

Bill No. 5-02  
Concerning: Procurement - Service  
Contracts - Wage Requirements  
Revised: 6-11-02 Draft No. 11  
Introduced: March 5, 2002  
Enacted: June 11, 2002  
Executive: June 26, 2002  
Effective: July 1, 2003  
Sunset Date: None  
Ch. 17, Laws of Mont. Co. 2002

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Andrews, Council President Silverman, and Councilmembers Ewing,  
Leggett, and Berlage

### AN ACT to:

- (1) require the payment of certain wages by certain contractors with the County, and the inclusion in certain bids~~[[,]]~~ and proposals~~[[, and offers]]~~ of funds to pay certain wages;
- (2) specify the process for setting and enforcing contractual wage requirements, including treating certain private employees as third-party beneficiaries of certain contracts; and
- (3) generally amend County law regarding wages paid by persons who contract with the County.

### By adding

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-33A

#### **Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

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

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

2   **11B-33A. Wage Requirements.**

3           **(a) Scope. Any contract for procurement of services by a County**  
 4           **department or office must require the contractor and any**  
 5           **subcontractor to comply with the wage requirements of this Section.**  
 6           **As used in this Section, "covered employer" refers to any contractor**  
 7           **or subcontractor that is subject to this Section.**

8           **(b) Exentions to coverage. This Section does not apply to:**

9           **(1) a contractor who:**

10           **(A) employs fewer than 10 employees when the contractor**  
 11           **submits a bid or proposal, and**

12           **(B) does not employ 10 or more employees at [[all times]]**  
 13           **any time the contract is in effect as a result of**  
 14           **performing the contract;**

15           **(2) a [[prime]] contractor who, at the time a contract is signed:**

16           **(A) has received less than \$50,000 from the County in the**  
 17           **most recent 12-month period; [[or]] and**

18           **(B) will be entitled to receive less than \$50,000 from the**  
 19           **County under that contract in the next 12-month period;**

20           **(3) a contract with a public entity;**

21           **(4) a contract with a nonprofit organization that has qualified for**  
 22           **an exemption from federal income taxes under Section**  
 23           **501(c)(3) of the Internal Revenue Code;**

24           **(5) a [[sole source]] non-competitive contract[[, as defined in the**  
 25           **regulations implementing this Chapter]] awarded under Section**  
 26           **11B-14 if the Chief Administrative Officer finds that the**

- 27 performance of the contract would be significantly impaired if  
 28 the wage requirements of this Section applied;
- 29 (6) a contract for electricity, telephone, cable television, water,  
 30 sewer, or similar service delivered by a regulated public utility;
- 31 (7) a contract for services needed immediately to prevent or  
 32 respond to an imminent threat to public health or safety; [[or]]
- 33 (8) an employer to the extent that the employer is expressly  
 34 precluded from complying with this Section by the terms of any  
 35 federal or state law, contract, or grant;
- 36 (9) a bridge contract entered into under Section 11B-42; or
- 37 (10) a contract entered into under a cooperative procurement under  
 38 Section 11B-40.

39 The Executive by regulation may increase the amount in subsection  
 40 (h)(2) to reflect increases in the cost of living.

41 (c) [[Bid]] Solicitation requirements.

- 42 (1) Each bid[[, offer,]] or proposal to provide services to the  
 43 County must specify how the contractor and each  
 44 subcontractor will comply with these wage requirements, and  
 45 must include sufficient funds to meet these requirements.
- 46 (2) Each bid[[, offer,]] or proposal to provide services to the  
 47 County which is submitted by an organization that is exempt  
 48 from coverage under subsection (b)(4) must specify the wage  
 49 the organization intends to pay to those employees who will  
 50 perform direct, measurable work under the contract, and any  
 51 health insurance the organization intends to provide to those  
 52 employees. In evaluating the cost of a bid[[, offer,]] or proposal  
 53 the County must disregard any additional cost attributable to

54                    payment of the wage requirements of this Section by any  
 55                    organization that is exempt from coverage under subsection  
 56                    (b)(4) when compared to a bid or proposal submitted by another  
 57                    organization that is also exempt from coverage under  
 58                    subsection (b)(4).

59                    **(3) A contractor must not split or subdivide a contract. pay an**  
 60                    **employee through a third party, or treat an employee as a**  
 61                    **subcontractor or independent contractor. to avoid the**  
 62                    **imposition of any requirement under this Section.**

63                    **(d) *Health insurance.* If a contractor or subcontractor commits in its**  
 64                    **bid[[, offer,]] or proposal to provide health insurance to any employee**  
 65                    **who provides services to the County, the contractor or subcontractor**  
 66                    **may:**

67                    **(1) [[estimate]] certify in its bid[[, offer,]] or proposal the per-**  
 68                    **employee hourly cost of the employer's share of the premium**  
 69                    **for that insurance. and**

70                    **(2) reduce the wage paid under subsection (e) to [[employees]] any**  
 71                    **employee covered by the insurance by all or part of the per-**  
 72                    **employee hourly cost of the employer's share of the premium**  
 73                    **[[unless the Director finds that the cost of the insurance is**  
 74                    **substantially lower than estimated or is excessive in relation to**  
 75                    **the coverage provided]].**

76                    **(e) *Wage requirement.***

77                    **(1) Except as permitted under subsection (d)(2), each covered**  
 78                    **employer must pay each employee who is not exempt under**  
 79                    **subsection (f) at least \$10.50 per hour during the time the**  
 80                    **employee actually provides services to the County.**

81           (2) The Chief Administrative Officer must adjust the wage rate  
 82           required under this subsection, effective July 1 of each year, by  
 83           the annual average increase, if any, in the Consumer Price  
 84           Index for all urban consumers for the Washington-Baltimore  
 85           metropolitan area, or any successor index, for the previous  
 86           calendar year. The Chief Administrative Officer must calculate  
 87           the adjustment to the nearest multiple of 5 cents, and must  
 88           publish the amount of this adjustment not later than March 1 of  
 89           each year. Each adjustment under this paragraph applies to any  
 90           contract covered by this Section which:

91           (A) is in effect when the adjustment takes effect, or

92           (B) takes effect during the next 12 months.

93           (f) Exceptions to wage requirement. The wage requirements of this  
 94           Section do not apply to any employee:

95           (1) who performs no measurable work related to any contract with  
 96           the County;

97           (2) who participates in a government-operated or -sponsored  
 98           program that restricts the earnings of or wages paid to  
 99           employees to a level below the wage required under this  
 100           Section;

101           (3) who participates for no longer than 120 days in any calendar  
 102           year in a government-operated or -sponsored summer youth  
 103           employment program; or

104           (4) for whom a lower wage rate is expressly set in a bona fide  
 105           collective bargaining agreement.

106           (g) Conflicting requirements. If any federal, state, or County law or  
 107           regulation requires payment of a higher wage, that law or regulation

108 controls. If any applicable collective bargaining agreement requires  
109 payment of a higher wage, that agreement controls.

110 (h) *Enforcement.*

111 (1) The Chief Administrative Officer must require each covered  
112 employer to:

113 (A) certify that the employer and each subcontractor is aware  
114 of and will comply with the applicable wage  
115 requirements of this Section;

116 (B) keep and submit any records necessary to show  
117 compliance; and

118 (C) conspicuously post notices informing employees of the  
119 requirements of this Section, and send a copy of each  
120 such notice to the Chief Administrative Officer's  
121 designee.

122 (2) The Chief Administrative Officer must enforce this Section,  
123 perform random audits and any other audit necessary to do so,  
124 and investigate any complaint of a violation.

125 (3) An employer must not discharge or otherwise retaliate against  
126 an employee for asserting any right under this Section or filing  
127 a complaint of a violation. Any retaliation is subject to all  
128 sanctions for noncompliance with this Section.

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

133 (5) Each contract may specify that liquidated damages for any  
134 noncompliance with this Section includes the amount of any

135           unpaid wages, with interest, and that the contractor is jointly  
 136           and severally liable for any noncompliance by a subcontractor.  
 137           In addition, each contract must specify that an aggrieved  
 138           employee, as a third-party beneficiary, may by civil action  
 139           enforce the payment of wages due under this Section and  
 140           recover any unpaid wages with interest, a reasonable attorney's  
 141           fee, and damages for any retaliation for asserting any right  
 142           under this Section.

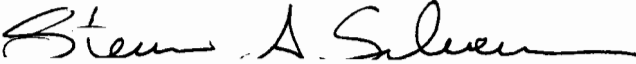
143           (i) Report.

144           ~~[(5)]~~ ~~[(6)]~~ The Chief Administrative Officer must report annually to the  
 145           Council and Executive on the operation of and compliance with this  
 146           Section. In addition, the report filed under Section 11B-61(a) each  
 147           year must compute the number of contracts and subcontracts with  
 148           minority-owned businesses that are subject to the requirements of this  
 149           Section, and how that number has changed since the year before those  
 150           requirements took effect.

151           **Sec. 2. Effective Date.** Section 11B-33A, inserted by Section 1 of this Act,  
 152           applies, effective July 1, 2003, to any contract ~~[[that takes effect]]~~ for which the  
 153           County government released a solicitation on or after ~~[[July]]~~ January 1, 2003,  
 154           ~~[[including]]~~ and to any renewal or extension of a previously-effective contract  
 155           ~~[[that]]~~ which takes effect on or after July 1, 2003, and incorporates any material  
 156           alteration to a provision of that contract. The Chief Administrative Officer must  
 157           offer to renegotiate any multi-year contract which took effect before July 1, 2003  
 158           if the contractor agrees to apply the wage requirements of Section 11B-33A to  
 159           employees who provide services under that contract. The first annual wage  
 160           adjustment required by Section 11B-33A(e)(2) must take effect on July 1, 2004.

161 *Approved:*

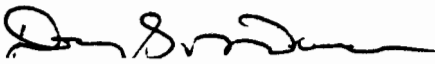
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163   
Steven A. Silverman, President, County Council

6/12/02  
Date

164 *Approved:*

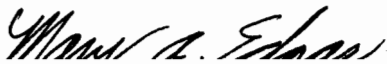
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166   
Douglas M. Duncan, County Executive

6/20/02  
Date

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

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169   
Mary A. Edgar, CMC, Clerk of the Council

6/24/02  
Date