and Regulation.

<u>This packet contains:</u>	<u>Circle #</u>
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Bill No. 17-25  
Concerning: Contracts and Procurement  
– General Provisions – Exemptions –  
Internet Access Service  
Revised: 6/9/2025 Draft No. 1  
Introduced: June 17, 2025  
Expires: December 7, 2026  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. [#] , Laws of Mont. Co. [year]

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the request of the County Executive

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**AN ACT** to: exempt the acquisition of internet access service from procurement law

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-4

<b>Boldface</b>	<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       **Sec. 1. Section 11B-4 is amended as follows:**

2       **Sec. 11B-4. Exemptions.**

3       (a) This Chapter, other than Article XII, does not apply to:

4                               \*       \*       \*

5               (10) obtaining advertising services from media sources; [and]

6               (11) obtaining internet access service under procedures approved by  
7                       the Chief Administrative Officer; and

8               (12) any other procurement exempted from this Chapter by another  
9                       law.



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
*County Executive*

MEMORANDUM

April 23, 2025

TO: Kate Stewart, President  
Montgomery County Council

FROM: Marc Elrich, County Executive

SUBJECT: Legislation for the Exemption of the Purchase of Internet Access Service from Chapter 11B, Contracts and Procurement of the Montgomery County Code

Draft legislation to exempt the purchase of internet access service from Chapter 11B, Contracts and Procurement, of the Montgomery County Code is attached for review and consideration by the County Council.

The purchase of internet access service using a competitive solicitation method has not been successful. Highly reliable internet service providers have not been willing to engage in a competitive solicitation process to provide high-quality internet service to the County. In addition, internet service providers are not willing to adhere to the County's standard terms and conditions and other requirements of a competitive solicitation process. Their business model assumes that the purchasing entity will adhere to their standard service agreement, and as a result, they are not willing to negotiate the provisions of their standard agreements to accommodate any requested changes from the County.

As a result, the Department of Technology and Enterprise Business Solutions (TEBS) has been procuring Tier 1 Internet Service under a waiver by the Chief Administrative Officer of the Direct Purchase Threshold established under Procurement Regulation 4.1.9.1. for up to \$100,000 per vendor for three (3) years. This waiver was approved on May 4, 2023, and later expanded on April 21, 2024.

As the County seeks to expand its services to include the sale/re-sale of internet access to Public, Education, and Government ("PEG") entities, as a means of offsetting the operating cost of FiberNet, the \$100,000 threshold will be reached quickly, and a more permanent resolution of the challenge is needed. Providing an exemption for the purchase of internet access service from

Chapter 11B, will enable the County to acquire internet service that is superior in quality and lower in cost. Additionally, the County will be in a position to quickly add, remove or change service providers as needs arise.

If additional information is required, please contact my office or Joseph Webster, Chief Broadband Officer, Department of Technology and Enterprise Business Solutions.

Enclosures:

Bill XX-XX Exempt the acquisition of internet access service from procurement  
law

Fiscal Impact Statement

Legislative Request Report

cc:

Cecily Thorne, Chief of Staff to the Council President, Montgomery County Council

Craig Howard, Executive Director, Montgomery County Council

Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive

Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive

Tricia Swanson, Director of Strategic Partnerships, Office of the County Executive

Jennifer R. Bryant, Director, Office of Management and Budget

Gail Roper, CIO/Director, Department of Technology and Enterprise Business Solutions

Paul B. Ellis, Deputy Chief of Staff – Technology, Montgomery County Council

# Fiscal Impact Statement

Office of Management and Budget

## Bill xx-25

## Contracts and Procurement - General Provisions - Exemptions

### Bill Summary

The bill exempts purchases of internet access service from procurement regulations.

### Fiscal Impact Summary

This bill will reduce expenditures significantly due to reduced costs of procuring internet service at wholesale prices. Currently, it is not possible to purchase through the standard RFP or other procurement processes. This bill makes permanent the exemption that is currently being used to procure internet service for the County, slated to expire in May 2026.

### Fiscal Impact Analysis

This bill is expected to result in lower costs for internet services due to increased competition. TEBS has a temporary procurement exemption in place through May 2026. Recent competitive bids for internet service utilizing existing procurement processes have received no viable responses and at no point has the County been able to procure internet service using the RFP process. Previously, the County purchased 10Gbps of internet service for \$11,000 per month through the County's franchise agreement. Under the current exemption and this bill, the County is able to purchase two 10Gbps connections for \$750/ month each and one 100Gbps connection for \$4,050 per month. The new service has significantly more bandwidth, better redundancy, and increased reliability. The County has been rebuffed on numerous occasions where it attempted to procure internet service through traditional procurement channels using the County's contract terms.

While it is not possible to provide an exact figure for the cost of procuring internet service within the RFP or franchise agreement process, a rough estimate is possible based on the rates paid previously under the franchise agreement and the rates paid presently under the exemption. The County's previous internet service was nearly 15 times more expensive for a 10Gbps connection. The approximate cost to use this method to provide a similar level of service (two 10Gbps connections and one 100 Gbps connection) would cost at least \$81,400 per month and \$976,800 per year.

Purchasing internet service directly from Tier 1 internet service providers is estimated to be far more cost effective than any other option available to the County. Additionally, procuring internet service directly at wholesale rates also allows the County to resell internet service to other local governments to generate additional revenue while simultaneously reducing costs for municipalities and independent agencies receiving funding from the County.

### Staff Impact

TEBS requires approximately 120 work hours to complete a RFP for technology services, eliminating the RFP requirement for internet service will create efficiencies and allow staff to focus on other duties.

### Actuarial Analysis

The bill is not expected to impact retiree pension or group insurance costs.

### Information Technology Impact

This bill facilitates significantly improved reliability, increased bandwidth, and decreased costs for internet service.





## Other Information

*Later actions that may impact revenue or expenditures if future spending is projected*

Any reduced costs realized compared to current costs from future purchases of internet service will depend on market forces at the time of purchase. The County may require an increased amount of service purchased in order to expand offering internet service to other municipalities or agencies within the County. This increased service would generate increased revenue from these other municipalities and agencies.

*Ranges of revenue or expenditures that are uncertain or difficult to project*

It is not possible to calculate the exact cost to procure internet service through the RFP process as the County has never successfully completed an RFP for internet service. Revenue generated by providing internet and connectivity services to municipalities and independent agencies is subject to negotiation. By purchasing internet service at wholesale rates, the County is anticipating the ability to reduce costs not only for County Government but also for our partners while also generating net revenue for the County. However, the exact amount of revenue generated is difficult to quantify prior to negotiations.

*Contributors*

Seamus McNamara, Office of Management and Budget  
Joe Webster, Technology Enterprise Business Solutions  
Alison Dollar, Technology Enterprise Business Solutions  
Donna Potisk, Technology Enterprise Business Solutions



## LEGISLATIVE REQUEST REPORT

### Bill xx-24 Contracts and Procurement – 11B-4

**DESCRIPTION:** This Bill would expand Section 11B-4 of the Montgomery County Code to include the purchase of internet access service as an item that is exempt from the requirements of Chapter 11B, Contracts and Procurement.

**PROBLEM:** The purchase of internet access service using a competitive solicitation method has not been successful. Highly reliable internet service providers have not been willing to engage in a competitive solicitation process to provide high-quality internet service to the County. In addition, internet service providers are not willing to adhere to the County's standard terms and conditions and other requirements of a competitive solicitation process. Their business model assumes that the purchasing entity will adhere to their standard service agreement, and as a result, they are not willing to negotiate the provisions of their standard agreements to accommodate any requested changes from the County. As a result, the Department of Technology and Enterprise Business Solutions (TEBS) has been procuring Tier 1 Internet Service under a waiver by the Chief Administrative Officer of the Direct Purchase Threshold established under Procurement Regulation 4.1.9.1. for up to \$100,000 per vendor for three (3) years. This waiver was approved on May 4, 2023, and later expanded on April 21, 2024. As the County seeks to expand its services to include the sale/re-sale of internet access to Public, Education, and Government ("PEG") entities, as a means of offsetting the operating cost of FiberNet, the \$100,000 threshold will be reached quickly, and a more permanent resolution of the challenge is needed.

**GOALS:** This Bill will establish an exemption of the purchase of internet access services from Chapter 11B, Contracts and Procurement. This would enable the County to purchase highly reliable internet access services at competitive prices in a quick and efficient manner. New services can be added quickly, unsatisfactory services can be terminated easily and the County will have access to a higher quality of service.

**COORDINATION:** Office of the County Attorney.

**FISCAL IMPACT:** The County will be able to purchase internet access service at highly competitive prices from high-quality internet service providers whose business model does not include responding to competitive solicitation or engaging in lengthy negotiations over terms and conditions.

**ECONOMIC IMPACT:** This could result in lower costs for purchasing internet access service while also providing access to highly reliable internet access service providers.

**RACIAL EQUITY**

**AND SOCIAL**

**JUSTICE IMPACT:** This would have a neutral impact on RESJ issues.

**EVALUATION:** To be requested.

**EXPERIENCE**

**ELSEWHERE:** To be provided.

**SOURCE OF INFORMATION:** Department of Technology and Enterprise Business Solutions

**APPLICATION WITHIN MUNICIPALITIES:** Not applicable

**PENALTIES:** Not applicable.



**DEPARTMENT OF TECHNOLOGY AND ENTERPRISE BUSINESS SOLUTIONS**

*Marc Elrich*  
County Executive

*Gail M. Roper*  
Chief Information Officer/Director

**M E M O R A N D U M**

February 11, 2025

**TO:** Richard S. Madaleno, Chief Administrative Officer  
Office of the County Executive

**FROM:** Gail M. Roper, CIO/Director  
Department of Technology and Enterprise Business Solutions

**SUBJECT:** Request for Review – Decision Memorandum – Exemption of the Purchase of Internet Access Service from Chapter 11B, Contracts and Procurement of the Montgomery County Code.

The Department of Technology and Enterprise Business Solutions (TEBS) is requesting that the Chief Administrative Officer (CAO) review and approve a Decision Memorandum seeking a legislative change to Chapter 11B, Contracts and Procurement, of the Montgomery County Code to create an exemption from the law for the purchase of internet access service. Such an exemption would allow the County to purchase highly reliable internet access service at competitive prices in an efficient and effective manner. TEBS is also requesting the transmission of the proposed legislative change to the County Council for consideration.

As outlined in the attached Decision Memorandum, TEBS has made several attempts to procure internet access service through competitive solicitation methods. These efforts were not successful, and TEBS is currently purchasing Tier 1 Internet Service through a waiver of the \$10,000 Direct Purchase Threshold established under Procurement Regulation 4.1.9.1 for up to \$100,000 per vendor for three (3) years. This waiver was initially approved by the Chief Administrative Officer, in accordance with Procurement Regulation 1.1.2 on May 4, 2023. The waiver was then expanded on April 21, 2024, to allow for the sale of internet access to Public, Education and Government (“PEG”) entities as a method of generating funding to help offset the operating costs of FiberNet. As a result of the re-selling of internet access to PEG entities, the \$100,000 threshold will be reached more quickly than anticipated since TEBS is procuring more bandwidth than originally planned.

It is in the County's best interests to be able to purchase highly reliable internet service at competitive prices in an efficient manner and for the reasons outlined in the Decision

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Memorandum believes that the exemption of the purchase of this type of service from Chapter 11B, Contracts and Procurement would be the best way to achieve this objective.

If you concur with this recommendation, please indicate your approval by signing off on Page 4 of the Decision Memorandum dated February 11, 2025 which is included in this package.

If you have any questions regarding this request, please contact Joseph Webster, Chief Broadband Officer, at [joseph.webster@montgomerycountymd.gov](mailto:joseph.webster@montgomerycountymd.gov).



**DEPARTMENT OF TECHNOLOGY AND ENTERPRISE BUSINESS SOLUTIONS**

*Marc Elrich*  
County Executive

*Gail M. Roper*  
Chief Information Officer/Director

**CAO DECISION MEMORANDUM**

February 11, 2025

**TO:** Richard S. Madaleno, Chief Administrative Officer

**FROM:** Gail M. Roper, CIO/Director *Gail Roper*  
Department of Technology and Enterprise Business Solutions

**SUBJECT:** Decision Memorandum – Exemption of the Purchase of Internet Access Service from Chapter 11B, Contracts and Procurement of the Montgomery County Code

**1. PURPOSE:**

To obtain the approval of the Chief Administrative Officer (CAO) to proceed with legislation that would provide an exemption for the purchase of Internet Access Service from Chapter 11B, Contracts and Procurement of the Montgomery County Code and the Montgomery County Procurement Regulations.

**2. BACKGROUND:**

A critical part of the County's business continuity plan is a reliable data center and reliable internet service to support all County IT operations and digital equity programs. In the furtherance of these goals, in early January 2022, the County entered into a contract with Equinix, LLC for data center colocation services, on-premises cloud, internet, and related service provider connectivity. Equinix is a Tier 4 data center that provides the most secure and reliable service as it is fault tolerant with redundancy in every component. Tier 4 data centers, such as Equinix are uniquely able to provide highly reliable access to internet services from Tier 1 Internet Service Providers (ISPs). A Tier 1 ISP is a company that operates a global network infrastructure and has direct connections with other Tier 1 ISPs, which means it does not need to purchase internet transit from other providers to reach any other part of the internet. The advantages of a Tier 1 ISP include:

1. High Network Performance – a Tier 1 ISP offers high network performance and availability, as it has a large network infrastructure and it is directly connected to other Tier 1 ISPs, this results in fast and reliable connectivity, which is essential for businesses that require uninterrupted internet access. A Tier 1 ISP can provide network availability of 99.999%.

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2. Reduced Latency – By being directly connected to other Tier 1 ISPs a Tier 1 ISP can offer reduced latency or lag time in data transmission. This is particularly important for businesses that require low latency for real-time applications, such as video conferencing.
3. Better Support – A Tier 1 ISP generally offers better customer support and technical assistance and has the resources and expertise to handle complex network issues.
4. Scalability – A Tier 1 ISP can easily scale its network infrastructure to meet the growing demand of customers. This is particularly important during periods of rapid business growth or to handle seasonal spikes in internet traffic.

Shortly after executing the contract for services at Equinix, TEBS entered into two Direct Purchase arrangements with Cogent and Hurricane Electric to provide Tier 1 ISP services. At the time, the fees charged by Cogent and Hurricane Electric for this Tier 1 internet service were approximately \$800/month.

Following the issuance of the Direct Purchase Orders, TEBS initiated an Informal Solicitation to procure these Tier 1 internet services. The initial Informal Solicitation was issued under the Local Small Business Reserve Program (LSBRP) and did not yield any proposals that met the requirements of the solicitation. As a result, the LSBRP Informal Solicitation was canceled and a Non-LSBRP Informal Solicitation was issued. The day bids were due, Hurricane Electric contacted the TEBS contract manager responsible for the solicitation and stated that they did not intend to bid. Hurricane Electric indicated that they did not have attorneys or other staff on board to review or negotiate the types of conditions that were associated with the Informal Solicitation and that would apply to a contract resulting from that solicitation. Cogent did submit a bid but indicated that it would not be able to accept the County's Terms and Conditions "as is" and provided a copy of its Service Level Agreement with its solicitation response. AT&T submitted a bid and also indicated exceptions to the County's Terms and Conditions and provided a copy of their Service Level Agreement. AT&T also sought to charge the County approximately \$3,300 per month for services that Cogent and Hurricane Electric were providing for \$800/month. In addition, AT&T did not meet the required service levels stated in the Informal Solicitation. Based on the outcome of the Informal solicitation process and the nature of the market as it pertains to ISPs, TEBS sought and received a waiver of the \$10,000 Direct Purchase Threshold established under Procurement Regulation 4.1.9.1 up to \$100,000 for three (3) years. TEBS received this approval on May 4, 2023.

On June 6, 2023, the County Attorney approved the sale of various broadband, connectivity and sublicensed Tier 4 data center colocation services leveraging FiberNet, including the sale/re-sale of internet access, to Public, Education and Government ("PEG") type entities as a method of generating funding to help offset the operating costs of FiberNet. Following that approval, TEBS initiated discussions with various PEG entities about their interest in buying services provided over FiberNet. Several entities have expressed strong interest in buying various services from the County and TEBS is currently in the process of developing a related Memorandum of Understanding (MOU) in coordination with the Office of the County Attorney and Risk Management to sell/re-sell services to these PEG entities.

Based on this development, TEBS requested an expansion of the waiver that was granted on May 4, 2023, to explicitly include the ability of TEBS to sell/re-sell internet access to interested PEG entities under

MOUs developed in consultation with the Office of the County Attorney and Division of Risk Management. Approval for this expansion was received on April 21, 2024.

The expansion of services requires TEBS to purchase increased internet bandwidth from the Tier 1 ISPs to support the efforts of developing this self-funding initiative for FiberNet. As a result of this expansion, TEBS is spending approximately \$5,600/month on internet services from two Tier 1 providers and expects that these expenditures will increase as demand from PEG customers increases over time.

TEBS is also not the only department that is experiencing these challenges. The Office of Agriculture was granted a waiver of the Procurement Law and Regulations to obtain services for its offices by Comcast, who also refused to sign off on a County-drafted agreement and would only work with its own Service Level Agreement. TEBS also sought to procure business-class internet services through a Request for Proposals (RFP). The result of that effort was a cancellation of the RFP as no responses were received by a provider able to provide service to the entire County.

### 3. **ANALYSIS:**

There are very few, if any, modern business systems that can operate without the internet or an internet service provider. Internet Service Providers are aware of the necessity of their services to business operations and, as a result, are not interested in submitting proposals to competitive solicitations or negotiating terms and conditions related to their service. Tier 1 providers like Hurricane Electric and Cogent, who provide top-of-the-line service at a very competitive price, are only able to work in that business model by avoiding the necessity of employing attorneys or other staff to work to review, respond, and negotiate contracts for their services.

Providers who can provide the level of service required by the County simply do not have the incentive to enter into lengthy negotiations with the County since they are aware of the necessity of their services to operations. Internet service has become as essential as electric or water service.

If legislation is approved that would exempt the purchase of internet service from Chapter 11B, Contracts and Procurement of the Montgomery County Code, the County will be able to purchase high-quality and reliable internet service at competitive prices. Additionally, the County will have the flexibility to change providers, remove providers, or add providers quickly and efficiently to meet changing needs.

### 4. **FISCAL IMPACT:** To Be Provided

### 5. **RECOMMENDATION:**

TEBS recommends approval be granted to allow for the presentation of legislation to the Montgomery County Council for consideration of an exemption of the purchase of internet access service from Chapter 11B, Contracts and Procurement of the Montgomery County Code.




6. **ATTACHMENTS:**

- A) CAO Waiver Approved May 4, 2023;
- B) CAO Waiver Approved April 21, 2024;
- C) Draft Legislation;
- D) Legislative Request Report;
- E) Fiscal Impact Statement; and
- F) Transmittal Memo to County Council President

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**Chief Administrative Officer Decision:**

☒ Agree      ☐ Disagree      ☐ Schedule Briefing      ☐ See/Call Me  
  
Chief Administrative Officer      Date: 2/20/25

CC: Fariba Kassiri, Deputy Chief Administrative Officer



**DEPARTMENT OF TECHNOLOGY AND ENTERPRISE BUSINESS SOLUTIONS**

*Marc Elrich*  
County Executive

*Gail M. Roper*  
Chief Information Officer/Director

**MEMORANDUM**

December 13, 2023

TO: Avinash G. Shetty, Director  
Office of Procurement

FROM: Gail M. Roper, CIO/Director *Gail M. Roper*  
Department of Technology and Enterprise Business Solutions

SUBJECT: Request for Contract Review Committee Approval  
Recommendation for Modified Waiver of Procurement Regulations  
Tier 1 Internet Service Providers

The Department of Technology and Enterprise Business Solutions (TEBS) is requesting that, pursuant to the Montgomery County Procurement Regulations Section 15.5.1.4 the Contract Review Committee (CRC) recommend a modification to a waiver previously approved by the Chief Administrative Officer (CAO) of the Montgomery County Procurement Regulations as it relates to the purchase of Tier 1 Internet Service from providers such as Cogent and Hurricane Electric for services from Tier 4 data centers such as the County's data center at Equinix in Ashburn, VA. Montgomery County Procurement Regulation Section 1.1.2 provides that the procurement regulations may be suspended or waived by the Chief Administrative Officer with respect to any procurement action, or class of procurement actions, upon a determination and finding setting forth the reasons why the best interests of the County would be served by the waiver.

On May 4, 2023, following the Contract Review Committee's recommendation, the CAO approved a waiver of the \$10,000 cap on Direct Purchases, as set forth in Procurement Regulation 4.1.9.1 up to \$100,000 per vendor for the purchase of Tier 1 Internet Service. The waiver was to be effective for three (3) years. A copy of the approved waiver is attached as Exhibit A to this Memorandum.

The information presented to the CRC in March 2023, related to the request for a waiver was for the purchase of internet service for the County's own use. However, on June 6, 2023, the County

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Attorney approved the sale of various broadband, connectivity, and sublicensed Tier IV data center colocation services leveraging FiberNet, including the sale/re-sale of internet access, to Public, Education and Government (“PEG”) type entities as a method of generating funding to help offset the operating costs of FiberNet. Following that approval, TEBS initiated discussions with various PEG entities about their interest in buying services provided over FiberNet. Several entities have expressed strong interest in buying various services from the County and TEBS is currently in the process of developing a related Memorandum of Understanding (MOU) in coordination with the Office of the County Attorney and Risk Management to sell/re-sell services to these PEG entities.

At this time, TEBS is requesting the expansion of the scope of the waiver that was granted on May 4, 2023, to explicitly include the ability of TEBS to sell/re-sell internet access to interested PEG entities under MOUs developed in consultation with the Office of the County Attorney and Division of Risk Management.

The expansion of services will require TEBS to purchase increased internet bandwidth from the Tier 1 Internet service providers to support the efforts of developing this self-funding initiative for FiberNet. As a result of this expansion, the County is spending approximately \$5,600 per month on internet access service from two Tier 1 providers and it is expected that these expenditures will increase as demand from PEG customers increases over time. At the time of approval of the original waiver, services from Cogent and Hurricane Electric were costing approximately \$800/per month/each for this Tier 1 internet service. At least two ISPs are necessary to provide redundant, high quality and reliable internet services. TEBS finds these prices to be fair and reasonable.

If you have any questions regarding this request, please contact Joseph Webster, Chief Broadband Officer at [joseph.webster@montgomerycountymd.gov](mailto:joseph.webster@montgomerycountymd.gov) for technical matters or Donna Potisk, Contract Manager at [donna.potisk@montgomerycountymd.gov](mailto:donna.potisk@montgomerycountymd.gov) for contract matters.

**ACTION OF CONTRACT REVIEW COMMITTEE**

CRC's RECOMMENDATION OF APPROVAL OF A WAIVER OF THE \$10,000 CAP ON DIRECT PURCHASES, AS SET FORTH IN PROCUREMENT REGULATION 4.1.9.1 UP TO \$100,000 PER VENDOR FOR THE PURCHASE OF TIER 1 INTERNET SERVICE IS MODIFIED TO INCLUDE THE SALE/RE-SALE OF INTERNET ACCESS SERVICES TO PEG ENTITIES. THIS WAIVER IS EFFECTIVE FOR THREE YEARS FROM APPROVAL OF THE ORIGINAL WAIVER REQUEST (MAY 4, 2023). THIS WAIVER IS HEREBY:

X  
RECOMMENDED FOR  
CAO APPROVAL

  
Fariba Kassiri, Chair  
Contract Review Committee

\_\_\_\_\_  
NOT RECOMMENDED FOR  
CAO APPROVAL

04/19/2024  
Date

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**ACTION OF CHIEF ADMINISTRATIVE OFFICER**

CRC's RECOMMENDATION OF APPROVAL OF A WAIVER OF THE \$10,000 CAP ON DIRECT PURCHASES, AS SET FORTH IN PROCUREMENT REGULATION 4.1.9.1 UP TO \$100,000 PER VENDOR FOR THE PURCHASE OF TIER 1 INTERNET SERVICE IS MODIFIED TO INCLUDE THE SALE/RE-SALE OF INTERNET ACCESS SERVICES TO PEG ENTITIES. THIS WAIVER IS EFFECTIVE FOR THREE YEARS FROM APPROVAL OF THE ORIGINAL WAIVER REQUEST (MAY 4, 2023). THIS WAIVER IS HEREBY:

X  
APPROVED

  
Richard Madaleno  
Chief Administrative Officer

\_\_\_\_\_  
DENIED

04/21/2024  
\_\_\_\_\_  
Date



**DEPARTMENT OF TECHNOLOGY AND ENTERPRISE BUSINESS SOLUTIONS**

*Marc Elrich*  
County Executive

*Gail M. Roper*  
Chief Information Officer/Director

**M E M O R A N D U M**

March 31, 2023

**TO:** Avinash G. Shetty, Director  
Office of Procurement

**FROM:** Gail M. Roper, CIO/Director *Gail M. Roper*  
Department of Technology and Enterprise Business Solutions

**SUBJECT:** Request for Contract Review Committee Approval  
Recommendation for Proposed Waiver of Procurement Regulations  
Tier 1 Internet Service Providers

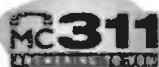
The Department of Technology and Enterprise Business Solutions (TEBS) is requesting that, pursuant to the Montgomery County Procurement Regulations Section 15.5.1.4 the Contract Review Committee (CRC) recommend a waiver by the Chief Administrative Officer (CAO) of the Montgomery County Procurement Regulations as permitted under Procurement Regulations Section 1.1.2 as it relates to the purchase of Tier 1 Internet Service from providers such as Cogent and Hurricane Electric for services from Tier 4 data centers such as the County's data center at Equinix in Ashburn, VA. Montgomery County Procurement Regulation Section 1.1.2 provides that the procurement regulations may be suspended or waived by the Chief Administrative Officer with respect to any procurement action, or class of procurement actions, upon a determination and finding setting forth the reasons why the best interests of the County would be served by the waiver.

A critical part of the County's business continuity plan is a reliable data center and reliable internet service to support all County IT operations and digital equity programs. In early January 2022, the County entered into a contract with Equinix, LLC for data center colocation services, on-premises cloud, internet and related service provider connectivity. Equinix is a Tier 4 data center which provides the most secure and reliable service as it is fault tolerant with redundancy in every component. Tier 4 data centers such as Equinix are uniquely able to provide highly reliable access to internet services from Tier 1 Internet Service Providers (ISPs).

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Maryland Relay 711

A Tier 1 ISP is a company that operates a global network infrastructure and has direct connections with all other Tier 1 ISPs, which means that it does not need to purchase internet transit from other providers to reach any other part of the internet. The advantages of a Tier 1 ISP include:

1. **High Network Performance:** A Tier 1 ISP offers high network performance and availability, as it has a large network infrastructure and it is directly connected to other Tier 1 ISPs, this results in fast and reliable connectivity, which is essential for businesses that require uninterrupted internet access. A Tier 1 ISP can provide network availability of 99.999%.
2. **Reduced Latency.** By being directly connected to other Tier 1 ISPs a Tier 1 ISP can offer reduced latency or lag time in data transmission. This is particularly important for businesses that require low latency for real-time applications, such as video conferencing.
3. **Better Support.** A Tier 1 ISP generally offers better customer support and technical assistance and has the resources and expertise to handle complex network issues.
4. **Scalability.** A Tier 1 ISP can easily scale its network infrastructure to meet the growing demand of its customers. This is particularly important during periods of rapid business growth or to handle seasonal spikes in internet traffic.

Shortly after the execution of the contract for services at Equinix, TEBS entered into two Direct Purchase arrangements with Cogent and Hurricane Electric to provide Tier 1 ISP services. The current fees charged by Cogent and Hurricane Electric are approximately \$800/per month for this Tier 1 internet service.

Following the issuance of the Direct Purchase Orders, TEBS initiated an Informal Solicitation to procure these Tier 1 internet services. The initial Informal Solicitation was issued under the Local Small Business Reserve Program (LSBRP) and did not yield any proposals that met the requirements of the solicitation. As a result, the LSBRP Informal Solicitation was cancelled and a Non-LSBRP Informal Solicitation was issued. The day the bids were due, Hurricane Electric contacted the TEBS contract manager responsible for the solicitation and stated that they did not intend to bid. Hurricane Electric indicated that they did not have attorneys or other staff on board to review or negotiate the types of conditions that were associated with the Informal Solicitation and that would apply to a contract resulting from that solicitation. Cogent did submit a bid but indicated that it would not be able to accept the County's Terms and Conditions "as is" and provided a copy of their Service Level Agreement with their solicitation response. AT&T submitted a bid and also indicated exceptions to the County's Terms and Conditions and provided a copy of their Service Level Agreement and sought to charge the County approximately \$3,300 per month for the services that Cogent and Hurricane Electric provide for no more than \$800 per month. In addition, AT&T did not meet the required service levels stated in the Informal Solicitation. Based on the outcome of the Informal Solicitation process and the nature of the market as it pertains to Tier 1 ISPs, TEBS is requesting a waiver of the Procurement Regulations

so that TEBS can continue to utilize highly reliable internet service providers at the very reasonable prices quoted.

TEBS plans to explore the legislative process to institute internet service as an exemption to the Procurement Law and Regulations. Internet Service has become the most crucial factor in business continuity. There are very few, if any, modern business systems that can operate without the internet and an internet service provider. Tier 1 Internet service providers are aware of the necessity of their services to business operations and, as a result, are not interested in submitting proposals to competitive solicitations or negotiating terms and conditions related to their service. Providers like Hurricane Electric and Cogent, who provide top of the line service at a very competitive price are only able to work in that business model by avoiding the necessity of employing attorneys or other staff to work to review, respond and negotiate contracts for their services. TEBS is not the only department who is experiencing these challenges, recently the Office of Agriculture was granted a waiver of the Procurement Law and Regulations to obtain services for its offices by Comcast, who also refused to sign off on a County-drafted agreement and would only work with its own Service Level Agreement. TEBS also sought to procure business class internet service through a Request for Proposals (RFP). The result of that effort was a cancellation of the RFP as no responses were received by a provider able to provide service to the entire County. Providers who are able to provide the level of service required by the County simply do not have the incentive to enter into lengthy negotiations with the County since they are aware of the necessity of their services to operations. Internet service has become as essential as a “utility” such as electric service or water service and TEBS plans to explore the legislative process to have internet service exempted from the Procurement Law and Regulations. If successful, this will enable the County to purchase high quality and reliable internet service at competitive prices. However, in the interim, until the legislative process is fully explored and completed, TEBS requires the Tier 1 services provided by Cogent and Hurricane Electric or other Tier 1 Internet service providers and therefore is requesting a waiver of the Procurement Law and Regulations to allow TEBS to utilize Tier 1 Internet Service Providers.

The cost of the services currently provided by Hurricane Electric and Cogent is no more than \$10,000 per year/each. At least two ISPs are necessary to provide redundant, high quality and reliable internet services. TEBS finds these prices to be fair and reasonable. By way of example, AT&T, who provides a service that is not as reliable as that provided by Cogent and Hurricane Electric offered charges four times the amount charged by Cogent and Hurricane Electric.

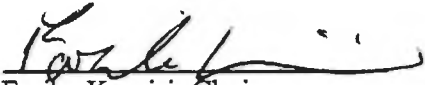
If you have any questions regarding this request, please contact Joseph Webster, Chief Broadband Officer at [joseph.webster@montgomerycountymd.gov](mailto:joseph.webster@montgomerycountymd.gov) for technical matters or Donna Potisk, Contract Manager at [donna.potisk@montgomerycountymd.gov](mailto:donna.potisk@montgomerycountymd.gov) for contract matters.




**ACTION OF CONTRACT REVIEW COMMITTEE**

CRC's RECOMMENDATION OF APPROVAL OF A WAIVER OF THE \$10,000 CAP ON DIRECT PURCHASES, AS SET FORTH IN PROCUREMENT REGULATION 4.1.9.1 UP TO \$100,000, FOR THE PURCHASE OF TIER 1 INTERNET SERVICE. THIS WAIVER IS EFFECTIVE FOR THREE YEARS. THIS WAIVER IS HEREBY:

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RECOMMENDED FOR  
CAO APPROVAL

  
Fariba Kassiri, Chair  
Contract Review Committee

\_\_\_\_\_  
NOT RECOMMENDED FOR  
CAO


  
Date

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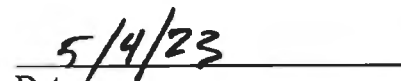
**ACTION OF CHIEF ADMINISTRATIVE OFFICER**

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✓  
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APPROVED

  
Richard Madaleno  
Chief Administrative Officer

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DENIED

  
Date