

Bill No. 5-15  
Concerning: Contracts and Procurement  
- Health Insurance Preference  
Revised: September 17, 2015 Draft No. 5  
Introduced: February 3, 2015  
Enacted: September 15, 2015  
Executive: September 24, 2015  
Effective: July 1, 2016  
Sunset Date: None  
Ch. 43, Laws of Mont. Co. 2015

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

By: Councilmember Navarro

---

**AN ACT** to:

- (1) create a preference in the procurement of services by the County for a small business that provides health insurance for its employees;
- (2) require the County Executive to adopt a regulation implementing the preference for a small business that provides health insurance for its employees; and
- (2) generally amend the law governing the County's procurement of services.

By adding

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Article XVII  
Section 11B-77

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

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

1           **Sec. 1. Article XVII is added to Chapter 11B as follows:**

2           **Article XVII. Preference for a Small Business With Health Insurance.**

3           **11B-77. Preference for a Small Business With Health Insurance.**

4           (a) Definitions. In this Article the following terms have the following  
 5           meanings:

6           [[Business With Health Insurance means a business that provides health  
 7           insurance for each employee who provides services to the County under  
 8           a contract.]]

9           Certified Small Business With Health Insurance means a business  
 10           certified by the Director as meeting the standards established by  
 11           regulation for a Small Business With Health Insurance.

12           Contract means a contract for procurement services subject to the Wage  
 13           Requirements Law in Section 11B-33A.

14           Director means the Director of the Department of Health and Human  
 15           Services or the Director's designee.

16           Health insurance means insurance coverage [[that is part of an employer  
 17           benefit package]] that pays for medical expenses incurred by an employee  
 18           and an employee's family either by reimbursing the employee or by  
 19           paying the care provider directly and provides the minimum essential  
 20           health benefits required under the Patient Protection and Affordable Care  
 21           Act, 26 U.S.C. §5000A, as amended.

22           Health insurance evaluation factor means an evaluation factor in a  
 23           request for proposals that gives an offeror credit for being a certified  
 24           Business With Health Insurance.

25           Percentage price preference means the percent by which a responsive bid  
 26           from a responsible bidder who is a certified Business With Health

Insurance may exceed the lowest responsive bid submitted by a responsible bidder who is not a certified Business With Health Insurance.

Small Business With Health Insurance means a business that:

- (1) has 50 or fewer full-time equivalent employees; and
- (2) provides an employer benefit package that includes health insurance for each employee who provides services to the County under a contract; or
- (3) demonstrates that each employee who provides services to the County has health insurance from another source.

(b) Regulation. The County Executive must adopt a regulation under Method 2 that [[includes]] establishes:

- (1) an application process for a business to be certified as a Small Business With Health Insurance;
- (2) standards for a business to meet to be certified as a Small Business With Health Insurance;
- (3) the amount of a percentage price preference for a Small Business With Health Insurance under a solicitation for competitive sealed bidding; and
- (4) a Small Business With Health Insurance evaluation factor for use in a request for proposals.

(c) Certification. The Director must certify a business that meets the standards established by regulation as a Small Business With Health Insurance. A false statement on an application for certification is a Class A violation.

(d) Role of Office of Procurement and Department of Health and Human Services.

- 53           (1)   The Office of Procurement must review all specifications of each  
 54           using department [[and each cooperative purchasing agreement]]  
 55           to assure compliance with this Section, appropriate use of a  
 56           percentage price preference or an evaluation factor, and  
 57           consistency among using departments procuring similar services.
- 58           (2)   The Department of Health and Human Services must:
- 59                (A)   operate the certification process;
- 60                (B)   permit pre-certification as a Small Business With Health  
 61                Insurance; and
- 62                (C)   maintain a list of businesses that have been certified as a  
 63                Small Business With Health Insurance.
- 64           (e)   Denial or revocation of certification. The Director may refuse to certify  
 65           a business under this Section, and may suspend or revoke a certification  
 66           issued under this Section, after a hearing for which reasonable notice has  
 67           been given, if the business or applicant does not meet the standards for  
 68           certification as a Small Business With Health Insurance.
- 69           (f)   Notice and opportunity for hearing.
- 70                (1)   Notice. After finding that one or more grounds for denial,  
 71                suspension, or revocation of a certification could exist, the Director  
 72                may serve a written notice on the business or applicant in person  
 73                or by regular mail, postage prepaid, addressed to the person's last  
 74                known address as maintained in the Director's file. Service on that  
 75                person by mail is effective 3 days after mailing. The written notice  
 76                must, at a minimum:
- 77                    (A)   state that the Director has found that the business or  
 78                    applicant may be subject to denial, suspension, or  
 79                    revocation of the certification;

80                   (B) identify the specific grounds for the Director's findings; and  
81                   (C) set a date for a hearing on denial of the application or  
82                   suspension or revocation of the certification.

83           (2) Hearing. The Director or a designee may conduct the hearing. At  
84           the hearing, the business or applicant may present evidence and  
85           witnesses to refute the grounds cited by the Director for denying  
86           the application or suspending or revoking the certification, and the  
87           County and any other person may submit relevant evidence. The  
88           relevant records of the [[Department]] Office are part of the  
89           hearing record. The person conducting the hearing must render a  
90           decision in writing, giving the reasons for the decision. That  
91           decision is final, subject to judicial review under the Maryland  
92           Rules for review of administrative decisions in the Circuit Court  
93           and the Court of Special Appeals.

94           (3) Failure to appear. A business or applicant who after notice does  
95           not appear at a hearing waives the right to a hearing and consents  
96           to the action that the Director proposed in the notice. The Director  
97           may deny the application or suspend or revoke the certification as  
98           proposed in the notice.

99           (g) Appeals. Any person aggrieved by the denial, suspension, or revocation  
100           of any certification under this Section may seek judicial review under the  
101           Maryland Rules for review of administrative decisions in the Circuit  
102           Court and the Court of Special Appeals.

103           (h) Report by Office of Procurement. The Director of the Office of  
104           Procurement, after consulting with the Director of Health and Human  
105           Services, must submit a report to the County Council and County

- 106           Executive by September 30 each year after implementation of this  
107           Section for the prior fiscal year. The report should include:
- 108           (1)   the dollar value of services purchased from a certified Small  
109                 Business With Health Insurance;
  - 110           (2)   the dollar value of services purchased from a business that is not a  
111                 certified Small Business With Health Insurance;
  - 112           (3)   to the extent ascertainable, the additional cost of any contracts  
113                 awarded to a certified Small Business With Health Insurance under  
114                 a percentage price preference;
  - 115           (4)   a summary of applications for certification as a Small Business  
116                 With Health Insurance made during the year, including the results  
117                 of each application;
  - 118           (5)   a list of certified Small Businesses With Health Insurance;
  - 119           (6)   suggested legislative or administrative changes; and
  - 120           (7)   any other relevant information.

121           **Sec. 2. Effective Date.**

122           This Act takes effect on July 1, 2016 and applies to any solicitation issued on  
123           or after July 1, 2016.

124

125 *Approved:*

126 George Leventhal 9/15/2015  
George Leventhal, President, County Council Date

127 *Approved:*

128 Isiah Leggett 9/24/2015  
Isiah Leggett, County Executive Date

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

130 Linda M. Lauer 9/25/15  
Linda M. Lauer, Clerk of the Council Date