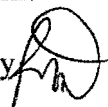


MEMORANDUM

March 31, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession 3:** Bill 61-14, Contracts and Procurement - Local Business Subcontracting Program

Expected attendees:

Cherri Branson, Director of Procurement
Pam Jones, Procurement
Grace Denno, Procurement
Bonnie Kirkland, Assistant CAO

Bill 61-14, Contracts and Procurement - Local Business Subcontracting Program, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on November 25, 2014. A public hearing was held on January 13 and Government Operations and Fiscal Policy Committee worksessions were held on March 19 and September 17.

Background

Bill 61-14 would establish a Local Business Subcontracting Program requiring 10% of the dollars related to an initial procurement contract award that is estimated to be valued at more than \$10 million to be subcontracted to a Local Business. The Bill would define a local business as a for-profit business that has its principal place of business in the County. The Bill would also require the Executive to adopt a regulation, by Method 2, further defining a local business and the certification process. The Director of the Office of Procurement¹ or her designee would be responsible for certifying a business as a local business. The Bill would also authorize the Director to waive all or part of the local subcontracting requirements for a specific contract.

The Bill, as introduced, would take effect on July 1, 2015 and apply to a solicitation for a high dollar value contract issued after July 1, 2015.

¹ After Bill 61-14 was introduced, the Office of Procurement became a principal office in the Executive Branch independent of the Department of General Services.

Public Hearing

The only witness at the public hearing, DGS Director David Dise, representing the Executive, supported the Bill. (©13)

March 19, 2015 GO Worksession

Councilmember Rice attended the meeting in addition to the Committee members. DGS Director David Dise, Assistant CAO Bonnie Kirkland, Grace Denno, DGS, and Pam Jones, DGS represented the Executive Branch. Linda Price, Legislative Analyst and Robert Drummer, Senior Legislative Attorney, represented the Council Staff. The Committee discussed the Bill with the Executive Branch representatives. The Committee requested comments from the MFD Task Force before making a decision.

September 17, 2015 Worksession

Procurement Director Cherri Branson, Assistant CAO Bonnie Kirkland, Grace Denno, Procurement, and Pam Jones, Procurement, represented the Executive Branch. Robert Drummer, Senior Legislative Attorney, represented the Council Staff. The Committee discussed the need for more information on the percentage of large contracts already being subcontracted to local businesses with the Procurement Staff and the recommendation from the MFD Task Force to not enact the Bill at this time. Ms. Branson told the Committee that Procurement has not had the time to analyze the need to help local businesses that size out of the LSBRP. The Committee requested Procurement to do this analysis within the next 6 months.

Issues

1. What is the fiscal and economic impact of the Bill?

The Office of Management and Budget (OMB) reports that the County currently has approximately 85 contracts valued at more than \$10 million for a total value of \$2.4 billion. (©8-12) Although OMB acknowledged that a bidder may increase the price of a bid due to the local subcontracting requirements, OMB was unable to estimate the potential cost of these increased bid prices. OMB estimated that the Bill would require the addition of 2 half-time employees to implement the Program at an annual recurring cost of \$79,220. The Executive's recommended FY17 Operating Budget does not include these additional positions for the Office of Procurement.²

The Finance Department indicated that the Program would target approximately \$270 million to local businesses, but they were unable to estimate the economic impact on County businesses. The Fiscal and Economic Impact Statement does not estimate the amount of high dollar value contracts currently being awarded to local businesses.

² The Executive's recommended FY17 Operating Budget would add only one administrative specialist to the Office of Procurement.

2. Would Bill 61-14 create a preference for County businesses that would trigger a reciprocal preference against a County business when bidding in a different jurisdiction?

Md. State Finance and Procurement Code §14-401 establishes a reciprocal preference for a Maryland business against a business located in another State if that other State provides a preference for a business located in that State. Section 14-401 provides that the State must provide the Maryland business with the same preference offered to the out-of-State business in its own State. According to a chart recently published by the State of Oregon, this type of reciprocal local preference exists in 43 other States. See ©18-19. These defensive reciprocal preference laws are designed to discourage local preference laws in other States.

Md. Local Gov't Art. §1-402 authorizes a political subdivision of the State to give a Maryland business a preference against a bidder from another State if the other State gives a preference to its local businesses. Bill 49-14, Contracts and Procurement - Formal Solicitation - Reciprocal Local Preference, enacted on April 14, 2015, implements this State enabling act. Both of these Maryland laws are designed to discourage local preferences in other States.

A local preference law that adds a percentage preference to a bid by a County business against a business from another State would probably trigger a reciprocal local preference law when a Maryland business places a bid in one of the 43 other States with a reciprocal local preference law. While some States (or Counties in Maryland) may use the local subcontracting program that would be established by Bill 61-14 to provide a preference for local businesses in that State, it is likely that most would not. Bill 61-14 does not discriminate against non-local prime bidders; it favors County-based subcontractors.

3. Do other Maryland Counties have a local preference for a County-based business?

Allegany, Caroline, Cecil, Frederick, Garrett, and Prince George's counties have a local preference law benefitting local County-based businesses in certain types of contracts. The Prince George's County Code §10A-160 includes a 10% price preference for a County-based business. Therefore, once Bill 49-14 takes effect on January 1, 2016, the County may be required to award a contract to a County business that is within 10% of the low bid from a Prince George's County business. Enactment of Bill 61-14 may trigger a 10% local subcontracting requirement on a contract in another Maryland County or in another State.

4. Does the reciprocal preference in Bill 49-14 conflict with Bill 61-14?

Bill 49-14 creates a reciprocal local preference. Bill 61-14 would create a mandatory local subcontracting program for high value contracts. Although they can both be implemented together, they represent conflicting policy values. Bill 49-14 is a defensive reaction designed to discourage State and local preferences that work against a County business. Bill 61-14 is a local preference law designed to benefit a County business at the expense of a business located outside of the County – including a business located in a different Maryland County.

5. Are County businesses underutilized on high value contracts?

Bill 61-14 would establish a mandatory subcontracting program for local businesses that is similar to the current MFD subcontracting program. The MFD program is designed to remedy the effects of past discrimination against businesses owned by women and certain minority groups. As discussed in the packet for Bill 48-14, the County hired a consultant to prepare a comprehensive disparity study to determine if MFD businesses were underutilized in County contracts and if that underutilization can be attributed to discrimination on the basis of race, gender, or disability. A mandatory subcontracting program for local businesses would not be based upon race or gender and would therefore not be subject to the strict scrutiny test under the Equal Protection Clause of the 14th Amendment. However, it would still be instructive to determine if County businesses are underutilized on high value contracts before establishing a mandatory local subcontracting program.

Council staff requested DGS for statistics on the number of high value contracts and the portion of each contract that was subcontracted to a County business. See DGS Answers at ©14-17. Unfortunately, DGS does not track data on local subcontractors. DGS told us that 23% (\$167,688,239) of the \$722 million in high value contracts were awarded to a County based prime contractor. Several of these high value contracts were awarded to non-local businesses providing group health insurance for County employees and retirees which may have no subcontracting opportunities.

After the last worksession, Procurement reviewed the contracts valued at more than \$10,000,000 that were awarded in FY14 and FY15 and produced a chart showing each contract awarded, the contract's eligibility for a local subcontracting requirement, and the actual local subcontracting promised. See ©21-23. Excluding contracts that would not be eligible for a local subcontracting requirement under Bill 61-14, the County awarded 9 contracts for a total value of \$186,186,744 during this time period. Four of the 9 contracts included local subcontracting greater than 10%. The total amount subcontracted to local firms was \$16,792,750 or 9%. We have no information about what percentage of the relevant markets consist of local contractors, and therefore, can draw no conclusions as to whether the achieved percentage represents underutilization or over-utilization of local contractors.

6. The recommendation from the Minority Owned and Local Small Business Task Force.

The Minority Owned and Local Small Business Task Force recommended not enacting Bill 61-14 for several reasons. See the June 3 memo from the Chair at ©20. The Task Force pointed out that there is no evidence of underrepresentation of local subcontractors on large contracts. They also argued that this new program would detract from the Local Small Business Reserve Program, increase the complexity of the procurement system, and divert time and attention of Procurement staff from increasing the use of local small businesses.

7. Does Procurement have sufficient staff to implement this Bill along with other recently added responsibilities?

Here is a chart showing recently enacted procurement laws and the new positions that should be added to implement the law.

	Status	Expense	FTE Proc.
Enacted Legislation			
Bill 14-14 - Health Insurance Requirements	Funded	\$101,468	1.0
Bill 48-14 - Minority Owned Business Procedures	No Impact	\$0	0.0
Bill 23-15 - Local Small Business Reserve Amendments	No Impact	\$0	0.0
Bill 29-14 - Wage Reporting	Unfunded	\$101,468	1.0
Bill 49-14 - Reciprocal Local Preference	Unfunded	\$85,626	1.0
Bill 5-15 - Health Insurance Preference	Unfunded	\$85,946	1.0
Bill 43-15 - Wage Requirements - Amendment	Unfunded	\$288,468	2.0
Pending Legislation			
Bill 61-14 - Local Business Subcontracting Program	Pending	\$79,220	1.0

According to the fiscal impact statements, recently enacted procurement laws require 6 additional positions to implement. Only 1 of these 6 positions was funded in FY16. The Executive's recommended FY17 Operating Budget would add only 1 new administrative specialist position to the Procurement Staff. Bill 61-14 would require 2 half-time positions to implement. Although the Office of Procurement would implement this Bill if it is enacted, it is likely to divert their time and attention from their other responsibilities.

8. Does Bill 61-14 conflict with the recommendations made by the Procurement Policies and Regulations Task Force?

The Procurement Policies and Regulations Task Force made the following recommendation:

1. Clarify County procurement preferences.

The Task Force observed that it is difficult to reconcile competing preference programs in a given procurement. Competing preferences would be reconciled on a contract-by-contract basis. Procurement currently administers four preference programs, which include a local tie-breaker preference, a reciprocal local preference, a preference for small businesses certified as offering health insurance; and an evaluation factor for purchases from minority owned businesses. This is one example that reinforces the perceptions illustrated in survey responses that County contracting is unfair and that the social preference programs may have overcome business considerations in County procurement. Accordingly, metrics must be developed to determine if desired results are being achieved in preference programs, social policies, process improvements, productivity and financial metrics. *A moratorium should be placed on additional changes to County procurement process, to include additional*

preferences or social responsibility programs and provisions, until those metrics are established to determine if desired results are being achieved. (emphasis added)

Bill 61-14 would add another preference to the already confusing procurement matrix.

9. Should the Council enact Bill 61-14?

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 using 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 will add a new requirement for contracts awarded by a request for proposals. The County has a Prevailing Wage Law that requires a County construction contractor to pay at least the prevailing wage set by the State. Bill 29-14, requested by the Executive, will require County service contractors to provide additional reports on wages paid to their employees. The County Wage Requirements Law 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. This Bill would add a new mandatory local business subcontracting requirement for high 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. However, each new procurement requirement adds an incremental layer of complexity.

Bill 61-14 raises some interesting policy questions. Is there a problem that needs a remedy? We do not know! Will this make the solicitation of high value contracts more complex? Yes. Procurement would have to certify businesses as a local business. Procurement would have to respond to complaints about a business that was improperly certified or denied certification. Procurement would have to audit contracts for compliance. Procurement would also have to respond to requests for a full or partial waiver of the requirement. Does the Executive's FY17 recommended Operating Budget include the additional Procurement office staffing needed to complete these new tasks? No. Finally, bidders would have to begin to use the location of the business as part of their recruiting process along with looking for MFD firms. It is difficult to see the potential benefits of this program being worth the additional complexity it would create.

Council staff recommendation: do not enact this Bill and request Procurement to begin tracking information on subcontractors on high value contracts.

8. Effective date.

The Bill, as introduced, has an effective date of July 1, 2015. If the Council enacts this Bill, the Bill must be amended to change the July 1 effective date.

This packet contains:	<u>Circle #</u>
Bill 61-14	1
Legislative Request Report	7
Fiscal and Economic Impact Statement	8
Testimony of David Dise	13
DGS Answers to Council Staff Questions	14
Oregon Chart of Reciprocal Local Preference Laws	18
Minority Owned and Small Business Task Force Memo	20
Chart of Large Contracts Awarded in FY14 and FY15	21

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Bill No. 61-14
Concerning: Contracts and Procurement
 - Local Business Subcontracting
 Program
Revised: 11/20/14 Draft No. 3
Introduced: November 25, 2014
Expires: May 25, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

AN ACT to:

- (1) increase the participation of local businesses in certain large County procurement contracts;
- (2) establish a subcontracting goal for local businesses in certain large County procurement contracts;
- (3) establish a Local Business Subcontracting Program for certain County procurement contracts; and
- (4) generally amend the law governing County procurement.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XVII. Local Business Subcontracting Program
Sections 11B-78 through 11B-83

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:

Sec. 1. Sections 11B-78, 11B-79, 11B-80, 11B-81, 11B-82, and 11B-83 are added as follows:

Article XVII. Local Business Subcontracting Program

11B-78. Definitions.

In this Section, the following words have the meanings indicated:

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

(1) a supplier of goods who:

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

(B) does not regularly assume physical custody or possession of goods of comparable character to those offered to the County, or

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

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

Contract Award means the delivery by the County of a fully executed contract to an offeror.

High Dollar Value Contract means an initial Contract Award that is estimated to exceed \$10 million.

Local Business means a for-profit business other than a broker that has its principal place of business in the County, as further defined by Executive Regulation, and that is certified by the Director as a Local Business under the provisions of this Article.

Local Business Program Manager means a person designated by the Director to administer and monitor the Local Business Subcontracting Program.

Local Business Subcontractor means a Local Business that enters into a contract with a Contractor to perform work related to a High Dollar Value Contract for that Contractor.

11B-79. Goals; applicability.

(a) Local Business Subcontracting Goals. This subsection establishes the following Local Small Business subcontracting goals:

- (1) at least 10% of the contract dollars awarded for each High Dollar Value Contract should be awarded to a Local Business; and
- (2) at least 10% of the total dollar value of all High Dollar Value Contracts in the aggregate should be awarded to Local Businesses.

(b) Applicability. The Local Business Subcontracting Program goals apply to each High Dollar Value Contract except:

- (1) grants or appropriations under Section 11B-14 (a) (3) and (4);
- (2) cooperative procurements under Section 11B-40;
- (3) public entity contracts under Section 11B-41;
- (4) emergency procurements under Section 11B-16; or
- (5) bridge contracts, under Section 11B-42, if the Director determines in writing that compliance with this Article is impractical or is outweighed by the benefits to the County of entering into a bridge contract.

11B-80. Procedures.

- (a) The Director, at the time of a solicitation, must publish notification to businesses when the solicitation may result in a High Dollar Value Contract.
- (b) The Director must encourage Local Business participation in applicable High Dollar Value Contract opportunities by:
- (1) adding a provision in a solicitation for a High Dollar Value Contract that requires a Contractor to exercise good faith in its effort to subcontract 10% of the dollar value of the contract to one or more Local Businesses;
 - (2) requiring a Contractor on a High Dollar Value Contract to:
 - (A) submit a Local Business subcontracting plan describing how the Contractor proposes to meet the 10% Local Business Subcontracting Program goal;
 - (B) identify, before initial Contract Award, each Local Business with which the Contractor intends to subcontract and the projected dollar amount of each subcontract or percentage of the contract dollar amount allocated to each subcontract; and
 - (C) promptly notify the Using Department of any change in the information required under (A) and (B) of this subsection during the contract term.
 - (3) requiring the Contractor to comply with Local Business Subcontracting Program goals throughout the contract term.
- (c) A Contractor's failure to satisfy the requirements of the Local Business Subcontracting Program, including a failure to submit documentation required by the Director to show compliance, may constitute a breach of

the contract for which the County may withhold payment or impose liquidated damages, in addition to any other remedies available to the County.

(d) The Director may waive all or part of the Local Business subcontracting requirements for a specific contract under appropriate circumstances as established by Executive Regulation.

(e) The Director may require each Contractor and Local Business that participates in the Local Business Subcontracting Program to provide information concerning utilization by the Contractor of Local Businesses in a High Dollar Value Contract.

11B-81. Regulations.

The County Executive must adopt a regulation, by Method 2, to implement this Article. The regulation must include:

(a) monitoring procedures to assist a contract administrator and the Local Business Program Manager to determine compliance by a Contractor with the Local Business Subcontracting Program;

(b) certification requirements for a business to qualify as a Local Business under this Article; and

(c) procedures to certify or decertify a Local Business.

11B-82. No Standing to Challenge Contract Award.

This Article does not give any person, including a Local Business, any right or status, including standing, to challenge the award of a contract or subcontract arising from the County procurement system. The provisions of this Article are enforceable only through the oversight function of the Chief Administrative Officer or his designee.

11B-83. Penalty.

(a) A person must not:

(1) fraudulently obtain or retain, attempt to obtain or retain, or aid another person in fraudulently obtaining or retaining, or attempting to obtain or retain, certification as a Local Business for the purpose of this Article;

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

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

(b) A violation of this Article:

(1) is a class A violation; and

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

Sec. 2. Effective Date

This Act takes effect on July 1, 2015 and applies to any High Dollar Value Contract arising from a solicitation issued on or after July 1, 2015.

Approved:

Nancy Floreen, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 61- 14

Contracts and Procurement - Local Business Subcontracting Program

DESCRIPTION: Establish a goal that 10% of the dollars related to an initial procurement contract award that is valued above \$10 million should go to a local business.

PROBLEM: Contracts that are over \$10 million are exempted from the Local Small Business Reserve Program (LSBRP). This Bill would reserve a portion of those contracts dollars to local businesses.

GOALS AND OBJECTIVES: This Bill would establish a program to require each prime contractor of a High Dollar Value Contract to subcontract to a Local Business to perform and receive compensation for at least 10% of the value of the initial Contract Award.

COORDINATION: CEX, DGS, OCA, DED

FISCAL IMPACT: DGS personnel cost to support this program: \$153,000

ECONOMIC IMPACT: No economic impact

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be requested.

SOURCE OF INFORMATION: Grace Denno and Pam Jones, DGS

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Violation of this program may cause liquidated damages assessment against the contractor.



ROCKVILLE, MARYLAND

MEMORANDUM

December 15, 2014

TO: George Leventhal, President, County Council

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

SUBJECT: FEIS for Council Bill 61-14, Local Business Subcontracting Program

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
David Dise, Director, Department of General Services
Erika Lopez-Finn, Office of Management and Budget
Alex Espinosa, Office of Management and Budget

Fiscal Impact Statement
Council Bill 61-14, Local Contracts and Procurement – Local Business
Subcontracting Program

1. Legislative Summary

Contracts valued at over \$10 million are currently exempt from the existing Local Small Business Reserve Program (LSBRP).

The proposed legislation establishes a goal for a Contractor to subcontract with local businesses in an initial contract award that is valued over \$10 million and for the local business to receive compensation of at least 10% of the value of the contract award.

There are approximately 85 contracts with each over \$10 million in value. The total current value of all contracts over \$10 million dollars is \$2.4 billion. The legislation stipulates that 10% of the dollars related to an initial procurement contract award that is valued above \$10 million should go to Local Businesses.

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 expected from the proposed legislation.

Expenditures related to the proposed legislation are difficult to estimate. There is a potential for bidders or offerors to build their increased costs resulting from use of local subcontractors into their rates or prices offered to the County. The cost increase to the County cannot be estimated at this time.

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

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

The proposed legislation's expenditures will not affect ERP systems.

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

The proposed legislation does not authorize future spending.

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

DGS estimates that one (1.0) FTE is necessary to implement this legislation for a total annual cost of \$79,220 per year¹ plus associated expenses of \$5,468, for a total first-year cost of approximately \$84,688.

One half (0.5) FTE is for a Local Business Program Manager (Grade 23) with a financial background is needed to review vendors' eligibility, conduct site visits, validate compliance, compile reports, and conduct outreach at \$42,813 per year. DGS estimates associated operating expenses for the position at \$2,734.²

One half (0.5) FTE for a Procurement Specialist (under-filled at Grade 16) to analyze bid and proposal submissions related to additional solicitation and contract compliance requirements, coordinate with the Office of Business Relations and Compliance (OBRC) and Contract Administrators (CA) related to local business eligibility and applicability, to issue, approve and track legally required determination and finding recommendations under the Procurement process, to report, as needed or required and CA training at \$30,940 per year. DGS estimates associated operating expenses for the position \$2,734.

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

The Program Manager is needed for OBRC to manage this new program to review vendors' eligibility, conduct site visits, validate compliance, review reports, conduct outreach; and provide training.

The Procurement Specialist (Expeditor) will solely focus on minimizing delays that the new program may cause. The existing Procurement resources will not be able to cover the new additional tasks for this program, including: review bid/proposal submissions, determine for variances in application of law, track and report, and train Contract Administrators.

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

An appropriation of \$79,220 is needed in the first year of the proposed bill's implementation. On-going personnel would require an appropriation of \$79,220 for the 1.0 combined FTE.

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

¹ Assumes compensation (salary and benefits of 25%) at the mid-point of grade.

² Assumes a desktop computer with MS Office (\$1,074 one-time), phone expenses (\$660 per year), and initial furniture (\$1,000 one-time).

There is a potential for Bidders or Offerors to build their increased costs resulting from use of local subcontractors into their rates or offers to the County. The cost increase to the County cannot be estimated at this time.

- 11. Ranges of revenue or expenditures that are uncertain or difficult to project.**
See item #2.

- 12. If a bill is likely to have no fiscal impact, why that is the case.**
Not applicable.

- 13. Other fiscal impacts or comments.**
None

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

Grace Denno, Office of Business Relations and Compliance, Department of General Services
Pam Jones, Office of Procurement, Department of General Services
Beryl Feinberg, Department of General Services
Angela Dizelos, Department of General Services
Erika Lopez-Finn, Office of Management and Budget

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

12/15/14
Date

**Economic Impact Statement
Bill 61-14, Local Business Subcontracting Program**

Background:

This legislation would establish a goal that ten percent (10%) of an initial procurement contract award above \$10 million should go to local businesses. Under the proposed legislation, therefore, the prime contractor would subcontract with local businesses in an initial award of the contract value over \$10 million and local businesses would receive compensation for at least ten percent (10%) of the value of the contract.

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

Source of information is the Office of Business Relations and Compliance (OBRC), Department of General Services (DGS). According to OBRC, there were eighty-four (84) contracts awarded with a value of over \$10 million. The total value of these contracts was \$2.37 billion. Based on the above data, approximately \$237.0 million is targeted to be awarded or subcontracted to local businesses.

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 contracts awarded with a value of over \$10 million and the difference in contracts awarded to local businesses compared to previous years.

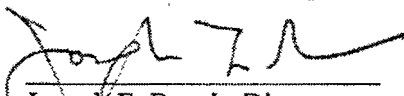
3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

The legislation would have an economic impact on business revenues and a possible increase in local employment, incomes, and investments. However, without specificity of data regarding employment and business expansion by the local businesses and baseline data on current awards it is difficult to specifically quantify the change in the economic impact.

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

See paragraph #3.

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



Joseph F. Beach, Director
Department of Finance

12/12/14

Date

16

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT
ON LOCAL BUSINESS SUBCONTRACTING
BILL 61-14**

January 13, 2015

I am David Dise, Director of Montgomery County's Department of General Services. I am pleased to testify on behalf of County Executive Isiah Leggett in support of Bill 61-14, Local Business Subcontracting Program, introduced November 21, 2014, by then Council President Rice. Mr. Leggett thanks Councilmember Rice's support in this effort to address the ongoing need to support and increase local business access to County contracting opportunities.

This Bill establishes a local business subcontracting goal for companies acting as prime contractors on large County contracts. The current Local Small Business Reserve Program (LSBRP) reserves qualifying County contracts *under* \$10 million to local small business competition. This Bill will provide increased opportunity to all Montgomery County based businesses by ensuring some measure of participation on County contracts valued *over* \$10 million, which includes contracts for engineering and architectural design, construction services, insurance, health and human services, IT commodities and services, trash/recycling collecting services, custodial services, storm water management services, and transportation services.

In FY15 to-date Montgomery County has contracted for \$722 million in goods and services through contracts over the \$10 million threshold. While the percent of local business participation in FY15 is 23%, the participation rate varies from year to year, as it does with the type of contract; such as construction or professional services. This legislation will ensure opportunity across *all* business categories as well as establish a minimum participation rate to ensure continuity of opportunity in future years.

Montgomery County has a robust, active and responsive local business community. These businesses employ local residents, provide good jobs, and are foundational to the local economy. This bill will ensure more opportunities for local businesses while maintaining healthy competition and ensuring the best value for the expenditure of public funds.

County Executive Leggett applauds the Council's support and recognition of the need to support the local business community and strengthen the local economy through this legislation.

1. In your testimony at the public hearing you stated that 23% of the \$722 million in contracts valued at more than \$10 million went to local businesses. Does the 23% include awards to a local prime contractor or just subcontracts?

This 23% (\$167,688,239) actually is the local vendors who are primes. we currently do not track data on local subcontractors.

Here is the breakdown:

For FY15, 2 new construction projects were awarded to local vendors for a total of \$84,755,000 to local businesses

Montgomery County Multi-Agency Service Park Public Safety Training Academy	CONST	RFP	Hess Construction + Engineering Services, Inc.	14-Nov-14	\$68,755,000.00
Residential Road Resurfacing - Primary award	CONST	IFB	Francis O. Day Co., Inc.	24-Dec-14	\$16,000,000.00

For FY15, the routine contracts below were expired and re-awarded, at a total of \$82,933,239

GTM Architects, Inc.	Department of General Services	James Stiles	\$ 30,000,000
CERTIFIED BUILDING SERVICES	Department of General Services	Michael Harkness	\$ 16,656,239
STORM WATER MANAGEMENT	Department of Environmental Protection	Carmen Ruby	\$ 17,160,000
MONTGOMERY COMMUNITY TV	Department of Technology Services	Donna Keating	\$ 19,117,000

2. Please provide a list of each contract awarded in FY 14 valued at more than \$10 million, including the type of goods or services provided. For each contract, please provide the percent of the contract subcontracted to local businesses and the overall amount of the contract awarded to local businesses including the prime contractor.

We currently do not track local subcontracting information. Contracts awarded to local businesses, as prime contractors, are highlighted in yellow in the chart below and represents 7% of these dollars (\$35.87m/\$479.4m). The chart below lists all FY14 contracts over \$10 million:

CONTR#	CONTRACT DESC	VENDOR	CITY	STATE	date_execution	amount_estimated
1030764	Prescription Plan	CaremarkPCS Health, L.L.C.	Northbrook	IL	21-Jan-14	123,000,000.00
1030769	Point-of-Service Plans, Retiree Indemnity Plan	Group Hospitalization and Medical Services, Inc,	Owings Mills	MD	21-Jan-14	81,000,000.00
1030766	Fully-Insured Staff Model Health Maintenance Organization Medical Plan	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	Rockville (does not meet County's definition of Local Business)	MD	03-Feb-14	61,200,000.00
1027827	Montgomery County Public Schools (MCPS) Food Distribution Relocation	Costello Construction Of Maryland, Inc.	Columbia	MD	10-Sep-13	37,790,000.00
1040850	Computer Aided Dispatch (CAD) Modernization	Motorola Solutions, Inc.	Schaumburg	IL	27-Jun-14	28925629
1038489	Dennis Avenue Health Center	Walsh Construction Company II, LLC	Chicago	IL	13-May-14	22,989,000.00
1029292	Health Care Services for Low Income, Uninsured Adults (Montgomery Cares)	Primary Care Coalition of Montgomery County Maryland, Inc.	Silver Spring	MD	01-Jul-13	22,819,812.48
1030767	Self-Insured Extended Provider Option Medical Plan	United HealthCare Services, Inc.	Hartford	CT	03-Feb-14	22,211,000.00
1039448	North Potomac Community Recreation Center	Dustin Construction, Inc.	Ijamsville	MD	22-May-14	18,932,000.00
1033169	Firm Natural Gas Supply	Washington Gas Energy Services, Inc.	Herndon	VA	07-Nov-13	15,000,000.00
1027826	Public Safety (PSTA) & Multi Agency Service Park - Site Development	Pleasants Construction, Inc.	Clarksburg	MD	14-Aug-13	13,052,000.00

1035901	Self Insured PPO Type Dental Benefits and Related Administrative Services	United Concordia Companies, Inc. d/b/a United Concordia Dental	Hunt Valley	MD	15-Jan-14	12,000,000.00
1033010	Design, Build, Operate and Maintain two CNG facilities at the County EMOC	Integrus Transportation Fuels, d/b/a Trillium CNG	Salt Lake City	UT	28-Feb-14	10,500,000.00
1011775	Engineering Services for Transportation Design & Planning	The Wilson T Ballard Company	Owings Mill	MD	29-Mar-14	10,000,000.00
Total						479,419,441.48
Total for health insurance related (0% local subcontracting, highlighted in Blue)						299,411,000.00
Total for Construction and IT related (assuming 30% of subcontracting)						180,008,441.48

3. Please provide a total percent of subcontracts awarded to local businesses for FY 14 on these high value contracts and a total percent of contracts awarded to local businesses as either a prime or subcontractor.

We currently do not track local subcontractors. Data is currently available on local prime contractors; see item 2 for FY14 data.

4. Please provide the same statistics for FY15.

Data is currently available for local prime contractors, see item 1.

5. What is the explanation for requiring 10% of each contract to be subcontracted to local businesses as opposed to 5% or 20%?

Many subcontracting programs (Minority, Small or Local subcontracting programs) throughout the country use 10% as a starting point. Since no study has been done in Montgomery County on local subcontracting disparities, the County selected the 10% based common practice.

A survey was done on major construction projects for FY12 and FY13. It shows 28%-29% local spending (see below):

	Total Procurement	Local Prime+Sub	% local
FY 12	\$762,811,116	\$220,034,639	29%
FY 13	\$845,361,770	\$233,701,295	28%

Although construction projects count for the majority of the contracts over \$10 million and usually provide great opportunities for local subcontracting, there are other categories such as "county employee health insurance", "prescription plan" and "dental benefits" which generally have close to 0% subcontracting for local businesses; see **Blue** highlights under item 2. These contracts (that have close to 0% local subcontracting opportunities) count for \$299M, or 62% of

the total contract amount in FY14. The rest of the contracts are construction and IT related, count for \$180M. Assuming construction and IT contracts provide 30% of local subcontracting (\$54M available for local subcontracting), for overall contracting amount it is 11%. (\$54,000M/\$479,000M)

6. What is the percent of local businesses compared to the total number of businesses in each industry we award these high value contracts? Do you have any evidence of underutilization of local businesses in these contracts based upon their availability in the marketplace?

In FY14, 2 out of 14 contracts over \$10mm were awarded to local businesses. This represents 14% of the contracts awarded.

Please let me know if you have any question.

Best Regards,

Grace Denno

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Procurement Services and Policy

DAS Divisions

State by State Preference Data (as submitted by each state)

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About Us

Reciprocal Preference

Enterprise Goods and
Services HomeProcurement Services
and Policy Home**Preference:**

Preference is any advantage given to offerors in a competition for contract award which may be granted based on pre-established criteria. These criteria are established by Law.

Law is mandatory; is defined by Statute, Rule, Statewide Policy, Executive Order; and is what gives you Preference Authority. Use of the preference may be identified as either Mandatory or Discretionary.

Reciprocal Preference:

An advantage a state applies in order to match a preference given by another state.

For Example: A preference based on residency.

State	Preference Law/Statute	Tie-Bid Preference	Reciprocal Preference	Preference Conditions Including Law Citation	Date of Verification	
Alabama (AL)	Yes	Yes	Yes	Details	January	2015
Alaska (AK)	Yes	No	Yes	Details	December	2014
Arizona (AZ)	No	No	Yes	Details	January	2015
Arkansas (AR)	No	No	Yes	Details	December	2014
California (CA)	No	Yes	Yes	Details	January	2015
Colorado (CO)	Yes	Yes	Yes	Details	February	2013
Connecticut (CT)	Yes	Yes	Yes	Details	December	2014
Delaware (DE)	No	No	Yes	Details	February	2013
Florida (FL)	Yes	Yes	Yes	Details	December	2014
Georgia (GA)	Yes	Yes	Yes	Details	December	2012
Hawaii (HA)	Yes	Yes	Yes	Details	October	2011
Idaho (ID)	Yes	Yes	Yes	Details	January	2013
Illinois (IL)	Yes	Yes	Yes	Details	March	2014
Indiana (IN)	Yes	No	Yes	Details	December	2014
Iowa (IA)	Yes	No	Yes	Details	February	2013
Kansas (KS)	No	Yes	None	Details	February	2013
Kentucky (KY)	No	Yes	Yes	Details	August	2014
Louisiana (LA)	Yes	Yes	Yes	Details	February	2013
Maine (ME)	Yes	Yes	Yes	Details	December	2012
Maryland (MD)	Yes	Yes	Yes	Details	December	2014
Massachusetts (MA)	Yes	Yes	Yes	Details	January	2001
Michigan (MI)	Yes	No	Yes	Details	October	2011
Minnesota (MN)	Yes	Yes	Yes	Details	July	2014
Mississippi (MS)	Yes	Yes	None	Details	January	2013
Missouri (MO)	Yes	Yes	Yes	Details	December	2014
Montana (MT)	Yes	Yes	Yes	Details	February	2013
Nebraska (NE)	Yes	Yes	Yes	Details	January	2015

Procurement Services and Policy State by State Preference Data (as submitted by each state)

Nevada (NV)	Yes	Yes	Yes	Details	January	2015
New Hampshire (NH)	No	Yes	None	N/A	February	2013
New Jersey (NJ)	Yes	No	Yes	Details	December	2014
New Mexico (NM)	No	Yes	Yes	Details	February	2013
New York (NY)	Yes	Yes	Yes	Details	December	2012
North Carolina (NC)	Yes	Yes	Yes	Details	December	2014
North Dakota (ND)	Yes	Yes	Yes	Details	December	2012
Ohio (OH)	Yes	No	Yes	Details	December	2012
Oklahoma (OK)	Yes	No	None	Details	December	2012
Oregon (OR)	Yes	Yes	Yes	Details	December	2012
Pennsylvania (PA)	Yes	Yes	Yes	Details	January	2015
Rhode Island (RI)	No	No	None	None	March	2009
South Carolina (SC)	No	Yes	Yes	Details	May	2002
South Dakota (SD)	Yes	Yes	Yes	Details	December	2012
Tennessee (TN)	Yes	Yes	Yes	Details	December	2012
Texas (TX)	Yes	Yes	Yes	Details	December	2012
Utah (UT)	No	Yes	Yes	Details	December	2014
Vermont (VT)	No	Yes	None	Details	February	2013
Virginia (VA)	Yes	Yes	Yes	Details	January	2013
Washington (WA)	Yes	No	Yes	Details	January	2015
Washington DC (District of Columbia)	Yes	No	Yes	Details	December	2012
West Virginia (WV)	Yes	No	Yes	Details	December	2014
Wisconsin (WI)	Yes	No	Yes	Details	February	2013
Wyoming (WY)	No	Yes	Yes	Details	May	2009

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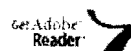
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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLANDRECEIVED
MONTGOMERY COUNTY
MINORITY OWNED AND LOCAL SMALL BUSINESS TASK FORCE

June 3, 2015

The Honorable George Leventhal
Council President
Montgomery County Council
Council Office Building
100 Maryland Avenue, 5th Floor
Rockville, MD 20850

Dear Council President Leventhal:

On behalf of the recently appointed Montgomery County Minority Owned and Local Small Business Task Force, we take the following position as it relates to Bill 61-14. The proposed legislation seeks to establish a Local Business Subcontracting Program requiring 10% of high value contracts pegged at greater than \$10 million to be subcontracted to local businesses.

Position

1. It is our understanding that the preparation and introduction of Montgomery County Council Bills occur as a result of identified and substantiated problem areas. Bill 61-14 appears not to be based on a rigorous analysis of relevant historical contract data to warrant legislation of this magnitude. While occasional anecdotal evidence is available, it does not rise to the level sufficient to enact legislation at this time.
2. It is further our position that Bill 61-14 detracts from the County's Local and Small Business Reserve Program (LSBRP) by creating additional workload for the Office of Procurement. Increased workload would take the form of local business certification and tracking. Additionally, time and attention to the LSBRP would lessen as a result.

Thank you for giving the Task Force an opportunity to express our views.

Herman Taylor
Chair, Minority Owned and Local Small Business Task Force

Cc: Councilmember Nancy Navarro, Chair, Government Operations and Fiscal Policy Committee

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FY14 contracts over \$10 million

FY14	CONTRACT #	CONTRACT DESC	VENDOR	Current Local participation	Estimated Amount	Local Subcontracting
	1027827	Montgomery County Public Schools (MCPS) Food Distribution Relocation	Costello Construction Of Maryland, Inc.	MD prime, 17% local sub	37,790,000.00	construction - >10% (17%)
	1038489	Dennis Avenue Health Center	Walsh Construction Company II, LLC	PA prime, 25% local sub	22,989,000.00	construction - >10% (25%)
	1039448	North Potomac Community Recreation Center	Dustin Construction, Inc.	MD prime, 12% local sub	18,932,000.00	construction - >10% (12%)
	1027826	Public Safety (PSTA) & Multi Agency Service Park - Site Development	Pleasants Construction, Inc.	County prime, 18% local sub	13,052,000.00	construction - >10% (18%)
	1029292	Health Care Services for Low Income, Uninsured Adults (Montgomery Cares)	Primary Care Coalition of Montgomery County Maryland, Inc.	No local participation	22,819,812.48	exempt: non-profit
	1030764	Prescription Plan	CaremarkPCS Health, L.L.C.	No local participation	123,000,000.00	no opportunity: health plan
	1030769	Point-of-Service Plans, Retiree Indemnity Plan	Group Hospitalization and Medical Services, Inc,	No local participation	81,000,000.00	no opportunity: health plan
	1030766	Fully-Insured Staff Model Health Maintenance Organization Medical Plan	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	No local participation	61,200,000.00	no opportunity: health plan
	1030767	Self-Insured Extended Provider Option Medical Plan	United HealthCare Services, Inc.	No local participation	22,211,000.00	no opportunity: health plan
	1035901	Self Insured PPO Type Dental Benefits and Related Administrative Services	United Concordia Companies, Inc. d/b/a United Concordia Dental	No local participation	12,000,000.00	no opportunity: health plan
	1040850	Computer Aided Dispatch (CAD) Modernization	Motorola Solutions, Inc.	No local participation	28,925,629.00	no opportunity: Motorola
	1033169	Firm Natural Gas Supply	Washington Gas Energy Services, Inc.	No local participation	15,000,000.00	no opportunity: utility
	1033010	Design, Build, Operate and Maintain two CNG facilities at the County EMOC	Integrays Transportation Fuels, d/b/a Trillium CNG	No local participation	10,500,000.00	no opportunity: fuel
	1011775	Engineering Services for Transportation Design & Planning	The Wilson T Ballard Company	MD prime, no local sub	10,000,000.00	the Bill applies, has opportunity

(21) FY15 contracts over \$10 million

	CONTRACT #	CONTRACT DESC	VENDOR	Current Local participation	Value	Local subcontracting
FY15	9803000105AA	Maintenance & Repair of Underground Storm Water Management Facilities	STORM WATER MANAGEMENT	County prime. No local sub	\$17,160,000	construction < 10%, (0%) has opportunity
	1006859	ADA alteration for Various Montgomery County Facility Projects	Turner Construction Company	Contract has expired	\$25,000,000	Task order based. Estimated too high. Will rebid this year. Will reserve under LSBRP
	1006857	ADA alteration for Various Montgomery County Facility Projects	Kellogg Brown & Root Services, Inc.	VA Prime. No local sub	\$25,000,000	Task order based. Estimated too high. Will rebid this year. Will reserve under LSBRP
	5346000009AA	CABLE TV PROGRAMMING, MANAGEMENT AND PRODUCTION SERVICES	MONTGOMERY COMMUNITY TV	No local participation	\$19,117,000	exempt: non-profit
	1029292	Health Care Services for Low Income, Uninsured Adults (Montgomery Cares)	Primary Care Coalition of Montgomery County Maryland, Inc.	No local participation	\$10,897,055	exempt: non-profit
	0649003006AA	Public Entity Contract with Housing Opportunities Commission to create and develop affordable housing for low to moderate individuals in the County..	HOUSING OPPORTUNITIES COM	No local participation	\$16,901,110	exempt: public entity
	1015061	Standard Heavy Duty Single-Rear-Axle Dump Trucks w/18,000 lb Front and 23,000 lb. Rear Capacity	Potomac Mack Sales & Service, Inc.	MD prime, no local subs	\$10,800,000	no opportunity: Dump Truck
	7344000063AA	800 MHZ Trunked Radio System, including equipment, services and maintenance	Motorola Inc	No local participation	\$57,029,406	no opportunity: Motorola
	7474000122AA	National Capital Region NCR LinX System	Northrop Grumman Systems Corporation	No local participation	\$14,000,000	no opportunity: proprietary
	6506030178AB	Custodial Services - Zone I	LT Services, Inc.	VA Prime. No local sub	\$13,910,050	Will rebid this year. will reserve one zone under LSBRP
	6506030178BB	Custodial Services Zone II	CERTIFIED BUILDING SERVICES	MD prime, no local sub	\$16,656,239	Will rebid this year. will reserve one zone under LSBRP
	1049987	Self Insured Claims Administration Services	Managed Care Innovations, LLC	VA Prime. currently 5% non-local sub	\$35,697,455	Workers comp services Has opportunity

FY14 and FY15 contracts with Local Subcontracting Opportunities

From the above 2 charts,

- Total 26 contracts over \$10m.
- 4 construction contracts with >10% local participation (estimated by the PMs). Projects are on-going. The # may increase or decrease.
- 15 contracts don't present local participation opportunities (exempted, health insurance related, proprietary products/systems, etc.)
- 7 contracts have local participation opportunities, see the chart below:

CONTRACT DESC	VENDOR	Current Local participation	Value	Expiration date	Local subcontracting opportunity?
Maintenance & Repair of Underground Storm Water Management Facilities	STORM WATER MANAGEMENT	County prime. No local sub	\$17,160,000	6/24/2016	Currently no subcontracting. Will re-bid this year. Is eligible for 61-14 with opportunity
ADA alteration for Various Montgomery County Facility Projects	Turner Construction Company	Contract has expired	\$25,000,000	--	Estimated value should be under \$10m. Will rebid this year. Will reserve under LSBRP
ADA alteration for Various Montgomery County Facility Projects	Kellogg Brown & Root Services, Inc.	VA Prime. No local sub	\$25,000,000	6/13/2016	Estimated value should be under \$10m. Will rebid this year. Will reserve under LSBRP
Custodial Services - Zone I	LT Services, Inc.	VA Prime. No local sub	\$13,910,050	5/13/2016	Will rebid this year. Will make 4 zones (unbundle) and will reserve one zone under LSBRP, other 3 zones open to non-LSBRP. Will have opportunity
Custodial Services Zone II	CERTIFIED BUILDING SERVICES	MD prime, no local sub	\$16,656,239	5/13/2016	Will rebid this year. Will make 4 zones (unbundle) and will reserve one zone under LSBRP, other 3 zones open to non-LSBRP. Will have opportunity
Self-Insured Claims Administration Services	Managed Care Innovations, LLC	VA Prime. currently 5% non-local sub	\$35,697,455	6/30/2017 (ext. 2022)	Currently 5% non-local sub. Workers comp services. Has opportunity.
Engineering Services for Transportation Design & Planning	The Wilson T Ballard Company	County prime, no local sub	\$10,000,000	3/28/2019	eligible for 61-14 with opportunity