



Montgomery
County Council

Committee GO

Staff: Robert H. Drummer, Senior Legislative Attorney

Purpose: To introduce agenda item – no vote expected

Keywords: #LocalBusinesses, #MoCo4Growth

AGENDA ITEM #5A

September 17, 2019

Introduction

SUBJECT

Expedited Bill 25-19, Contracts and Procurement – Local Business Preference Program - Established
Lead Sponsor: Council President Navarro at the request of the County Executive

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – no vote expected

DESCRIPTION/ISSUE

Bill 25-19 would provide a 10% price preference in evaluating a bid or proposal from a local business on a contract awarded by the County.

SUMMARY OF KEY DISCUSSION POINTS

- How would this affect the competition and bid prices on County contracts?
- How would this affect awards to minority owned businesses?
- How would this enhance the local economy and employment for County residents?

This report contains:


Staff Report	Page 1
Bill 25-19	©1
Legislative Request Report	©6
Fiscal and Economic Impact statement	©7

Alternative format requests for people with disabilities. If you need assistance accessing this report you may submit alternative format requests to the ADA Compliance Manager. The ADA Compliance Manager can also be reached at 240-777-6197 (TTY 240-777-6196) or at adacompliance@montgomerycountymd.gov

MEMORANDUM

September 12, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Expedited Bill 25-19, Contracts and Procurement – Local Business Preference Program - Established

PURPOSE: Introduction – no Council votes required

Expedited Bill 25-19, Contracts and Procurement – Local Business Preference Program - Established, sponsored by Lead Sponsor Council President Navarro at the request of the County Executive, is scheduled to be introduced on September 17, 2019. A public hearing is tentatively scheduled for October 15, 2019 at 1:30 p.m.¹

Bill 25-19 would require a 10% price preference for a local business bidding on a contract or submitting a proposal under an RFP for a contract awarded by the County. The Director of the Office of Procurement would be required to certify a business as a local business if it has its principal place of business in the County. The definition of a local business would be established by a Method 2 regulation. The Procurement Regulations, COMCOR §11B.00.01.02.4.72, define a principal place of business in the County as:

2.4.72 Principal Place of Business in the County: A regular course of business commerce in the County by a business, along with any of the following:

- (1) The business has its physical business location(s) only in the County; or
- (2) The business has physical business locations both in and outside of the County, and the County-based location(s) account for over 50% of the business's total number of employees, or over 50% of the business's gross sales.

This packet contains:	<u>Circle #</u>
Expedited Bill 25-19	1
Legislative Request Report	6
Fiscal Impact Statement	7
Economic Impact Statement	9

¹#LocalBusinesses, #MoCo4Growth

Expedited Bill No. 25-19
Concerning: Contracts and Procurement
- Local business Preference
Program - Established
Revised: July 29, 2019 Draft No. 2
Introduced: September 17, 2019
Expires: March 17, 2021
Enacted: [date]
Executive: [date signed]
Effective: January 1, 2020
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

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
7 ten percent (10%) preference for the award of a County contract to a County-based
8 business.

9 **11B-93. Definitions.**

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

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

13 (a) a supplier of goods who:

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

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

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

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

25 Director means the Director of the Office of Procurement or the Director’s
26 designee.

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

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

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

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

32 **11B-94. Applicability.**

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

35 **11B-95. Procedures.**

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

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

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

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

47 (c) Notice. The Director must publicly notify businesses of prospective
 48 procurement opportunities.

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

52 (1) by reducing the bid price(s) by a factor of 10%, for the purposes of
 53 evaluation and award only; or

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

57 The Local Business preference points authorized under this Article must
 58 not be combined with reciprocal preference points authorized under Section
 59 11B-9(j).

60 (e) Competitive sealed proposals. The Director must include an evaluation
 61 factor awarding additional points for a proposal from a Local Business
 62 worth 10% of the total available points in a Request for Proposals issued
 63 under Section 11B-10.

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

67 **11B-96. Regulations.**

68 The Executive must adopt regulations, by Method 2, to implement this Article.

69 The regulations must include:

70 (a) Certification requirements for a business to qualify as a Local Business;

71 (b) Procedures to certify, re-certify, or decertify a Local Business; and

72 (c) Procedures that will enable the Director to monitor compliance with the
 73 Local Business Preference Program.

74 **11B-97. Reports.**

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

78 **11B-98. Penalty.**

79 (a) A person must not:

80 (1) fraudulently obtain or retain, attempt to obtain or retain, or aid
 81 another person in fraudulently obtaining or retaining, or attempting
 82 to obtain or retain, certification as a Local Business;

83 (2) willfully make a false statement to a County official or employee for
 84 the purpose of influencing the certification of an entity as a Local
 85 Business; or

86 (3) fraudulently obtain, attempt to obtain, or aid another person in
87 fraudulently obtaining, or attempting to obtain, public monies to
88 which the person is not entitled under this Article.

89 (b) A violation of this Article:

90 (1) is a class A violation; and

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

93 **Sec. 2. Expedited Effective Date**

94 The Council declares that this legislation is necessary for the immediate
95 protection of the public interest. This Act takes effect on January 1, 2020 and must
96 apply to a solicitation issued under Section 11B-9 or Section 11B-10 on or after January
97 1, 2020.

98

99 *Approved:*

100

Nancy Navarro, President, County Council

Date

101 *Approved:*

102

Marc Elrich, County Executive

Date

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

104

Mary Anne Paradise, Acting Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 25-19

Contracts and Procurement – Local business Preference Program - Established

- DESCRIPTION:** The Bill would amend Chapter 11B of the County Code by establishing a local business preference program for all procurement purchases solicited under Sections 11B-9 and 11B-10.
- PROBLEM:** Local businesses are often at a disadvantage when competing for County procurement contracts due to the cost of operating a business in the County. This Bill seeks to offset some of that cost.
- GOALS AND OBJECTIVES:** The Bill will establish a ten percent (10%) preference for County-based businesses.
- COORDINATION:** Office of Procurement and Office of the County Attorney
- FISCAL IMPACT:** May impact contract award values
- ECONOMIC IMPACT:** Could have a positive economic effect on the growth in local businesses by means of County contract awards and increase employment and incomes for both local businesses and their employees.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** Local preference programs have been enacted in Prince George's County and Howard County
- SOURCE OF INFORMATION:** Office of Procurement
- APPLICATION WITHIN MUNICIPALITIES:** NA
- PENALTIES:** Class A violation; Debarment

Fiscal Impact Statement
Bill XX-19 - Contracts and Procurement – Local Business Preference Program

1. Legislative Summary

The purpose of this legislation is to increase the participation of local businesses in the County procurement process by establishing a Local Business Preference Program for certain County procurement contracts. The legislation adds Sections 11B-92 through 98 to the County Code.

Section 11B-95 provides that, “(d) The Office of Procurement must adjust the bid of a Local Business who submits a bid in response to an Invitation for Bid issued under Section 11B-9 by reducing the bid price(s) by a factor of 10%, for the purposes of evaluation and award only. And (e) the Office of Procurement must include an evaluation factor with a value of 10% of the total available points in a Request for Proposals issued under Section 11B-10, awarding additional points for a proposal from a Local Business.”

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.

The County’s total procurements are currently valued at approximately \$1.0 billion. Using data on Invitation for Bids (IFBs) provided from the Office of Procurement, the following table summarizes the fiscal impact to the County if this preference was in place for the last two fiscal years.

<u>Fiscal Year</u>	<u>Number of Low Bidders</u>	<u>Number of Local Low Bidders</u>	<u>Increase if Local Low Bidder Selected</u>
2018	35	13	\$655,340
2019	28	13	\$58,942

Of the \$1.0 billion in annual procurements, the selection of the local low bidder would have resulted in an increase of approximately \$655,340 in FY18 and \$58,942 in FY19.

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

It is difficult to project expenditure estimates for the next 6 fiscal years as the value of bids varies from each fiscal year.

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

Not applicable.

5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

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

Not applicable.

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

An existing Local Small Business Program Manager ("Program Manager") will absorb the staff time to implement and administer this program.

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

The Program Manager will absorb the added responsibilities.

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

Not applicable.

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

The intention of the Bill is to increase the participation of local businesses in the County procurement process. This increased competition in turn may bring cost savings to the County. Or in other scenarios, if the local business that is given preference points wins the contract, there may be an increase in the contract award values.

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

The range of cost increases or cost savings are difficult to project. If a local low bidder is selected under the local preference program, there may be a cost increase (as would have been the case in FY18 and FY19) or a cost savings (if it triggers increased competition for County contracts or encourages non-local vendors to be more aggressive with their pricing).

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

The bill may result in cost savings or cost increases in contract award values as stated above.

13. Other fiscal impacts or comments.

Not applicable.

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

Avinash G. Shetty, Office of Procurement

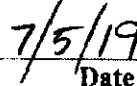
Grace Denno, Office of Procurement

Jane Mukira, Office of Management and Budget

Naeem Mia, Office of Management and Budget



Richard S. Madaleno, Director
Office of Management and Budget


Date

**Economic Impact Statement
Expedited Bill #-19, Contracts and Procurement –
Local Business Preference Program**

Background:

The purpose of this legislation is to increase the participation of local businesses in the County procurement process by establishing a Local Business Preference Program for certain County procurement contracts. The legislation adds Sections 11B-92 through 98 to the County Code. Section 11B-95 states that for IFBs, “(d) The Office of Procurement must adjust the bid of a Local Business who submits a bid in response to an Invitation for Bid issued under Section 11B-9 by reducing the bid price(s) by a factor of 10%, for purposes of evaluation and award only, and (e) the Office of Procurement must include an evaluation factor with a value of 10% of the total available points in a request for proposals issued under Section 11B-10, awarding additional points for a proposal from a Local Business”.

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

The source of information is the Office of Procurement. There are no assumptions or methodologies used by the Department of Finance in the preparation of the economic impact statement.

According to the Office of Procurement, the goal of the bill is to provide incentives for local contractors to bid on Montgomery County government contracts by reducing the bid prices by a factor of 10% for local contractors thereby minimizing the contract price differential for IFBs; or by giving an evaluation factor with a value of 10% of the total available points for RFPs.

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

The variables that could affect the economic impact estimates are the number of businesses that would benefit by reducing the contract price or evaluation points differential

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

The legislation could have a positive economic effect on the growth in local businesses by means of County contract awards, and increase employment and incomes for both local businesses and their employees. The legislation may also attract more businesses to move to the County and set up their principal place of business in Montgomery County.


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

The legislation could have an economic impact. Please see paragraph 3.

**Economic Impact Statement
Expedited Bill #-19, Contracts and Procurement –
Local Business Preference Program**

5. The following contributed to or concurred with this analysis:

David Platt and Rob Hagedoorn, Finance;
Grace Denno, Office of Procurement.



Michael Coveyou, Acting Director
Department of Finance

7/3/19
Date