

GO COMMITTEE #1
July 16, 2015

MEMORANDUM

July 14, 2015

TO: Government Operations and Fiscal Policy Committee

FROM: Linda Price, Legislative Analyst

SUBJECT: Proposed Executive Regulation 2-15, Adding Definitions to Procurement Regulations

The Government Operations and Fiscal Policy (GO) Committee will consider Executive Regulation 2-15, Adding Definitions in the Montgomery County Procurement Regulations. The proposed regulation would add definitions for “Principal Place of Business” and “Regular Course of Business Commerce” in the Procurement Regulations.

Those expected to attend this worksession include:

- Cherri Branson, Director, Office of Procurement
- Pam Jones, Division Chief, Procurement, Office of Procurement
- Grace Denno, Business Relations and Compliance, Office of Procurement

The Executive transmitted Executive Regulation 2-15 to the Council on April 15, 2015. The transmittal memorandum notes that the regulation was advertised in the February 2015 issue of the *Montgomery County Register* and no comments were received.

Executive Regulation 2-15 does not make any substantive changes to the Procurement Regulations. Regulation 2-15 is needed to update the Definitions section of the Procurement Regulations. In her testimony at the June 16, 2015 Public Hearing on Bill 23-15, Contracts - Local Small Business Reserve Program – Amendments, Ms. Branson also commented on ER2-15 (© 19). She stated that several County Bills use this term and it makes sense to have it defined in the general Procurement Regulations than separately in each Bill. For instance, Bill 61-14 (Contracts and Procurement - Local Business Subcontracting Program) would benefit from this having this clarification. The definition for “Regular Course of Business Commerce” is currently defined only in §11B.65.01.02, which are the definitions for the Local Small Business Reserve Program.

Council staff recommends adoption of Executive Regulation 2-15 as submitted.

This Packet contains:

CE Transmittal Letter & Fiscal Impact Statement	© 1-3
Executive Regulation 2-15	4-10
Executive Regulation 2-15 (Clean)	11-17
Draft Resolution	18
Testimony on Behalf of County Executive on Bill 23-15	19

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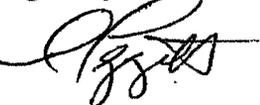
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 15, 2015

TO: George Leventhal, President, Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Executive Regulation 2-15, Adding Definitions in the Montgomery County Procurement Regulations

I am transmitting Executive Regulation 2-15, Adding Definitions in the Montgomery County Procurement Regulations. This regulation adds definitions for "Principal Place of Business" and "Regular Course of Business Commerce" in the Procurement Regulations. These definitions are necessary to clarify how the County qualifies businesses as "local" in its procurement processes.

Executive Regulation 2-15 was advertised for 30 days in the February 2015 issue of the Montgomery County Register. No comments were received in response to this advertisement.

Attachments

Fiscal Impact Statement
Executive Regulation 2-15, Adding definitions in the
Procurement Regulations

1. Legislative Summary

The regulation adds definitions for the "Principal Place of Business" and "Regular Course of Business Commerce" in the Procurement Regulations.

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.

No revenues and expenditures are expected from the regulation.

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 regulation that would affect retiree pension or group insurance costs.

The regulation does not affect retiree pension or group insurance costs.

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

The regulation expenditures will not affect IT or ERP systems.

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

The regulation does not authorize future spending.

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

DGS estimates no staff time needed to implement the regulation.

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

There are no 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.

Not applicable.

13. Other fiscal impacts or comments.

None.

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

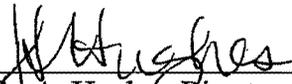
Grace Denno, Office of Business Relations and Compliance, Department of General Services

Pam Jones, Office of Procurement, Department of General Services

Beryl Feinberg, Department of General Services

Angela Dizelos, Department of General Services

Erika Lopez-Finn, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

2/2/15
Date



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Adding definitions in the Procurement Regulations	Number 2-15
Originating Department Department of General Services	Effective Date

Montgomery County Regulation on

Contracts and Procurement

Department of General Services

Issued by: County Executive
Regulation No. 2-15
COMCOR Sec. 11B. 00.01.02.4

Authority: Montgomery County Code (2004, as amended) Sec. 11B-1

Supersedes: Executive Regulation 27-03AM

Council Review: Method (1) under Code Section 2A-15

Register Vol. 32 No. 2

Effective Date: _____

Comment Deadline: 03/03/2015

Summary: This regulation adds definitions for “Principal Place of Business” and “Regular Course of Business Commerce” in the Procurement Regulations.

Staff contact: Grace Denno, Chief, Office of Business Relations and Compliance
Department of General Services
Address: 255 Rockville Pike, Rockville, MD 20850
Phone: 240-777-9959



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Adding definitions in the Procurement Regulations	Number 2-15
Originating Department Department of General Services	Effective Date

Section 11B.00.01.02 Definitions is amended 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.

2.4.7[2]3 Procurement: Buying, purchasing, leasing, or otherwise acquiring any goods, services, or construction. It also includes all functions that pertain to the obtaining of any goods, service, or construction, including description of requirements, selection and solicitation of sources, evaluation of offers, preparation and award of contract, dispute and claim resolution and all phases of contract administration.

2.4.7[3]4 Professional Services: The services of attorneys, physicians, architects, engineers, consultants, and other recognized professional individuals, associations, corporations, and groups whose services are customarily negotiated because of the individuality of those services and level of expertise involved.

2.4.7[4]5 Proposal: An offer binding on the offeror in response to an RFP and non-binding in response to an REOI.

2.4.7[5]6 Proposed Award: A decision of the Director that a specific offeror is the successful offeror after the



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Subject Adding definitions in the Procurement Regulations	Number 2-15
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evaluation of offers and the completion of any negotiations. This decision must be made in accordance with these regulations and initiates the process by which a contract award may be made to the offeror. A proposed award is not binding on the County.

2.4.7[6]7 **Protest:** A timely-filed challenge by an aggrieved offeror in connection with a decision regarding a formal solicitation in accordance with Section 11B-36 of the Montgomery County Code and these regulations
A protest must be filed, in writing, with the Director.

2.4.7[7]8 **Public Entity:** (1) the federal government; (2) a state government and any of its agencies; (3) any political subdivision of a state government and any of its agencies; (4) any board, commission, or committee established by federal, state, or local law; (5) any organization or association of the federal government, state governments, or political subdivisions of state governments; and (6) any other entity that is: (A) qualified as a non-taxable corporation under the United States Internal Revenue Code, as amended; and (B) incorporated by an entity under paragraphs (1) through (5) for the exclusive purpose of supporting or benefitting an entity under paragraphs (1) through (5).

2.4.7[8]9 **Public Notice:** Posting information for public inspection during regular business hours. In addition, public notice may, as determined by the Director, also include other means reasonably calculated to notify the public and promote adequate competition, such as advertisement, mailings, placing notices in newsletters, and inclusion of public notice on the RAPID system or other electronic media determined by the Director.

2.4.[79]80 **Qualification and Selection Committee (QSC):** A committee established by a Using Department for the purpose of evaluating responses submitted by offerors in connection with an RFP or an REOI.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Adding definitions in the Procurement Regulations	Number 2-15
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2.4.81 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.

2.4.[80]82 Request for Expressions of Interest (REOI): A solicitation to prospective offerors, the response to which is to be analyzed in accordance with evaluation criteria set forth in the solicitation. The REOI is used to develop a shortlist of prospective offerors who are eligible to receive a subsequent solicitation such as an RFP or an IFB. Requests for Expressions of Interest are generally made where specifications cannot be prepared or the availability of vendors for the goods, services, or construction involved is uncertain or unknown.

2.4.[81]83 Request for Proposals (RFP) - Best Value Procurement: A solicitation to prospective offerors, the response to which is analyzed in accordance with evaluation criteria set forth in the solicitation for the purpose of ranking the proposals received in order to obtain the best value for the County.

2.4.[82]84 Requirements Contract: A contract for goods, services, or construction covering long-term requirements (usually twelve months or more), used when the total quantity required cannot be definitely fixed, but may be stated as an estimate or within maximum and minimum limits. Delivery of goods, services, or construction are made upon issuance of a delivery order. A requirements contract may be exclusive, in which case all orders of goods, services, or construction covered by the contract must be made pursuant to it. In the alternative, a requirements contract may be non-exclusive, in which case the contract is not the only source of goods, services, or construction covered by it. Unless a requirements contract, and the solicitation for it, states that it is an exclusive contract, it is a non-exclusive contract. A requirements contract may not be used to unduly restrict competition and may not normally be used for large construction contracts.



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Subject Adding definitions in the Procurement Regulations	Number 2-15
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2.4.[83]85 Responsibility: A determination, based on characteristics of an offeror, that demonstrate that the offeror is capable of satisfying the County's needs and requirements for a specific contract.

2.4.[84]86 Responsible Offeror: A person the Director has determined under section 6.3 to be capable of satisfying the County's needs and requirements for a specific contract.

2.4.[85]87 Responsive Offeror: An offeror who has submitted a bid that conforms in all material respects to the requirements of an IFB or a small purchase.

2.4.[86]88 Responsiveness: A determination that a bid complies with the material requirements of an IFB or a small purchase. The Director determines if a bid is responsive. See Responsive Offeror.

2.4.[87]89 Retention (Retainage): The withholding of a part of the payment due to the contractor until the time of final acceptance according to the terms of the contract. The amount retained (also known as retainage), as well as the period of retention, is determined by the terms of the contract. Retention, as a method of payment administration, is usually associated with construction contracts.

2.4.[88]90 Services: The performance of an identifiable task by furnishing labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

2.4.[89]91 Shortlist: A list of offerors who, through a pre-qualification process, are eligible (usually through an REOD) to participate in a further process for award of one or more contracts.

2.4.[90]92 Small Purchase: An informal solicitation of goods, construction or non- professional services valued below a certain monetary threshold.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Adding definitions in the Procurement Regulations	Number 2-15
Originating Department Department of General Services	Effective Date

2.4.[91]93 Sole Source: A noncompetitive procurement in which goods, services, or construction necessary to meet minimum valid needs of the County are available from only one person as provided in Chapter 11B of the County Code including those having the exclusive right to manufacture, sell or otherwise market certain goods or services.

2.4.[92]94 Solicitation: A request for offers through either a formal communication or an informal communication, with potential offerors in accordance with these regulations. A solicitation may only be made by a contracting officer or an authorized government official.

2.4.[93]95 Specification: A set of requirements for goods, services, or construction that the County wishes to acquire. A specification must indicate, whenever appropriate, the procedure by which requirements are determined to be satisfied. As far as practicable, it is desirable that the requirements be expressed in numerical or other objective terms, together with their ranges or limits. A specification may be a standard, a part of a standard, or independent of a standard. It may also be expressed as an end result. Specifications should be contained in solicitations as well as contracts. Specifications should not be overly restrictive or prejudicial to competition beyond that justified by minimum valid needs of the County.

2.4.[94]96 Standardized Procurements: A standardized procurement is a purchase of equipment or parts for which the CRC determines standardization and interchangeability of parts is necessary or is in the public interest. A standardized procurement should include competition when reasonably available. Standardization approval must be for a stated period which bears a reasonable relationship to the life of the equipment and the specialized training or specialized equipment necessary to maintain the standardized item. A standardization



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decision includes the decision to procure compatible parts, equipment, services, and training.

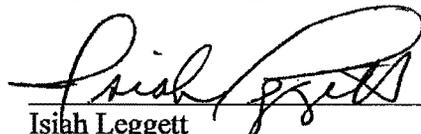
2.4.[95]97 Termination for Convenience: A termination of all or part of a contract by a contracting officer if the contracting officer determines that termination is in the best interest of the County.

2.4.[96]98 Termination for Default: A termination in whole or in part of a contract, at the option of the County, because of the contractor's failure to perform.

2.4.[97]99 Unsolicited Proposal: A proposal to render services or construction or deliver goods to the County outside of a solicitation by the County. Unsolicited proposals should be evaluated by an appropriate Using Department in terms of need, price, and funds available. If funds are available and need is present, the Using Department may initiate an appropriate solicitation as provided by these regulations, based upon the unsolicited proposal.

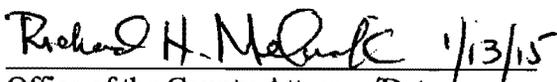
2.4.[98]100 Using Department: Any department, office, agency, or other person subject to the procurement requirements imposed under Chapter 11B, Montgomery County Code.

* * *



 Isiah Leggett
 County Executive

Approved as to form and legality:



 Office of the County Attorney/Date 1/13/15



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Council Review: Method (1) under Code Section 2A-15

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Comment Deadline: 03/03/2015

Summary: This regulation adds definitions for “Principal Place of Business” and “Regular Course of Business Commerce” in the Procurement Regulations.

Staff contact: Grace Denno, Chief, Office of Business Relations and Compliance

Department of General Services

Address: 255 Rockville Pike, Rockville, MD 20850

Phone: 240-777-9959



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2.4.73 Procurement: Buying, purchasing, leasing, or otherwise acquiring any goods, services, or construction. It also includes all functions that pertain to the obtaining of any goods, service, or construction, including description of requirements, selection and solicitation of sources, evaluation of offers, preparation and award of contract, dispute and claim resolution and all phases of contract administration.

2.4.74 Professional Services: The services of attorneys, physicians, architects, engineers, consultants, and other recognized professional individuals, associations, corporations, and groups whose services are customarily negotiated because of the individuality of those services and level of expertise involved.

2.4.75 Proposal: An offer binding on the offeror in response to an RFP and non-binding in response to an REOI.

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2.4.78 Public Entity: (1) the federal government; (2) a state government and any of its agencies; (3) any political subdivision of a state government and any of its agencies; (4) any board, commission, or committee established by federal, state, or local law; (5) any organization or association of the federal government, state governments, or political subdivisions of state governments; and (6) any other entity that is: (A) qualified as a non-taxable corporation under the United States Internal Revenue Code, as amended; and (B) incorporated by an entity under paragraphs (1) through (5) for the exclusive purpose of supporting or benefitting an entity under paragraphs (1) through (5).

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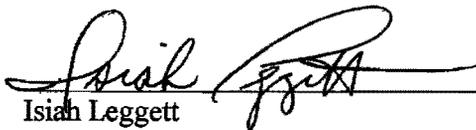
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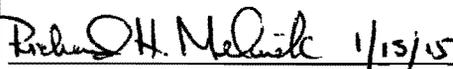
2.4.100 Using Department: Any department, office, agency, or other person subject to the procurement requirements imposed under Chapter 11B, Montgomery County Code.

* * *



 Isiah Leggett
 County Executive

Approved as to form and legality:



 Office of the County Attorney/Date

Resolution No.: _____
Introduced: July 28, 2015
Adopted: July 28, 2015

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 2-15, Adding Definitions in the Montgomery County Procurement Regulations

Background

1. On April 15, 2015, the County Council received Executive Regulation 2-15, Adding Definitions in the Montgomery County Procurement Regulations.
2. The regulation must be reviewed under method (1) of County Code §2A-15.
3. Under method (1), the Council must approve a regulation before it is adopted, and there is no deadline for Council action.

Action

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

The Council approves Executive Regulation 2-15, Adding Definitions in the Montgomery County Procurement Regulations.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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.