

GO COMMITTEE #2-3
October 13, 2015

Presentation

MEMORANDUM

October 9, 2015

TO: Government Operations and Fiscal Policy Committee

FROM: Linda Price, ^{LP}Legislative Analyst

SUBJECT: Report of the Procurement Policies and Regulations Task Force
Report of the Minority Owned and Local Small Business Task Force

Those expected to attend this meeting include:

- David Robbins, Chair, Procurement Policies and Regulations Task Force
- Herman Taylor, Chair, Minority Owned and Local Small Business Task Force
- Cherri Branson, Director, Office of Procurement

At this session, the Government Operations and Fiscal Policy Committee will receive presentations from the Procurement Policies and Regulations Task Force and the Minority Owned and Local Small Business Task Force on their final reports.

On October 28, 2014, the County Council established the Procurement Policies and Regulations (PPR) Task Force in Resolution 17-1254. The charge of this Task Force was to provide options for the needed reform of the County procurement system. Attached on © 1-4 is the Executive Summary from the Final Report. The full report is at:
<http://www.montgomerycountymd.gov/council/Resources/Files/REPORTS/Procurement/PPRFinalReport.pdf>. Other members of the PPR Task Force will also be present (see © 5 for the membership list).

On October 28, 2014, the County Council established the Minority Owned and Local Small Business (MOLSB) Task Force in Resolution 17-1253. The charge of this Task Force was to provide options to reform County programs for minority owned businesses and local small businesses. Attached on © 6-7 is the Executive Summary from the Final Report. The full report is at:
<http://www.montgomerycountymd.gov/council/Resources/Files/REPORTS/Procurement/MOLSBFinalReport.pdf>. Other members of the MOLSB Task Force will also be present (see © 8 for the membership list).

EXECUTIVE SUMMARY

On October 28, 2014, the Council approved Resolution 17-1254 which established the Procurement Policies and Regulations Task Force. The membership includes members of the community with deep expertise in federal, state, and local procurement as business leaders, acquisition professionals, consultants, attorneys, and community leaders. The Council asked the Task Force to provide options for the needed reform of the County procurement system. Task Force meetings were held from mid-February through late-August of 2015.

Observations and Themes:

While the procurement system works well overall, the Task Force found that there are opportunities to improve competition, ease of use, effectiveness, efficiency, resourcing, technology, transparency, and the impact of volume on the process. These opportunities exist in the overall procurement process as well as in individual steps within the procurement process.

The Task Force observed two themes from internal interviews and observations of the County procurement process. First is a lack of assessment of the County's procurement process as a system, rather than as a series of siloed tasks and steps that may make sense individually, but do not operate optimally as a systemic whole. Secondly, there is a perception among prospective offerors that the County's procurement system is not fair, not transparent, and is overly complex. There is concern that it takes too long to secure a contract. The following subthemes also are present:

1. The procurement system can benefit from re-engineering with respect to staffing (number of people, level of skill) and processes. More help is needed for Using Departments and vendors to engage in the process.
2. The procurement system is too manual given the complexity and volume of contracts, the number of vendors and Using Departments, and the time it takes to complete a procurement. Technology can be used to improve procurement program usability and efficiency; mitigate procurement resource capacity and skills issues; produce metrics for data driven decisions; and aid in transparency.
3. Processes and rules need to be simplified, and more procurement help is needed for Using Departments and vendors to best engage in the process.
4. Greater utilization of businesses that qualify for preferences and other benefits due to, for example, economic status or demographics of owners, is desired by the County. However, the burden of the pre-award compliance work can result in fewer "target" companies competing, as many of these companies are small and often lack the staffing

or other resources necessary to comply with substantial, up-front pre-contract requirements.

5. There seem to be several programs and initiatives in place to attract the “target” companies that do not have a consistent benefit. This risks de-emphasizing the value of goods and services received by the County and risks the economic assessment of individual offers being overrun by combinations of preferences operating without appropriate business rules.
6. Ongoing engagement of the vendor community as well as transparency is needed.

Recommendations:

The Task Force has grouped recommendations into short-term, medium-term, and long-term sets, which represents an analysis of what might be easier and less budget-intensive versus what might take longer.

Short-Term

1. **Improve use of technology in the procurement process to improve workflow.** Use existing technology to move away from paper and toward digital procedures.
2. **Utilize or enhance existing tools to increase opportunities for vendors.** The Central Vendor Registration System should be enhanced to let vendors self-identify specific solicitation types.
3. **Address challenges in balancing compliance and enforcement, and the comparative impact on offerors.** Compliance is too front-loaded and deters some potential offerors from competing. Experiment with self-certification and then empower audit staff to track compliance. Also, resources should be increased for audit and enforcement.
4. **Hold de-briefings for unsuccessful bidders to address perceptions of lack of fairness in the process.**
5. **Expand outreach and technical assistance to prospective vendors.** Expand overall outreach efforts and specific outreach to categories that have low percentages of small, local-minority, and women-owned businesses. Partner with the Maryland Procurement Technical Assistance Program to provide help-desk type services. Vendor outreach sessions should include on-site registration in the Vendor Registration System.
6. **Create a more transparent process.** Fairly or not, there is a perception that the County is unwelcoming of new entrants and that too much advanced work before a contract award drives away potential offerors. The “closed ranks” culture which limit the ability of getting through a procurement with limited resources must be changed.

The County must clearly and fully develop and communicate the intent of the procurement process to internal and external stakeholders.

7. **Clarify County procurement preferences.** County staff and attorneys could not explain how competing preference programs are reconciled for a given procurement. Metrics must be developed to determine if results are being achieved in preference programs. A moratorium should be placed on additional preferences or social responsibility provisions until metrics are established and results are analyzed.

Medium-Term

8. **Increase outreach and communication.** Engage the business community through outreach events, surveys, training, and town hall meetings to learn more about barriers to doing business in Montgomery County.
9. **Increase transparency.** Develop formal guidelines for de-briefs. Ensure that de-briefs, when requested, always occur. Adopt a de-brief process similar to the one outlined in Federal Acquisition Regulations (FAR 15.505 and 15.506). Allow unsuccessful bidders to review an aggregated, non-confidential scorecard of all bidders. This will help to demonstrate the evaluation process was conducted fairly.
10. **Develop a stronger protest process.** Bidders should have a fair opportunity to protest awards they believe were not evaluated fairly. The first stated remedy in the County Code to a protest is to ratify the flawed award. The County should review and develop a protest process similar to that in the Federal Acquisition Regulations (FAR 33.1).
11. **Increase opportunities for small purchases.** The County should post all small purchasing opportunities on the Procurement website or a webpage specifically for small purchasing opportunities.
12. **Publicize all solicitations.** The County should ensure that all Formal and Informal Solicitations are publicized on the Procurement website. Change the current provision in 11B-17, which requires a Using Department to post on a County website, to instead specify that it must be on the Procurement website.
13. **Train and re-train the procurement staff to improve vendor interactions.**
14. **Increase use of available data and technology and establish goals and priorities.** Determine the impact that technology and increased staffing has on efficient delivery of services. Measure the effects of training and education about incentive programs and contract provisions that reflect social policy. Promote diversity to encourage new ideas and efficiencies. State success for each point in the process. Consider changing or repealing procedures that do not have, or do not meet, goals.

Long-Term

15. **Review and streamline post-award compliance requirements for small business.** Small businesses find that they are not able to capture the cost of post-award compliance requirements. The County should review whether small businesses should be exempt from some of the reporting requirements.
16. **Improve Procurement Technology.** The Task Force recommends seven specific requirements which are included in the Recommendations section on page 34 of the Report.
17. **Enhance the Current Vendor Registration System.** The Task Force recommends 12 specific requirements that are included in the Recommendations section on page 34 of the full Report.
18. **Implement a task-centric system for service needs and a vendor rating/performance system for participants.**

Survey:

The Task Force sought input from businesses by creating and distributing a survey to over 9,500 business in the Montgomery County Inter-Agency Central Vendor Registration System and through distribution by Task Force members to their business networks. A press release was also issued directing interested parties to complete the survey. There were more than 200 responses. About two-thirds of respondents currently have contracts with Montgomery County. Of the respondents without current contracts, 78% had participated in solicitations. Over half of respondents owned MFD businesses. Over half were registered in the LSBRP program. Survey results are included in the full report.

Procurement Policies and Regulations

Task Force Membership

MEMBER LIST

David Robbins, Chair

Charles Atwell*

Wayne Cobb

Tom Creamer

Eppie Hankins

Buddy Henley

Linda Moore

Daniel Parra

Jan Zappold**

STAFF ASSISTANCE

Linda Price, Legislative Analyst, County Council

Marie Jean-Paul, Legislative Services Coordinator, County Council

Richard Melnick, Division of Finance and Procurement, County Attorney's Office

Mary Anne Paradise, Deputy Clerk, County Council

*Resigned February 2015

**Resigned April 2015

EXECUTIVE SUMMARY

On October 28, 2014, the Council approved Resolution 17-1253¹, which established the Minority Owned and Local Small Business Task Force. This was following the release of the Griffin and Strong Disparity Study, and subsequent review of the extension of the Minority, Female, and Disabled-Owned (MFD) program. The Council asked the Task Force to provide options for the needed reform of the County procurement system and programs for minority owned businesses and local small businesses. This need for reform was due to the results presented in the Griffin and Strong study. The Griffin and Strong report revealed that a business owner's race, ethnicity, gender, and disability status has a statistically significant and adverse effect on becoming newly self-employed as a business owner and on securing public contracting and subcontracting opportunities relative to non-MFD business owners.

The Task Force met from mid-February through early-September to review the MFD and Local Small Business Reserve Program (LSBRP) programs. They also met with a host of procurement stakeholders. Additionally, the Task Force reviewed contracting programs that have had success in other jurisdictions.

The Task Force has developed 24 recommendations will help to improve contracting opportunities for minority owned and local small businesses. Recommendations are organized by program, as well as by ways to improve accountability, outreach, and initiatives to build capacity for minority owned and local small businesses within the County.

Recommendations

I. Minority, Female, and Disabled-Owned Businesses Program Improvements

1. Establish a 35% mandate for local MFD subcontracting.
2. Continue to set annual goals for minority group participation.
3. Bring accountability to the MFD subcontractor participation requirement by undertaking the following:
 - a. Require MFD subcontracting plan submission sooner in the procurement process;
 - b. Require prime contractors to submit written documentation on outreach efforts; and
 - c. Enforce stringent criteria for waivers and improve transparency for approvals or denials.
4. Establish preference points for local-MFD prime contractors.
5. Strengthen MFD program compliance and monitoring.
6. Institute a prompt payment clause for subcontractors.

¹ See Appendix I.

7. Increase number of firms obtaining certification and streamline the County's MFD certification process.
8. Create a Standard Operating Procedure manual for the MFD program.
9. Require minimum number of bids from minority firms.

II. Local Small Business Reserve Program Improvements

10. Require headquarters to be based in Montgomery County.
11. Establish a 50% set-aside for MFD small businesses.
12. Exercise greater scrutiny in approving bridge contracts.

III. Outreach Improvements

13. Expand County outreach programs.
14. Invite potential MFD prime and subcontractors to attend pre-bid conferences for high value contracts.
15. Increase formal interaction between the County and Chambers of Commerce to improve outreach and correct negative perceptions.

IV. Accountability Improvements

16. Establish and appoint an oversight commission.
17. Retroactively apply adopted recommendations.
18. Tie diversity goals to performance.
19. Create Office of Procurement Accountability within the Office of the Chief Administrative Officer.
20. Simplify Request for Proposal boilerplate forms.
21. Prevent unjustified contract bundling.

V. Increasing Capacity of Local Small and Minority Owned Firms

22. Establish a mentorship program.
23. Establish private sector initiatives.
24. Improve financing options.

The Task Force released a survey, which included a preliminary set of 21 recommendations to vendors in the Montgomery County Inter-Agency Central Vendor Registration System, as well as the contacts and lists from Task Force member affiliations. An overwhelming majority of survey participants agreed with the preliminary recommendations. Participants also offered additional suggestions to improve the procurement system and programs for minority owned businesses and local small businesses. An analysis of the survey is included in the report. The full survey results are included beginning on the Appendix A-75.

Minority Owned and Local Small Business Task Force Members

MEMBER LIST

The Honorable Herman Taylor, Chair

Mayra Bayonet

Margo Briggs

Cherian Eapen

Warren Fleming

Janice Freeman

Julian Haffner

Leon Hollins*

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Sandra Marin, Administrative Specialist, County Council

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*Resigned June 2015