

MEMORANDUM

January 12, 2010

TO: Transportation, Infrastructure, Energy, and Environment Committee

FROM: Jennifer Renkema, Research Associate *JR*
Leslie Rubin, Legislative Analyst *LR*

SUBJECT: **Worksession on OLO Report 2010-4: *Evaluation of the Local Small Business Reserve Program***

On January 14, 2010, the Transportation, Infrastructure, Energy, and Environment Committee will hold a worksession on Office of Legislative Oversight (OLO) Report 2010-4. The Council formally received and released the report on December 8, 2009. This report responds to the legislative requirement that OLO evaluate the Local Small Business Reserve Program (LSBRP) before the program's initial sunset date of December 31, 2009. Copies of the full report are available online at www.montgomerycountymd.gov/olo and in alternative formats upon request to OLO.

The following representatives from the Executive Branch are schedule to attend the T&E Committee worksession:

- David Dise, Director, Department of General Services
- Steve Silverman, Director, Department of Economic Development
- Ken Taylor, Manager, Office of Business Relations and Compliance, DGS

OLO recommends the Committee worksession begin with a briefing on the report by OLO staff, followed by comments from the Executive Branch. The Committee can then address OLO's recommendations and related issues that are summarized in the packet, which is organized as follows:

- **Part A** provides a brief overview of OLO's report.
- **Part B** summarizes OLO's recommendations.
- **Part C** describes the status of the FY09 LSBRP Annual Report.

The Executive Summary of OLO's report is attached at ©1. Written comments received from the Chief Administrative Officer on the final draft of the report are attached at ©5. OLO's findings are attached at ©11.

A. PROJECT OVERVIEW

The Local Small Business Reserve Program (LSBRP) was established by law in 2005 and required that all County Government departments award at least ten percent of *eligible* contract dollars to local small businesses. The legislative goals of the program are to:

- Enhance competitiveness of County-based small businesses doing business with the County;
- Broaden the pool of local small businesses doing business with the County; and
- Encourage the County’s economic growth by enhancing the business climate for local small businesses.

The primary mechanisms established by law for accomplishing these goals were the ten percent procurement requirement and a process for reserving contracts for bidding on by only local small businesses.

In March 2009, at the County Executive’s recommendation, the Council approved changes to the LSBRP and extended the sunset date of the program from December 2009 to December 2012. The approved changes included doubling the local small business requirement for County Government departments from 10 to 20 percent of *eligible* procurements and increasing the size thresholds for businesses to be eligible for the program (i.e., a larger business can now qualify as a “small” business based on the changes).

OLO’s Findings. OLO evaluated the LSBRP based on data from FY07 and FY08, the two years for which the County Government had complete data available. OLO’s evaluation found that the County Government was largely in compliance with the statutory requirements of the LSBRP in these two years. Overall, however, OLO’s findings suggest that the LSBRP did not fully meet the stated legislative goals. Specifically:

1. Only a fraction of eligible local small businesses registered for the program.

Since January 2006, only 1,540 businesses registered for the program. At the end of FY09, only 687 businesses were actively registered with the program. In comparison, an estimated 20,000 businesses may qualify for the program under the amended regulations approved in March 2009.

2. Almost all of the contracts awarded to LSBRP vendors were awarded through the regular procurement process, not through the LSBRP’s contract reserve process.

In FY07, only \$100,000 (1.2%) out of \$11.5 million in awards to LSBRP vendors resulted from contracts reserved under the LSBRP. In FY08, only \$400,000 (3.1%) out of \$11.8 million in awards to LSBRP vendors resulted from reserved contracts.

3. More than 90% of the County Government’s total contract spending was exempted from the LSBRP.

In FY07, 94 percent of the County Government’s approximately \$1 billion in contract spending met at least one of the legally-established program exemptions. In FY08, almost 92 percent of the \$985 million in total contract spending was exempt. The most commonly cited exemptions were for pre-existing contracts, non-competitive contracts, and because a department concluded that no qualified local small business existed to perform the contract. The table below summarizes the magnitude of procurement dollars exempted from the LSBRP in FY07 and FY08.

Value of County Contracts	FY07		FY08	
	\$ in millions	% of total	\$ in millions	% of total
Contract Spending	\$1,019.1	100%	\$984.9	100%
<i>Portion Exempt from LSBRP</i>	<i>\$959.5</i>	<i>94.1%</i>	<i>\$904.8</i>	<i>91.9%</i>

Source: DTS

B. REPORT RECOMMENDATIONS

In addition to the findings listed above, the absence of critical procurement data and the recent changes to the program made it difficult to draw definitive conclusions about the bottom-line effectiveness of the program. As a result, OLO’s recommendations focus on providing the Council with the information needed to make informed decisions about the future of the LSBRP.

Recommendation #1: Decide the future of the LSBRP based upon a complete picture of all County Government purchases from local small businesses.

In the course of reviewing the Local Small Business Reserve Program, OLO found that a substantial gap in knowledge exists about County Government purchases from local small businesses. Because 90 percent of the County’s procurement dollars were exempted (by law) from the LSBRP, the data tracked to date about the County Government’s purchases from local small businesses only reflects information on ten percent of the County’s contract purchases. Further, the data do not take into account local small businesses that are hired as subcontractors on larger County contracts.

OLO recommends that the Council’s future decisions about the LSBRP be based on the full picture of the County Government’s procurements from local small businesses. Finding out the dollar value and types of goods and services the County Government is purchasing from local small businesses, both as a result of the LSBRP and through the regular procurement process, will better position the Council to:

- Judge the effectiveness of the LSBRP; and
- Make informed decisions about changes to the parameters of the LSBRP, e.g., business eligibility, mandated targets, criteria for exemptions.

The table below outlines the macro-level data about the County Government’s contracts with local small business that OLO recommends the Council request the Executive Branch to compile about FY10 procurements.

Summary of FY10 County Government Contract Awards

Type of Business	Total Contract Dollars	Value of All Contracts Awarded...		Percent of Total
		Directly to Local Small Businesses	Indirectly to Local Small Businesses (Subcontracts)	
Wholesale				
Retail				
Manufacturing				
Services				
Construction				
TOTAL				

OLO also recommends that the Council request a companion report on the value of contracts awarded to locally-based non-profit organizations. Currently, non-profit organizations with workforces comparable to “local small businesses” (as defined in the law) do not qualify as such simply because they are not-for-profit businesses instead of for-profit businesses. Many of the County Government’s contracts with non-profits, however, legitimately reflect County dollars spent with local organizations.

Recognizing that it will take some time to collect these data, OLO recommends that the Council ask the Chief Administrative Officer (CAO) to provide a report on all contract awards to local small businesses during FY10 by November 30, 2010. OLO recommends the Council ask the Executive Branch to incorporate these data into the FY10 annual report to the Council on the LSBRP.

This timing will enable the Council to, approximately one year from now, discuss the future of the LSBRP based on:

- A complete picture of the County Government’s current contract awards from local small businesses, and
- Another full year of LSBRP experience based on the March 2009 legislative changes to the program.

Recommendation #2: Explore strategies other than the contract reserve mechanism for accomplishing the goals of the LSBRP

The table below summarizes the program’s goals, as currently found both in the legislative record and in the legislation that established the Local Small Business Reserve Program.

LSBRP Goals ¹	Source
Award at least ten percent (now 20%) of “eligible” contract dollars for goods, services, or construction to local small businesses.	Legislation
Enhance the competitiveness of County-based small businesses by creating a separate market where small businesses can compete against each other rather than against larger firms for procurement opportunities.	Legislative Record
Broaden the pool of local small vendors doing business with the County.	Legislative Record
Encourage the County’s economic growth by enhancing the business climate for local small businesses.	Legislative Record

LSBRP data for FY07 and FY08 indicate that only a fraction of the County’s procurement dollars awarded to local small businesses was awarded through the program’s process for reserving contracts for local small businesses. The remaining contract dollars awarded to local small businesses in FY07 and FY08 resulted from the regular (non-reserve) procurement process. The table below summarizes FY07 and FY08 data on LSBRP-reserved contracts.

Known Procurement Awards to Local Small Businesses, FY07 and FY08

Fiscal Year	Contract Awards to Local Small Businesses		Total LSBRP Procurements
	Through LSBRP-Reserve Process	Through Regular Procurement Process	
FY07	\$100,000	\$11.4 million	\$11.5 million
FY08	\$400,000	\$11.4 million	\$11.8 million

¹ Executive Regulation 21-05AM; April 12, 2005 County Council Worksession Packet: *Agenda Item #8, Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program*, p. 2

If the LSBRP data for FY09 and FY10 continue to evidence that the County Government awards all but a fraction of contracts to local small businesses through the regular procurement process, then OLO recommends the Council either amend or eliminate the LSBRP contract reserve process and consider alternative strategies for assisting local small businesses.

To enable an informed Council discussion about feasible alternatives to the contract reserve mechanism, OLO recommends that the Council task the Chief Administrative Officer with exploring other strategies. OLO recommends that the Council ask for a report back from the CAO on alternative program structures by November 30, 2010, as part of the report on all procurements from local small businesses.

Other jurisdictions that have developed programs to favor small and/or local businesses in their government procurements have employed several different methods to achieve the goal. These methods include:

- Price preferences for local small businesses;
- Mandatory subcontracting goals on contracts over a certain amount, with a mandatory percentage going to local small businesses;
- Reserving a contract solicited through the regular procurement process for local small businesses, if a minimum number of qualified local small businesses bid on the contract; and
- Reducing or waiving requirements for bonding or insurance to contract with otherwise-qualified local small businesses.

C. FY09 ANNUAL REPORT

The LSBRP law requires the Executive Branch to submit an annual report on the LSBRP to the County Council by November 30 of each year. The Council has not received the LSBRP annual report for FY09 because, according to Executive Branch staff, the reorganization of Executive Branch departments resulted in data discrepancies that OBRC and DTS staff are working to resolve. Executive Branch staff report that the FY09 annual report will be submitted to the Council by February 15, 2010.

**EVALUATION OF THE LOCAL SMALL BUSINESS RESERVE PROGRAM
OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2010-4 / DECEMBER 8, 2009**

OVERVIEW

In April 2005, the County Council adopted Bill 23-04 to establish the Local Small Business Reserve Program (LSBRP). The legislative intent of the new program was to enhance the business climate for County-based small businesses and broaden the pool of local small businesses doing business with the County. The law:

- Authorized a process for reserving County contracts for bidding only by local small businesses.
- Required all County departments to award 10% of *eligible* contract dollars to local small businesses.
- Exempted certain procurements from the 10% requirement, e.g., single procurements greater than \$10 million; pre-existing contracts; contracts for which there are no qualified local small businesses.

The legislation and an accompanying Executive Regulation also set eligibility criteria for local small businesses, which included a maximum number of employees (by type of business) and maximum gross sales.

In March 2009, as part of the County Executive's Economic Assistance Plan, the Council approved changes to the parameters of the LSBRP. The program amendments increased the size limits for local small businesses and doubled (from 10-20%) the percent of *eligible* contract dollars that each department must award to local small businesses. In addition, the Director of the Department of General Services must now approve exemptions from the program based on the reason that there is no qualified local small business available.

The initial law creating the LSBRP established a program sunset date of December 31, 2009. The amendments to the law enacted earlier this year (Bill 3-09) extended the sunset date for the program to December 31, 2012.

PROGRAM RESULTS

In FY07, LSBRP vendors received contracts worth a total of \$11.5 million, or 19.2% of *eligible* contract dollars. In FY08, LSBRP vendors received contracts worth \$11.8 million, or 14.8% of *eligible* contract dollars.

Value of County Contracts	FY07		FY08	
	\$ in millions	Percent	\$ in millions	Percent
Total Amount Eligible for LSBRP	\$59.6	100%	\$80.1	100%
Portion Awarded to LSBRP Vendors	\$11.5	19.2%	\$11.8	14.8%

These data demonstrate that the County Government met the statutory requirement to award at least 10% of *eligible* contract dollars to local small businesses. However, the following facts suggest that compliance with the 10% procurement goal does not translate into an overall finding that the LSBRP met the legislative goals identified when the program was established.

Only a fraction of eligible local small businesses registered to participate. Between January 2006 and June 2009, a total of 1,540 local small businesses registered with the program. This represents only a fraction of the more than 20,000 businesses in the County that meet the program's eligibility criteria for the program.

Almost all of the contract dollars awarded to LSBRP vendors resulted from regular procurements, not the contract reserve process. In FY07, only 1.2% of the \$11.5 million in contracts awarded to LSBRP vendors resulted from use of the contract reserve process; in FY08, the value of contracts awarded through the reserve process increased slightly, but still only to 3.1% of the total \$11.8 million awarded to LSBRP vendors.

More than 90% of the County Government's total contract spending was exempted from the LSBRP. In FY07, \$959.5 million, or 94% of the County Government's approximately \$1 billion in contract purchases, was exempted from the LSBRP. In FY08, the amount exempted was \$904.8 million, or 92% of the total. The three most commonly cited reasons for exempting contracts were: the contract was in place before the LSBRP was established; no local small business was deemed qualified; or that the contract was awarded non-competitively.

**EVALUATION OF THE LOCAL SMALL BUSINESS RESERVE PROGRAM
OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2010-4 / DECEMBER 8, 2009**

PERSONNEL AND OPERATING COSTS

Since 2005, three different offices have been responsible for administering the LSBRP. The program was initially assigned to the Department of Economic Development. In January 2008, the program was transferred to the Office of Procurement. In July 2008, responsibility for LSBRP was transferred again, this time to its current location in the Department of General Services Office of Business Relations and Compliance.

The primary staff activities associated with managing the program are conducting outreach to the business community; assisting contract administrators across County Government to identify contracts for reserved bidding by local small businesses; collecting program data; and compiling the annual report to the Council.

Over the past three years, the cost of personnel and operating costs dedicated to managing the LSBRP has ranged from \$209K to \$362K. These estimated costs do not include the staff time spent by contract administrators across all other County Government departments to implement the program.

Personnel and Operating Costs of Administering the Local Small Business Reserve Program, FY07-FY10			
FY07	FY08	FY09	FY10 (Budgeted)
\$240,000	\$209,000	\$362,000	\$211,000

FEEDBACK FROM THE BUSINESS COMMUNITY AND COUNTY GOVERNMENT STAFF

OLO's online survey of local small businesses and interviews with representatives of the business community evidenced support for the concept of the LSBRP, but disappointment with how the program has worked in practice. In particular, small business owners had expected that LSBRP would result in more opportunities to bid on reserved contracts and that these contracts would be worth higher amounts. Also, business owners thought that attention should be paid to better matching available vendors with the County's purchasing needs.

OLO interviewed contract administrators who implement the LSBRP in 13 County Government departments. Although most departments had met the program target of purchasing 10% from local small businesses, contract staff expressed some concern about meeting the new 20% requirement. The most common reason given for not reserving more contracts through the LSBRP was the limited vendor pool. Contract administrators also voiced frustration with the LSBRP database, describing it as confusing and difficult to work with.

CHALLENGES TO DETERMINING PROGRAM EFFECTIVENESS

The following factors made it difficult for OLO to make a final determination about the effectiveness of the Local Small Business Reserve Program.

- **Absence of data on all County Government procurements.** To date, the County has only collected data on awards to local small businesses on contracts affected by the LSBRP program. Because such a large portion of all County Government contracts (90%) was deemed exempt from the LSBRP, it is not known how much of the \$900 million in exempt County Government contracts each year went to local small businesses through the regular procurement process.
- **Only two years of data combined with recent program changes.** Earlier this year, Bill 3-09 made significant changes to the parameters of the LSBRP program; it is premature to assess the impact of these changes. Recently enacted program changes combined with the availability of only two full years of program data (FY07 & FY08) limit the ability to draw conclusions about program accomplishments.

**EVALUATION OF THE LOCAL SMALL BUSINESS RESERVE PROGRAM
OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2010-4 / DECEMBER 8, 2009**

COMPARATIVE INFORMATION

The State of Maryland established a small business reserve program in 2004 that requires certain State agencies to award 10% of contract dollars to small businesses. Reports on the results of the State's program show that, on average, participating agencies have awarded about 6% of contract dollars to small businesses under this program.

Although Montgomery County's Local Small Business Reserve Program was initially modeled after the State of Maryland program, there are significant differences between the two programs:

- The State program does not limit program eligibility to small businesses located in Maryland; in comparison, the County's program only applies to small businesses located in the County.
- The State's eligibility requirements for businesses are based on *both* number of employees *and* gross sales, while the County bases eligibility on *either* number of employees *or* gross sales.
- The State program requires 10% of contract dollars spent by certain State agencies to be awarded to small businesses; in comparison, (since the law was amended in 2009) Montgomery County's program requires 20% of eligible contract dollars spent by all County departments.
- The State program identifies one category of procurement as exempt from the program. In comparison, the County Government's law identifies seven exemption categories.

OLO also compiled information about small business procurement programs offered by the Federal Government and other governments in the Washington, D.C. area. In addition to set-asides, programs included:

- Price preferences for local small businesses;
- Mandatory local small business subcontracting goals on contracts over a certain amount;
- Reserving a contract solicited through the regular procurement process for local small businesses, if a minimum number of qualified local small businesses bid on the contract; and
- Reducing or waiving requirements for bonding or insurance to contract with otherwise-qualified local small businesses.

GOALS OF THE LOCAL SMALL BUSINESS RESERVE PROGRAM

The table below summarizes the program's goals, as currently found both in the legislative record and in the legislation that established the Local Small Business Reserve Program.

LSBRP Program Goal	Source
Award at least 10 percent (now 20%) of "eligible" contract dollars for goods, services, or construction to local small businesses.	Legislation
Enhance the competitiveness of County-based small businesses by creating a separate market where small business can compete against each other rather than against larger firms for procurement opportunities.	Legislative Record
Broaden the pool of local small vendors doing business with the County.	Legislative Record
Encourage the County's economic growth by enhancing the business climate for local small businesses.	Legislative Record

RECOMMENDATIONS
OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2010-4 / DECEMBER 8, 2009

As reviewed in the report, the absence of comprehensive procurement data and recent changes to the structure of the Local Small Business Reserve Program make it difficult to draw definitive conclusions about program effectiveness. Further, even though the County Government exceeded the 10% target set for awarding *eligible* contract dollars to local small businesses, other program results – the small number of registered businesses, the large portion of contract exemptions, the rarely used reserve process – raise questions about whether the legislative goals of the program were accomplished.

OLO's recommendations for Council action focus on compiling the information needed to make informed judgments about the effectiveness of the LSBRP and decisions about the future structure of the program, e.g., the contract reserve mechanism, mandated targets, criteria for exemptions.

Recommendation #1: Decide the future of the LSBRP based upon a complete picture of all County Government purchases from local small businesses.

In the course of reviewing the Local Small Business Review Program, OLO found that a substantial gap of knowledge exists about County Government purchases from local small businesses. Because 90% of the County's procurement dollars were exempted from the LSBRP, the data tracked to date about the County Government's purchases from local small businesses only reflects information on about 10% of the County's contract purchases. Further the data do not take into account local small businesses that are hired as subcontractors on larger County contracts.

OLO recommends that the Council's future decisions about the LSBRP be based on the full picture of the County Government's procurements from local small businesses. OLO also recommends that the Council request a companion report on the contracts awarded to locally-based non-profit organizations.

Recognizing that it will take some time to collect these data, OLO recommends that the Council ask the Chief Administrative Officer to provide a report on all contract awards to local small businesses and locally-based non-profits during FY10 by **November 30, 2010**. OLO recommends asking the Executive Branch to incorporate these data into the FY10 annual report to the Council on the LSBRP.

Recommendation #2: Explore strategies other than the contract reserve mechanism for accomplishing the goals of the LSBRP.

LSBRP data for FY07 and FY08 indicate that only a fraction of the County's procurement dollars awarded to local small businesses was awarded through the process established for reserving contracts for local small businesses. In other words, almost all (97-98%) of contract dollars awarded to local small businesses in FY07 and FY08 resulted from the regular (non-reserve) procurement process.

If the LSBRP program data for FY09 and FY10 continue to evidence this same pattern of contract awards to local small businesses, then OLO recommends the Council either amend or eliminate the LSBRP contract reserve process and consider alternative strategies for assisting local small businesses.

To enable an informed Council discussion about feasible alternatives to the contract reserve mechanism, OLO recommends that the Council task the Chief Administrative Officer with exploring other strategies. OLO recommends that the Council ask for a report back from the CAO on alternative program structures by **November 30, 2010**, as an addendum to the report on all FY10 procurements from local small businesses.

For a complete copy of OLO Report 2010-4, go to: www.montgomerycountymd.gov/olo.
This document is available in alternative formats upon request.



OFFICES OF THE COUNTY EXECUTIVE

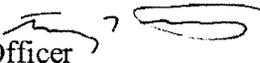
Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

December 3, 2009

TO: Karen Orlansky, Director
Office of Legislative Oversight

FROM: Timothy L. Firestine 
Chief Administrative Officer

SUBJECT: OLO Report 2010-4, Evaluation of the Local Small Business Reserve Program

The OLO Report 2010-4 provides a fair evaluation of the Local Small Business Reserve Program (LSBRP). As noted in the OLO report, recent legislative changes have increased the program's parameters and market penetration, thus creating a more active business outreach. The program transfer to the Department of General Services' Office of Business Relations and Compliance (OBRC) places the LSBRP in an environment with contracting expertise and direct links to County departments and local businesses. The partial reorganization of County government that created DGS is recognized as the catalyst for many of the OLO recommendations.

The report shows that since implementation of the new legislation the number of LSBRP solicitations has increased significantly. In fact, in the last six months more LSBRP solicitations have been issued than in the first two years of the program. However, as the report indicates, the current data collection system only tracks the performance of the LSBRP program and its vendors and does not address businesses that may qualify but are not registered in the database, nor does it track subcontracts, where it's expected that a great deal of local small business activity takes place as a distinct and indirect result of County contract. OBRC is working closely with the Office of Procurement to encourage large businesses to subcontract with LSBRP registered vendors. Additionally, solicitations are being advertised that will result in unbundling several large County contracts to maximize local contracting opportunities.

This response to the OLO report addresses specific statements made in the OLO Executive Summary and the report's two recommendations.

EXECUTIVE SUMMARY

Feedback from the Business Community and County Government Staff

OLO Language

OLO's online survey of local small businesses and interviews with representatives of the business community evidenced support for the concept of the LSBRP, but disappointment with how the program has worked in practice. In particular, small business owners had expected that LSBRP would result in more opportunities to bid on reserved contracts and that these contracts would be worth higher amounts. Also, business owners thought that attention should be paid to better matching available vendors with the County's purchasing needs.

Response: When the program was first created, LSBRP staff worked aggressively to promote the program and invite qualifying businesses to register, and many did. However, the effort to identify County requirements relative to businesses registering with the system was not thorough. As a result, many businesses that registered expecting opportunities were disappointed, while County departments searching the registry of businesses were unable to identify businesses providing the goods or service required. This resulted in few formal solicitations being advertised through the LSBRP reserve, and few contracting opportunities to registered businesses.

OLO Language

OLO interviewed contract administrators who implement the LSBRP in 13 County Government departments. Although most departments had met the program target of purchasing 10% from local small businesses, contract staff expressed some concern about meeting the new 20% requirement. The most common reason given for not reserving more contracts through the LSBRP was the limited vendor pool. Contract administrators also voiced frustration with the LSBRP database, describing it as confusing and difficult to work with.

Response: The original LSBRP database was cumbersome. After the program was moved to DGS, the database was planned to be part of the Central Vendor Registration System (CVRS) after it went live January 2009. The LSBRP database was moved to the CVRS in October 2009 and is now much easier to use.

By utilizing the CVRS, local small businesses may now register in only one place and are not required to register with LSBRP as a second and independent process. This has resulted in the identification of more businesses and, through marketing efforts by staff of the OBRC, businesses previously registered with the central system are now updating their record to include their qualifying status for the LSBRP.

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The above-referenced earlier broad based efforts to register businesses is now more focused as OBRC staff meet with departments to determine contracting plans for the coming year and then work with the Department of Economic Development and County chambers of commerce to identify the available pool of businesses capable of addressing the contracting requirements. These businesses are then contacted to make sure they are registered with the County as LSBRP companies. Further, the recent legislative increase from 10% to 20% in the contracting goal also broadened the qualifying thresholds for small business will allow more businesses to participate in the program. These combined efforts are expanding the utilization of small businesses in both formal and informal contracting requirements, making the obtaining of the 20% goal achievable.

Challenges to Determining Program Effectiveness

OLO Language

The following factors made it difficult for OLO to make a final determination about the effectiveness of the Local Small Business Reserve Program.

- *Absence of data on all County Government procurements. To date, the County has only collected data on awards to local small businesses on contracts affected by the LSBRP program. Because such a large portion of all County Government contracts (90%) was deemed exempt from the LSBRP, it is not known how much of the \$900 million in exempt County Government contracts each year went to local small businesses through the regular procurement process.*
- *Only two years of data combined with recent program changes. Earlier this year, Bill 3-09 made significant changes to the parameters of the LSBRP program; it is premature to assess the impact of these changes. Recently enacted program changes combined with the availability of only two full years of program data (FY07 & FY08) limit the ability to draw conclusions about program accomplishments.*

Response: The combination of inadequate technology tools to track activity, low and unfocused enrollment in the LSBRP database and limited staff resources make accurate reporting on small business contracting a challenge. Past reports have reported only on the contracting activity with the businesses registered in the LSBRP database, in addition to records maintained through the year by County departments. Changes enacted in the past year will help track this information better.

The numerous exemptions allowed under the law do reduce the eligible contracting opportunities. However, the exemption category that permits a using department to determine that no local small business exists to meet that

department's requirement has the greatest room for improvement. A change in the LSBRP law that now requires review and approval of this determination by the DGS Director will reduce the number of contracts exempted.

Subcontracting is not specifically addressed in the law, however, a large amount of local small business contracting takes place through County contractors subcontracting with local companies. While the law focuses on direct County contracting activity, it is undeniable that subcontracting is a direct benefit to the local business community. Staff is now reviewing processes by which this may be tracked and reported in the future.

Comparative Information

OLO Language

OLO also compiled information about small business procurement programs offered by the Federal Government and other governments in the Washington, D.C. area. In addition to set-asides, programs included:

- *Price preferences for local small businesses;*

Response: Price preferences should be reviewed for legal compliance and prudently considered as local preferences tend to invite reciprocity by other municipalities and states, which would result in an unintended disadvantage to the businesses a preference is intended to support.

- *Mandatory local small business subcontracting goals on contracts over a certain amount;*

Response: Mandatory goals assume that subcontracting requirements can be met by the local business community, which may not always be the case. It may be preferable to award additional evaluation points based on the amount of local business participation, or some similar approach.

- *Reversing a contract solicited through the regular procurement process for local small businesses, if a minimum number of qualified local small businesses bid on the contract;*

Response: Preparing bids and proposal is a time consuming and expensive undertaking for any business. Asking business to prepare and submit a bid or proposal only to have it dismissed when a sufficient number of qualifying small businesses participate will discourage competition and could invite legal challenge. The current law provides for a reserve when sufficient competition is known to exist. Improvements in program administration should address this issue and should be pursued before more restrictive measures are considered.

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- *Reducing or waiving requirements for bonding or insurance to contract with otherwise-qualified local small businesses.*

Response: In certain instances bonding limits may be unrealistically high and, therefore, exclude small business that typically have lower bonding capacity. Procurement staff review draft solicitations and consult with Risk Management and OBRC staff to determine if bonding is necessary, or limits are too high. This determination must be made on a case-by-case basis.

Goals of the Local Small Business Reserve Program

OLO Language

As reviewed in the report, the absence of comprehensive procurement data and recent changes to the structure of the Local Small Business Reserve Program make it difficult to draw definitive conclusions about program effectiveness. Further, even though the County Government exceeded the 10% target set for awarding eligible contract dollars to local small businesses, other program results – the small number of registered businesses, the large portion of contract exemptions, the rarely used reserve process – raise questions about whether the legislative goals of the program were accomplished.

Response: As stated earlier, the slow and unfocused beginning of this program has been replaced by a more strategic implementation. It is premature to question the accomplishments of a program that is only now under the direction it should have enjoyed at its inception. Scrutinizing exemption determinations, expanding program enrollment and targeting specific industries to address known County requirements will increase the amount of small business participation in County contracting. If the program's goal is to ensure that local small businesses are provided an equitable share of County contracting expenditures, these measures will help realize that goal.

OLO RECOMMENDATIONS

Recommendation #1: Decide the future of the LSBRP based upon a complete picture of all County Government purchases from local small businesses.

Recognizing that it will take some time to collect these data, OLO recommends that the Council ask the Chief Administrative Officer to provide a report on all contract awards to local small businesses and locally-based non-profits during FY10 by November 30, 2010. OLO recommends asking the Executive Branch to incorporate these data into the FY10 annual report to the Council on the LSBRP.

Response: This is a reasonable goal with which we agree.

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Recommendation #2: Explore strategies other than the contract reserve mechanism for accomplishing the goals of the LSBRP.

To enable an informed Council discussion about feasible alternatives to the contract reserve mechanism, OLO recommends that the Council task the Chief Administrative Officer with exploring other strategies. OLO recommends that the Council ask for a report back from the CAO on alternative program structures by November 30, 2010, as an addendum to the report on all FY10 procurements from local small businesses.

Response: The Executive Branch is willing to consider any strategy that will promote a strong economy and provide opportunity for local businesses to benefit from County contracting. As noted above, the strategies proposed have challenges but some alternatives may be considered in addition to the improved management of the current program.

cc: Kathleen Boucher, Assistant Chief Administrative Officer
David Dise, Director, Department of General Services
Steve Emanuel, Director, Department of Technology Services
Leon Rodriguez, County Attorney
Steve Silverman, Director, Department of Economic Development

CHAPTER VII. Findings

This chapter presents the Office of Legislative Oversight's evaluation findings, organized as follows:

- A. Legislative and Staffing History
- B. Program Results
- C. Data Collection
- D. Feedback on the LSBRP from the Business Community and County Government Staff
- E. Comparative Information

A. LEGISLATIVE AND STAFFING HISTORY

In 2005, the County Council initiated and adopted legislation to establish the Local Small Business Reserve Program (LSBRP). Earlier this year, as part of the County Executive's 2009 Economic Assistance Plan, the Council approved changes to the parameters of the LSBRP.

Legislative History

1. The Council's legislative record indicates that the goals of the Local Small Business Reserve Program were to: (a) enhance the competitiveness of County-based small businesses in the County Government's procurement process; (b) broaden the pool of local small businesses doing business with the County; and (c) encourage the County's economic growth by enhancing the business climate for local small businesses.
2. The 2005 law establishing the LSBRP (Bill 23-04) required all County Government departments to award at least ten percent of *eligible* contract dollars to local small businesses. The definition of "local small business," including maximum limits on a business' gross sales and number of employees, were established by executive regulation.
3. The law that established the LSBRP exempted the following types of contracts from the ten percent requirement:
 - Pre-existing contracts or extension(s) of pre-existing multi-year contracts;
 - Non-competitively awarded contracts;
 - Public entity or emergency procurements;
 - Contracts granted a waiver by the Chief Administrative Officer;
 - Any single procurement greater than \$10 million;
 - Any procurement for which no local small business was qualified or able to perform the contract; and
 - Contracts for which the LSBRP law did not apply because of a conflict with state, federal, or local law or a grant requirement.

4. As the primary mechanism for achieving the goals of the LSBRP, the law authorized a process for County Government departments to reserve (or set aside) contracts for bidding by only local small businesses. Staff responsible for administering the LSBRP work with contract administrators across County Government departments to identify contracts that are appropriate for the reserve process.
5. In March 2009, as part of the County Executive's Economic Assistance Plan, the Council approved changes to the parameters of the LSBRP. The program amendments increased the size limits for local small businesses and doubled (from 10-20%) the percent of *eligible* contract dollars that each department must award to local small businesses. In addition, the Director of the Department of General Services must now approve exemptions from the program based on the reason that there is no qualified local small business available.

Staffing History and Costs

6. Since 2005, as a result of Executive Branch reorganizations, three different offices have been responsible for administering the Local Small Business Reserve Program. The program was initially assigned in 2005 to the Department of Economic Development (DED). In January 2008, the program was transferred to the Office of Procurement. In July 2008, it was transferred again, this time to its current location in the Department of General Services' Office of Business Relations and Compliance (OBRC).
7. Between FY07 and FY09, personnel and operating expenses dedicated to managing the LSBRP ranged from \$209K to \$362K. In terms of workyears, the staff assigned to LSBRP fluctuated from 2.6 WYs (FY07) to 4.2 WYs (FY09). For FY10, dedicated program staffing is budgeted at two workyears in the Department of General Services. These budget data do not include the costs of time allocated by contract administrators across all County Government departments/offices to implement the program.

B. PROGRAM RESULTS

OLO analyzed program data and information on business eligibility and participation; contract awards to local small businesses; and compliance with the LSBRP law and regulation. While OLO was able to reach some meaningful findings on the results of the program (summarized below), the following factors made it difficult to make a final determination about the effectiveness of the LSBRP:

- **Absence of data on all County Government procurements.** To date, the County has only collected data on awards to local small businesses on contracts affected by the LSBRP. Because such a large portion of all County Government contracts (90%) was deemed exempt from the LSBRP, it is not known how much of the \$900 million in exempt County Government contracts each year went to local small businesses through the regular procurement process.
- **Only two years of data combined with recent program changes.** At the time OLO conducted the report, only two full years of program data (FY07 and FY08) were available. Earlier this year, Bill 3-09 made significant changes to the parameters of the LSBRP; it is premature to assess the impact of these changes. These recently enacted program changes combined with only two years of data limit the ability to draw conclusions about program accomplishments.

Contract Awards to Local Small Businesses

8. In FY07, the County Government awarded contracts totaling \$11.5 million, or 19.2 percent of *eligible* contract spending to local small businesses. In FY08, LSBRP vendors received contracts worth \$11.8 million, or 14.8 percent of *eligible* contract spending.

Value of County Contracts	FY07		FY08	
	\$ in millions	Percent	\$ in millions	Percent
Total Amount Eligible for LSBRP	\$59.6	100%	\$80.1	100%
<i>Portion Awarded to LSBRP Vendors</i>	<i>\$11.5</i>	<i>19.2%</i>	<i>\$11.8</i>	<i>14.8%</i>

Source: DTS

While these data demonstrate that the County Government met the statutory requirement to award at least ten percent of *eligible* contract dollars to local small businesses, the following facts on business participation in the program, the volume of program exemptions, and the minimal use of the contract reserve mechanism suggest that compliance with the procurement goal does not translate into an overall finding that the legislative goals of the LSBRP were fully met.

Business Eligibility and Participation

9. Only a fraction of the eligible local small businesses have registered to participate in the LSBRP. Between January 2006 and June 2009, a total of 1,540 vendors registered for the program. Data on the characteristics of the active registered business (as of September 2009) indicate that most of the vendors who have registered for the LSBRP are significantly smaller in size (number of employees and/or gross sales) than allowed by program eligibility criteria.
10. Available data indicate that upwards of 90 percent of the businesses located in Montgomery County likely qualify as “small businesses” under the eligibility requirement adopted (and amended earlier this year) for the LSBRP. While the estimates of the number of eligible businesses vary, a conservative number would be higher than 20,000.
11. At any given time the number of “active” vendors (defined as those with current registrations) is substantially smaller than the total number ever registered. For example, at the end of FY09, there were only 687 “active” vendors. One of the primary reasons for this disparity is that businesses choose not to renew their registrations.



High Percent of Contracts Exempted

12. More than 90 percent of the County Government’s total contract spending was exempted from the LSBRP. In FY07, 94 percent of the County Government’s approximately \$1 billion in contract spending met at least one of the legally-established program exemptions. In FY08, almost 92 percent of the \$985 million in total contract spending was exempt. The most commonly cited exemptions were for pre-existing contracts, no qualified local small business, and non-competitive contracts.

Value of County Contracts	FY07		FY08	
	\$ in millions	% of total	\$ in millions	% of total
Contract Spending	\$1,019.1	100%	\$984.9	100%
<i>Portion Exempt from LSBRP</i>	<i>\$959.5</i>	<i>94.1%</i>	<i>\$904.8</i>	<i>91.9%</i>

Source: DTS

Contract Reserve Mechanism Rarely Used

13. Only a fraction of the contract dollars successfully awarded to LSBRP businesses resulted from the LSBRP contract reserve process; virtually all contract awards resulted from the regular procurement process. In FY07, \$100,000 (1.2%) of awards to LSBRP vendors resulted from contracts that were reserved under the LSBRP. In FY08, \$400,000 (3.1%) of awards to LSBRP vendors resulted from reserved contracts.

Value of County Contracts	FY07		FY08	
	\$ in millions	% of total	\$ in millions	% of total
Awards to LSBRP Registered Vendors	\$11.45	100%	\$11.82	100%
<i>Portion Reserved</i>	<i>\$0.14</i>	<i>1.2%</i>	<i>\$0.37</i>	<i>3.1%</i>

Source: DTS

14. In FY07 and FY08, the County Government reserved a total of 18 solicitations for LSBRP vendors. Of these, 13 resulted in contracts with LSBRP vendors. In FY09, another 16 solicitations were reserved, and nine went to LSBRP vendors. The remaining solicitations were cancelled or reissued as regular solicitations due to insufficient vendor responses or reasons specific to the contract.

Compliance with LSBRP law and regulations

15. As noted above (see #8), in FY07 and FY08, the LSBRP exceeded the requirement in the LSBRP law and regulation to award ten percent of *eligible* procurement spending to local small businesses.

- In FY07, the County Government as a whole awarded 19.2 percent of *eligible* contract spending to LSBRP vendors; in FY08, the County Government awarded 14.8 percent of eligible spending to LSBRP vendors.
- In FY07 and FY08 about half of County Government departments/offices that were required to comply with the LSBRP law had program-eligible procurements. Of these, about three-quarters of the departments awarded at least ten percent of their *eligible* procurement spending to LSBRP vendors.

16. The LSBRP law and executive regulation also stipulate requirements for outreach, data collection, and reporting. The table below lists requirements and indicates whether they were met.

Requirement	Met			Comments
	Yes	No	Partially	
Outreach to Business Community				
Advertising in media	√			
Distribute brochures	√			
Business events (minimum of 3 annually)	√			
Work with small business groups	√			
Annual press releases			√	Press release for FY06 and part of FY07 No press releases for FY08
Website and Database				
Provide general information about program	√			
Allow registrations	√			
Provide list of registered vendors	√			
Track dollar amount of contracts awarded to LSBRP vendors	√			
Track number of contracts awarded to LSBRP vendors		√		Database does not capture number of contracts
Annual Report to County Council				
Due November 30			√	FY08 report submitted in March 2009
Data on number and amount of contracts awarded under program			√	No data on number of contracts
Data on number and amount of exempted contracts			√	No data on number of exempt contracts
Data on Outreach to business community			√	No information in FY08 report

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C. DATA COLLECTION

Since the inception of the LSBRP, County Government staff have put substantial effort into gathering data on the LSBRP. However, the factors listed below made it difficult for County Government staff to provide the data needed for a comprehensive program evaluation.

17. The LSBRP database does not capture information on whether contracts that were exempt from the program were nonetheless awarded to local small businesses. Consequently, program staff cannot analyze 90 percent of the County Government's annual contract spending nor what percent of that spending is going to local small businesses.
18. At the time of program implementation in 2005, the LSBRP database was set up separately from other procurement databases. This created challenges for LSBRP data collection, which resulted in inefficient (and potentially inaccurate) reporting. Specifically:
 - The LSBRP database gathers data on expenditures from two Office of Procurement databases. These databases do not contain information on whether: the vendor is registered for the LSBRP; a contract was reserved for the LSBRP; or a contract was exempt from the LSBRP.
 - Department contract administrators must individually report this data for each procurement transaction over \$5,000, a time consuming process for large departments that literally have thousands of transactions annually.
 - Some departments do not report all of their contract information by the deadline for the LSBRP annual report. As a result, the annual report submitted to the Council does not contain the final program data.
 - The LSBRP database does not include data on purchases under \$5,000, and as a result, most expenditures under \$5,000 are not reflected in either the eligible or exempt procurements discussed above. Approximately \$41 million in County Government purchases were under \$5,000 in FY07, and approximately \$42 million in FY08. This area of procurement represents a substantial component of County spending for which there is incomplete information on how much is actually being procured from local small businesses.

D. FEEDBACK FROM THE BUSINESS COMMUNITY AND COUNTY GOVERNMENT STAFF

To obtain feedback about the Local Small Business Reserve Program, OLO conducted a survey of local small businesses that had registered with the LSBRP; consulted with selected other representatives of the business community; and interviewed contract administrators in 13 County Government departments/offices.

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Feedback from the Business Community

OLO used an online survey tool to solicit feedback about the LSBRP from business owners who are registered in the LSBRP database. Of the 768 business owners who were invited to participate, 112 (15%) responded.

19. In general, survey respondents expressed support for the concept of a reserve program for local small businesses, but disappointment that the LSBRP has not resulted in more opportunities for them to contract with the County Government.
20. Seventy-eight percent of survey respondents reported that they had never received a contract from the County Government. Of these 86 businesses, a majority (54%) reported that they had never seen a solicitation for the goods or services that they provide.
21. Twenty-two percent of survey respondents reported they had received at least one County Government contract. Of these 25 businesses, about one third reported receiving a contract through the LSBRP reserve process; one third reported receiving a contract through the regular contracting process; and one third reported receiving contracts both through the reserve process and the regular contract process.
22. Of the 72 percent of businesses that reported being aware of the March 2009 changes to the LSBRP, approximately half did not believe that the changes would have any significant impact on their business.
23. Consistent with the survey results, OLO's interviews with other members of the business community (including representatives of ten chambers of commerce) found strong support for the concept of a reserve program. However, the general view expressed was also that implementation of the program could and should be improved. Specific comments included:
 - The business community had expected the program would result in more opportunities for local small businesses to compete for reserved contracts and that these contracts would be worth higher amounts.
 - In general, the LSBRP needs to be publicized in a way that matches available vendors with the County Government's purchasing needs.

Feedback from County Government Staff

OLO interviewed 13 contract administrators who implement the LSBRP in County Government departments. Their LSBRP responsibilities include coordinating LSBRP solicitations among department staff and DGS; encouraging department staff to consider LSBRP vendors for solicitations; and managing the department's data in the LSBRP intranet database.

24. Eleven of the 13 department representatives interviewed reported that their department had met the LSBRP requirement to award ten percent of eligible contract dollars to local small businesses. Nine of these individuals expressed some concern about being able to meet the higher 20 percent requirement.

25. The most common reason given by contract administrators for not reserving more contracts through the LSBRP was the limited pool of vendors registered with the County. A recurring concern is the risk of a time delay that would occur if/when a reserved contract does not receive a sufficient number of responses, which would then require the department to reissue the solicitation.
26. County Government contract staff expressed frustration with the LSBRP database. They described it as confusing, and had difficulty searching for vendors and reporting data about their purchases.

E. COMPARATIVE INFORMATION

OLO's review of the State's small business reserve program and several other public sector procurement programs operating in the Washington D.C. area found that:

27. The State of Maryland established a small business reserve program in 2004 that requires certain State agencies to award ten percent of contract dollars to small businesses. Published reports on the results of the State's program show that, on average, participating agencies have awarded about six percent of contract dollars to small businesses under this program.
28. Although Montgomery County's Local Small Business Reserve Program was initially modeled after the State of Maryland program, there are significant differences between the two programs:
 - The State program does not limit program eligibility to small businesses located in Maryland; in comparison, the County's program only applies to small businesses located in the County.
 - The State's eligibility requirements for businesses are based on *both* number of employees *and* gross sales, while the County bases eligibility on *either* number of employees *or* gross sales.
 - The State program requires ten percent of contract dollars spent by certain State agencies to be awarded to small businesses; in comparison, (since the law was amended in 2009) Montgomery County's program requires 20 percent of eligible contract dollars spent by all County departments/offices to be awarded to local small businesses.
 - The State program identifies one category of procurement as exempt from the program. In comparison, the County Government's law identifies seven exemption categories.
29. OLO also compiled information about small business procurement programs offered by the Federal Government; Commonwealth of Virginia; State of West Virginia; District of Columbia; Washington Suburban Sanitary Commission; and Cecil County, Maryland. In addition to some set-asides for small and/or local businesses, programs offered by these jurisdictions included:
 - Price preferences for local small businesses;
 - Mandatory local small business subcontracting goals on contracts over a certain amount;
 - Reserving a contract solicited through the regular procurement process for local small businesses, if a minimum number of qualified local small businesses bid on the contract; and
 - Reducing or waiving requirements for bonding or insurance to contract with otherwise-qualified local small businesses.