GO Item 2
January 22, 2015
Worksession

MEMORANDUM

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting

Expected Attendees:

David Dise, Department of General Services Director
Bonnie Kirkland, Assistant CAO
Grace Denno, DGS

Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting, sponsored by the Council President at the request of the County Executive, was introduced on May 6. A public hearing was held on July 8.

Bill 29-14 would require a County contactor subject to the Wage Requirements Law to report summary wage data, including data by gender and race, paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.

Background

President Obama recently recognized the lack of equality in pay between men and women in the workforce, with women consistently receiving less than men. Without current and accurate data to trace compensation based upon race and gender, the root that causes this disparity is difficult to trace. Employees, in some circumstances, may face discrimination or retaliation for discussing their compensation with one another, impeding efforts by individuals to assert their right to equal pay. In an effort to encourage equal pay, this Bill adds wage reporting requirements for County contractors who perform services for the County. Contractors must report, by race and gender, the annual wages paid to employees that performed direct, measurable work under a County contract. Additionally, the Bill prohibits discrimination or retaliation against a Contractor's employees discussing their compensation. The Bill requires each contract to include a liquidated damages clause for a violation. The Director of General Services would be authorized to perform audits to verify compliance and to refer matters to the Office of Human Rights under Chapter 27 for investigation.

The County Attorney's bill review memorandum pointed out that the Bill, as requested by the Executive, would not apply to subcontractors and does not include the same sanctions for a violation of these reporting requirements that the law provides for a violation of the wage requirements. See ©8-9.

Public Hearing

The lone speaker at the public hearing, DGS Director David Dise, testified in support of the Bill on behalf of the Executive. (©14). Mr. Dise explained that the Bill would promote wage equity among County service contractor's employees by requiring each contractor to submit regular reports summarizing wages paid to covered employees broken down by race and gender. DGS would review the reports and refer cases to the County Office of Human Rights for investigation for a possible violation of the equal employment laws in appropriate cases.

Issues

1. What is the fiscal impact of the Bill?

OMB and Finance originally estimated that the Bill would require two new positions in the Department of General Services – a full-time Program Manager II (Grade 25) with financial, accounting, and auditing experience to respond to complaints, investigate issues, initiate and monitor audits, and educate vendors and a full-time Procurement Specialist (Grade 27) to analyze bids and proposals. (©10-13) The Program Manager position has an estimated recurring cost of $90,000 and a first year cost for office equipment of $2734. The Procurement Specialist position has an estimated recurring cost of $102,000 and a first year cost for office equipment of $2734. OMB submitted a revised fiscal impact statement on September 17, 2014 changing the estimated staff time to two half-time positions for a total recurring annual personnel cost of $101,468. (©17-19) OMB revised this estimate based upon a conclusion that DGS staff would only review a random sample of contract payroll records instead of reviewing each payroll record. The estimated office equipment costs for each position remain the same.

Although OMB could not estimate the number of audits required, each audit was estimated to cost between $40,000 and $80,000. Finally, the Fiscal Impact Statement points out that potential vendors may need to hire additional personnel to create the required wage reports. If so, these additional costs are likely to be reflected in higher bid prices.

2. Should the Bill apply to subcontractors?

As the County Attorney's Office pointed out, the reporting requirements do not apply to subcontractors. See ©9. The equal pay goal would apply equally to an employee of a subcontractor who performs work on the contract. However, the contractor would be responsible under the contract to ensure that each subcontractor supplies a wage report to the County. Whether this additional administrative burden on the contractor is worth the potential additional cost is a policy question that goes to the ultimate value of the reporting requirement itself.

If the Committee decides to extend the wage reporting requirement to subcontractors, it can be accomplished by:

> *Replace the word "contractor* "with *the term "covered employer" in lines 6, 12, 30, and 48.*

3. Should the enforcement provisions be the same for a violation of the reporting requirement?

As the County Attorney's Office pointed out, a violation of the wage requirements is treated the same as a violation of the nondiscrimination requirements, but the wage reporting requirement is not. See ©8. The Bill provides for liquidated damages for a violation of the wage reporting requirement. However, if the wage reporting requirement leads to a violation of the equal employment law, then the sanction for the race or gender discrimination would be the same. A contractor would violate the wage reporting requirement by not filing a required report. Failure to file a report does not prove an equal pay violation. Liquidated damages under the contract may be a sufficient remedy for a failure to file a required report.

If the Committee decides to extend the same sanctions to a violation of the wage reporting requirements, it could be done by amending §11B-33A(h)(4) as follows:

> (4) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage and wage reporting requirements of this Section.

4. How does this Bill relate to Bill 51-14?

The substance of Bill 51-14 is similar to the prohibition against retaliation for wage disclosure contained in Bill 29-14. However, Bill 51-14 would add this prohibition to the County's anti-discrimination laws and would therefore apply to any employer who employs one or more persons in the County. Bill 29-14 would limit the prohibition to an employer who obtains a service contract with the County. On January 15, the HHS Committee recommended approval of Bill 51-14. If Bill 51-14 is enacted, it would cover all County service contractors.

5. Should the Council enact a wage reporting requirement?

County procurement often struggles with competing purposes. First, the County has an obligation to County residents to obtain the best goods and services from contractors for the best possible price. This is normally served by establishing an open competitive process for the award of a County contract. The County sometimes attempts to use its contracting dollars to serve a different public purpose.

For example, the County has a Local Small Business Reserve Program that reserves certain contracts for local small businesses. The County Procurement Law also has a Minority Owned Business Program. Bill 48-14, currently pending before the Council, would extend the Minority Owned Business Program to certain contracts awarded through a request for proposals. The County enacted a Prevailing Wage Law that requires a County construction contractor to pay at least the prevailing wage set by the State. The Wage Requirements Law that Bill 29-14 would amend already requires most service contractors to pay all employees working on a County service contract at least a living wage, currently set at $14.15 per hour. The GO Committee is also considering a bill to increase the number of employees with health insurance who work on a County service contract under the Wage Requirements Law (Bill 14-14). Bill 61-

14, recently introduced at the request of the Executive would create a new local business subcontracting program for high dollar value contracts.

Each of these procurement laws supports a strong public policy, but also runs counter to the County's overall obligation to obtain the best goods and services for the best price. The resulting procurement system is complicated and sometimes slow. It can be difficult to navigate. Each new procurement requirement adds an incremental layer of complexity. The Council recently established a citizen task force to study the County procurement system and make recommendations on how to make it less complex and faster.

A cost/benefit analysis of Bill 29-14 raises some interesting issues. The fiscal impact statement acknowledges that the Bill would require the County to create and fill 2 new half-time professional positions in Procurement at an estimated annual recurring cost of $101,468. In addition, the fiscal impact statement estimates that each audit would cost between $40,000 and $80,000. Finally, OMB points out that the added administrative burden on contractors is likely to increase bid prices. What does the County receive in return? The County would receive wage reports from each contractor showing the wages paid to each employee who performs measurable work on the contract broken down by race and gender. Would this lead to evidence of discrimination? Possibly. Would it help reduce wage discrimination on the basis of race or gender? Possibly. Wage discrimination on the basis of race or gender is already a violation of Federal, State, and County law. At best, Bill 29-14 may lead to evidence of unlawful wage discrimination. A more comprehensive anti-retaliation provision for wage disclosure is already part of Bill 51-14.

The Federal government requires a contractor, as a condition of having a Federal contract, to engage in a self-analysis for the purpose of discovering any barriers to equal employment opportunity. The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces these requirements through 6 Regional Offices. Each Regional Office has District and Area Offices in major metropolitan centers. A Department of Labor description of the OFCCP is at ©15-16. Although Federal contract requirements in this area go much further than the wage reporting that would be required by Bill 29-14, the Bill would begin the County on a similar path. Any effort to eliminate unlawful employment discrimination is a worthy goal, and some would argue that no cost is too great to work toward that end. Absent any evidence that the wage reporting in Bill 29-14 would make a significant difference in reducing unlawful employment discrimination, the cost may be too great for the potential benefit. **Council staff recommendation:** do not enact the Bill without evidence that the wage reporting is likely to significantly reduce unlawful employment discrimination.

This packet contains:	Circle #
Bill 29-14	1
Legislative Request Report	5
Memo from County Executive	7
County Attorney Bill Review Memorandum	8
Fiscal and Economic Impact Statement	10
Testimony of David Dise	14
US Department of Labor – OFCCP Description	15
Revised Fiscal Impact Statement	17

F:\LAW\BILLS\1429 Contracts And Procurement - Wage Requirements-Reporting\GO Memo.Doc

Bill No. 29-14
Concerning: Contracts and Procurement – Wage Requirements – Reporting
Revised: April 30, 2014 Draft No. 3
Introduced: May 6, 2014
Enacted: November 6, 2015
Executive:
Effective:
Sunset Date: None
Ch. _____, Laws of Mont. Co. ________

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

(1) require certain County contractors to report summary data, including data by gender and race, paid to their employees who work on County contracts;

(2) prohibit certain County contractors from retaliating against certain employees that disclose salary information to another person or employee; and

(3) generally amend County wage requirements law for contractors.

By amending
Montgomery County Code
Chapter 11B, Contracts and Procurement
Article VI, Contract Administration
Section 11B-33A – Wage Requirements

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 11B-33A is amended as follows:

11B-33A. Wage requirements.

* * *

(g) *Wage reporting.*

(1) The Director must insert into each contract subject to this Section a provision that requires the contractor to submit to the Director a report (on a schedule determined by the Director) showing a summary of the wages paid to its employees, who performed direct, measurable work under the contract, by gender and race.

(2) *Prohibition against retaliation.* Except as provided in paragraph (3), a contractor must not discharge or in any other manner discriminate or retaliate against an employee, who performed direct, measurable work under the contract, because the employee:

(A) has inquired about, discussed, or disclosed the wages of the employee or another employee;

(B) asserts any right under this subsection; or

(C) files any complaint for violation of this subsection.

(3) The prohibition against retaliation under paragraph (2) does not apply to an employee who has access to wage information of other employees or applicants as part of the employee's essential job functions and discloses the wages of other employees or applicants to individuals who do not otherwise have access to the information, unless the disclosure is in response to:

(A) a formal complaint or charge;

(B) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the contractor; or

(C) is consistent with the contractor's legal duty to furnish information.

(4) The Director may refer a report to the Office of Human Rights for investigation of a possible violation of Chapter 27, Human Rights and Civil Liberties.

(h) *Conflicting requirements.* If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.

[(h)] (i) *Enforcement*

* * *

(5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify:

(A) that liquidated damages may be imposed in the event that a contractor violates the wage reporting requirement in subsection (g); and

(B) that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right under this Section.

[(i)] (j) *Report*

* * *

Sec. 2. Transition. This Act applies to a contract awarded after October 1, 2014, but does not apply to an amendment or extension of a contract originally awarded before October 1, 2014.

Approved:

____

Craig Rice, President, County Council Date

Approved:

____

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 29-14

Contracts and Procurement –Wage Requirements - Reporting

DESCRIPTION: Bill 29-14 would require a County contactor subject to the Wage Requirements Law to report summary wage data, including date, by gender and race, paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.

PROBLEM: President Obama recently recognized the lack of equality in pay between men and women in the workforce, with women consistently receiving less than men. Without current and accurate data to trace compensation based upon race and gender, the root that causes this disparity is difficult to trace. Employees, in some circumstances, may face discrimination or retaliation for discussing their compensation with one another, impeding efforts by individuals to assert their right to equal pay. In an effort to encourage equal pay, this Bill adds wage reporting requirements for County contractors to Chapter 11B of the County Code. Contractors must report, by race and gender, the annual wages paid to employees that performed direct, measurable work under a County contract. Additionally, the Bill prohibits discrimination or retaliation against a Contractor's employees discussing their compensation. The Bill requires liquidated damages provisions in contracts for violations, empowers the Director of General Services to perform audits to verify compliance and to refer matters to the Office of Human Rights under Chapter 27 for investigation.

GOALS AND OBJECTIVES: Wage equality.

COORDINATION: 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: David E. Dise, Director
240 777 6191

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Contractual liquidated damages.

F:\LAW\BILLS\1429 Contracts And Procurement - Wage Requirements-Reporting\LRR.Doc

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 24, 2014

TO: Craig L. Rice, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Legislation to Add to Chapter 11B, Contracts and Procurement – Equal Wage

I am attaching for the Council's consideration a bill that would amend the County's Contract and Procurement law to require certain County contractors to report wages paid by race and gender and to prohibit discrimination against employees who discuss wage information.

President Obama recently recognized the lack of equality in pay between men and women in the workforce, with women consistently receiving less than men. Without current and accurate data to trace compensation based upon race and gender, the root that causes this disparity is difficult to trace. Employees, in some circumstances, may face discrimination or retaliation for discussing their compensation with one another, impeding efforts by individuals to assert their right to equal pay. In an effort to encourage equal pay, this Bill adds wage reporting requirements for County contractors to Chapter 11B of the County Code. Contractors must report, by race and gender, the annual wages paid to employees that performed direct, measurable work under a County contract. Additionally, the Bill prohibits discrimination or retaliation against a Contractor's employees discussing their compensation. The Bill requires liquidated damages provisions in contracts for violations, empowers the Director of General Services to perform audits to verify compliance and to refer matters to the Office of Human Rights under Chapter 27 for investigation. The amendment exempts the same contractors presently exempt from the wage provisions of Code § 11B-33A.

Thank you for your consideration of this matter.

IL:lh

Attachments: Draft legislation
Legislative Request Report

cc: David Dise, Director, DGS
Jennifer A. Hughes, Director, OMB
Joseph Adler, Director, OHR
Marc Hansen, County Attorney
Joseph F. Beach, Director, DOF

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Greg Ossont, Deputy Director
Department of General Services

FROM: Erin J. Ashbarry
Associate County Attorney

VIA: Marc P. Hansen, County Attorney

DATE: May 16, 2014

RE: Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting

---

Bill 29-14 amends the County's "Wage Requirements" law, found at County Code § 11B-33A, which mandates minimum hourly rates for employees working on County contracts. Bill 29-14 will require County contractors to report, by race and gender, the wages paid to employees who perform direct, measurable work on the County's contract. Additionally, Bill 29-14 protects from retaliation the employees of a County contractor who inquire about or discuss wages paid to other employees.

County contracts subject to Bill 29-14 must state that liquidated damages may be imposed in the event a contractor violates the wage reporting requirements. Further, the Director may refer a report to the Office of Human Rights for investigation of a possible violation of County Code Chapter 27, Human Rights and Civil Liberties.

Contracts exempt from the Wage Requirements law will also be exempt from the wage reporting requirements and anti-retaliation provisions of Bill 29-14. *See* Montgomery County Code § 11B-33A(b)(1) – (9) (listing exempt contracts).

Bill 29-14 does not extend the sanctions for noncompliance with the Wage Requirements to the wage reporting provisions. *See* Montgomery County Code § 11B-33A(h)(4) (stating "[t]he sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the *wage requirements* of this Section" (emphasis added)).

101 Monroe Street, Third Floor, Rockville, Maryland 20850-2580
(240) 777-6744 • TTD (240) 777-2545 • FAX (240) 777-6705 • erin.ashbarry@montgomerycountymd.gov

Additionally, Bill 29-14's wage reporting requirements and its protection against retaliation do not apply to subcontractors. Bill 29-14 uses the term "contractor," not a "covered employer." *See* Bill 29-14, Lines 6, 12. Section 11B-33A defines a "covered employer" as including subcontractors. *See* Code § 11B-33(A)(a) (defining "covered employer" to include "any contractor *or subcontractor* that is subject to this Section" (emphasis added)). A court would interpret use of the term "contractor," in Lines 6 and 12 of Bill 29-14, instead of "covered employer," to exclude subcontractors.

This omission of subcontractors differs from the wage requirements generally in Code § 11B-33A, which include subcontractors. This omission of subcontractors also differs from the County's equal benefits and prevailing wage laws, which both apply to contractors and subcontractors. *See generally* Code Code §§ 11B-33C(d)(2) (requiring a contractor and a subcontractor to pay a prevailing wage rate); 11B-33C(h)(1) (requiring each contractor and subcontractor to submit quarterly payroll records) ; 11B-33D(b) (requiring a contractor and a subcontractor to provide equal benefits), 11B-33D(d)(2) (prohibiting retaliation by a contractor or a subcontractor in violation of the equal benefits provisions).

Section 11B-33A's statement that a contract may hold a contractor liable for subcontractor's noncompliance, *see* Code § 11B-33A(h)(5), will not provide incentive for a contractor comply with Bill 29-14, as Bill 29-14 does not extend the wage reporting and anti-retaliation provisions to subcontractors.

Enclosure (bill)

cc: Bonnie A. Kirkland, Assistant CAO
Robert H. Drummer, Senior Legislative Attorney

ROCKVILLE, MARYLAND

MEMORANDUM

May 27, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
David Platt, Department of Finance
Robert Hagedoorn, Department of Finance
David Dise, Director, Department of General Services
Erika Lopez-Finn, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Felicia Zhang, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 29-14 & Contracts and Procurement –
Wage Requirements - Pay Equity, Wage Reporting

1. Legislative Summary.

   The legislation requires a County contractor subject to the Wage Requirements law report to summarize wage data, including data by gender and race, paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.

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 are affected by this legislation.

   In order to comply with the legislation, vendors may need to hire extra administrative support to manually input gender and race information which is not standard on payroll reports. In order to offset this increased cost, there is the potential for bidders or offerors to increase their bid or rate proposals to the County as a result of adding specific information, such as gender and race, into their payroll report. The exact cost percentage increase to the County is hard to estimate.

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

   See the answer to 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.

   One FTE (Program Manager II grade 25) with a financial and auditing background is needed to respond to complaints, investigate issues, initiate and monitor audits, process memos and reports, provide outreach, and educate vendors and contract administrators.

   One FTE (Procurement Specialist grade 27) is needed to analyze bid and proposal submissions as it relates to financial responsibility and qualifications, cost and price, of adequate resources for the MFD program. Adding the requirements of Bill 29-14 to this position would negatively impact the functions of the MFD program.

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

   DGS would need one FTE Program Manager II (grade 25), with financial, accounting and auditing background. DGS estimates total personnel costs at $90,000 and $2,734 of associated operating expenses (desktop, furniture, phone) in the first year of implementation.

   DGS would require one FTE Procurement Specialist (grade 27) and estimates total personnel costs at $102,000 and $2,734 of associated operating expenses(desktop, furniture, phone)) in the first year of implementation.

   Complaints or issues during compliance validation may trigger investigations and possible audits. Each audit is estimated at $40,000-$80,000 based on recent actual audit costs, and estimates from the Office of Internal Audit.

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

   The number of workers under each contract can affect the cost to the County since costs to vendors would likely be included in bid proposals.

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

    See the answer to item 2. Direct costs to vendors are difficult to estimate.

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

    Not applicable.

12. Other fiscal impacts or comments.

    None.

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

    Pam Jones, Chief, Office of Procurement, DGS
    Grace Denno, Office of Business Relations and Compliance, DGS
    Erika Lopez-Finn, Office of Management and Budget

Blaise DeFazio for JAH — 5/27/14

Jennifer A. Hughes, Director — Date
Office of Management and Budget

Economic Impact Statement
Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting

Background:

This legislation would require a County contractor subject to the Wage Requirements Law to report summary wage data, including data by gender and race, paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.

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

   The Department of General Services

   The economic impact, as opposed to the fiscal impact, would depend on whether County contractors, i.e., Bidders or Offerors, incur costs such as hiring additional administrative staff in order to comply with Bill 29-14, and if they increase their rates when bidding on contracts to reflect the higher cost.

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

   The variable that could affect the economic impact is whether a contractor incurs additional administrative costs and whether contractors can increase their rates to cover those additional costs.

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

   It is uncertain whether Bill 29-14 would have a positive or negative impact on business income, employment, spending, incomes, and property values. The reason for the uncertainty is: 1) whether a contractor, i.e., Bidder or Offeror, would incur additional costs, 2) whether such additional costs would result in an increase in the proposed rates, and if so, those costs would be borne by Montgomery County and no economic impact, and 3) if the Bidder or Offeror could pass the additional costs through higher rates, would the Bidder or Offeror do so given the likely competition for County contracts.

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

   As noted in #3, it is uncertain whether Bill 29-14 would have an economic impact.

5. **The following contributed to and concurred with this analysis**: David Platt and Rob Hagedoorn, Department of Finance; Grace Denno, Department of General Services.

RHagge
For Joseph F. Beach, Director
Department of Finance

5/21/2014
Date

15

TESTIMONY ON BEHALF OF THE COUNTY EXECUTIVE ISIAH LEGGETT ON BILL 29-14, CONTRACTS AND PROCUREMENT-WAGE REQUIREMENTS-REPORTING (PAY EQUITY BILL)

July 8, 2014

I am David Dise, Director of Montgomery County's Department of General Services and I am here on behalf of County Executive Isiah Leggett to urge the Council's favorable consideration of Bill 29-14 to require County contractors that are under the Living Wage Law to report gender and race information in their payroll reports.

Montgomery County is home to a diverse, vibrant, majority-minority population. The County's vendor base reflects this diversity. The County has always been a leader among local governments in promulgating responsible and inclusive laws such as the Local Small Business Reserve Program, the Minority, Female, Disabled-owned Business Program, as well as the Living and Prevailing Wage laws. Passage of this Bill will continue that distinction by establishing certain pay equity requirements for its contractors. Underscoring this, the County models its commitment to pay equity. Female County employees are consistently paid at a rate equitable to their male counterparts.

Montgomery County's current Living Wage Law requires contractors to pay all employees, at a minimum, a "living" wage rate. While it is always hoped that employers treat all employees equally, this is not always the case. This Bill requires contractors to submit regular reports to the Department of General Services summarizing wages paid to all employees performing direct, measurable work under the County contract, specifically by gender and race. The Bill further prohibits a County contractor from discriminating or retaliating against an employee if the employee inquires about, discusses or discloses wage information or asserts a right under or files a complaint for a violation of the Bill's provisions. The Bill will apply to a contract awarded after October 1, 2014.

Under current law DGS has enforcement authority to investigate complaints and conduct audits. If the audit findings warrant further investigation, DGS will report to the Office of Human Rights for investigation of a possible violation of Chapter 27, Human Rights and Civil Liberties. County Executive Leggett believes that women and minority employees who work on County contracts deserve to make the same pay as their colleagues, and passing this Bill is the right thing to do.

United States Department of Labor

Office of Federal Contract Compliance Programs

Office of Federal Contract Compliance Programs (OFCCP)

About OFCCP

Mission Statement

The purpose of the Office of Federal Contract Compliance Programs (OFCCP) is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government.

DOL's Reorganization

On November, 8, 2009, the Employment Standards Administration (ESA) was abolished and the four major program components of ESA-Office of Federal Contract Compliance Programs, Office of Labor Management Standards, Office of Workers' Compensation Programs and the Wage and Hour Division-became stand-alone programs reporting directly to the Secretary of Labor. The Office of the Assistant Secretary and the Office of Management, Administration and Planning (OMAP) were eliminated with administrative functions in OMAP transferred to the four programs or departmental administrative programs.

The purpose of the reorganization was to improve the efficiency of all four programs by eliminating a layer of review and decision-making, which allows DOL leadership to more quickly attend to policy matters in each program without having an added organization component review between the program heads and senior leadership.

OFCCP's ENFORCEMENT PROCEDURES

In carrying out its responsibilities, the OFCCP uses the following enforcement procedures:

- Offers technical assistance to federal contractors and subcontractors to help them understand the regulatory requirements and review process.
- Conducts compliance evaluations and complaint investigations of federal contractors and subcontractors personnel policies and procedures.
- Obtains Conciliation Agreements from contractors and subcontractors who are in violation of regulatory requirements.
- Monitors contractors and subcontractors progress in fulfilling the terms of their agreements through periodic compliance reports.
- Forms linkage agreements between contractors and Labor Department job training programs to help employers identify and recruit qualified workers.
- Recommends enforcement actions to the Solicitor of Labor.
- The ultimate sanction for violations is debarment - the loss of a company's federal contracts. Other forms of relief to victims of discrimination may also be available, including back pay for lost wages.

The OFCCP has close working relationships with other Departmental agencies, such as: the Department of

Justice, the Equal Employment Opportunity Commission and the DOL, the Office of the Solicitor, which advises on ethical, legal and enforcement issues; the Women's Bureau, which emphasizes the needs of working women; the Bureau of Apprenticeship and Training, which establishes policies to promote equal opportunities in the recruitment and selection of apprentices; and, the Employment and Training Administration, which administers Labor Department job training programs for current workforce needs.

OFCCP has a national network of six Regional Offices, each with District and Area Offices in Major Metropolitan Centers. OFCCP focuses its resources on finding and resolving systemic discrimination. The agency has adopted this strategy to: (1) prioritize enforcement resources by focusing on the worst offenders; (2) encourage employers to engage in self audits of their employment practices; and (3) achieve maximum leverage of resources to protect the greatest number of workers from discrimination.

OFCCP Leadership

Patricia A. Shiu
Director

Vacant
Deputy Director

Tom Dowd
Deputy Director

OFCCP Office Directory

- Key Personnel National Office
- Regional Offices
- District & Area Offices

Organization Chart

Revised Fiscal Impact Statement
Council Bill 29-14 & Contracts and Procurement –
Wage Requirements - Pay Equity, Wage Reporting

1. **Legislative Summary**

   The legislation requires a County contractor subject to the Wage Requirements law report certain wage data (including data by gender and race) paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.

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 are affected by this legislation.

   In order to comply with the legislation, vendors may need to hire extra administrative support to manually input gender and race information which is not standard on payroll reports. In order to offset this increased cost, there is the potential for bidders or offerors to increase their bid or rate proposals to the County as a result of adding specific information (such as gender and race) into their payroll report.

   The exact cost passed onto the County is hard to estimate at this time and will vary by vendor and contract.

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.**

   Additional staff hours required under the proposed legislation are difficult to estimate; however, DGS estimates *at least* one (1.0) FTE for the Offices of Business Relations and Compliance (OBRC) and Procurement, as follows:

- One half (0.5) FTE for a Program Manager II (grade 25) with a financial and auditing background is needed to respond to complaints, investigate issues, initiate and monitor audits, process memos and reports, provide outreach, and educate vendors and contract administrators.[1]

- One-half (0.5) FTE for a Procurement Specialist (grade 27) is needed to analyze bid and proposal submissions as it relates to financial responsibility and qualifications, cost and price, evaluation and award impacts for any equity disparity as part of the County's procurement process.[2]

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

   In order to implement the proposed legislation, other key aspects of the above-mentioned laws would have to be re-prioritized against the new responsibilities which the OBRC currently cannot absorb within existing resources.

   The proposed legislation also requires additional direct guidance to vendors which will result in less time spent on other actions.

   Procurement Specialists are expected address issues with cures or terminations resulting from failure to comply with the OBRC program. The requirements of this legislation add further procurement delays which will increase solicitation and contract processing delays. For example, procurement specialists would have to cancel the contract and conduct the appropriate paperwork associated to re-issue the contract in case of non-compliance.

   Currently, DGS estimates that the present Procurement office staff of 19 FTEs spends a total of 77 hours on each compliance action, with 44 actions per year on average. This results in staff spending a total of 3,388 hours (on top of other duties) at the current level of compliance work.[3] These compliance actions are in addition to other procurement duties currently assigned.

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

   DGS estimates that an appropriation of *at least* $101,468 is required for one FTE in the first year of implementation, based on:

---

[1] This FTE estimate assumes that only a random sample of payroll records is reviewed and instead of every individual payroll record.

[2] The position would review a random sample of solicitation and award action to determine compliance with laws and regulations, and manage procurement actions and issues to minimize delays, coordinate and communicate with Office of Businesses Relations and Compliance (OBRC), contract administrators, and offerors.

[3] 77 hours per compliance action times 44 compliance actions per year = 3,388 hours per year to address compliance actions

- One-half of an FTE for a Program Manager II (grade 25) with a financial, accounting, and auditing background. DGS estimates total personnel costs at $45,000 and $2,734 of associated operating expenses (desktop, furniture, phone, etc.) in the first full year of implementation.
- One-half of an FTE for a Procurement Specialist (grade 27) and estimates total personnel costs at $51,000 and $2,734 of associated operating expenses (desktop, furniture, phone) in the first year of implementation.

Furthermore, complaints or issues during compliance validation may trigger investigations and possible audits. Each audit is estimated at $40,000-$80,000 based on recent actual audit costs and estimates from the Office of Internal Audit. The exact number of audits is unknown at this time.

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

The number of workers under each contract that is required to comply with the data reporting can affect the cost to the County since the vendors' increased administrative costs would likely be included in bid proposals.

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

See #item 2 - direct costs to vendors are difficult to estimate as it is unknown at this time the precise impact on vendors and the increased costs, if any, that will be passed on to the County.

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

Not applicable

12. Other fiscal impacts or comments.

None

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

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

Jennifer A. Hughes
Jennifer A. Hughes, Director
Office of Management and Budget

9/17/14
Date