

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 3-09, Local Small Business Reserve Program – Amendments

Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): approve the Bill with amendments.

Expedited Bill 3-09, Local Small Business Reserve Program – Amendments, sponsored by the Council President at the request of the County Executive, was introduced on February 10, 2009. A public hearing was held on March 3, 2009. The Council's Transportation, Infrastructure, Energy and Environment (T & E) Committee reviewed the Bill at a worksession on March 26.

Background

Expedited Bill 3-09 would amend the County's procurement law by increasing the minimum percentage of the combined dollar value of eligible contracts that each using department must award to a local small business. Each using department is currently required to award a minimum of 10% of its combined dollar value of eligible contracts to certified local small businesses during a fiscal year. Certain types of contracts are exempt from this requirement. A business can be certified as a local small business (LSB) under the regulations if:

- It is independently owned and operated.
- It is not a subsidiary of another business.
- It has a physical location in Montgomery County that houses at least 50% of its employees or that generates at least 50% of its economic activity.
- It does not exceed the following size or gross sales criteria:
 - The wholesale operations (sale of goods in large quantities usually for resale) of the business, if any, did not employ more than 15 persons, or the gross sales of the wholesale business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years.
 - The retail (sale of goods in small quantities directly to the ultimate consumer) operations of the business, if any, did not employ more than 15 persons, or the gross sales of the retail business did not exceed an average of \$2,500,000 in its most recently completed 3 fiscal years.

- The manufacturing (producing goods from raw materials by hand or by machinery) operations of the business, if any, did not employ more than 20 persons, or the gross sales of the manufacturing business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal years.
- The services operations of the business, if any, did not employ more than 25 persons, or the gross sales of the service business did not exceed an average of \$2,500,000 in its most recently completed 3 fiscal years.
- The construction operations of the business, if any, did not employ more than 25 persons, or the gross sales of the construction business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal years.

Expedited Bill 3-09 would increase the minimum percentage each using department must award to certified local small businesses to 20% of the combined dollar value of eligible contracts during a fiscal year. Using departments are authorized to designate contract solicitations for bids or proposals only from certified local small businesses in order to meet this minimum. The Local Small Business Reserve Program (LSBRP) was established by Bill 23-04, effective January 1, 2006. Bill 23-04 provided that the law and the regulations expire on December 31, 2009. Expedited Bill 3-09 would take effect on the date on which it becomes law, which could occur during the current fiscal year. Bill 3-09, along with the law establishing the Program, would expire in the middle of FY10 unless the Council enacts a law extending the sunset date.

Although the original law charged the Department of Economic Development with administering the Program, the Executive Reorganization approved by the Council last year transferred this responsibility to the new Department of General Services.

The First 2 Years

The Local Small Business Reserve Program has operated for 2 full fiscal years. The Office of Business Relations and Compliance (OBR) of the Department of General Services (DGS) recently released a report on the FY08 results. See ©7-17. Code §11B-66(c) excludes the following types of contracts from the Program:

- (c) The total dollar value of procurements by a using department does not include:
 - (1) the value of any contract to which this Article does not apply because of a conflict with state or federal law or a grant requirement;
 - (2) a preexisting contract executed by the County;
 - (3) a non-competitive contract award made under Section 11B-14;
 - (4) a public entity or emergency procurement;
 - (5) any waiver made under Section 11B-67(f);

- (6) any procurement where no local small business is qualified or able to perform the contract; or
- (7) any single procurement that is estimated to exceed \$10 million.

The County awarded procurement contracts valued at approximately \$983.2 million in FY08.¹ The statutory exclusions reduced the total value of procurement contracts eligible for the Program to approximately \$78.7 million. County agencies met the goals of the Program in FY08 by awarding 14.25% of eligible contracts to local small businesses valued at approximately \$11.2 million. In FY07, County agencies awarded 21.4% of eligible contracts to local small businesses for an approximate value of \$11.2 million.

OLO Review

Bill 23-04 required the Office of Legislative Oversight (OLO) to begin a review of the Program within one year after implementation and report to the Council on its effectiveness. On August 21, 2006, OLO issued a Memorandum Report describing its plan to evaluate the Program in the future. See ©19. OLO plans to review data for a full 3 fiscal years and release a final report in September 2009.

T & E Committee Worksession

The T & E Committee held a worksession on Bill 3-09 on March 26, 2009. The Committee recommended (3-0) approval of the Bill with the following amendments:

1. Extend the sunset provision of the Bill to December 31, 2012.
2. Require the Director of DGS to approve a using department's decision that there are no LSB's available to perform work on a specific contract.

Issues

1. Should the minimum percentage each using department must award to certified local small businesses be increased from 10% to 20% of the combined dollar value of eligible contracts during a fiscal year?

The Executive's transmittal letter does not include an explanation for the 20% goal for awards to LSB's. The 21.4% obtained in FY07 and the 14.25% obtained in FY08 support an increase from the current 10% goal. Unfortunately, DGS does not currently have accurate statistics on the number of LSB's bidding on County contracts. The percent of LSB's available to bid on County contracts in the marketplace would be the best evidence of the appropriate goal for the program.² In January 2009, DGS instituted a mandatory vendor registration program that will help the department capture better statistics for the percent of LSB's awarded County

¹ DGS staff told Council staff that these dollar amounts may include payments made in FY08 for contracts awarded in earlier fiscal years.

² Unless a vendor voluntarily registers as a LSB, DGS does not currently know if a successful bidder is a LSB. Therefore, it is likely that the percent of LSB's receiving County contracts in FY07 & FY08 is higher than reported.

contracts. DGS staff indicates that they plan to implement a mandatory central bidder registration system that will improve on availability statistics for bidders.

The current law requires the Executive to adopt Method 2 regulations establishing the qualifications for LSB's. The current definition of LSB was established by regulation codified at COMCOR §§11B.65.01.01 *et seq.* The Executive has advertised proposed revisions to these regulations that would significantly increase the size of companies eligible to participate as LSB's. The Executive formally transmitted proposed Executive Regulation 2-09 to the Council for approval on March 26, 2009. A copy of is attached for your information at ©28-39. The number of LSB's in the local market for County contracts would likely increase if the maximum size of businesses eligible to participate as LSB's is increased. This increase in the number of eligible LSB's, our past experience of exceeding 10%, and the likelihood that more LSB's will be identified with our mandatory vendor registration system all support increasing the goal for LSB's. **Committee recommendation (3-0):** increase the goal from 10% to 20%.

2. Should the sunset for the LSBRP be extended beyond December 31, 2009?

The law establishing the LSBRP expires on December 31, 2009 unless the Council extends it. If the Council enacts Expedited Bill 3-09 and approves the Executive's amended regulations, the December 31, 2009 sunset should be extended to permit the newly revised Program a reasonable time to operate under the new rules. There is little reason to let the LSBRP sunset 6 months after making significant changes to it because we will not have sufficient data to evaluate the revised Program. The 3 year time period envisioned in the original law is a reasonable time period to evaluate the revised Program.

The law requires the Office of Legislative Oversight (OLO) to begin a review of the Program within one year after implementation and report to the Council on its effectiveness. On August 21, 2006, OLO issued a Memorandum Report describing its plan to evaluate the Program in the future. See ©19. OLO plans to review data for a full 3 fiscal years and release a final report in September 2009. If the Council extends the sunset for this law to December 31, 2012, the OLO report in September 2009 will be a review of the program as it existed for the first 3 years before the law was amended in Expedited Bill 3-09. **Committee recommendation (3-0):** Extend the sunset date for the law to December 31, 2012. See lines 23-29 of the attached Bill.

3. Should the Director of DGS be required to approve the using department's determination that there are no LSB's available to perform a contract?

DGS reported that \$285,503,848 or 30% of the dollars excluded from the LSBRP in FY08 was due to the using department deciding that no LSB vendor was qualified to perform the work. Under current law, this decision is made by the using department alone. Although the using department often has the best understanding of the relevant market, the using department's primary responsibility is to use the service or product to further the department's primary mission. DGS has the primary responsibility to reach out to LSB's and ensure they receive opportunities to compete for County contracts.

The exclusion of 30% of County contract dollars by deciding that there are no LSB's qualified to perform the work raises the possibility that some opportunities to include LSB's

have been missed under the current law. Amending the law to require that the using department's decision be approved by the Director of DGS would better balance the competing interests and may result in opening up greater opportunities for LSB's. **Committee recommendation (3-0):** require the Director of DGS to approve a using department's decision that there are no LSB's that can perform the work on a specific contract. See lines 21-22 in the attached Bill.

<u>This packet contains:</u>	<u>Circle #</u>
Expedited Bill 3-09	1
Legislative Request Report	4
County Executive Memo	5
Fiscal Impact Statement	6
DGS Report on the LSBRP for FY08	7
OLO Report dated August 21, 2006	19
Proposed Executive Regulation 2-09	28

Expedited Bill No. 3-09
Concerning: Local Small Business
Reserve Program - Amendments
Revised: April 14, 2009 Draft No. 2
Introduced: February 10, 2009
Expires: August 10, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: December 31, [[2009]]
2012
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- 1) amend the County's Local Small Business Reserve Program by increasing the minimum percentage of the combined dollar value of certain contracts that each using department must award to local small businesses; ~~[[and]]~~
- 2) extend the sunset date of the law to December 31, 2012; and
- 3) generally amend the County's Local Small Business Reserve Program.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-66

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 Section 11B-66 is amended as follows:

11B-66. Local Small Business Reserve Program.

- (a) Except as provided in Subsection (c), this Article applies to all procurements by a using department.
- (b) A using department’s procurement procedures must award a minimum of [10] 20 percent of the using department’s combined dollar value of contracts issued for goods, services, or construction to local small businesses, subject to method 2 regulations.
- (c) The total dollar value of procurements by a using department does not include:
 - (1) the value of any contract to which this Article does not apply because of a conflict with state or federal law or a grant requirement;
 - (2) a preexisting contract executed by the County;
 - (3) a non-competitive contract award made under Section 11B-14;
 - (4) a public entity or emergency procurement;
 - (5) any waiver made under Section 11B-67(f);
 - (6) any procurement where no local small business is qualified or able to perform the contract; or
 - (7) any single procurement that is estimated to exceed \$10 million.
- (d) A using department’s decision to exclude a procurement under Subsection (c)(6) must be approved by the Director.

Sec. 2. Section 3 of Chapter 3, Laws of Montgomery County of 2005 is amended as follows:

[[This Act takes effect no later than January 1, 2006.]] This Act and any regulations adopted under it expires on December 31, [[2009]] 2012. The Office of Legislative Oversight must begin a review of the Program one year after its

28 implementation begins and must report to the Council about the effectiveness of the
29 Program.

30 **Sec. 3. Expedited Effective Date.**

31 The Council declares that this legislation is necessary for the immediate
32 protection of the public interest. This Act takes effect on the date on which it
33 becomes law.

34 *Approved:*

35

Philip M. Andrews, President, County Council

Date

36 *Approved:*

37

Isiah Leggett, County Executive

Date

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

39

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 3-09

Local Small Business Reserve Program—Revisions

DESCRIPTION:	Provides revisions to the local small business reserve program to increase the minimum percentage of the combined dollar value of contracts that the using departments must award to local small businesses.
PROBLEM:	The current economic climate impacts local small businesses disproportionately to other businesses.
GOALS AND OBJECTIVES:	By increasing the percentage of contracts that must be awarded to local small businesses, the legislation will encourage greater participation in the program.
COORDINATION:	Department of General Services.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Not applicable.
SOURCE OF INFORMATION:	David E. Dise, Director, Department of General Services. Kenneth Taylor, Office of Business Relations and Compliance, DGS
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Not Applicable.

Bill



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

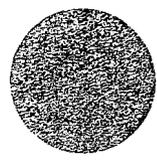
040272

kas -> MF
cc
SAF
kas -> LH
DD
AM
JF

Isiah Leggett
County Executive

MEMORANDUM

February 02, 2009



777-777-7777
11/11/09

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation – Local Small Business Reserve Program

I am attaching for the Council's consideration a bill which would amend the Local Small Business Reserve Program to increase the minimum percentage of the combined dollar value of contracts that departments must award to local small businesses. I am also attaching a Legislative Request Report and a Fiscal Impact Statement for the proposed bill.

This bill is one of four legislative proposals which I am submitting to Council today to implement the 11-point economic plan which I announced in December 2008. Each legislative proposal is designed to ease some of the difficulties experienced by local businesses as a result of the national economic downturn. The current economic climate impacts local small businesses disproportionately to other businesses. By increasing the percentage of contracts that must be awarded to local small businesses, this legislation will encourage greater participation in the program and help retain existing jobs and create opportunities for new jobs.

My 11-point economic plan included a proposal to provide an economic impact analysis for all legislative and regulatory changes which would analyze the impact of each proposed change on local businesses. We are in the process of completing an economic impact analysis for this bill and will forward it to Council in the near future. I look forward to working with Council as it considers this bill and my other three legislative proposals which provide opportunities for some measure of relief to our business community and residents.

IL:dg

Attachments (3)



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

January 13, 2009

TO: Phil Andrews, County Council President
FROM: Joseph F. Beach, Director, Office of Management and Budget
SUBJECT: Expedited BM XX – Local Small Business Reserve Program - Revisions

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The proposed legislation revises the Local Small Business Reserve Program (LSBRP) to increase the minimum percentage of the combined dollar value of contracts that using departments must award to local small businesses.

FISCAL SUMMARY

There will be no fiscal impact on County expenditures. Additional administrative burden on the Department of Procurement will be managed within existing resources.

Increasing the LSBRP goal from 10 to 20 percent has a potential economic value to the small business community of \$10 million annually. Directing County spending to local businesses will help sustain the County small business base and provide a healthier business environment during the current downturn in the economy.

Kenneth Taylor with the Department of General Services contributed to and concurred with this analysis.

JFB:brg

c: Tom Street, Assistant Chief Administrative Officer
Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Office of the County Executive
Kenneth Taylor, Department of General Services
Adam Damin, Office of Management and Budget
Brady Goldsmith, Office of Management and Budget

Office of the Director

6



**REPORT TO MONTGOMERY
COUNTY COUNCIL**

ON

LOCAL SMALL BUSINESS RESERVE PROGRAM

**PREPARED BY DEPARTMENT OF GENERAL SERVICES
OFFICE OF BUSINESS RELATIONS AND COMPLIANCE**

March 1, 2009

TABLE OF CONTENTS

	<u>Page</u>
I. Executive Summary	3
II. Background	4
III. ANALYSIS of FY08 DATA and PPROCURMENT ACTIVITES.....	5
• Table 1. Summary of Procurement Dollars	6
• Table 2. Summary of Procurement Transactions	6
• Table 3. Summary of Exempted Dollar Value	7
• Table 4. Procurements Executed with Non-LSBRP by Agency.....	7
• Table 5. Procurements Executed with Non-LSBRP and Transaction.....	8
• Table 6. LSBRP Procurements and Transactions by Agencies.....	9
IV. ISSUES and RECOMMENDATIONS.....	10

I. EXECUTIVE SUMMARY

On January 1, 2006, Montgomery County launched its Local Small Business Reserve Program – LSBRP, the Program. Under the enabling Montgomery County legislation, County agencies must award a minimum of 10% of their available procurement dollars to local small businesses. The intent of the Program is to foster the growth of County-based small businesses by increasing their procurement opportunities with the County.

On July 1, 2008, the Local Small Business Reserve Program (LSBRP), formerly located in the Department of Economic Development (DED) was transferred to the Department of General Services (DGS) as a result of the reorganization of the Department of Public Works and Transportation (DPWT). The LSBRP is one of four programs located in the DGS Office of Business Relations and Compliance (OBRC). The LSBRP senior support staff remained with DED and technology support for the programs internet based management system remained in the Department of Technology Services. The Local, Small Business Reserve Program's effectiveness was impacted during the transition that occurred at the beginning of FY 08. Several employees responsible for data management were transferred, reassigned or accepted buyouts on July 1, 2009.

Fiscal Year 08 was the second full year of operation for the LSBRP. Both a declining economy and a County savings plan impacted department's ability to maximize their expenditures.

- However, the countywide departmental payments to LSBRP vendors remained at \$11 million equal to the prior fiscal year, accounting for 14% of procurement dollars available to vendors. The County met the program goal for the second consecutive full year of operation.
- \$285,503,848 or 30 % of the LSBRP's exempted dollars was due a determination of "No LSBRP Vendor Deemed Qualified by Using Department." This is also the most complained about issue by businesses.
- As of June 30, 2008, over 500 businesses were registered in the LSBRP.

Local businesses are the life's blood of the both local and national economies. As the report indicates leveling the playing field is the most important action the County can undertake at this critical business juncture. Small business invests substantially through taxes, payrolls and contributions to the community. As stated in the report governmental artificial barriers improperly placed on small businesses numerous prohibitive regulations. Open access and opportunity to the County market place is a goal worth pursuing vigorously.

Reducing the need for multiple certifications in order to do business is one of many important steps to be taken. The Central Vendor Registration System (CVRS) is an excellent new service appreciated by businesses. Small business reciprocal certification could be the next step for the County to offer businesses.

The County has a tremendous amount of work to be contracted. Work is preferred to credit because the dollar has a much higher payout. Departmentally, the County could expose local businesses to millions of dollars in work. However, in order for opportunity to be realized contracts must be unbundled and legacy business relations must be examined. The commitment of prime contractors to subcontractors must be monitored and enforced through compliance. Procurement goals need to re-examined and adjusted to meet current economic conditions. There is much to be done to maintain the viability, sustainability and survivability of small business during the current economic down turn.

II. BACKGROUND

In April 2005, the Montgomery County Council enacted a law to establish a Local Small Business Reserve Program (LSBRP, or the Program). On December 13, 2005, the County Council passed the Executive Regulation specifying legislative parameters regarding program implementation. Effective January 1st, 2006, all County agencies were required to contract 10% of their procurement dollars with eligible small businesses located in Montgomery County. The law will sunset on December 31, 2009, unless re-enacted by the County Council.

The goal of the LSBRP is to enhance the competitiveness of and increase economic opportunities for Montgomery County small businesses. Specifically, it allows them to bid on select County procurements without competing with larger, more established companies. By increasing the portion of public procurement dollars that go to local small businesses, the Program will help create new employment opportunities, increase income and spending, and generate greater tax revenues to support County services and capital investments.

Effective July 1, 2008, the Local Small Business Reserve Program was transferred from the Department of Economic Development (DED) and now resides in the Department of General Services, Office of Business Relations and Compliance (OBRC). DED continues to host the programs two websites, one for vendor use (public website) and the other for use by contract administrators (ADMIN website), and reporting the results to Council each year. The DGS coordinates closely with the business community in order to market the Program and improve the services provided.

For its part, each agency is responsible for complying with Program regulations, meeting its departmental 10% requirement and providing DGS with data for its annual report to the Council. Agencies use the ADMIN website to ascertain available vendors, check vendor certification, and record LSBRP procurement activity as well as using it as an overall information warehouse for procurement activity.

Any local businesses that meet the eligibility requirements based on size and ownership can register for the Program on the public website. In addition, a business is required to renew their registration every year and notify DGS immediately of any change in the firm's location, size, and ownership status.

The Office of Legislative Oversight serves as the County Council's assessment arm and closely coordinates with DGS as to program evaluation. The County Council sets the program structure and conducts annual Program review through legislative directive and through the activities of the Office of Legislative Oversight.

ANALYSIS OF FY08 DATA AND PROCUREMENT ACTIVITIES

This report is presented in a format that provides comparative data for analysis of FY 07 and FY 08. The two years represents full data collection for both years. Some relational data has been combined into one chart to provide an opportunity to fully evaluate the impact one statistic has on another.

	FY 07	FY 08
Has the County met the Local Small Business Reserve Program (LSBRP) requirement?	Yes	Yes
Percentage of County agencies' available procurement dollars awarded to local small businesses	21.40%	14.25%
Number of procurement transactions awarded to local small businesses	433	404
Value of procurement dollars awarded to local small businesses	\$11,482,588	\$11, 821,022

Summary of Procurement Dollars

The total dollars available to the LSBRP was nearly, \$79,000,000 in FY 08 and represented an increase of 2.17 % over FY 07. However the amount of dollars received by the LSBRP vendors remained equal to that spent in FY 07, \$11,000,000. Exempted procurements are one reason LSBRP expenditures have not grown at a faster rate.

Table 1. Summary of Procurement Dollars

Summary of Procurement Dollars					
	FY07		FY08		Percentage of Change from FY07 to FY08 +/-
	Dollar Value	Percentage of Total Procurement Dollars	Dollar Value	Percentage of Total Procurement Dollars	
Total Procurement Dollars	\$1,018,899,470.42		\$983,293,045.04		
Non Exempt Procurement Transactions					
Awarded to Non-LSBRP Vendors	\$47,804,958.78	4.70%	\$67,044,356.91	6.82%	2.12%
Awarded to LSBRP Vendors	\$11,250,678.93	1.11%	\$11,216,319.35	1.14%	0.03%
Advertised LSBRP Solicitation and Awarded LSBRP	\$142,152.00	0.02%	\$371,507.16	0.04%	0.02%
Advertised LSBRP, but Re-advertised Open Solicitation	\$137,000.00	0.01%	\$14,999.00	0.01%	0.00%
Under \$5,000 solicitation, awarded LSBRP	\$58,851.54	0.01%	\$55,871.84	0.01%	0.00%
Total	\$59,393,641.25	5.85%	\$78,703,054.26	8.02%	2.17%

Table 1. Summary of Procurement Dollars (Cont'd)

Summary of Procurement Dollars					
	FY07		FY08		Percentage of Change from FY07 to FY08 +/-
	Dollar Value	Percentage of Total Procurement Dollars	Dollar Value	Percentage of Total Procurement Dollars	
Total Procurement Dollars	\$1,018,899,470.42		\$983,293,045.04		
Exempt Procurement Transactions					
Pre-existing Contract	\$407,966,907.78	40.04%	\$381,230,578.72	38.77%	-1.27%
No LSBRP Vendor Deemed Qualified by Using Department	\$283,869,534.34	27.86%	\$285,459,688.22	29.03%	1.17%
Non-competitive Contract	\$116,950,151.00	11.48%	\$131,646,041.88	13.39%	1.91%
Public Entity or Emergency Procurement	\$107,553,816.36	10.56%	\$32,292,236.05	3.29%	-7.27%
Conflicts with a State, Federal, or Local Law or a Grant Requirement	\$37,750,031.89	3.94%	\$46,330,515.91	4.72%	0.78%
Chief Administrative Officer (CAO) Waiver	\$5,189,047.85	0.51%	\$2,168,665.00	0.22%	-0.29%
Procurement exceeds \$10 million	\$226,339.95	0.03%	\$25,462,265.00	2.59%	2.56%
Total	\$959,505,829.17	94.42%	\$904,589,990.78	92.01%	-2.41%

Table 2. Summary of Procurement Transactions

	FY07		FY08		Percentage of Change from FY07 to FY08 +/-
	Procurement Transactions	Percentage of Total Procurement Transactions	Procurement Transactions	Percentage of Total Procurement Transactions	
Total Procurement Transactions	11388		11221		
Non Exempt Procurement Transactions					
Awarded to Non-LSBRP Vendors	703	62%	867	69%	7.00%
Awarded to LSBRP Vendors	216	18%	170	13%	-4.58%
Advertised LSBRP Solicitation and Awarded LSBRP	5	0%	14	0%	-0.32%
Advertised LSBRP, but Re-advertised Open Solicitation	2	0%	1	0%	-0.10%
Under \$5,000 solicitation, awarded LSBRP	210	19%	214	17%	-2.10%
Total	1136	100%	1266	100%	-0.10%
Exempt Procurement Transactions					
Pre-existing Contract	2037	20%	1252	13%	-7.43%
No LSBRP Vendor Deemed Qualified by Using Department	6297	61%	6398	64%	2.84%
Non-competitive Contract	1060	10%	1403	14%	3.76%
Public Entity or Emergency Procurement	257	3%	188	2%	-0.62%
Conflicts with a State, Federal, or Local Law or a Grant Requirement	537	5%	694	7%	1.74%
Chief Administrative Officer (CAO) Waiver	63	1%	15	0%	-0.46%
Procurement exceeds \$10 million	1	0%	5	0%	0.05%
Total	10252	100%	9955	100%	-0.12%

Exempted Dollar Value

Exemptions account for more than 90% of the total procurement dollars not avail for the LSBRP. A large number of exemptions are warranted because many County's procurements exceed the capabilities of small vendors. Capital construction projects, large direct purchases, manufactured goods, cooperative purchases; pre-existing and non-competitive contracts are the reason these procurements are beyond the capacities of LSBRP vendors. Most exemptions are based upon objective criteria. However, the category "No LSBRP Vendor Deemed Qualified by Using Department" is subjective and accounts for \$283,000,000 or 30% of the total exemptions. It is the single category most objectionable to vendors and accounts for the greatest number of business complaints.

Table 3. Summary of Exempted Dollar Value

Exemption Provision	Dollar Value		Percentage of Total Exempt Procurement Dollars		Number of Procurement Transactions	
	FY07	FY08	FY07	FY08	FY07	FY08
Pre-existing Contract	\$394,778,937	\$381,230,578	41.80%	42.15%	1,968	1252
No LSBRP Vendor Deemed Qualified by Using Department	\$283,541,174	\$285,503,848	30.00%	31.57%	6,291	6400
Non-competitive Contract	\$116,516,270	\$131,646,041	12.30%	14.56%	1,053	1403
Public Entity or Emergency Procurement	\$105,992,688	\$32,292,236	11.20%	3.57%	253	188
Conflicts with a State, Federal, or Local Law or a Grant Requirement	\$37,610,817	\$46,330,515	4.00%	5.13%	535	694
Chief Administrative Officer (CAO) Waiver	\$5,189,048	\$2,124,505	0.50%	0.20%	63	13
Procurement exceeds \$10 million	\$226,340	\$25,462,265	0.02%	2.82%	1	5
Total	\$943,855,274	\$904,589,988	100%	100%	10,164	9955

Non-LSBRP Vendors by Agency

The total procurement dollars spent by agencies with Non-LSBRP Vendors grew to \$66,122,000 in FY08 and represented an increase of 63% over FY07. Many of the Non-LSBRP vendors would qualify for the program if actively recruited. Many of the Non-LSBRP contracting expenditures involve professional and medical services, architectural/engineering and a variety of trade related occupations.

Table 4. Procurements Executed with Non-LSBRP Vendors by Agency

Agency	FY07		FY08		Percentage of Change from FY07 to FY08 +/-
	Dollar Value	Percentage of Total Procurement Dollars	Dollar Value	Percentage of Total Procurement Dollars	
Department of Public Works and Transportation	\$20,589,216	50%	\$34,537,097	53%	3%
Department of Health and Human Services	\$3,678,114	9%	\$13,701,384	22%	13%
Department of Recreation	\$9,290,320	22%	\$10,583,012	17%	-5%
Department of Environmental Protection	\$524,999	1.3%	\$2,231,392	3.4%	2%
Department of Police	\$437,422	1.04%	\$1,745,052	3%	2%
Department of Correction and Rehabilitation	\$2,759,145	7%	\$1,398,495	3%	-4%
Regional Services Center	\$523,410	1.24%	\$611,587	1%	0%
Montgomery County Public Libraries	\$181,891	0.43%	\$539,547	1%	1%
Office of Public Information	\$130,590	3%	\$275,775	0.41%	-3%
Office of Human Resources	\$1,621,521	4%	\$222,393	0.33%	-4%
Board of Elections	\$137,504	0.3%	\$153,117	0.23%	0%
Department of Finance	\$1,282,330	3%	\$53,000	0.08%	-3%
Office of Management and Budget	\$19,630	0.04%	\$36,939	0.05%	0%
Department of Economic Development	\$64,999	0.2%	\$17,900	0.02%	0%
Office of the County Sheriff	\$667,852	2%	\$15,000	0.02%	-2%
Office of the County Council	\$28,500	0.1%	\$0	0%	0%
Department of Permitting Services	\$19,065	0.04%	\$0	0%	0%
Office of Zoning and Administrative Hearings	\$6,000	0.01%	\$0	0%	0%
Total	\$41,962,508	100%	\$66,121,690	100%	63%

Table 5. Procurements Executed with Non-LSBRP Vendors by Transaction

Procurements Executed with Non-LSBRP Vendors by Transaction					
Agency	FY07		FY08		Percentage of Change from FY07 to FY08 +/-
	Procurement Transactions	Percentage of Total Procurement Transactions	Procurement Transactions	Percentage of Total Procurement Transactions	
Department of Public Works and Transportation	304	45%	375	42%	-3%
Department of Health and Human Services	59	9%	94	10%	2%
Department of Recreation	124	18%	205	23%	5%
Department of Environmental Protection	2	0%	7	1%	0%
Department of Police	18	3%	57	6%	4%
Department of Correction and Rehabilitation	63	9%	40	4%	-5%
Regional Services Center	16	2%	22	2%	0%
Montgomery County Public Libraries	9	1%	12	1%	0%
Office of Public Information	3	0%	8	1%	0%
Office of Human Resources	29	4%	10	1%	-3%
Board of Elections	2	0%	11	1%	1%
Department of Finance	24	4%	53	6%	2%
Office of Management and Budget	1	0%	1	0%	0%
Department of Economic Development	3	0%	1	0%	0%
Office of the County Sheriff	13	2%	1	0%	-2%
Office of the County Council	2	0%	0	0%	0%
Department of Permitting Services	3	0%	0	0%	0%
Office of Zoning and Administrative Hearings	1	0%	0	0%	0%
Total	676	100%	897	100%	63%

FY08 LSBRP Procurements

In FY08, a total of 397 procurement transactions were awarded to local small businesses. These procurements represent \$12,408,302 in contract dollars. The Department of Public Works and Transportation and the Department of Recreation awarded majority of procurement dollars that went to LSBRP vendors.

Table 6. LSBRP Procurements and Transactions by Agencies

Agency	Dollars Awarded LSBRP Vendors		Transactions		Percentage of Change from FY07 to FY08 +/-
	FY07	FY08	FY07	FY08	
Department of Public Works and Transportation	\$6,069,198	\$5,185,191	95	83	-15%
Department of Recreation	\$1,976,698	\$2,355,980	47	34	16%
Department of Homeland Security	\$667,196	\$116,624	11	4	-83%
Department of Health and Human Services	\$635,940	\$1,002,061	28	18	37%
Department of Environmental Protection	\$613,000	\$1,826,228	2	20	66%
Department of Correction and Rehabilitation	\$437,221	\$270,900	6	4	-38%
Office of the County Sheriff	\$413,250	\$169,825	7	5	-59%
Department of Finance	\$160,000	\$75,964	3	3	-53%
Office of the County Council	\$99,999	\$84,500	4	3	89%
Department of Housing and Community Affairs	\$80,465	\$0	3	0	-100%
Montgomery County Fire and Rescue Service	\$57,194	\$97,791	1	4	42%
Department of Police	\$49,755	\$250,526	2	209	18%
Office of Public Information	\$46,054	\$25,000	2	1	-46%
Department of Economic Development	\$37,612	\$122,632	2	4	70%
Department of Technology Services	\$21,154	\$0	2	0	-100%
Montgomery County Public Libraries	\$20,365	\$18,998	3	3	-7%
Office of Human Resources	\$12,240	\$45,582	2	2	97%
Office of Community Use of Public Facilities	\$10,285	\$0	1	0	-100%
Mid-County Regional Services Center	\$8,570	\$0	1	0	-100%
Office of the County Executive	\$7,540	\$0	1	0	-100%
Circuit Court	\$0	\$62,081	0	1	100%
Department of Liquor Control	\$0	\$77,000	0	2	100%
Department of Permitting Services	\$0	\$9,140	0	3	100%
Office of Management and Budget	\$0	\$24,999	0	1	100%
Total	\$11,423,736	\$11,821,022	223	404	8%

IV. ISSUES AND RECOMMENDATIONS

A. ISSUES Proposed Actions to be taken in FY09

The LSBRP has demonstrated consistent performance in the face of economic challenges. The best way to mitigate the challenges is to act aggressively and not to fall victim to status quo thinking and business practices. Increasing small business prosperity during an economic downturn and a reduction in County spending will require hard work and innovative thinking and programming.

The Office of Business Relations and Compliance has identified several future initiatives to stimulate small business growth in the LSBRP. It is very important for the county be viewed as a valued resource to small businesses. .

Proposed Actions:

Targeted Outreach, Business Alliances, and Advocacy:

- Review large contracts to identify unbundling opportunities.
- Schedule meetings with businesses and associations (professional and trade) to assist them in preparing for the new opportunities.
- Schedule Matchmaking opportunities for local vendors and area prime contractors.
- Targeted recruitments for up the coming solicitations.
- Small Business Training on a variety of topics including:
 - ▶ How To Do Business with the County
 - ▶ Selecting the Correct Commodity Codes
 - ▶ Meet the Department Heads, Buyers or Contract Administrators
- Use the County's contracting leverage to encourage large prime contractors seek to develop subcontracting or mentoring opportunities with LSBRP fully certified vendors.
- Develop a vendor-friendly, reliable procurement-forecasting tool.
- Conduct departmental forums with vendors to explain how the contracting process works for each business type of business.
- Develop and publish predictable procurement solicitation schedules.
- Provide periodic networking opportunities for businesses.

B. Legislative, Regulatory and Administrative Procedures Review

Small businesses face many artificial barriers as a result of regulatory criteria designed to prevent problems for dealing with much larger businesses. Some of the barriers include standard boilerplate language, insurance, bonding, and compliance issues. In many instances the small business owner must bear the added expense and lost productivity of duplicative solicitation requirements.

Proposed Actions:

Many eligible professionals chose not to register because it is time consuming and there is no guarantee of a likely contract:

- Allow full certification at the point of intake for businesses with the required documentation.
- Providing full certification at intake facilitate faster contracting.
- Encourage departments to use the open solicitation and multiple contract awards to reduce the administrative burden.
- Develop reciprocal partnerships with other governmental agencies and private organizations. Obtaining multiple certifications is expensive and time consuming for small businesses.
- Legislation and regulatory reviews must be conducted to streamline the procurement.

C. Site Visits, Meetings & Referrals

The LSBRP in order to attract and retain vendors must be seen as an avenue to business vitality and sustainability. The current hostile business climate has forced business to seek out governmental opportunities. Therefore, the LSBRP strategic business plan must be modified to meet the small business community proactively.

Proposed Actions:

Provide more effective outreach and interactive opportunities:

- Familiarize businesses with the County way of conducting business.
- Meet with small business owners on a regular basis. The meetings help to update information, learn about business needs, and allow owners to acquire knowledge.
- Meet with businesses at their location or where they gather.
- Participate in local trade and professional meetings.
- Facilitate meaningful business interactions for LSBRP vendors with the County and private sector businesses.
- Provide information on navigating the certification, vendor registration, licensing, and other processes.
- Assist the county's contract administrators and businesses in a timely, professional and quantifiable manner.
- Identify and recruit prospective vendors from outreach initiatives and referrals into the program.

MEMORANDUM

March 18, 2009

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Karen Orlansky^{KO}, Director
Office of Legislative Oversight

SUBJECT: **Mandated Evaluation of the Local Small Business Reserve Program**

This memorandum provides information on the current legal requirement for the Office of Legislative Oversight (OLO) to evaluate the Local Small Business Reserve Program (LSBRP). As the Council considers the changes to the LSBRP, as proposed in Expedited Bill 3-09, staff recommends the Council simultaneously revisit the evaluation requirement.

Background

The legislation that established the LSBRP (Bill 23-04) included a statutory requirement that OLO evaluate the LSBRP before the program's current sunset date of December 31, 2009. In preparation for this evaluation, OLO submitted a memorandum report to the Council in August 2006 that outlined a proposed scope of OLO's study, with an anticipated completion in the fall of 2009. To meet this deadline, OLO's FY09 Work Program, as approved by the Council last July, includes a project to begin work on the LSBRP evaluation before the end of FY09.

OLO's August 2006 memorandum report to the Council on the LSBRP is attached (©1-8). The excerpt from OLO's FY09 Work Program addressing the LSBRP evaluation is at ©9.

Staff Recommendation

The current requirement for OLO to conduct an evaluation of the LSBRP was linked to the initial program design and sunset date of December 31, 2009. If the Council approves changes to the structure of the LSBRP, and especially if these changes include a revised sunset date, then staff recommends the Council also revisit the mandated evaluation requirement. In particular, staff recommends the Council amend the due date of OLO's program evaluation to coincide with the revised expiration date of the LSBRP.

Attachments:

- OLO Memorandum Report 2006-9, Planning for the Legally-Required Evaluation of the Local Small Business Reserve Program
- Excerpt from Council Resolution 16-673, FY09 OLO Work Program



MEMORANDUM REPORT

August 21, 2006

TO: County Council

FROM: Craig Howard^{CA}, Legislative Analyst
Leslie Rubin^{LR}, Legislative Analyst
Office of Legislative Oversight

SUBJECT: OLO Memorandum Report 2006-9: *Planning for the Legally-Required Evaluation of the Local Small Business Reserve Program*

In April 2005, the Council enacted legislation that established Montgomery County's Local Small Business Reserve Program (LSBRP or Program). The law requires that the Office of Legislative Oversight (OLO) begin a review of the LSBRP one year after implementation of the program begins, and report to the Council on the effectiveness of the program. By law, unless the Council affirmatively acts to extend the program, the LSBRP expires on December 31, 2009.

This memorandum report updates the Council on OLO's planning efforts related to the future evaluation of LSBRP. It is organized into four sections as follows:

Part A, Overview of Assignment and Legislative Intent of Program , describes the origin of the Local Small Business Reserve Program and OLO's evaluation responsibilities.	Page 2
Part B, Program Implementation to Date , summarizes the steps taken to date by the County Government to implement the LSBRP.	Page 3
Part C, Parameters of the Future Program Evaluation , discusses anticipated components and limitations of the LSBRP evaluation.	Page 6
Part D, Next Steps , describes OLO's recommended next steps related to the future LSBRP evaluation.	Page 7

Office of Legislative Oversight

100 Maryland Avenue, Rockville, Maryland 20850, 240/777-7990, FAX 240/777-7879

Printed on Recycled Paper



PART A. OVERVIEW OF ASSIGNMENT AND LEGISLATIVE INTENT OF PROGRAM

On April 12, 2005, the Montgomery County Council enacted Bill #23-04, *Contracts and Procurement – Local Small Business Reserve Program*. The County Executive signed the bill into law on April 25, 2005. The legislation and Executive Regulations (approved by the Council under Method 2) to implement the program went into effect on January 1, 2006.

The legislation mandates that “the Office of Legislative Oversight must begin a review of the Program one year after its implementation begins and must report to the Council about the effectiveness of the program.” Unless the Council affirmatively acts to extend the program, the LSBRP and Regulations both expire on December 31, 2009.

The legislation also mandates that, by November 30 each year, the Director of the Department of Economic Development (DED) must report to the Council on the Program. This report must include:

- The number, type, and dollar amount of contracts awarded under the Program during the preceding fiscal year;
- The number, type, and dollar amount of each waiver pertaining from the Program granted by a department director or the Chief Administrative Officer;
- Information about how these numbers have changed from the preceding fiscal year; and
- The extent of outreach efforts by DED.¹

As summarized by Council staff in the final worksession packet on Bill #23-04, the Council’s legislative intent in establishing the LSBRP is to “. . . enhance the competitiveness of County-based small businesses by creating a separate defined market in which small businesses will compete against each other, not against larger firms, for County contracts; broaden the pool of local small vendors doing business with the County, and encourage the County’s economic growth by enhancing the business climate for local small businesses.”²

The Local Small Business Reserve Program Regulation defines a “local small business” as one that:

- Is independently owned and operated;
- Is not a subsidiary of another business;
- Generates a significant amount of economic activity in the County; and
- Meets the criteria, size, and gross sales amounts found in the Regulation.³

¹ Montgomery County Code § 11B-69(b); Montgomery County Executive Regulations 21-05AM § 5(i)(d).

² April 12, 2005 County Council Worksession Packet : *Agenda Item #8, Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program*, pg. 2

³ Montgomery County Code § 11B-65(c); Montgomery County Executive Regulations 21-05AM § 2(i).

The Regulation further defines a local small business by establishing limits: 1) on the number of employees in a business *or* 2) on the average gross sales of the business over three fiscal years. The size and sales limits, as outlined in Regulation, differ for businesses based on five business types: wholesale, retail, manufacturing, services, or construction operations.⁴

The Local Small Business Reserve Program (LSBRP or Program) has two primary components. The first component requires each County department to award at least 10 percent of the department's eligible contracts for goods, services, or construction to local small businesses.⁵ The second requires County departments to post each planned purchase valued between \$5,000 to \$25,000 on a County web site for five days before making a purchase or entering into a contract.⁶

PART B. OVERVIEW OF PROGRAM IMPLEMENTATION

As of August 2006, the Department of Economic Development (DED) has taken a series of steps to implement the Local Small Business Reserve Program. This section provides a brief overview of DED's efforts, which include:

- Developing Internet and intranet sites for the LSBRP, working in conjunction with the Department of Technology Services;
- Educating and working with County staff across the department to meet the requirements of the Program;
- Providing outreach about the Program to businesses and Chambers of Commerce in the community; and
- Assisting businesses to register and become certified for the Program.

This section also describes DED's staffing and funding for the Program and OLO's actions with regard to evaluation planning.

Development of LSBRP Web Sites. As part of the LSBRP implementation, DED and DTS developed two web sites: an Internet web site where small businesses can register for the Program; and an intranet web site for County departments to administer, record, and track LSBRP activities. Businesses began registering on the Internet web site in January 2006; the intranet web site went live on March 6, 2006.

⁴ If a business engages in more than one type of operation, the combined business operations must fall within the size or sales criteria limits of the operation with the higher limits. Montgomery County Executive Regulations 21-05AM § 3(g).

⁵ Montgomery County Code § 11B-66.

⁶ Montgomery County Executive Regulations 21-05AM § 5(h)(ii)(d).

The Internet website serves four primary functions. It:

- Provides an overview of the Program, including eligibility criteria;
- Allows businesses to register for the Program;
- Provides contact data for registered businesses and their commodity/service category in order to facilitate networking; and
- Provides a link to the Office of Procurement web site where all County solicitations are posted. The Office of Procurement's web site identifies when a procurement is restricted to LSBRP-eligible vendors.

Web site users can search for vendors by: commodity/service provided; name; address; or business type (wholesale, retail, manufacturing, service, or construction). Businesses registering on the web site are asked a series of questions to determine whether they meet the criteria for a local small business. If they do not meet the criteria, they cannot complete the registration.

The intranet web site serves several informational and administrative functions for County departments. It:

- Provides information about the Program and describes departmental responsibilities under the LSBRP;
- Allows departments to search LSBRP-registered vendors by commodity and other categories to determine whether a sufficient number of vendors exist to designate a solicitation as part of the LSBRP;
- Allows departments to input and track information on procurements or other purchases in excess of \$5,000 (required) and under \$5,000 (optional), including whether the procurement was awarded to a business qualifying as a LSBRP; and
- Provides a reporting function that allows departments to easily summarize data on the type, amount, and LSBRP status of contracts issued each year in accordance with the Executive Regulation and County Code requirements.

Educating Departments about Program Requirements. Between January and August 2006, DED held seven training and feedback sessions attended by department Contract Administrators. During these sessions, DED staff:

- Explained requirements for complying with the Program;
- Discussed how to use the Internet and intranet web sites;
- Reviewed outreach efforts DED is making to the business community; and
- Obtained feedback on the intranet web site and other Program issues.

Because the Program began in the middle of FY06, DED wanted to allow departments to get used to the program requirements. As a result, DED required departments to show "good faith" efforts to comply with the Program requirements in FY06 and will require departments to meet the 10 percent LSBRP procurement standard beginning in FY07.

DED Outreach to the Local Small Business Community. DED reports conducting the following outreach activities for local small businesses as of August 2006:

- Gave presentations to over 360 individuals at 11 meetings hosted by various business organizations in the County;
- Attended 12 procurement fairs;
- Published 20 advertisements for the LSBRP in the Financial Gazette and other business journals;
- Developed promotional materials and distributed them to the Chambers of Commerce and Montgomery County libraries;
- Participated in two cable television programs that focused on the LSBRP;
- Provided training to Montgomery County librarians who assist business owners register for the LSBRP; and
- Developed plans to publish a newsletter for vendors starting in September 2006.

Certification of Businesses for Participation in LSBRP. When businesses register on the DED web site, they self-certify that they meet the requirements for a local small business. Businesses must annually renew their self-certification. Before a County department recommends a business for a LSBRP contract award, the business must submit documentation to DED verifying that it meets the criteria for a local small business. If it meets the local small business criteria, DED will certify the business for participation in the LSBRP and the business is eligible to receive the contract award.

As of August 4, 2006, 490 businesses are registered for the Program on the DED Internet web site. Also, as of early August, DED had verified the eligibility of eight businesses to receive contract awards under the Program.

Staffing and Funding. The Council appropriated FY06 funding to the Department of Economic Development for the following items associated with start-up of the Local Small Business Reserve Program:

\$ 80,000	Salary and benefits for a Program Manager (0.9 Workyear)
\$ 50,000	Information Technology contract services
<u>\$100,000</u>	Operating expenses
\$230,000	FY06 Total

In the FY07 approved budget, funding for the Local Small Business Reserve Program includes the addition of three workyears (WYs) – an IT Specialist, a Business Development Specialist, and an Office Services Coordinator – as well as annualization of the Program Manager position. The Council lapsed each of the three new positions by a 0.2 WY (for a total lapse calculation of a 0.6 WY).

As a result, DED’s FY07 approved funding associated with the Local Small Business Reserve Program is:

\$288,469	Salaries and benefits for 3.4 Workyears
<u>\$ 66,000</u>	Operating expenses
\$354,469	FY07 Total

In addition, in FY07 the Council approved the Office of Procurement's request to expand a part-time Program Manager position to a full-time position related to implementing the Local Small Business Reserve Program. The additional personnel cost in FY07 to make the position full-time is \$41,580. According to the Office of Procurement, this position expansion was needed to:

“ . . . ensure that living wage and [LSBRP] certification does not conflict with current procurement regulations; provide assistance to using departments regarding procurement rules related to the [LSBRP] requirements; and provide liaison services to ensure that using departments encumber appropriate funding to meet the [LSBRP] dollar limit.”⁷

Office of Legislative Oversight's Actions. OLO staff attended several meetings and briefings related to the development and implementation of the Local Small Business Reserve Program. In particular, OLO staff provided feedback to DED and DTS staff on the design of the Intranet Local Small Business Reserve Program Monitoring Database. OLO's participation to date was focused on ensuring that the database captured the information that will be needed for the future evaluation of the LSBRP.

At DED's request, OLO will be assisting DED develop a survey that DED will distribute to department staff and registered small businesses. The survey will be designed to gauge initial assessments of the Program's implementation, opinions on information received about the Program, and feedback on the form and content of the LSBRP web sites.

PART C. PARAMETERS OF THE FUTURE PROGRAM EVALUATION

The stated legislative intent of the Local Small Business Reserve Program is to “. . . enhance the competitiveness of County-based small businesses by creating a separate defined market in which small businesses will compete against each other, not against larger firms, for County contracts; broaden the pool of local small vendors doing business with the County, and encourage the County's economic growth by enhancing the business climate for local small businesses.”⁸ Based on the data DED will be collecting, OLO's evaluation of the LSBRP will be able to examine indicators of program effectiveness since the Program's implementation. In particular, OLO's evaluation will examine:

- Annual trends in opportunities for small businesses since implementation of the Program, both in terms of total procurement dollars received and percent of total procurements received;
- Annual small business procurement trends by commodity/service provided and by business type;

⁷ May 9, 2006 County Council Worksession Packet: *Agenda Item #29, FY07 Operating Budget – Office of Procurement*, p.4.

⁸ April 12, 2005 County Council Worksession Packet : *Agenda Item #8, Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program*, pg. 2

- Whether County departments have awarded 10 percent of their eligible contracts to local small businesses;
- Reasons using departments did not meet the 10 percent requirement, if applicable;
- Annual number, value, and types of procurements exempt from the Program;
- Qualitative feedback from County staff on the strengths and weaknesses of the Program; and
- Qualitative feedback from registered businesses on the strengths and weaknesses of the Program.

The absence of baseline data and its implications for OLO’s evaluation. A future evaluation will not be able to compare data on small business opportunities before implementation of the LSBRP with data on opportunities after implementation of the LSBRP. As noted previously, a business must meet specific requirements related to both size and sales to qualify as a “small business” under the Program. According to the Office of Procurement, no County department recorded this size and sales data for businesses receiving County procurements before implementation of this Program.

From a program evaluation perspective, this means that no baseline data are available on small businesses (as defined by the LSBRP) that received County procurement dollars before the implementation of the Program. As a result, an LSBRP evaluation will only be able to analyze the expansion of opportunities for local small businesses during each year after the Program was initially implemented.

LSBRP Database. The data DED is collecting for the LSBRP will allow OLO to examine trends since implementation of the program. DED’s Local Small Business Reserve Program’s monitoring database is set up to indicate, for each department transaction over \$5,000, whether:

- The procurement was designated as an LSBRP-restricted contract and was awarded to an LSBRP vendor;
- The procurement was not designated as an LSBRP-restricted contract but was awarded to an LSBRP vendor;
- The procurement was not designated as an LSBRP-restricted contract, was not awarded to an LSBRP vendor, and was not exempt from the LSBRP;
- The procurement was designated as an LSBRP-restricted contract but was not awarded to an LSBRP vendor due to a lack of responses; or
- The contract or transaction was exempt under the LSBRP regulations and the reason why.⁹

While this information is required for all transactions over \$5,000, departments can enter the same information for transactions under \$5,000. Transactions under the \$5,000 threshold that go to LSBRP vendors count towards a department’s 10 percent requirement.

⁹ The exemption categories in the LSBRP database are: 1) conflict with a State, federal, or local law or a grant requirement; 2) preexisting contract; 3) non-competitive contract; 4) emergency procurement; 5) waiver granted by the CAO; 6) no Local Small Business is qualified or able to perform the contract as determined by the head of the Using Department; and 7) procurement exceeds \$10 million.

PART D. NEXT STEPS

This section details three recommended “next steps” related to OLO’s Local Small Business Reserve Program evaluation planning.

- **OLO recommends the target date for a completed evaluation of the Local Small Business Reserve Program be September 2009.**

The Local Small Business Reserve Program’s enabling legislation mandates that “the Office of Legislative Oversight must begin a review of the Program one year after its implementation begins and must report to the Council about the effectiveness of the program.” OLO recommends that it provide the Council with its final evaluation report in September of 2009.

By that time, the County will have three years of data from the LSBRP. This time frame will allow OLO to conduct a comprehensive evaluation of the Program, based on three years of program data and trends. Additionally, Office of Procurement staff report that many County procurements extend over a three-year periods (an initial contract year followed by two renewal years). The three years of LSBRP program data will, according to Office of Procurement staff, cover a full “cycle” of County procurements.

A target completed date of September 2009 will also provide the County Council with sufficient time to review the evaluation results, and decide whether to extend the LSBRP beyond its current expiration date of December 31, 2009.

- **OLO recommends that the Council continue to include LSBRP evaluation planning on OLO’s annual Work Program to monitor data being collected by Program staff.**

Similar to other OLO projects that include follow-up work or monitoring in future fiscal years, OLO recommends that the Council ask OLO to continue monitoring LSBRP data collection efforts in the fiscal years leading up to a final evaluation report. Including this assignment will also set-aside staff time for working with DED to identify new and different types of data that might be useful for evaluation purposes.

- **OLO recommends that the Council seek recommendations from the Department of Economic Development on an annual basis for possible changes to the law or regulations to improve the LSBRP.**

As reviewed earlier, DED staff are making a concerted effort to obtain feedback on the Program from both using departments and participating local small businesses. As part of DED’s plan to annually report LSBRP program results to the Council, the Council should request that DED include any recommendations on changes to the LSBRP law or regulations that could enhance the Program.

**PROJECT #13
THE LOCAL SMALL BUSINESS RESERVE PROGRAM**

In 2005, the Council approved legislation creating the Local Small Business Reserve Program (LSBRP). This program requires County agencies to award a minimum of ten percent of their available procurement dollars to local small businesses.

The Department of Economic Development launched the LSBRP in January 2006. The County Executive transferred responsibility for the program to the Office of Procurement in January 2008. The newly-created Department of General Services assumed responsibility for the program on July 1, 2008.

The legislation creating the LSBRP contains a provision indicating that the law and any related Executive Regulations expire on December 31, 2009. The legislation also requires “[t]he Office of Legislative Oversight [to] begin a review of the program one year after its implementation begins and [to] report to the Council about the effectiveness of the Program”

In August 2006, OLO submitted a memorandum report to the Council that summarized information about the history and implementation of the LSBRP, and outlined the scope of an OLO evaluation to be completed by September 2009. To meet this deadline, OLO will need to begin work on this study before the end of the current fiscal year.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

Montgomery County Regulation on

LOCAL SMALL BUSINESS RESERVE PROGRAM

Issued by: County Executive
Regulation No. 2-09

Authority: Montgomery County Code (2004) Section 11B-66

Amends: 21-05AM

Council Review: Method (2) under Code Section 2A-15
Register Vol. 26 No.2

Effective Date: _____

Comment Deadline: 2/28/09

Summary: This regulation implements the Local Small Business Reserve Program for procurement contracts. This amendment transfers the responsibility for administering the program to the Department of General Services; increases the threshold amounts for local small business contracts; and increases the minimum percent of the combined value of contracts that Using Departments must award to local small businesses.

Staff contact: Kenneth Taylor
Office of Business Relations & Compliance
(240) 777-9959

Address: Department of General Services
255 Rockville Pike
Rockville, Maryland 20850

Background: This regulation implements Chapter 11B, Article XV of the County Code.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

Section 1. Authority

In accordance with the requirements of Montgomery County Code § 11B-17A, and the Program authorized under Chapter 11B, Article XV of the County Code, as codified at §§ 11B-65 through 70, this Executive Regulation establishes definitions, processes, and procedures to administer and implement the Local Small Business Reserve Program.

Section 2. Definitions

The Definitions noted in the County Procurement Law and related Regulation apply to this Regulation, unless stated otherwise.

- (a) Broker- A person that conducts business (other than real estate, investment, or insurance sales) on a pass-through basis and with respect to:
 - (i) Supplies:
 - a. Does not own, operate, or maintain a place of business in which supplies 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 supplies of comparable character to those offered to the County, or
 - c. Exclusively acts as a middleman in the provision of supplies offered to the County; or
 - (ii) Services, 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 acquires the services elsewhere, for the benefit of the County.
- (b) Combined Dollar Value of Contracts – A Using Department’s total, combined dollar value of procurement contracts for goods, services, or construction during a given particular fiscal year. This has the same meaning as “total dollar value of procurements” as that term is used in County Code §11B-66 (b) & (c).
- [(c) Director - For purposes of this Regulation related to the Local Small Business Reserve Program, the term “Director” means the Director of the Office of Procurement.]



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

[(d)](c) [DED] Director - For purposes of this Regulation related to the Local Small Business Reserve Program, the term “[DED] Director” means the Director of the Department of [Economic Development (DED)]General Services (DGS).

[(e)](d) Department - For purposes of this Regulation related to the Local Small Business Reserve Program, the term “Department” means the Department of [Economic Development (DED)]General Services (DGS).

[(f)](e) Employment or Employ – The measurement of the number of people a business did or did not employ is calculated on a “Full-Time Equivalent” (FTE) basis. Any full-time, part-time, temporary, or contractual employee, who is not a broker, including an employee of a temporary help firm or a subcontractor, working for and receiving compensation from the business, will be included in determining the number of people a business did or did not employ for a particular period. The averaged sum of the specific FTE employment levels for a business at the end of each calendar quarter (i.e. March 31, June 30, September 30 and December 31) will determine the business’s annual FTE employment level

[(g)](f) Gross Sales –The total documented value of sales, before deducting for expenses, customer discounts, allowances, or returns.

[(h)](g) Independently Owned and Operated- Where those in possession of a controlling interest and those directing and managing the affairs of a business are free from the influence, control, and determination of others

[(i)](h) Local Small Business - A for-profit business, other than a broker, that meets the following elements:
(iii) The business is independently owned and operated.
(iv) The business is not a subsidiary of another business.
(v) The business generates a significant amount of economic activity in the County.
(vi) The criteria, size, and gross sales amounts noted in this Regulation, including those in Section 3 below.

[(j)](i) Local Small Business Reserve – Any procurement that is limited to responses from Local Small Businesses.

[(k)](j) Local Small Business Reserve Application – An on-line based application system that resides in the County’s web site, by which a Contractor provides self-certification, by affidavit or otherwise, demonstrating that the Contractor meets all of the requirements of the definition of Local Small Business



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

[(l)](k) Local Small Business Reserve Database – A database that resides in the County web site that stores the list of self-certified Local Small Businesses, and enables search by the business name, industry sector, and the County commodity code.

[(m)](l) Regular Course of Business Commerce- The on-going and continuous exchange of goods or services for money between two or more businesses or between a business and consumers.

[(n)](m) Significant Amount of Economic Activity in the County - A regular course of business commerce in the County by a business, along with any of the following:
(i) The business has its physical business location(s) only in the County; or
(ii) The business has physical business locations both in and outside of the County, and the County-based location(s) account for over 50% of the business’s total number of employees, or over 50% of the business’s gross sales.

[(o)](n) Subsidiary of Another Business - A business controlled by another business that owns all or a majority of its shares or interest.

Section 3. Size and Sales Criteria

To qualify as a “Local Small Business,” a business must meet the definition in Section 2 above and the following size or gross sales criteria:

- (a) The wholesale operations (sale of goods in large quantities usually for resale) of the business, if any, did not employ more than [15] 30 persons, or the gross sales of these business operations did not exceed an average of [\$2,000,000] \$5,000,000 in its most recently completed 3 fiscal years.
- (b) The retail (sale of goods in small quantities directly to the ultimate consumer) operations of the business, if any, did not employ more than [15] 30 persons, or the gross sales of these business operations did not exceed an average of [\$2,500,000] \$5,000,000 in its most recently completed 3 fiscal years.
- (c) The manufacturing (producing goods from raw materials by hand or by machinery) operations of the business, if any, did not employ more than [20] 40 persons, or the gross sales of these business operations did not exceed an average of [\$7,000,000] \$14,000,000 in its most recently completed 3 fiscal years.
- (d) The services operations of the business, if any, did not employ more than [25] 50 persons, or the gross sales of these business operations did not exceed an average of [\$2,500,000] \$5,000,000 in its most



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

recently completed 3 fiscal years.

- (e) The construction operations of the business, if any, did not employ more than [25] 50 persons, or the gross sales of these business operations did not exceed an average of [\$7,000,000] \$14,000,000 in its most recently completed 3 fiscal years.
- (f) Gross sales for a business that has been in operation long enough to file a Federal income tax statement, shall be determined by the average of gross sales amounts contained on the tax form(s) for the most recently completed 3 fiscal years. In the absence of a federal income tax statement, the business must provide verification that it meets the definition of a Local Small Business, including the above size and sales criteria, through audited financial statements. If a business has not existed for three years, the employment and gross sales average(s) shall be the average for each year or part of a year during which the business has been in existence. For a newly formed business, the determinations regarding size and sales criteria will be based upon then-current employment levels as of the time of the Local Small Business Reserve application, and projected gross sales for that fiscal year.
- (g) If a business operates in more than one of the above-noted business operations classifications (i.e., wholesale, retail, manufacturing, service, and construction), its combined business operations must meet the above-stated limitation of the more liberal size and sales criteria. For instance, [regarding gross sales, for any type of wholesale and service operations, the average annual gross] the gross annual sales limit for wholesale businesses is [\$2] \$5 million; [and] for retail goods, and non-construction services the limit is [\$2.5] \$5 million; and for construction services and manufacturing the limit is \$14 million [respectively]. Therefore, the combined operation cannot exceed [2.5] \$5 million annually in average gross sales. Further, regarding size, the employment limit for [a] wholesale and retail business [operation] operations is [15] 30 persons versus [25] 50 for a service operation. Accordingly, a business with both wholesale and service classifications can have up to [25] 50 employees.

Section 4. Contract Under Local Small Business Reserve Program

- (a) Except as provided in Subsection (c) of this Section 4, this Regulation applies to all procurements by a Using Department. Any procurement under this Program is subject to all requirements and procedures otherwise applicable to the procurement under the Procurement Regulations. Except as otherwise provided by law, the provisions of this Regulation supplement, but do not replace, other provisions of, and definitions in, the County's Procurement Regulations and Procurement Law.
- (b) A Using Department must award a minimum of [10] 20 percent of the Using Department's combined dollar value of contracts issued for goods, services, or construction to a Local Small Business. A Usin



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

Department need not designate a contract or a solicitation as a Local Small Business Reserve in order for it to count towards the immediately preceding requirement to award a minimum of [10] 20 percent of the Using Department's combined dollar value of contracts awarded for goods, services, or construction to a Local Small Business. The dollar amount of a contract that is solicited through the regular Procurement process that is awarded to a certified Local Small Business [shall] count toward the [10] 20 percent requirement.

- (c) The combined dollar value of procurements by a Using Department under this section does not include:
- (1) the value of any contract to which this Regulation does not apply because of a conflict with a State, federal, or local law or a grant requirement;
 - (2) a preexisting contract or extension(s) of a preexisting, multi-year, contract executed by the County;
 - (3) a non-competitive contract,
 - (4) a public entity or emergency procurement;
 - (5) any waiver made under Montgomery County Code §11B-67(f);
 - (6) any procurement where no Local Small Business is qualified or able to perform the contract as determined by the head of the Using Department; or
 - (7) any single procurement that is estimated to exceed \$10 million
- (d) In determining whether a Contractor is "qualified or able to perform the contract" under Section 4(c)(6), the Using Department must make a recommendation as of the time of a business's offer in response to a solicitation based on a Contractor's reputation, past performance, business and financial capability and other factors that demonstrate the Contractor is capable of satisfying the County's needs and requirements for a specific contract. This requirement is in addition to those stated in Section 6.3 of the Procurement Regulations regarding responsibility.
- (e) In order for a business to be eligible to respond to a solicitation under the Local Small Business Reserve Program, a business has to be registered and certified in the County web site prior to the applicable solicitation due date (closing date)

Section 5. Procedures and Program Operations

- (a) Any procurement of goods, services, or construction by a Using Department is eligible for designation for the Local Small Business Reserve Program by the Using Department director, or designee, except any procurement that is excluded under County Code §11B-66(c), the items of which are reiterated in Section 4(c) above.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

- (b) A solicitation for a procurement that has been designated under the Local Small Business Reserve Program must be published in the same manner as required for other solicitations under County Code, Chapter 11B, Article III.
- (c) The Director will award a procurement contract designated as a Local Small Business Reserve in accordance with County law and Procurement Regulations, except to the extent stated otherwise in this Regulation.
- (d) A business must affirm and provide supporting documentation to the [DED] Director to show that it is a Local Small Business as defined in County Code § 11B-65([c]a) when required or requested by the [DED] Director. The Local Small Business must complete any required Local Small Business Reserve Application and any supporting affidavit required by [DED] DGS to demonstrate to the [DED] Director that it is a Local Small Business. [DED] DGS will post this requirement and any required affidavit on the Local Small Business Reserve web site.
- (e) A Local Small Business is no longer eligible for a procurement under the Program if the business has been awarded \$10 million in County contracts and at least 10 separate contracts, as either a prime contractor or a subcontractor, from January 1, 2006. The [DED] Director will provide written notice to the Local Small Business when the Local Small Business is no longer eligible for the Program and the [DED] Director will remove the Local Small Business from the Local Small Business Reserve Database.
- (f) The Chief Administrative Officer may waive the application of Montgomery County Code, Chapter 11B, Article XV, to a specific procurement if the Chief Administrative Officer finds that the application of that Article conflicts with the overall objectives and responsibilities of the Chapter. The Chief Administrative Officer must keep records on the number of waivers issued and the reason for each waiver. This information must be reported to the Council by the Department in the annual report on the Program under Code §11B-69(b).
- (g) Montgomery County Code, Chapter 11B, Article XV, does not give any person, including a Local Small Business, any right or status, including standing, to challenge the award of a contract or subcontract under the County procurement system. That Article is enforceable only through the oversight function of the Chief Administrative Officer and the County Council.
- (h) Administration and Implementation: The following delineates the departmental responsibilities to administer and implement the Program:
 - (i) The Department of [Economic Development] General Services administers and implements the



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

Program. It must compile and maintain a comprehensive bidder's list of self-certified Local Small Businesses, and post that list on the County's Internet site. To accomplish these objectives, the Department will:

- (a) With cooperation from the Department of Technology Services (DTS), develop an Internet-based Local Small Business Reserve Database (Database) housed in the County's web site that will, at a minimum, have the following features:
 - 1. Local Small Business Reserve Program description;
 - 2. Local Small Business Reserve Program Application and Contractor self-certification module;
 - 3. Self-Certified Local Small Business database that can be sorted according to the commodity code used by the County procurement process;
 - 4. Self-Certified Local Small Business profile update module; and
 - 5. Self-Certified Local Small Business annual renewal module.
- (b) Maintain the Database by:
 - 1. Enhancing the efficiency of the database by incorporating advancements in database technology;
 - 2. Requiring each self-certified Local Small Business, before being awarded a County contract designated as for this Program, to submit documentation to the Department that satisfactorily demonstrates that it meets all of the requirements of a Local Small Business as of the bid closing date for that procurement.
 - 3. Tracking the number and the dollar amount of County contracts awarded to each Local Small Business in the Database, in coordination with other Using Departments.
 - 4. Removing a Local Small Business from the Local Small Business Reserve Database when the Local Small Business has received \$10 million dollars in County contracts and at least 10 separate contracts, as specified in this Section 5, Paragraph (e).
 - 5. Removing a Local Small Business[es] from the Local Small Business Reserve Database when the Local Small Business fails to meet the definition of Local Small Business as defined in this Regulation. A removed Local Small Business will subsequently be added to the Local Small Business Reserve Database by the [DED] Director only after the business submits an appeal letter and sufficient supporting documents to the [DED] Director within fifteen (15) days after removal from the list by the Department. The business's letter must evidence that



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

the business meets the definition of Local Small Business as defined in Section 2(h) of this Regulation. The review and approval of the appeal letter is within the sole discretion of the [DED] Director.

6. Assigning a unique County Vendor Identification number to each Local Small Business in the Database.
- (c) Market the Program and Provide Outreach Efforts to Local Small Businesses by:
1. Advertising the Program in the media, as deemed necessary by the [DED] Director, to increase the public awareness of the Program.
 2. Preparing a Program brochure and other necessary collateral material, and distributing these materials in strategic locations, as determined by the [DED] Director, to enable easy and timely access by businesses in the County.
 3. Participating in County business events, at least three times a year, to market the Program.
 4. Working with small business resource groups in the County such as the Chambers of Commerce, Small Business Development Centers, Women’s Business Organization, etc., to disseminate Program information to the member businesses.
 5. Preparing a press release once a year to publicize the Program results.
- (d) Reporting: By November 30 each year, the [DED] Director must report to the Council on the Local Small Business Reserve Program. This report must include: the number, type, and dollar amount of contracts awarded under this Regulation during the preceding fiscal year; the number, type, and dollar amount of each waiver from the Internet posting requirement granted by the Director; the number, type, and dollar amount of each waiver pertaining to the Program that is granted by the Chief Administrative Officer; information about how these numbers have changed from the preceding fiscal year; and, the extent of outreach efforts by [DED] DGS. [DED] DGS [and the] through its Office of Procurement will work with the Office of Legislative Oversight to ensure that the data needed to conduct a comprehensive evaluation of the program are collected.
- (e) Take any other action necessary to administer or implement this Program.
- (ii) The Using Department: The Using Department will:
- (a) Award a minimum of [10] 20 percent of the Using Department’s combined dollar value of contracts issued for goods, services, or construction to Local Small Businesses, except



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

as noted in Section 4(c), above.

- (b) Notify the Office of Procurement upon designating a procurement as a Local Small Business Reserve.
 - (c) Search the Local Small Business Reserve Database before conducting a solicitation process and before recommending a vendor for award, in a contract that has been designated for this Program. If the vendor is self-certified in the Local Small Business Reserve Database, the Using Department must obtain verification from [DED] DGS, prior to recommending the vendor for award, that the vendor is an eligible Local Small Business.
 - (d) Post on a County web site each planned purchase of goods, services, or construction valued at \$5,000 to \$25,000, regardless of whether the solicitation is designated as a Local Small Business Reserve or not, for 5 business days in the manner described in County Code Section 11B-17A, before the County enters into a contract.
 - (e) Track and report to the [DED] Director, by September 30 of each year, the procurement activities under the Program during the previous fiscal year, in accordance with County Code Section 11B-69(a) and (b), including:
 - 1. Number, type, and combined dollar value of contracts awarded;
 - 2. Number, type, and combined dollar value of contracts that are not included under this Regulation, in accordance with County Code Section 11B-66(c);
 - 3. Number, type, and combined dollar value of contracts awarded to Local Small Businesses.
 - 4. Number, type, and combined dollar value of contracts that were initially designated under the Program but were not awarded to a Local Small Business, and the reason they were not awarded to a Local Small Business.
 - 5. Procedural changes and other related administrative efforts made to comply with this Regulation, and the associated fiscal impact of such changes.
 - (f) Take any other action necessary to comply with this Regulation.
- (iii) The [Office of Procurement] Department of General Services will:
- (a) Develop procedures and processes to enable a Using Department to post each planned



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

purchase of goods, services, or construction valued at \$5,000 to \$25,000, on a County web site. The Using Department must clearly identify, on the County web site, a Procurement that is designated as Local Small Business Reserve.

- (b) Develop a process to ensure that in any Informal Solicitation, the vendor selection process used by the Office of Procurement to generate the five random vendor selections required under the Procurement Regulations includes vendors from the Local Small Business Reserve Database.
- (c) The Director must keep records on the number of waivers of a Using Department's Internet posting requirement issued in accordance with County Code Section 11B-17A(c), during a given fiscal year, and the reason for each waiver. The Director must report this information to the [DED Director] Chief Administrative Officer (CAO) by September 30 of each year.
- (iv) Department of Technology Services – The Department of Technology Services will assist the Department in administering and implementing the Program, including that which is indicated in (h)(i) of this Section 5.
- (v) The Chief Administrative Officer will:
 - (a) Have the authority to waive the application of this Regulation to a specific contract if the Chief Administrative Officer finds that the application of this Regulation conflicts with the overall objectives and responsibilities of Article XV of Chapter 11B of the County Code. The Chief Administrative Officer must keep records on the number of waivers the Chief Administrative Officer issues and the reason for each waiver. This information must be reported to the [DED] Director so this information can be included in the annual report to the County Council on the Program, as required under County Code Section 11B-69(b).
 - (b) Provide the oversight function to enforce the Regulation.

Section 6. Penalty; Enforcement.

In addition to that stated under County Law, or a particular contract, any person who willfully makes a false statement to a County official or employee for the purpose of influencing participation in the Program; or fraudulently obtains, attempts to obtain, or aid another person in



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Small Business Reserve Program	Number 2-09
Originating Department General Services	Effective Date

fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under this Regulation constitutes a material breach of the contract. Accordingly the County may then exercise any available remedy, including, terminating the contract for default.

Section 7. Effective Date.

This Executive Regulation takes effect immediately [on January 1, 2006] and has no expiration date. [expires on December 31, 2009, unless extended by the County Council.]

Approved as to form by the
Office of the County Attorney

Isiah Leggett
County Executive

Karen L. Federman Henry, Division Chief