

**MEMORANDUM**

September 11, 2015

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Bill 23-15, Contracts – Local Small Business Reserve Program – Amendments  
Executive Regulation 6-15, Local Small Business Reserve Program

**Government Operations and Fiscal Policy Committee recommendation (2-0, Riemer absent):** approve the Bill and the regulation without amendment.

Bill 23-15, Contracts – Local Small Business Reserve Program – Amendments, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on May 21. A public hearing was held on June 16 and a Government Operations and Fiscal Policy Committee worksession was held on July 23 on the Bill and the Regulation.

The Bill would:

- (1) modify the types of contracts subject to the Local Small Business Reserve Program;
- (2) amend the definition of a local small business under the Local Small Business Reserve Program; and
- (3) change the reporting dates.

**Background**

The Local Small Business Reserve Program (LSBRP) was established by Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program, effective January 1, 2006. The legislative intent of the program was 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.

Bill 23-15 would require that a local small business have its principal place of business in the County instead of requiring the business to generate a significant amount of economic activity in the County in order to participate in the program. This change would codify existing regulations defining "generating a significant amount of economic activity in the County." The Bill would also codify existing practice by eliminating a contract awarded through an emergency

procurement, a bridge contract, or a cooperative procurement from the types of contracts eligible for the LSBRP. Finally, the Bill would change the annual reporting date from September 30 to October 30.

### **Public Hearing**

The lone speaker, Cherri Branson, Director of Procurement, representing the Executive, supported the Bill. See ©11-12.

### **July 23 GO Committee Worksession**

Cherri Branson, Director of Procurement, Pam Jones, Procurement, and Grace Denno, Procurement, represented the Executive Branch. The Committee discussed both the changes that would be made to the LSBRP by the Bill and the regulation. The Committee (2-0, Riemer absent) approved both the Bill and the regulation without amendment.

### **Discussion/Issues**

#### **1. Does requiring a local business to have its principal place of business in the County change existing practice?**

The Bill would change the definition of a local business from a business that “generates a significant amount of economic activity in the County” to a business that “has its principal place of business in the County.” The current Procurement Regulation, COMCOR §11B.65.01.02 defines a business that generates a significant amount of economic activity in the County as:

- (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.*

A definition of “principal place of business” was recently added to the procurement regulations by ER 2-15. Under the new definition, a business has its principal place of business in the County if:

- (1) The business has its physical business location(s) only in the County; or
- (2) 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.

Therefore, this change in law does not change how the current law has been implemented by regulation.

**2. Does removing bridge contracts and cooperating agreements from the LSBRP change current practice?**

The Director may enter into a bridge contract with a vendor when the vendor has an existing contract with another public entity for the same goods or services that was obtained through competition. A cooperative agreement involves combining the requirements of two or more public entities to obtain the benefits of volume purchases, reduction in administrative expenses, or some other public purpose. Neither of these types of contracts would be appropriate for inclusion in the LSBRP, and according to Procurement, they have not been. Therefore, this change in law codifies existing practice as implemented by regulation.

**3. Should the Bill be enacted?**

The remaining change made by the Bill would extend the time for each Department to send the annual report on the LSBRP to the Director of Procurement from September 30 to October 30. It does not change the November 30 date for the annual report from the Director of Procurement to the Council. **Committee recommendation (2-0, Riemer absent):** approve the Bill as introduced.

**Executive Regulation 6-15, Local Small Business Reserve Program**

ER 6-15 would make a substantive change in the LSBRP by increasing the size criteria for service vendors from a business with 50 or fewer employees to 100 or fewer employees or a business with average gross sales of \$5 million or less in the most recently completed 3 years to \$10 million or less. Procurement reports that this change would make an additional 806 County businesses eligible for the program. Of those 806 County businesses, 61% are in the retail trade or provide professional, scientific, technical, education, arts, entertainment, and recreation services. The Department of Finance estimated that the Bill would have a positive impact on employment, personal income, and business revenues for those companies that are now eligible to compete for contracts in the program. However, Finance could not estimate the impact. See the Economic Impact Statement for the Bill at ©9-10. Of course, the increased competition for contracts under the program could also have a negative impact on smaller businesses who will have to compete with the newly eligible businesses.

This change in the criteria for a small business in the LSBRP is consistent with the current criteria for a small business under the Maryland Small Business Reserve Program. See COMAR § 21.11.01.06. **Committee recommendation (2-0, Riemer absent):** approve ER 6-15.

This packet contains:

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Bill No. 23-15  
Concerning: Contracts – Local Small  
Business Reserve Program -  
Amendments  
Revised: May 19, 2015 Draft No. 2  
Introduced: May 21, 2015  
Expires: November 21, 2016  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**AN ACT** to:

- (1) to modify the types of contracts subject to the Local Small Business Reserve Program;
- (2) amend the definition of a local small business under the Local Small Business Reserve Program;
- (3) change the reporting dates; and
- (4) generally amend the law regarding the Local Small Business Reserve Program.

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Sections 11B-65, 11B-66, 11B-67, and 11B-69

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

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

1           **Sec. 1. Sections 11B-65, 11B-66, 11B-67, and 11B-69 are amended as**  
2 **follows:**

3                           **Article XV. Local Small Business Reserve Program**

4 **11B-65. Definitions.**

5           In this Article the following words have the meanings indicated.

6           (a) *Local Small Business* means a for-profit business, other than a broker,  
7           that:

- 8                   (1) [generates a significant amount of economic activity] has its  
9                   principal place of business in the County;
- 10                  (2) is independently owned and operated;
- 11                  (3) is not a subsidiary of another business; and
- 12                  (4) meets criteria, size limits, and gross sales amounts established by  
13                  method 2 regulations.

14   \*                   \*                   \*

15 **11B-66. Local Small Business Reserve Program.**

16   \*                   \*                   \*

17           (c) The total dollar value of procurements by a using department does not  
18           include:

19   \*                   \*                   \*

- 20                   (4) a public entity [or emergency] procurement;
- 21                   (5) an emergency procurement;
- 22                   (6) a bridge contract;
- 23                   (7) a cooperative procurement;
- 24                   (8) any waiver made under Section 11B-67(f);
- 25                   [(6)] (9) any procurement where no local small business is qualified  
26                   or able to perform the contract; or



## LEGISLATIVE REQUEST REPORT

Bill 23-15

*Contracts – Local Small Business Reserve Program - Amendments*

**DESCRIPTION:** The Bill would:

- (1) modify the types of contracts subject to the Local Small Business Reserve Program;
- (2) amend the definition of a local small business under the Local Small Business Reserve Program; and
- (3) change the reporting dates.

**PROBLEM:** The definition of a local business under the Local Small Business Reserve Program is difficult to apply and certain types of contracts should be removed from the Program.

**GOALS AND OBJECTIVES:** These amendments will update the Local Small Business Reserve Program to modify the requirements to be a local business and minimize confusion from the vendors

**COORDINATION:** CEX, DGS, OCA, DED

**FISCAL IMPACT:** To be determined

**ECONOMIC IMPACT:** To be determined

**EVALUATION:** N/A

**EXPERIENCE ELSEWHERE:** N/A

**SOURCE OF INFORMATION:** Grace Denno and Pam Jones, DGS  
Karen Federman-Henry and Richard Melnick, OCA

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** Not changed:

Violations may constitute a material breach of the contract. Accordingly the County may then exercise any available remedy, including, terminating the contract for default.



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

April 15, 2015

TO: George Leventhal, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Local Small Business Reserve Program Legislation amendments

In accordance with Section 313 of the County Charter and Section 11B of the Montgomery County Code, I am forwarding the attached Local Small Business Reserve Program Legislation amendments. The purpose of these amendments is to:

- (1) clarify the scope of the Local Small Business Reserve Program;
- (2) modify the factors for evaluating whether a business meets the criteria to participate in the Local Small Business Reserve Program;
- (3) change the reporting dates; and
- (4) generally amend the law regarding the Local Small Business Reserve Program.

I recommend prompt passage of this legislation so the local businesses will benefit from this program.

Attachments

c: David Dise, Director, Department of General Service  
Beryl L. Feinberg, Deputy Director, Department of General Services  
Bonnie Kirkland, Assistant Chief Administrative Officer  
Pam Jones, Chief, Office of Procurement  
Grace Denno, Manager, Office of Business Relations and Compliance



ROCKVILLE, MARYLAND

MEMORANDUM

June 11, 2015

TO: George Leventhal, President, County Council

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

SUBJECT: FEIS for Bill 23-15, Contracts - Local Small Business Reserve Program - Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph F. Beach, Director, Department of Finance  
Fariba Kassiri, Acting Director, Office of Procurement  
David Platt, Department of Finance  
Erika Lopez-Finn, Office of Management and Budget  
Alex Espinosa, Office of Management and Budget  
Naeem Mia, Office of Management and Budget

**Fiscal Impact Statement**  
**Council Bill 23-15, Local Small Business**  
**Reserve Program- Amendments**

1. Legislative Summary.

The proposed legislation would modify the types of contracts subject to the Local Small Business Reserve Program; amend the definition of a local small business to a business which, "has its principal place of business in the County"; and change reporting dates from September 30 to October 30.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There would be no changes in expenditures or revenues.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Not applicable.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

The proposed legislation does not affect retiree pensions or group insurance.

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

The proposed legislation does not affect IT systems.

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

The proposed legislation does not authorize future spending.

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

Additional staff time is not needed to implement the bill.

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

Not applicable.

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

No additional appropriation is needed.

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

Not applicable.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

The change in the definition of a local small business clarifies a small business and the change in reporting dates allows the Office of Procurement more time after the conclusion of the fiscal to compile and analyze the data for reporting

13. Other fiscal impacts or comments.

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

Erika Lopez-Finn, Office of Management and Budget

Pam Jones, Office of Procurement

Grace Denno, Office of Procurement

  
Jennifer A. Hughes, Director  
Office of Management and Budget

6/10/15  
Date

**Economic Impact Statement**  
**Bill 23-15, Contracts - Local Small Business Reserve Program - Amendments**

**Background:**

This legislation would amend the Local Small Business Reserve Program (LSBRP) to:

- modify the types of contracts subject to the Local Small Business Reserve Program,
- amend the definition of a local small business under the Local Small Business Reserve Program, and
- change the reporting dates.

The intent of Bill 23-15 is to update the LSBRP with new size requirements and minimize any confusion among the vendors. Bill 23-15 increases the threshold of the services category vendor size from 50 to 100 employees and from the current \$5 million annual revenue to \$10 million annual revenue.

Specifically, Bill 23-15 defines a Local Small Business as a for-profit business, other than a broker, that has its principal place of business in Montgomery County. The legislation deletes the language regarding “significant amount of economic activity in the County” generated by the Local Small Business. Bill 23-15 also amends Section 11B-66 of the County Code to delete “or emergency” from the “a public entity or emergency procurement” language and adds that phrase as a separate line in the Code. The legislation also adds “a bridge contract” and “a cooperative procurement” to Section 11B-66.

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

Sources of information include the Office of Procurement and the Department of Economic Development.

Bill 23-15 would increase the size of vendors eligible under the LSBRP in the services category and, therefore, increase the LSBRP pool of vendors that will bid on County contracts. Based on data provided by the Department of Economic Development, the number of businesses with employees from 51 to 100 is 806 establishments. Of those establishments with at least 51 employees, 61 percent are in the retail trade; professional, scientific, and technical services; educational services; and arts, entertainment, and recreation.

**2. A description of any variable that could affect the economic impact estimates.**

The variable that could affect the economic impact is the number of service-category vendors that employ between 51 and 100 employees and have revenues between \$5 million and \$10 million that could now become eligible for LSBRP contract awards.

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

**Economic Impact Statement**  
**Bill 23-15, Contracts - Local Small Business Reserve Program - Amendments**

The legislation is likely to have a positive economic effect on employment, personal income, and business revenues for those companies that currently employ between 51 and 100 employees and have annual income between \$5 million and \$10 million.

Without detailed data on the number of service-category vendors, a specific economic impact cannot be determined, however an order of magnitude estimate of the potential increased local small business revenues is provided in the table below under different scenarios.

Assuming that LSBRP Expenditures remain at approximately 25% of Procurement Expenditures Eligible for LSBRP Procurement (this ratio has been maintained since FY11), with an assumed increase of LSBRP Eligible Procurement Expenditures in the range of 25% to 50% as shown in the table below, LSBRP revenue could increase by \$18.4 million to \$36.9 million per year as a result of this legislation. Of course, these are only order of magnitude estimates that are dependent on several variables including the number of affected local small businesses, the change in procurement related expenditures, and other factors.

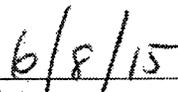
Exemption Categories	FY14		Increased LSBRP Eligible		
	Million \$	%	25%	33%	50%
Total Procurement Dollars	\$980.77		\$980.77	\$980.77	\$980.77
Eligible for LSBRP Procurement	\$299.17	30.50%	\$373.96	\$397.90	\$448.76
Procurement Expenditure to LSBRP	\$73.71	24.60%	\$92.14	\$98.03	\$110.57
LSBRP Exp/Eligible	25%		25%	25%	25%
Potential Increase LSBRP Expenditure compared to FY14			\$18.43	\$24.32	\$36.86

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

Bill 23-15 is likely to have a positive economic impact.

**5. The following contributed to or concurred with this analysis:** David Platt, Mary Casciotti, and Rob Hagedoorn, Finance; Grace Denno, Office of Procurement.

  
 \_\_\_\_\_  
 Joseph F. Beach, Director  
 Department of Finance

  
 \_\_\_\_\_  
 Date

TESTIMONY ON BEHALF OF THE COUNTY EXECUTIVE ON BILL 23-15,  
LOCAL SMALL BUSINESS RESERVE PROGRAM AMENDMENTS

June 16, 2015

I am Cherri Branson, Director of the Office of Procurement. I am here on behalf of County Executive Isiah Leggett to ask for the Council's favorable consideration of Bill 23-15 and its accompanying regulations to amend the Local Small Business Reserve Program (LSBRP) to increase the LSBRP vendor pool and clarify language to minimize confusion.

Montgomery County has a robust, active and responsive small business community. Nearly 95% of resident businesses are considered small business. These businesses employ local residents, provide good jobs, and make real contributions to the local economy. It is clear that local small businesses have benefited from the LSBRP. The program is widely supported by local vendors, chambers of commerce, and County residents, because it provides fair yet active competition among local businesses to ensure the public benefits from best value for the dollar spent under county contracts. In addition, the LSBRP provides an economic opportunity that every local small business can benefit from now and in the future. This investment back into the local economy, certainly a help in difficult times, addresses an ongoing need for every small business struggling to get a foot-hold in the marketplace, and provides an equally ongoing benefit to the County.

One of the amendments in the Executive Regulations (ER6-15) to the LSBRP is to "increase the size criteria for services vendors from 50 employees to 100 employees, and from \$5 million to \$10 million average gross sales in the most recently completed three fiscal years." This update is consistent with the State's recent threshold increase in its Small Business Reserve Program, and will increase the number of businesses which are eligible for participation in our LSBRP program. Based on data provided by the Department of Economic Development, the number of Montgomery County based businesses with employees from 51 to 100 is 806 businesses. Of those 806 businesses, 61% are in the retail trade, professional, scientific, and technical services, educational services, and arts, entertainment, and recreation. All are within the County's services contracts marketplace. We believe that increasing the eligible vendor pool will allow more LSBRP vendors to benefit from the LSBRP program, and therefore increase the County's LSBRP contracting volume.

Another amendment is to identify "local business" as having "its principal place of business in the County." "Principal place of business" is defined in the general Procurement Regulations (ER 2-15) as follows:

*2.4.72 Principal Place of Business in the County: A regular course of business commerce in the County by a business, along with any of the following:*

- (1) The business has its physical business location(s) only in the County; or*
- (2) 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.*

Several other bills use this term, and it makes more sense to have it defined in the general Procurement Regulations rather than separately in each bill.

Further, in response to issues and sources of confusion identified by the business community, Bill 23-15 updates language, definitions and exemption categories to maintain consistency with the LSBRP enforcement practice and other compliance programs.

Bill 23-15 is one of the many efforts that the County is making to reflect business community feedback and make improvements to and update our existing compliance programs and procurement procedures. County Executive Leggett believes that passage of this Bill will help us to better serve our business community.

Thank you for the opportunity to testify today.



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

May 5, 2015

TO: George Leventhal, President, Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Executive Regulation 6-15, Local Small Business Reserve Program  
Amendments to the Executive Regulations

I am transmitting Executive Regulation 6-15, Local Small Business Reserve Program. This regulation amends the Local Small Business Reserve Program regulations to:

- 1) Increase the size criteria for services vendors from 50 employees or \$5 Million to 100 employees or \$10 million average gross sales in the most recently completed three fiscal years;
- 2) Add language in the qualification criteria to require the LSB contractors to provide, at a minimum, 51% of measurable work on the contract, measured by the dollar amount, unless the Director specifies, in writing, a lower percentage based on a particular contract's scope of work;
- 3) Update certification procedure language to replace "LSBRP self-certification" with "Local Small Business Reserve Application" to minimize confusion; and,
- 4) Update language in the definitions section and the exemption categories section to be consistent with the LSBRP Bill and other compliance programs.

Executive Regulation 6-15 was advertised for 30 days in the March 2015 issue of the Montgomery County Register. No comments were received in response to this advertisement. This Regulation would supersede Executive Regulation 2-09.



**Fiscal Impact Statement**  
**Executive Regulation 6-15, Local Small Business Reserve Program**

1. Executive Regulation Summary

The amendment to the Local Small Business Reserve Program to:

- a. Increase the size criteria for services vendors from 50 employees or \$5 million to 100 employees or \$10 million average gross sales in the most recently completed three fiscal years;
  - b. Add language in the qualification criteria to require the LSB contractors provide, at a minimum, 51% of measurable work on the contract, measured by the dollar amount, unless the Director specifies, in writing, a lower percentage based on a particular contract's scope of work;
  - c. Update certification procedure language to replace "LSBRP self-certification" with "Local Small Business Reserve Application" to minimize confusion;
  - d. Update language in the definitions section and the exemption categories section to keep consistency with the LSBRP and other compliance programs.
2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.
- The amended regulation does not affect revenues or expenditures. The amendment updates language and expands the scope of the program. No additional staff time is needed to implement the changes.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See item #2.

4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.

Not applicable.

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

The amendment does not affect the County's information technology systems or ERP.

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

The amendment does not authorize future spending.

7. An estimate of the staff time needed to implement the regulation.  
See #2 above.
8. An explanation of how the addition of new staff responsibilities would affect other duties.  
The amendment does not result in additional staff responsibilities..
9. An estimate of costs when an additional appropriation is needed.  
No additional appropriation is needed.
10. A description of any variable that could affect revenue and cost estimates.  
Not applicable.
11. Ranges of revenue or expenditures that are uncertain or difficult to project.  
Not applicable.
12. If a regulation is likely to have no fiscal impact, why that is the case.  
The amendment raises the threshold for small businesses and changes the reporting date;  
there is no increase to the workload for the Office of Procurement.
13. Other fiscal impacts or comments.  
Not applicable.
14. The following contributed to and concurred with this analysis.  
Grace Denno, Office of Procurement  
Erika Lopez-Finn, Office of Management and Budget

  
Jennifer A. Hughes, Director  
Office of Management and Budget

3/23/15  
Date



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Local Small Business Reserve Program	<b>Number</b> 6-15
<b>Originating Department</b> Office of Procurement	<b>Effective Date</b>

Montgomery County Regulation on

## LOCAL SMALL BUSINESS RESERVE PROGRAM

Issued by: County Executive

Regulation No. 6-15

COMCOR Sec. 11B.65.01

Authority: Montgomery County Code (2014, as amended) Sec. 11B-65

Supersedes: Executive Regulation 2-09 and 21-05 AM

Council Review: Method (2) under Code Section 2A-15

Register Vol. 32 No. 3

Effective Date: \_\_\_\_\_

Comment Deadline: March 30, 2015

**Summary:**

This regulation amends the Local Small Business Reserve Program Regulations, to:

1. Increase the size criteria for services vendors from 50 employees or \$5 million to 100 employees or \$10 million average gross sales in the most recently completed three fiscal years;
2. Add language in the qualification criteria to require LSBRP contractors to provide, at a minimum, 51% of measurable work on the contract, measured by the dollar amount, unless the Director specifies, in writing, a lower percentage based on a particular contract's scope of work;
3. Update certification procedure language to replace "LSBRP self-certification" with "Local Small Business Reserve Application" to minimize confusion; and,
4. Update language in the definitions section and the exemption categories section to keep consistency with the LSBRP Bill and other compliance programs.

**Staff contact:**

Grace Denno, Chief

Office of Business Relations and Compliance, Office of Procurement

240-777-9959

**Address:**

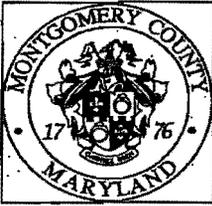
Office of Procurement

255 Rockville Pike, Suite 180

Rockville, Maryland 20850

**Background:**

This regulation implements Chapter 11B, Article XV of the County Code, with the above amendments.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Local Small Business Reserve Program	<b>Number</b> 6-15
<b>Originating Department</b> Office of Procurement	<b>Effective Date</b>

Section 11B.65.01 Local Small Business Reserve Program is amended as follows:

### 11B.65.01.01 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.

### 11B.65.01.02 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) and (c).



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Local Small Business Reserve Program	<b>Number</b> 6-15
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- (c) Director - For purposes of this Regulation related to the Local Small Business Reserve Program, the term "Director" means the Director of the [Department of General Services (DGS)] Office of Procurement.
- (d) Department - For purposes of this Regulation related to the Local Small Business Reserve Program, the term "Department" means the [Department of General Services (DGS)] Office of Procurement.
- (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.
- (f) Gross Sales - The total documented value of sales, before deducting for expenses, customer discounts, allowances, or returns.
- (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.
- (h) Local Small Business - A for-profit business, other than a broker, that [meets the following elements]:
  - (i) has its principal place of business in the County;
  - (ii)[(i)] [The business] is independently owned and operated[.];
  - (iii)[(ii)] [The business] is not a subsidiary of another business[.]; and
  - [(iii)] The business generates a significant amount of economic activity in the County.]
  - (iv) meets [The] criteria, size limits, and gross sales amounts noted in this Regulation, including those in [Section 3] 11B.65.01.03 below.
- (i) Local Small Business Reserve - Any procurement that is limited to responses from Local Small Businesses.



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- (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] completes an on-line application, and submits it to the Director for [that the Contractor meets all of the requirements of the definition of] certification as a Local Small Business.
- (k) Local Small Business Reserve Database - A database that resides in the [County] County's web site that stores the list of [self-certified] Local Small Business[Businesses] applicants, and enables search by the business name, industry sector, and the County commodity code.
- [(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.]
- [(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.]
- [(l)](n) Subsidiary of Another Business - A business controlled by another business that owns all or a majority of its shares or interest.

### 11B.65.01.03 [Size and Sales] Criteria

To qualify as a "Local Small Business," a business must: meet the definition in 11B.65.01.02 [Section 2] above; provide, at a minimum, 51% of measurable work on the contract, measured by the dollar amount, unless the Director specifies, in writing, a lower percentage based on a particular contract's scope of work; and, meet 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 30 persons, or the gross sales of these business operations did not exceed an average of \$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 30 persons, or the gross sales of these business operations did not exceed an average of \$5,000,000 in its most recently completed 3 fiscal years.



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- (c) The manufacturing (producing goods from raw materials by hand or by machinery) operations of the business, if any, did not employ more than 40 persons, or the gross sales of these business operations did not exceed an average of \$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 [50]100 persons, or the gross sales of these business operations did not exceed an average of \$[5]10,000,000 in its most recently completed 3 fiscal years.
- (e) The construction operations of the business, if any, did not employ more than 50 persons, or the gross sales of these business operations did not exceed an average of \$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 [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, the gross annual sales limit for wholesale businesses is \$5 million; for retail goods, and non-construction services the limit is \$5 million; and for construction services and manufacturing the limit is \$14 million. Therefore, the combined operation cannot exceed \$5 million annually in average gross sales. Further, regarding size, the employment limit for wholesale and retail business operations is 30 persons versus [50]100 for a service operation. Accordingly, a business with both wholesale and service classifications can have up to [50]100 employees.

### 11B.65.01.04 Contract Under Local Small Business Reserve Program

- (a) Except as provided in Subsection (c) of 11B.65.01.04 [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



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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 20 percent of the Using Department's combined dollar value of contracts issued for goods, services, or construction to a Local Small Business. A Using 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 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 counts toward the 20 percent requirement.
- (c) The combined dollar value of procurements by a Using Department under this section does not include:
- [1](i) 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](ii) a preexisting contract or extension(s) of a preexisting, multi-year, contract executed by the County;
  - [3](iii) a non-competitive contract;
  - [4](iv) a public entity [or emergency] procurement;
  - (v) an emergency procurement;
  - (vi) a bridge contract;
  - (vii) a cooperative procurement;
  - [5](viii) any waiver made under Montgomery County Code § 11B-67(f);
  - [6](ix) any procurement where no Local Small Business is qualified or able to perform the contract as determined by the [head of the Using Department] Director; or
  - [7](x) any single procurement that is estimated to exceed \$10 million.



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- (d) In determining whether a Contractor is “qualified or able to perform the contract” under 11B.65.01.04(c)(6) [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] must complete and submit the on-line vendor registration, including the Local Small Business Reserve Application on [in] the [County] County’s web site, prior to the applicable solicitation due date and time [(closing date)]. The business must receive the Director’s certification as a Local Small Business prior to any contract award.

## 11B.65.01.05 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 11B.65.01.04(c) [Section 4(c)] above.
- (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 Director to show that it is a Local Small Business as defined in County Code § 11B-65(a) when required or requested by the Director. The Local Small Business must complete any required Local Small Business Reserve Application and any supporting affidavit required by [DSG] the Director to demonstrate to the Director that it is a Local Small Business. [DSG will post this requirement and any required affidavit on the Local Small Business Reserve web site.]
- (e) The Local Small Business must be in compliance with applicable Federal, State and County laws and regulations, including those relating to permits, licenses, and zoning that apply to operating



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the business. In addition, the business must operate in or from a physical location, and, among other things, reference by the business to a post office box or virtual office is insufficient to substantiate a physical location from which the business operates.

(f)(e) Eligibility as a Local Small Business ends [A Local Small Business is no longer eligible for a procurement under the Program] if the business has been awarded \$10 million in the aggregate in County contracts and at least 10 separate contracts, as either a County prime contractor or subcontractor, [from] beginning January 1, 2006. The Director will provide written notice to the Local Small Business when the Local Small Business is no longer eligible for the Program and the Director will remove the Local Small Business from the Local Small Business Reserve Database.

(g)(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).

(h)(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.

(i)(h) Administration and Implementation: The following delineates the departmental responsibilities to administer and implement the Program:

(i) The Department [of General Services] administers and implements the Program. It must compile and maintain a comprehensive bidder's list of [self-certified] Local Small Business [Businesses] applicants that have completed and submitted the on-line Local Small Business Reserve Application, and post that list on the County's [Internet] web site. To accomplish these objectives, the Department will:

[(a)]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;



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2. Local Small Business Reserve [Program] Application [and Contractor self-certification] module;
3. [Self-Certified] Local Small Business applicant database that can be sorted according to the commodity code used by the County procurement process;
4. [Self-Certified] Local Small Business applicant profile update module; and
5. [Self-Certified] Local Small Business applicant [annual] renewal module.

[(b)]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 applicant, 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] solicitation due date and time 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 in the aggregate and at least 10 separate contracts, as specified in 11B.65.01.05(f) [this Section 5(e)].
5. Removing a Local Small Business 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 Director only after the business submits an appeal letter and sufficient supporting documents to the Director within fifteen (15) days after removal from the list by the Department. The



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business's letter must evidence that the business meets the definition of Local Small Business as defined in 11B.65.01.02(h) [Section 2(h)] of this Regulation. The review and approval of the appeal letter is within the sole discretion of the Director.

6. Assigning a unique County Vendor Identification number to each Local Small Business in the Database.

[(c)]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 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 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)]d. Reporting: By November 30 each year, the 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 [DGS] the Director. [DGS] The Director [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.



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[(e)]e. Take any other action necessary to administer or implement this Program.

(ii) The Using Department: The Using Department will:

[(a)]a. Award a minimum of 20 percent of the Using Department's combined dollar value of contracts issued for goods, services, or construction to Local Small Businesses, except as noted in 11B.65.01.04(c) [Section 4(c)], above.

[(b)]b. Notify the Office of Procurement upon designating a procurement as a Local Small Business Reserve.

[(c)]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] The Using Department must obtain verification from [DGS] the Director, prior to recommending the vendor for award, that the vendor is an eligible Local Small Business.

[(d)]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)]d. Track and report to the 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



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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)]e. Take any other action necessary to comply with this Regulation.

(iii) The Department [of General Services] will:

[(a)] Develop procedures and processes to enable a Using Department to post each planned 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)]a. 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)]b. 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 Chief Administrative Officer (CAO) by [September] October 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)(i) of 11B.65.01.05 [this Section 5].

(v) The Chief Administrative Officer will:

[(a)]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



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reason for each waiver. This information must be reported to the 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).

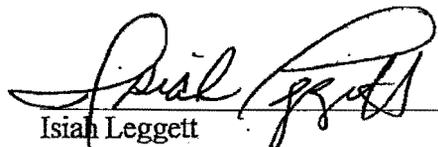
[(b)]b. Provide the oversight function to enforce the Regulation.

### 11B.65.01.06 Penalty; Enforcement

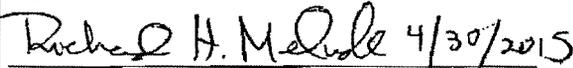
In addition to that stated under County Law, or a particular contract, any person who willfully makes a false statement to a County official or employee for the purpose of influencing participation in the Program; or fraudulently obtains, attempts to obtain, or aid another person in fraudulently obtaining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

### 11B.65.01.07 Effective Date

This Executive Regulation takes effect upon approval by the County Council.

  
 Isiah Leggett  
 County Executive

Approved as to form and legality:

  
 Richard H. McQuade 4/30/2015  
 Office of the County Attorney/Date



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Montgomery County Regulation on

## LOCAL SMALL BUSINESS RESERVE PROGRAM

Issued by: County Executive

Regulation No. 6-15

COMCOR Sec. 11B.65.01

Authority: Montgomery County Code (2014, as amended) Sec. 11B-65

Supersedes: Executive Regulation 2-09 and 21-05 AM

Council Review: Method (2) under Code Section 2A-15

Register Vol. 32 No. 3

Effective Date: \_\_\_\_\_

Comment Deadline: March 30, 2015

**Summary:**

This regulation amends the Local Small Business Reserve Program Regulations, to:

1. Increase the size criteria for services vendors from 50 employees or \$5 million to 100 employees or \$10 million average gross sales in the most recently completed three fiscal years;
2. Add language in the qualification criteria to require LSBRP contractors to provide, at a minimum, 51% of measurable work on the contract, measured by the dollar amount, unless the Director specifies, in writing, a lower percentage based on a particular contract's scope of work;
3. Update certification procedure language to replace "LSBRP self-certification" with "Local Small Business Reserve Application" to minimize confusion; and,
4. Update language in the definitions section and the exemption categories section to keep consistency with the LSBRP Bill and other compliance programs.

**Staff contact:**

Grace Denno, Chief  
Office of Business Relations and Compliance, Office of Procurement  
240-777-9959

**Address:**

Office of Procurement  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850

**Background:**

This regulation implements Chapter 11B, Article XV of the County Code, with the above amendments.



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Section 11B.65.01 Local Small Business Reserve Program is amended as follows:

### 11B.65.01.01 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.

### 11B.65.01.02 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) and (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.

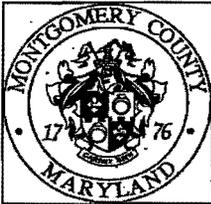


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- (d) Department - For purposes of this Regulation related to the Local Small Business Reserve Program, the term "Department" means the Office of Procurement.
- (e) Employment or Employ - The measurement of the number of people a business did or did 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.
- (f) Gross Sales - The total documented value of sales, before deducting for expenses, customer discounts, allowances, or returns.
- (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.
- (h) Local Small Business - A for-profit business, other than a broker, that:
  - (i) has its principal place of business in the County;
  - (ii) is independently owned and operated;
  - (iii) is not a subsidiary of another business; and
  - (iv) meets criteria, size limits, and gross sales amounts noted in this Regulation, including those in 11B.65.01.03 below.
- (i) Local Small Business Reserve - Any procurement that is limited to responses from Local Small Businesses.
- (j) Local Small Business Reserve Application - An on-line based application system that resides in the County's web site, by which a Contractor completes an on-line application, and submits it to the Director for certification as a Local Small Business.
- (k) Local Small Business Reserve Database - A database that resides in the County's web site that stores the list of Local Small Business applicants, and enables search by the business name, industry sector, and the County commodity code.



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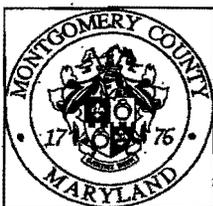
<b>Subject</b> Local Small Business Reserve Program	<b>Number</b> 6-15
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- (l) **Subsidiary of Another Business** - A business controlled by another business that owns all or a majority of its shares or interest.

### 11B.65.01.03 Criteria

To qualify as a "Local Small Business," a business must: meet the definition in 11B.65.01.02 above; provide, at a minimum, 51% of measurable work on the contract, measured by the dollar amount, unless the Director specifies, in writing, a lower percentage based on a particular contract's scope of work; and, meet 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 30 persons, or the gross sales of these business operations did not exceed an average of \$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 30 persons, or the gross sales of these business operations did not exceed an average of \$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 40 persons, or the gross sales of these business operations did not exceed an average of \$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 100 persons, or the gross sales of these business operations did not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years.
- (e) The construction operations of the business, if any, did not employ more than 50 persons, or the gross sales of these business operations did not exceed an average of \$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



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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, the gross annual sales limit for wholesale businesses is \$5 million; for retail goods, and non-construction services the limit is \$5 million; and for construction services and manufacturing the limit is \$14 million. Therefore, the combined operation cannot exceed \$5 million annually in average gross sales. Further, regarding size, the employment limit for wholesale and retail business operations is 30 persons versus 100 for a service operation. Accordingly, a business with both wholesale and service classifications can have up to 100 employees.

## 11B.65.01.04 Contract Under Local Small Business Reserve Program

- (a) Except as provided in Subsection (c) of this 11B.65.01.04, 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 20 percent of the Using Department's combined dollar value of contracts issued for goods, services, or construction to a Local Small Business. A Using 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 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 counts toward the 20 percent requirement.
- (c) The combined dollar value of procurements by a Using Department under this section does not include:



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- (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 procurement;
  - (5) an emergency procurement;
  - (6) a bridge contract;
  - (7) a cooperative procurement;
  - (8) any waiver made under Montgomery County Code § 11B-67(f);
  - (9) any procurement where no Local Small Business is qualified or able to perform the contract as determined by the Director; or
  - (10) 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 11B.65.01.04(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 must complete and submit the on-line vendor registration, including the Local Small Business Reserve Application on the County's web site, prior to the applicable solicitation due date and time. The business must receive the Director's certification as a Local Small Business prior to any contract award.



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## 11B.65.01.05 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 11B.65.01.04(c) above:
- (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 Director to show that it is a Local Small Business as defined in County Code § 11B-65(a) when required or requested by the Director. The Local Small Business must complete any required Local Small Business Reserve Application and any supporting affidavit required by the Director to demonstrate to the Director that it is a Local Small Business.
- (e) The Local Small Business must be in compliance with applicable Federal, State and County laws and regulations, including those relating to permits, licenses, and zoning that apply to operating the business. In addition, the business must operate in or from a physical location, and, among other things, reference by the business to a post office box or virtual office is insufficient to substantiate a physical location from which the business operates.
- (f) Eligibility as a Local Small Business ends if the business has been awarded \$10 million in the aggregate in County contracts and at least 10 separate contracts, as either a County prime contractor or subcontractor, beginning January 1, 2006. The Director will provide written notice to the Local Small Business when the Local Small Business is no longer eligible for the Program and the Director will remove the Local Small Business from the Local Small Business Reserve Database.
- (g) 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).



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- (h) 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.
- (i) Administration and Implementation: The following delineates the departmental responsibilities to administer and implement the Program:
- (i) The Department administers and implements the Program. It must compile and maintain a comprehensive bidder's list of Local Small Business applicants that have completed and submitted the on-line Local Small Business Reserve Application, and post that list on the County's web 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 Application module;
    3. Local Small Business applicant database that can be sorted according to the commodity code used by the County procurement process;
    4. Local Small Business applicant profile update module; and
    5. Local Small Business applicant renewal module.
  - b. Maintain the Database by:
    1. Enhancing the efficiency of the database by incorporating advancements in database technology;
    2. Requiring each Local Small Business applicant, 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 solicitation due date and time for that procurement.



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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 in the aggregate and at least 10 separate contracts, as specified in 11B.65.01.05(f).
  5. Removing a Local Small Business 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 Director only after the business submits an appeal letter and sufficient supporting documents to the Director within fifteen (15) days after removal from the list by the Department. The business's letter must evidence that the business meets the definition of Local Small Business as defined in 11B.65.01.02(h) of this Regulation. The review and approval of the appeal letter is within the sole discretion of the 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 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 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.



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5. Preparing a press release once a year to publicize the Program results.
  - d. Reporting: By November 30 each year, the 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 the Director. The Director 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 20 percent of the Using Department's combined dollar value of contracts issued for goods, services, or construction to Local Small Businesses, except as noted in 11B.65.01.04(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. The Using Department must obtain verification from the Director, prior to recommending the vendor for award, that the vendor is an eligible Local Small Business.
  - d. Track and report to the 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);



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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.
- e. Take any other action necessary to comply with this Regulation.
- (iii) The Department will:
- a. 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.
  - b. 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 Chief Administrative Officer (CAO) by October 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 11B.65.01.05(i).
- (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 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.



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### 11B.65.01.06 Penalty; Enforcement

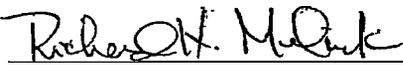
In addition to that stated under County Law, or a particular contract, any person who willfully makes a false statement to a County official or employee for the purpose of influencing participation in the Program; or fraudulently obtains, attempts to obtain, or aid another person in fraudulently obtaining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

### 11B.65.01.07 Effective Date

This Executive Regulation takes effect upon approval by the County Council.

  
 Isiah Leggett  
 County Executive

Approved as to form and legality:

 4/30/2015  
 Office of the County Attorney/Date

Resolution No. \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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Lead Sponsor: County Council

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**SUBJECT:** Approval of Executive Regulation 6-15, Local Small Business Reserve Program

**Background**

1. On May 5, 2015, the Executive transmitted to the County Council, under method (2), Executive Regulation 6-15, Local Small Business Reserve Program. The proposed regulation would amend the regulations implementing the Local Small Business Reserve Program, including an increase to the maximum size of certain service vendors.
2. On June 30, 2015, the Council extended the time to approve ER 6-15 by Resolution No. 18-196.
3. The Council's Government Operations and Fiscal Policy Committee reviewed the regulation on July 23, 2015, and recommended approval.

**Action**

*The County Council for Montgomery County Maryland approves the following resolution:*

Executive Regulation 6-15, Local Small Business Reserve Program is approved.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council