

Clerk's note: Corrected the executive date on the first page to accurately reflect the CE signed date on the last page.

Expedited Bill No. 25-19
Concerning: Contracts and Procurement
- Local Business Preference Program
- Established
Revised: June 23, 2020 Draft No. 4
Introduced: September 17, 2019
Enacted: June 23, 2020
Executive: June 29, 2020
Effective: [[January 1, 2020]] August 1,
2020
Sunset Date: None
Ch. 19, Laws of Mont. Co. 2020

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

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

AN EXPEDITED ACT to:

- (1) increase the number of local businesses awarded County contracts;
- (2) establish a Local Business Preference Program for certain County contracts; and
- (3) generally amend the law governing County procurement.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XXI. Local Preference Program
Sections 11B-92, 11B-93, 11B-94, 11B-95, 11B-96, 11B-97, and 11B-98

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

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

1 **Sec. 1. Sections 11B-92, 11B-93, 11B-94, 11B-95, 11B-96, 11B-97, and**
 2 **11B-98 are added as follows:**

3 **ARTICLE XXI. Local Business Preference Program.**

4 **11B-92. Purpose.**

5 This Article is intended to bolster the County's economic growth and support the
 6 creation and retention of employment opportunities within the County by establishing a ten
 7 percent (10%) preference for the award of a County contract to a County-based business.

8 **11B-93. Definitions.**

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

10 Broker means a person that provides goods or services (other than real estate,
 11 investment, or insurance sales) on a pass-through basis as:

12 (a) a supplier of goods who:

13 (1) does not own, operate, or maintain a place of business in which goods
 14 of the general character required under the contract are kept in stock
 15 in the regular course of business;

16 (2) does not regularly assume physical custody or possession of goods of
 17 comparable character to those offered to the County; or

18 (3) exclusively acts as a middleman in the sale of goods to the County; or

19 (b) a supplier of services who does not regularly maintain the capability,
 20 capacity, training, experience, and applicable regulatory licensing to directly
 21 perform the principal tasks of a contract with the County and must provide
 22 the principal tasks through a subcontract with a third party.

23 Director means the Director of the Office of Procurement or the Director's designee.

24 Local Business means a business, other than a broker, that:

25 (a) has its principal place of business in the County;

26 (b) meets criteria established by method 2 regulations; and

27 (c) is certified by the Director as a Local Business under the provisions of this
 28 Article.

29 **11B-94. Applicability.**

30 This Article applies to all procurement purchases solicited under Sections 11B-9 or
 31 11B-10.

32 **11B-95. Procedures.**

33 (a) Eligibility. To be eligible for local business preference points, a business
 34 must affirm and provide supporting documentation to the Director to show
 35 that it is a local business as defined in Section 11B-93. The Director may
 36 investigate and verify the information provided on the application, as
 37 necessary, and must certify a business as a local business for the purposes of
 38 this Article.

39 (b) Certification. Preference points must be applied only to a business:

40 (1) that has a valid local business certification when the business submits
 41 a bid or proposal; or

42 (2) who has applied for local business certification before the time to
 43 submit a bid or proposal has passed.

44 (c) Notice. The Director must publicly notify businesses of prospective
 45 procurement opportunities.

46 (d) Competitive sealed bids. The Director must adjust the bid of a Local
 47 Business who submits a bid in response to an Invitation for Bid issued under
 48 Section 11B-9:

49 (1) by reducing the bid price(s) by a factor of 10%, but not to exceed
 50 \$200,000, for the purposes of evaluation and award only; or

51 (2) if a Local Business is eligible for a reciprocal preference pursuant to
 52 Section 11B-9(j), the bid of the Local Business must be adjusted by
 53 that reciprocal preference if it exceeds the 10% preference factor.

54 The Local Business preference points authorized under this Article must not
 55 be combined with reciprocal preference points authorized under Section
 56 11B-9(j).

57 (e) Competitive sealed proposals. The Director must include an evaluation
 58 factor awarding additional points for a proposal from a Local Business worth

59 10% of the total available points in a Request for Proposals issued under
60 Section 11B-10.

61 (f) Waiver. The Director may waive a bid or proposal preference under this
62 Section in a solicitation if the Director finds that a preference would result
63 in the loss to the County of Federal or State funds.

64 **11B-96. Regulations.**

65 The Executive must adopt regulations, by Method 2, to implement this Article. The
66 regulations must include:

- 67 (a) Certification requirements for a business to qualify as a Local Business;
68 (b) Procedures to certify, re-certify, or decertify a Local Business; and
69 (c) Procedures that will enable the Director to monitor compliance with the
70 Local Business Preference Program.

71 **11B-97. Reports.**

72 By October 31st of each year, the Director must report to the Council on the Local
73 Business Preference Program. This report must include the number, solicitation type and
74 dollar amount of contracts that were awarded pursuant to the Program.

75 **11B-98. Penalty.**

- 76 (a) A person must not:
77 (1) fraudulently obtain or retain, attempt to obtain or retain, or aid another
78 person in fraudulently obtaining or retaining, or attempting to obtain
79 or retain, certification as a Local Business;
80 (2) willfully make a false statement to a County official or employee for
81 the purpose of influencing the certification of an entity as a Local
82 Business; or
83 (3) fraudulently obtain, attempt to obtain, or aid another person in
84 fraudulently obtaining, or attempting to obtain, public monies to
85 which the person is not entitled under this Article.
86 (b) A violation of this Article:
87 (1) is a class A violation; and

88 (2) may disqualify the violator from doing business with the County for
89 up to 2 years.

90 **Sec. 2. Expedited Effective Date**

91 The Council declares that this legislation is necessary for the immediate
92 protection of the public interest. This Act takes effect on ~~[[January 1, 2020]]~~ [[July 1,
93 2020]] August 1, 2020 and must apply to a solicitation issued under Section 11B-9 or
94 Section 11B-10 on or after ~~[[January 1, 2020]]~~ [[July 1, 2020]] August 1, 2020.

Approved:



Sidney Katz, President, County Council 6/24/2020
Date

Approved:



Marc Elrich, County Executive 6/29/2020
Date

This is a correct copy of Council action.



Selena Mendy Singleton, Esq., Clerk of the Council 6/30/2020
Date