GO COMMITTEE #2
March 10, 2016

Worksession

MEMORANDUM

March 9, 2016

TO: Government Operations and Fiscal Policy (GO) Committee

FROM: Robert H. Drummer, Senior Legislative Attorney
Linda Price, Legislative Analyst

SUBJECT: Worksession: Report and recommendations of the Minority Owned and Local Small Business Task Force

At this session, the GO Committee will continue its review of the recommendations from the Minority Owned and Local Small Business (MOLSB) Task Force to improve the Minority, Female, and Disabled-Owned (MFD) program and the Local Small Business Reserve Program (LSBRP). On October 13, 2015, MOLSB Task Force Chair Herman Taylor presented their Final Report recommendations to the GO Committee.

I. Background

On October 28, 2014, the County Council established the MOLSB Task Force and the Procurement Policies and Regulations (PPR) Task Force in Resolutions 17-1253 and 17-1254, respectively. The MOLSB Task Force was asked to study the MFD and LSBRP Programs and provide options to improve them. Attached at © 1-2 is the Executive Summary from the Final Report[1].

The Office of Procurement has made a number of improvements to procurement processes since the release of the Disparity Study and appointment of the MOLSB Task Force. The Office of Procurement was reorganized into a standalone office and a new director was appointed. The Executive initiated the Procurement Innovation Project (PIP) to take a comprehensive look at procurement processes and make recommendations for improvement (see © 47-48 for the initial status update). Additionally, the Office of Legislative Oversight issued Report 2015-11:

[1] See the Final Report of the Minority Owned and Local Small Business Task Force at: http://www.montgomerycountymd.gov/council/Resources/Files/REPORTS/Procurement/MOLSBFinalReport.pdf.

Procurement Performance Metrics[2] on July 28, 2015. The report recommended a number of new procurement performance measurements that Councilmembers expressed interest in having tracked by CountyStat. Therefore, a number of changes within the Office have already been made, some that were also recommended by the Task Force.

II. The Legal Framework of the MFD Program

In *City of Richmond v. J. A. Croson,* 488 U.S. 469 (1989), the United States Supreme Court established the legal foundation upon which the County's MFD Program must be based. The Court held that the Equal Protection Clause of the 14th Amendment to the U.S. Constitution requires that a race/national origin or gender[3] conscious government procurement program, such as the MFD Program, be narrowly tailored to achieve a compelling government interest. In *Croson,* the City of Richmond had required the prime contractor on each City construction contract to subcontract at least 30% of the work to one or more minority owned businesses. The City defended this ordinance by pointing to the overwhelming majority of the population that belonged to one or more minority groups. The Court expressly rejected the use of local population as a measure of expected use of MFD firms as government contractors.

The MFD Program is a race and gender conscious affirmative action program. Justice O'Connor, speaking for the majority in *Croson*, explained the type of evidence of discrimination that might support a race conscious affirmative action program:

> Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise. 488 U.S. 469, at 509.

A race conscious affirmative action program, such as the MFD Program, that discriminates on the basis of race and gender can only be justified as a temporary remedy for past discrimination against the members of the race or gender that receive a preference. The MFD Program must satisfy the Court's *strict scrutiny* test to survive a challenge under the Equal Protection Clause of the 14th Amendment. Under the strict scrutiny test, the government must show that the affirmative action program is based upon a compelling governmental interest and is narrowly tailored to achieve this interest. Eliminating the effects of past discrimination based upon race and gender in government contracting is a compelling governmental interest.

In 2010, the United States Court of Appeals for the 4th Circuit upheld part of a North Carolina minority and women owned business subcontracting program for construction contracts and struck down part of the same program in *H.B. Rowe Co. v. Tippett,* 615 F.3d 233 (4th Cir. 2010). The Court held that the State had shown a statistical underutilization of minority owned

---

[2] See the October 13, 2015 packet at: http://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2015/151013/20151013_GO1.pdf.

[3] Gender classifications are treated on the same basis as race and national origin because Maryland has adopted an Equal Rights Amendment.

firms in the construction industry likely due to discrimination and that the preference program for minority owned firms was narrowly tailored to remedy that discrimination. However, the Court struck down the preferences for women owned firms because the disparity study performed for the State showed overutilization of women owned firms in the construction industry. The Court explained how the State goals were narrowly tailored for minority-owned firms as follows:

> The State has also demonstrated that the Program's participation goals are related to the percentage of minority subcontractors in the relevant markets in the State. *See* N.C. Gen.Stat. § 136–28.4(b1). The Department has taken concrete steps to ensure that these goals accurately reflect the availability of minority-owned businesses "on a project-by-project basis." First, the Department generates a report detailing the type of work that it anticipates subcontractors will perform on a particular project. Next, a goal-setting committee consults its database of certified minority contractors in the relevant geographic area capable of performing those types of work. Consulting the report, the database, and its own members' experience, the committee then sets a project-specific participation goal. Notably, this goal-setting process does not mechanically require minority participation; in fact, between July 2002 and February 2004, the committee set a goal of *zero* percent minority participation on approximately 10 percent of projects.

Following these legal precedents, the County retained Griffin & Strong, P.C. (GSPC) in May 2013 to conduct a comprehensive disparity study. GSPC examined and analyzed the procurement policies and practices of the County and its prime contractors regarding the use of MFD firms on County contracts for goods and services. The goal was to determine if there was a statistically significant disparity between the number of MFD firms in the relevant market and the dollars awarded to MFD firms through County contracts. GSPC divided County contracts into 4 categories – Construction, Professional Services, Services, and Goods.

GSPC conducted a quantitative analysis of the County's contracting history between July 1, 2007 and June 30, 2012. This analysis started with a determination of the relevant geographic market area for each of the 4 categories of procurement contracts. GSPC concluded that the relevant market was the geographic area where 75-85% of the firms contracting with the County are located.[4] Within each relevant market, GSPC compared the percentage of firms in each race, ethnicity, gender, and disability group that are qualified, willing and able to perform services used by the County with the percentage of dollars spent by the County on firms in each MFD group. GSPC used this analysis to determine if each MFD group was underutilized or overutilized in each relevant market. GSPC looked at both prime contractor utilization and subcontractor utilization.

GSPC further analyzed the results to determine if the underutilization observed was statistically significant and if the underutilization could be attributed to the MFD status of the firms through both a regression analysis that controlled for other possible explanations, such as business size or experience, and anecdotal evidence. A summary of the statistically significant underutilization found by GSPC is at © 3-4. The complete report can be found at: http://www.montgomerycountymd.gov/cat/services/disparitystudy.html.

[4] Montgomery County was not found to be the relevant market for any of the 4 categories. The relevant market always included the County, but also included neighboring jurisdictions.

GSPC found a statistically significant underutilization of some MFD groups in each procurement category that can be attributed to discrimination in the marketplace. Although GSPC did not find a statistically significant underutilization for all MFD groups in each category, they did find that African American owned firms were underutilized in each procurement category each year of the study. GSPC concluded that the "evidence suggests that absent affirmative measures the County would be a passive participant in a pattern of exclusion of MFD firms (see Study at © 5)."

III. Task Force recommendations

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

Recommendation #1: *Establish a 35% mandate for local-MFD subcontracting* (© 6-7).

The Task Force made this recommendation in order to take aggressive action to overcome past underutilization of minority firms in subcontracting. The report notes the concern expressed in the GSPC study regarding "the methodology utilized for determining availability of MFD companies to establish annual MFD subcontracting goals." The Task Force does not cite the GSPC data as the basis for a 35% mandate and discussed the current subcontracting goals established by Procurement. The Task Force was briefed on the legal problems with mandates and set-asides (as opposed to goals). However, they continued to question why the County should not have a mandate as strong as the Federal 8(a) program and concluded that a mandate will make clear the County's commitment to overcome past underutilization.

Council staff comments: The Task Force's recommendation is not based upon the availability of MFD firms in any industry found in the GSPC disparity study. It is remarkably similar to the 30% mandatory subcontracting program struck down in 1989 by the Supreme Court in *Croson.* Although GSPC found underutilization of some MFD firms for some types of contracts, they did not find underutilization for all firms on all contracts and did not find a 35% availability of MFD firms in each relevant market. In short, this recommendation would easily fail the requirement that a race or gender preference be narrowly tailored to remedy the discrimination found.

Council staff recommends taking no action on this recommendation. Goals have been set for each purchasing category, Bill 48-14 has been initiated along with a number of other initiatives and improvements to increase utilization of minority subcontractors.

Recommendation #2: *Continue to set annual goals for minority group participation* (© 7-8).

The Task Force recommended that the County revise the MFD program in order to ensure that specific goals are achieved. They added that the "laws that govern Montgomery County MFD participation must be changed to allow flexibility so that the needs of those groups that are underutilized can be specifically addressed, while those groups that are not underutilized in certain procurement categories are not targeted by programs meant to address disparities." In order to achieve this, they recommended that the County continue to set goals to remedy the disparities in underutilization of minority firms.

Council staff comments: The Disparity Study set goals in FY15, which have been updated for FY16 based on utilization and availability to the following: Services-15%; Non-Professional Services-22%; Goods-15%; and Construction-21%. FY15 utilization and availability, as well as FY16 Goals are broken out in each service category and minority group in the MFD Program FY2015 Annual Report at © 33. Individual goals for each type category and each minority group would conflict with the 35% mandate in recommendation #1.

Council staff recommends taking no action on this recommendation. County Code §11B-60(a)[5] requires that goals be set annually. Additionally, the code stipulates that the Chief Administrative Officer (CAO) must not set goals for a socially or economically disadvantaged group unless the CAO determines that the value of purchases made during the previous fiscal year from that group in each category of purchases under a particular source selection method, compared with the availability of that group to perform work in that category, shows a significant under-utilization of the group.

Recommendation #3: *Bring accountability to the MFD subcontractor participation requirement by undertaking the following:*

a) *Require MFD subcontracting plan submission sooner in the procurement process* (©8).

The purpose of this recommendation was to understand the intentions of the contractor with regards to the MFD Subcontractor Performance Plan. Bill 48-14 already requires the inclusion of a Subcontractor Performance Plan at the time of bid in order to be eligible for points under a Request for Proposals (RFP). Bill 48-14 does not apply to an Invitation for Bids (IFB) for a contract that will be awarded to a responsible bidder with the lowest bid price.

Council staff comments: The Committee may wish to discuss performance plan inclusion when bids are submitted in IFBs. Especially, since the Task Force has stated that "this initial plan may be amended during the negotiation process."

b) *Require prime contractors to submit written documentation on outreach efforts* (© 8).

Procurement staff provided the following information on County and prime contractor outreach efforts to subcontractors.

> As part of the MFD enforcement enhancement efforts, if a prime contractor request a full or partial waiver of MFD participation where industry data indicates that MFD vendors should be available, the office requests that prime contractors document MFD subcontracting outreach efforts. Additionally, the MFD program specialist provides primes with relevant MFD vendors who have registered as MFD firms with the Central Vendor Registration System. Where possible, the MFD program specialist conducts follow up with referred vendors to determine whether the prime has conducted outreach efforts.

[5] By September 30 of each year, the Chief Administrative Officer must set for the following calendar year percentage goals of the dollar value of purchases subject to this Article for each socially or economically disadvantaged group.

Council staff comments: Recent enhancement efforts in Procurement help address the issue of outreach to subcontractors. **The Committee may wish to understand how this enhancement has added to the workload of the MFD Program Specialist and understand if more staffing resources are needed to augment this effort.**

c) *Enforce stringent criteria for waivers and improve transparency for approvals or denials* (©8-9).

The Task Force found that a number of waivers were routinely placed in the MFD Involvement Not Possible category when the goods or services are delivered from the manufacturer directly or through a manufacturer certified or licensed distributor with an exclusive right to distribute the product. Additional waiver reasons included: Good-Faith Efforts Impaired; MFD Unavailable/Not Identifiable; and Partial Waiver.

In the FY15 MFD Annual Report, Procurement expanded and updated waiver reasons to the following:

1) Individual contractors, including Recreational Instructors, Doctors, Nurses, etc., where subcontracting is impractical;
2) MFD firms listed on the subcontracting plan who hold certifications not accepted by Montgomery County or not CVRS registered;
3) Manufacturers or their certified distributors for certain products that are not available for contracting otherwise;
4) Proprietary services or products owned and controlled by the prime contractor.
5) Economically impracticable; and
6) Vendor claims that they have in-house capacity to perform the services.

The following table provides a history of waiver actions from FY11-FY15.

	FY11	*FY12*	*FY13*	*FY14*	*FY15*
Total Value Subject to MFD Requirement	$833,800,972	$667,257,831	$738,407,857	$755,666,309	$1,034,061,757
Total MFD Dollars Waived	$63,079,074	$30,348,650	$35,189,027	$43,564,475	$217,993,585
Total Dollar Value of MFD Awards	$156,897,426	$128,964,095	$148,285,518	$147,818,712	$191,506,372
Total Number of MFD Awards	1,524	1,748	2,334	6,330	2,030
Waiver Actions, Total	323	291	287	357	211
Good-Faith Efforts Impaired Waivers	0	2	2	4	n/a
MFD Unavailable/Not Identifiable Waiver	0	0	0	3	n/a
MFD Involvement Not Possible Waivers	272	238	285	350	n/a
Partial Waivers	51	51	0	0	n/a
1) Individual contractors	n/a	n/a	n/a	n/a	33
2) Unrecognized MFD certification	n/a	n/a	n/a	n/a	0
3) Products not available for contracting	n/a	n/a	n/a	n/a	83
4) Proprietary services or products	n/a	n/a	n/a	n/a	30
5) Economically impractical	n/a	n/a	n/a	n/a	3
6) Vendor has in-house capacity to perform	n/a	n/a	n/a	n/a	62
Percent of Contract Dollars Waived	7.56%	4.54%	4.77%	5.77%	21.08%
Percent of Total Dollars to MFDs	18.81%	19.33%	20.08%	19.56%	18.52%

The percent of contract dollars waived in FY15 was 21%, which is high compared to recent years. This is due to a number of fleet related purchases that fall under categories 3 and 4. When removing these items, the percent of contract dollars waived would be 7.3%. While this is still higher than the last three fiscal years, there was also a large increase in the total value of contracts subject to MFD requirements.

The Task Force recommended that waivers be posted online. Waivers are currently being posted in the annual report. Procurement states that "based on current resources and priority projects, this office can consider posting waivers on a bi-annual basis at a later time." The Task Force also recommended an additional layer of approval in the waiver process, which currently undergoes an internal multi-step approval process.

Council staff comments: Procurement has made progress in improving the accuracy and transparency in the waiver process. However, the Task Force recommendation to post waivers online in a more timely fashion would help improve any negative perceptions that bidders have on the fairness of the County MFD process. If waivers are not posted online as granted, a quarterly or mid-year update on waivers should be posted, especially in the case of straightforward waivers. Any formal requirements for waiver approvals above the Procurement Director would extend the timeframe to award a contract and not support streamlining efforts.

Recommendation # 4: *Establish preference points for Local-MFD prime contractors* (© 9).

The Task Force recommended that the County award preference points for local-MFD firms when they are bidding as the prime contractor. Bill 48-14 awards points in RFPs for MFD offerers, regardless of whether they are local. The Task Force is also recommending enhancements to the LSBRP to establish a set-aside for MFD firms, however this would only be for local small business eligible contracts.

Council staff comments: Council staff recommends taking no action on this recommendation. This recommendation would benefit local minority prime contractors, but Council staff shares the concern of the PPR Task Force on the preferences[6], which at times compete and pit attaining the best value against making social policy gains. Council staff recommends that Procurement track and report how many MFD awards are made to local firms in future MFD annual reports. The purpose of Bill 48-14 was to increase the award of RFP contracts to MFD firms as prime contractors as a remedy for past discrimination against MFD firms. It is contradictory to insert a local preference into this program. To the extent that the Disparity Study documented evidence of past discrimination against MFD firms, it found evidence of discrimination against both local and non-local MFD firms. The remedy must include both types of firms in order to be narrowly tailored under the 14th Amendment.

[6] The PPR Task Force recommended that the County clarify procurement preferences and recommended that a moratorium be placed on additional preferences or social responsibility programs until metrics are established to reconcile the application of preference points.

Recommendation #5: *Strengthen MFD program compliance and monitoring* (© 10).

The Task Force recommended that additional staff be added to the MFD program in order to ensure compliance and improve reporting and monitoring of contracts.

Procurement is currently working to reclassify the MFD Program Specialist position to a Program Manager. However, they have offered no information on what additional enhancements could be made to MFD compliance with the addition of 1, 2, or 3 FTEs since the PRISM contract compliance will offer enhancements and streamline compliance and monitoring of prime and subcontractor payments and participation.

Council staff comments: There are a number of enhancements that are recommended and underway within Procurement. In order to efficiently meet the needs of improving the program, **Council staff recommends the review of staffing and resource needs. This review should be done in context of the review of the Recommended FY17 Operating Budget.**

Recommendation #6: *Institute a prompt payment clause for subcontractors* (© 10-11).

The Task Force agreed with the recommendation suggested by user departments in the Disparity Study to institute a prompt payment clause for subcontractors. The Task Force also recommended that the County require prime contractors to report payments on a monthly or quarterly basis to the County.

The County would not be able to institute a prompt payment clause for subcontractors because the County does not have a contract with subcontractors. However, implementation of the PRISM system will help ensure that prime contractors are in compliance with subcontractor performance requirements. The system will enable prime and subcontractors to log in payment amounts and schedules and Procurement staff to track and monitor this information.

The County has a net 30 day policy for payments to prime contractors. However, procurement has also noted that "in some instances, the County may delay payments from prime contractors where a prevailing wage issue arises or where contract completion issues are present."

Council staff comments: The PRISM system will allow the County to be more efficient and effective in monitoring payments to subcontractors. Given the access and ability to track this data, **the Committee may wish to have Procurement report compliance statistics in their annual report to illustrate progress and improvements.**

Recommendation #7: *Increase number of firms obtaining certification and streamline the County's MFD certification process* (© 11).

The Task Force recommended that the current six certifications accepted by the County be reviewed to determine if the process can be streamlined. The report also noted that increased certification should be encouraged, so the County can better assess whether it is meeting its goals.

Procurement staff report that they are partnering with area Chambers of Commerce and the State to assist firms in obtaining MFD certifications. Procurement reports that the number of registered firms with accepted MFD certifications has increased from 675 to 902 since January 2015, an over 30% increase.

Council staff comments: Firms have the ability to select the MFD certification organization(s) that best meet their needs, therefore a review of the certifications may not be a good use of resources. Procurement staff should continue partnerships with entities to assist and increase certified MFD registrations. The number of registered MFD vendors and annual increases in registration of certified MFD vendors should be reported in future MFD annual reports.

Recommendation #8: *Create a Standard Operating Procedure manual for the MFD program* (© 11-12).

GSPC and the Task Force recommended the production of a Standard Operating Procedure manual that incorporates MFD participation goals and efforts that demonstrate the desire for new MFD engagement with the County.
Council staff comments: Procurement staff will work to create an outward facing document to assist bidders in understanding the County MFD process. **The Committee may wish to understand the timeline for production of this document.**

Recommendation #9: *Require minimum number of bids from minority firms* (© 12).

The Task Force recommends that the County create a policy requiring a minimum number of bids from minority firms for the next five years to improve underutilization.

The following Preliminary Recommendations survey responses were received which reflect some of the potential challenges to implementing this recommendation.

- Requiring minimum bids is onerous. We should consider it as a goal, but not a requirement.
- The firms must be qualified. Simply requiring a minimum number of bids could lead to unqualified firms bidding and getting the work. Qualifications based selection must take priority over using minority firms.
- It's the company's responsibility to go out and look for bids and respond.
- With this rule, if there is not enough participation, it punishes those that submit timely proposals. Non-minority business will be held hostage by this ruling.
- What happens when minimum number of bids are not met? Cancel and re-bid? It is not fair for the firms that bid the first time.

Council staff comments: Council staff recommends taking no action on this recommendation.

B. Local Small Business Reserve Program Improvements

Recommendation #10: *Require headquarters to be based in Montgomery County* (© 12).

To be eligible currently, businesses are required to have their principal place of business located in Montgomery County. 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

The Task Force would like to require that businesses have their headquarters based in Montgomery County and 50% of income taxes must be paid to Montgomery County. The goal of this recommendation is to limit non-local firms, headquartered outside of the County from routinely winning LSBRP contracts.

Council staff comments: An unintended consequence of this recommendation could penalize growth for County based businesses that are located within the County, but do business with localities outside of Montgomery County. The relevant market is rarely limited to just Montgomery County. In most cases the market is regional or larger. **No locality changes are recommended at this time.**

Recommendation #11: *Establish a 50% set-aside in the LSBRP program for MFD small businesses* (© 13).

The Task Force recommended that the County establish a 50% set-aside under LSBRP specifically for minority firms. Set aside numbers must be adjusted as sub-goals for each minority group based on the utilization and availability for each category of service. The program is already subject to MFD subcontracting requirements for contracts over $50,000.

Council staff comments: This recommendation confuses the purpose of the LSBRP program. The LSBRP is a race and gender neutral preference that ***indirectly*** helps small MFD firms. The courts uniformly require that a government attempt to use race and gender neutral programs to remedy past discrimination before using a race and gender conscious preference. As a result of past discrimination against certain minority groups and women, MFD firms are more likely to be late entrants into the marketplace and therefore smaller. Since it is difficult to compete against older, well-established larger firms, MFD firms remain at a disadvantage in securing government contracts in open competition. The theory for the LSBRP is that a small business preference is therefore likely to help MFD firms establish themselves in the market without having to satisfy the strict scrutiny test mandated by the Supreme Court for a race and gender conscious remedy. This recommendation would convert the LSBRP program into a race and gender conscious preference subject to the strict scrutiny test. The LSBRP program creates a sheltered market where certain contracts can be bid on only by eligible local small businesses. A sheltered market for MFD firms is unlikely to ever satisfy the requirement that a race or gender conscious preference be narrowly tailored to remedy the discrimination.

Council staff recommends taking no action on this recommendation. However, the Office of Procurement should track data on LSBRP contracts awarded to minorities and report this metric in the LSBRP report. Procurement staff estimate that from FY13-FY15, 22-25% of LSBRP contract awardees were MFD vendors. The program is subject to MFD subcontracting requirements, as well as Bill 48-14. Therefore, the percentage of MFD awards within the LSBRP program may continue to increase.

Recommendation #12: *Exercise greater scrutiny in approving bridge contracts* (© 13).

The Task Force believes there is no due diligence regarding the availability of local small businesses capable of providing the goods and/or services if a bridge contract is in place. They recommended that greater scrutiny be exercised when approving bridge contracts with more effort taken to utilize local businesses providing goods and services in lieu of bridge contracts, especially in cases where the price and value are competitive.

Council staff comments: Procurement staff is aware of the perception surrounding bridge contracting. As mentioned above, the County must balance the need for getting the best value with other social purchasing programs. However, Procurement must work to include educational and outreach materials to correct the perception that bridge contracts are misused and not supportive of the local small and minority businesses.

C. Outreach Improvements

Recommendation #13: *Expand County outreach programs* (© 14).

The Task Force recommended that the County undertake a campaign that emphasizes that Montgomery County is open to doing business with a diverse business community. Holding seminars and events were suggested as a way to improve outreach.

Council staff comments: Procurement built up their outreach programs over the last year. The Office should now focus on building awareness of the programs and other resources available to County bidders.

Recommendation #14: *Invite potential MFD prime and subcontractors to attend pre-bid conferences for high value contracts* (© 14).

Council staff comments: The Office has had a number of pre-bid conferences and is working to increase awareness of the events through increased outreach.

Recommendation #15: *Increase formal interaction between the County and Chambers of Commerce to improve outreach and correct negative perceptions* (© 14).

The Task Force recommended that the County, including the new Economic Development Corporation, partner with area chambers of commerce to offer training and certification to be certified/authorized as providers of information

Council staff comments: According to Procurement, they are exploring expanding their relationships with various chambers, especially as it relates to information about upcoming opportunities, events and workshops. **Council staff does not recommend any formal agreement or funding be adopted at this time, but recommends that Procurement work with the new Economic Development Corporation to find opportunities to strengthen relationships with the chambers and other organizations.** An update in late summer/early fall to the Committee of these efforts and opportunities would be helpful.

D. Accountability Improvements

Recommendation #16: *Establish and appoint an oversight commission* (© 15).

The Task Force recommended that the County appoint a dedicated commission to oversee these procurement improvement recommendations through implementation and the ongoing programs. It was also recommended that the commission be responsible for reviewing procurement training sessions to ensure that they include more extensive training on non-discriminatory practices with MFD participation to meet the outlined goals.

Council staff comments: Council staff does not recommend establishing and appointing an oversight commission. Given the multitude of improvement measures that have been recommended and instituted over the last year, this may not be the most effective use of resources.

Recommendation #17: *Retroactively apply adopted recommendations* (© 15).

The Task Force recommended that all adopted policy changes be retroactive for existing contracts upon renewal and not just apply to new or expiring contracts. Changes to contracts upon renewal can affect the contract pricing, while terms and conditions were negotiated at the execution of the contract. Procurement staff stated that if a vendor received a waiver of MFD subcontracting requirements, they are asking vendors to formally request that a waiver apply to the renewal and are re-evaluating whether the market conditions dictate the continuation of the waiver.

Council staff comments: This policy of Procurement to have contractors request a waiver on renewals is an effective way to ensure that MFD goals are met in circumstances where it is now possible to obtain MFD subcontractors.

Recommendation #18: *Tie diversity goals to performance* (© 15-16).

The Task Force recommended that the Director of each Using Department, and key employees be evaluated based on diversity/inclusion goals being met or exceeded. The MFD annual report does track department participation details, but only for procurements exceeding $5 million in the aggregate or procurements for professional services exceeding $1 million in the aggregate. In FY15, 14 offices and departments met that criteria (see © 35).

Council staff comments: It would be helpful to track this data for all County offices and departments regardless of the total amount of procurements. The report should explicitly note that the performance measurements directly apply to annual employee performance reviews.

Recommendation #19: *Create Office of Procurement Accountability within the Office of the Chief Administrative Officer* (© 16).

The Task Force recommended establishing an office to be responsible for increasing awareness among using departments of minority underutilization and availability goals.

Council staff comments: Related to Recommendation #16, establishing a separate office may not be the best use of resources at this time. Following release of the OLO study, CountyStat intends to implement tracking of the following performance metrics related to the goals of this recommendation: compliance of contract administrators with procurement trainings; satisfaction survey ratings of contract administrators; and number and percent of MFD vendors and contracts (measured against County goals for each category).

Recommendation #20: *Simplify Request for Proposal boilerplate forms* (© 16).

The Office of Procurement has revised the once 40 page long boilerplate template. It is now 22 pages long and includes links to other documents when needed. The revised template has been transmitted to Directors and contract administrators.

Recommendation #21: *Prevent unjustified contract bundling* (© 16-17).

The Task Force recommends that the Office of Procurement review its policies of the current acquisition system and take steps to develop techniques for mitigating the negative effects of contract bundling on small and minority businesses.

Council staff comments: County Code §11B-57(d)4 and §11B-60(g) require the Procurement Director to review procedures and requirements to remove artificial barriers to competition. The Office of Procurement reviews all solicitations before public release.

E. Increasing Capacity of Local Small and Minority Owned Firms

The following three recommendations are meant to create new opportunities and pathways to growth for MFD firms. The Council passed Bill 25-15 (Economic Development - Reorganization - Montgomery County Economic Development Corporation) on June 30, 2015. The Bill states that the new entities program must include activities "supporting minority, female, and disabled owned businesses, including assisting minority, female, and disabled owned businesses to gain access to capital". The following three recommendations are business development in nature, and would be better reviewed along with the Planning, Housing and Economic Development (PHED) Committee as the new Economic Development Corporation becomes operational.

Recommendation #22: *Establish a mentorship program* (© 17).
Recommendation #23: *Establish private sector initiatives* (© 17-18).
Recommendation #24: *Improve financing options* (© 18).

One aspect of Recommendation #23 addresses the need for the Interagency Procurement Coordinating Committee (IPCC) to report on how County agencies can improve the participation

of MFD firms. Action should be taken to reboot this initiative, which has not submitted a work plan to the Council since FY11[7] and include information and plans on MFD contracting.

Council staff comments: The Committee may wish to schedule a summer/fall joint GO/PHED Committee meeting. The Committee may also wish to require the IPCC transmit an FY17 Work Program before August 2016 for review by the GO Committee.

IV. Extension of MFD Program

Expedited Bill 48-15 was enacted on December 1, 2015 to extend the sunset date for the MFD Program until December 31, 2016. This was done to give the Council time to analyze the recommendations of the MOLSB and PPR Task Forces and decide if any changes to the legislation authorizing the MFD Program should be made. Council staff does not recommend any legislation making changes to the MFD program. Therefore, the MFD program should be extended until December 31, 2019 to coincide with receipt and review of the next disparity study.

County Code §11B-61 requires the Chief Administrative Officer to submit a report on the MFD program to the Council by September 30 of each year. County Code §11B-69 requires the Procurement Director to submit a report on the LSBSRP to the Council by November 30 of each year. Council staff recommends that the Committee formally hold a meeting with the Office of Procurement to review the MFD and LSBRP annual reports and ensure that progress and improvements continue to be made in these programs and implemented recommendations made by the Task Force.

Attachments:

© 1 MOLSB Final Report - Executive Summary
© 3 Griffin and Strong Disparity Study - Summary of Findings
© 5 Griffin and Strong Disparity Study - Recommendations
© 6 MOLSB Final Report - Recommendations
© 19 Office of Procurement - MFD Annual Report
© 47 Procurement Innovation Project - January 2016 Status Update

F:\Price\Procurement\FY16\March 10 GO Committee MOLSB Task Force Recommendations Review.docx

[7] See the March 25, 2015 Transportation, Infrastructure, Energy and Environment Committee packet for the FY10 Annual Report and FY11 ITPCC Work Plan located at: http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2010/100325/20100325_TE1.pdf.

EXECUTIVE SUMMARY

On October 28, 2014, the Council approved Resolution 17-1253[1], 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.

II. SUMMARY OF FINDINGS

The Study found a statistically significant disparity between the number of available MFDs in the relevant markets in each work category throughout the term and the utilization, measured by dollars awarded by the County, of those same MFD groups. GSPC also determined that when the disparity was broken down by each race/gender/ethnicity group, on average, over the entire Study, the following significant underutilizations were found.

Table 1: Summary of Statistically Significant Underutilization in Prime Contracting

Montgomery County, Maryland
Disparity Study
(Over Entire Study Period – July 1, 2007 through June 30, 2012)
From P.O., DPO, and P-Card Purchases

Construction	***Professional Services***	***Services***	***Goods***
African American	African American	African American	African American
Asian American	Asian American	Asian American (DPO and P-card purchases only)	Asian American
Hispanic American (DPO and P-card purchases only)	Hispanic American (DPO and P-card purchases only)	Hispanic American (DPO and P-card purchases only)	Hispanic American
Native American	Native American	Native American (DPO and P-card purchases only)	Native American
Female (PO and P-Card purchases only)	Female	Female	Female
Disabled	Disabled	Disabled (PO and P-card only)	Disabled

Griffin & Strong, P.C. 2014

With regard to subcontractors, GSPC found that the following MFD groups in the following business categories showed significant underutilization:

3

Table 2: Summary of Statistically Significant Underutilization in Subcontracting

Montgomery County, Maryland
Disparity Study
(Over Entire Study Period – July 1, 2007 through June 30, 2012)
From Prime Vendor Questionnaire

Construction	*Professional Services*	*Services*	*Goods*
African American	African American	African American	
Asian American		Asian American	Asian American
Hispanic American	Hispanic American	Hispanic American	Hispanic American
Native American	Native American	Native American	Native American
Female			
Disabled	Disabled	Disabled	Disabled

Griffin & Strong, P.C. 2014

GSPC then tested the disparities for likely cause through a regression analysis and determined that Montgomery County, Maryland may be an active or passive participant in past or present discrimination in its vendor marketplace. Notwithstanding this general finding, the County has made some improvements in the inclusion of MFDs in its procurement process since the last, 2005 Disparity Study and the enactment of the Local Small Business Reserve Program in all areas except Construction which decrease by a minimal .1%.

Table 3: Summary of MFD Prime Utilization Comparison Between 2001-03 and 2007-12

Montgomery County, Maryland
Disparity Study
From P.O.s

	2001-2003 %	*2007-2012* %	*% Change*
Construction	26.11	26.01	- .10
Professional Services	7.08	8.94	+1.86
Services	19.61	31.95	+12.34[1]
Goods	6.19	7.13	+ .94

Griffin & Strong, P.C. 2014

Detailed findings are included in Section VIII of this report.

[1] Substantial increase is primarily due to jump in Asian American utilization from .68 in 2001-3 to 14.69 in 2007-2012.

4

both individual and firm characteristics. This combined evidence suggests that absent affirmative measures the County would be a passive participant in a pattern of exclusion of MFD firms.

FINDING 14: Purchasing Practices Policies and Procedure Findings

In general, based on a comparison among the anecdotal interviews, interviews with procurement personnel and GSPC's review of the procurement policies, GSPC finds that the County's current policies are not in need of revision to give better access to MFDs in the procurement process. However, there appears to be a disconnect in communicating that process to the MFD business community. Further, it appears the procurement personnel are unclear in how to execute the process of utilizing MFDs and do not always take full advantage of the lists and other tools available to them.

B. Recommendations

The statistical evidence in this Study, combined with anecdotal accounts and an examination of purchasing practices shows that there is significant basis for an inference of passive participation in discrimination and/or evidence of past discrimination against minority, female, and disabled owned businesses in Montgomery County. GSPC's Study team has found that Montgomery County will be an appropriate site for programs and measures to ensure that it is not a passive participant in discrimination and that all capable firms available within the relevant market are given every chance to succeed in business with the County. Much of the information emerging from the anecdotal evidence indicates that there are harmful perceptions of the County's processes, which may prevent capable and available MFD firms from attempting to do business with the County, further perpetuating this impression. The recommendations below are intended to streamline the County's practices, improve relations with the MFD business community in and around the county, and promote increased transparency.

1. Annual Goals for African American Participation

African American owned firms are the only race/ethnic/gender group that was underutilized in every procurement category, in every year of the Study. The anecdotal evidence drawn from the African American business community in Montgomery County's relevant market area support a

RECOMMENDATIONS

Based on its analysis of the County's MFD and LSBRP programs, meeting discussions and review of other contracting programs, the Task Force has 24 recommendations that it believes will improve contracting processes and opportunities for minority owned and local small firms. The recommendations and rationale are organized into five sections:

- Minority, Female, and Disabled-Owned Businesses (MFD) Program;
- Local Small Business Reserve Program (LSBRP);
- Outreach Improvements;
- Accountability Improvements; and
- Increasing Capacity of Local Small and Minority Firms.

The Task Force disseminated a survey containing a preliminary set of 21 recommendations to regional businesses. Respondents were asked to indicate whether they agreed or disagreed with each of the recommendations.

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

1. Establish a 35% mandate for local-MFD subcontracting.

The Griffin and Strong study expressed concern around "the methodology utilized for determining availability of MFD companies to establish annual MFD subcontracting goals". Griffin and Strong deemed this practice questionable, noting that it is "unclear whether realistic subcontracting goals are being developed in each purchasing category". The Task Force does not believe that the current goals set annually by the Office of Procurement are sufficient to remedy past discrimination. Based on the findings presented in the Disparity Study, the Task Force believes that aggressive action is needed to remedy the underutilization of minority firms.

Currently, the goals for dollars awarded to MFD firms from solicitations subject to the MFD program are 27% for construction, 18% for professional services, 25% for non-professional services, and 14% for goods. However, in FY14 only 19.6% of dollars went to MFD firms. This is less than the 20.1% achieved in FY13. The State of Maryland's Minority Business Enterprise (MBE) program has a goal of 29%. In FY2014, the State's overall MBE participation was 27.3% compared to 24.4% in FY13.

Although they did not meet their goal, the State reported this as their highest achievement in the history of their MBE Program. While both the State and the County have had issues meeting MFD goals, the State has worked to make changes to increase participation. The Task Force believes that for the County to make substantial progress, aggressive action must be taken and that a mandatory goal of 35% will make clear the County's strong commitment to take aggressive action to overcome past underutilization.

As a part of forming both this recommendation and the later recommendation calling for a set-aside for MFD small business within the LSBRP, the Task Force was briefed on and discussed the Supreme Court case related to the City of Richmond vs. J.A. Croson Co., which

raised the standards by which federal courts will review a set-aside, should lawsuits be brought against the County. After this briefing, the Task Force continued to question why the County cannot have a mandate as strong as the Federal 8(a) program, a program which has been found to be Constitutional. Until the laws that govern Montgomery County minority percentages and set-aside programs are changed, trying to meet the goals of African American and minority participation in procurement will continue to have disparities.

The Task Force recognizes that legal requirements may result in revisions to this recommendation.

Recommendation #1 Survey Response*	Number (#) Respondents	Percent (%) Respondents
Yes	128	82.1%
No	28	17.9%

*The survey question used the word goal, not mandate.

2. Continue to set annual goals for minority group participation.

With the release of the 2014 Disparity Study, the Office of Procurement set goals in FY15 for the minority groups in the four service categories (goods, professional services, non-professional services, and construction) that were underutilized in the previous fiscal year.

The Griffin and Strong Disparity Study found a statistically significant disparity between the number of available MFD firms in the relevant market and utilization, measured by dollars awarded to each of the same MFD groups. The study also found that for prime contracting, African American firms were underutilized in each category and for each type of award. It specifically found and recommended that, "a conclusion that the process by which contracts are awarded in Montgomery County is race neutral finds no support in our regression analysis that finds MFD status lowers the likelihood of success in contracting and subcontracting---particularly for businesses owned by African Americans. Therefore, GSPC recommends that Montgomery County consider instituting a strong, narrowly tailored program to draw more participation from this group in particular."

The Montgomery County Procurement Department has established a matrix that establishes annual goals by minority group for each procurement category. Since Montgomery County does not have mandatory goals, it has become more apparent that the County MFD program should be revised in order to make sure that specific goals are achieved. The laws that govern Montgomery County MFD participation must be changed to allow flexibility so that the needs of those groups that are underutilized can be specifically addressed, while those groups that are not underutilized in certain procurement categories are not targeted by programs meant to address disparities. When the Task Force discussed the underutilization of African American firms with the Acting Director of the Department of Economic Development, she noted that while she observed this, there isn't any current process to correct the problem.

The Task Force believes it is important that the Council understand that one of the reasons for the low submission from African American firms is due to their lack of knowledge and training in the navigation process of the political infrastructure. For many years, African

American issues were not properly evaluated when they were presented. It was not until 1986 that the Montgomery County Council had its first African American Councilmember. While Montgomery County remains one of the richest counties to live in, African Americans are unequivocally not part of its prosperity.

Recommendation #2 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	142	91.0%
No	14	9.0%

3. Bring accountability to the MFD subcontractor participation requirement.

The prime contractor must be held accountable and be required to meet subcontractor goals. In order to ensure all adequate efforts to comply with the MFD requirements, the Task Force recommends the following:

a. **Require MFD subcontracting plan submission sooner in the procurement process.** Over the years, minority subcontracting has been predicated on meeting a minimum goal. The Griffin and Strong study found there were no teeth to the process. Currently, subcontractor plan submission is part of the negotiation process, which takes place prior to the Office of Procurement executing the final contract and encumbering funds/issuing the notice to proceed.

   The submission of a Subcontractor Performance Plan should be submitted with the bid documentation, in order to understand the intent of the contractor to comply with subcontracting goals. This initial plan may be amended during the negotiation process.

b. **Require prime contractors to submit written documentation on outreach efforts.** The current Subcontractor Performance Plan form requires that contractors "provide a statement that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request". The Task Force recommends that this section of the plan be updated to require that each bidder submit documentation evidencing their outreach efforts to utilize minority firms as subcontractors.

c. **Enforce stringent criteria for waivers and improve transparency for approvals or denials.**

   The waiver process used to seek relief from minority participation is over utilized, exacerbating the challenge for minority firms. Unnecessary waivers make it even more difficult for MFD firms to make the necessary gains economically, and do not help the County meet participation goals.

   Stringent rules for MFD subcontracting waivers must be enacted. Waivers granted, if any, must be thoroughly reviewed and approved by a second party. Procurement Regulations currently only require review by the Office of Procurement's Director.

In Sec. 7.3.3.5 (a) of the Procurement Regulations, waivers are allowed in cases where it is "unusually difficult or impossible for the contractor to meet a subcontracting requirement". This section of the regulations should be strengthened with specific guidance on those conditions. The four waiver reasons permitted by Procurement include:

1) Good-Faith Efforts Impaired;
2) MFD Unavailable/Not Identifiable;
3) MFD Involvement Not Possible; and
4) Partial Waiver.

These reasons should be reevaluated to ensure that they cannot be easily circumvented in favor of prime contractors. Good-Faith Efforts, which often include pricing differences, should be evaluated earlier in the solicitation process to ensure that efforts are not impaired. Also, the County should require "Best Efforts" instead of "Good Faith" efforts and this should be defined in the Procurement Regulations.

Finally, there should be more openness, transparency and information available on why a waiver was approved. The County should look into adopting a similar practice held in other jurisdictions, such as the District of Columbia, to proactively make available information on waivers requested and granted, and post this information online. Currently, the MFD waiver information is posted online in the MFD annual report, which is currently done after the fiscal year has closed.

Recommendation #3 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	140	94.6%
No	8	5.4%

4. Establish preference points for Local-MFD prime contractors.

The County should award preference points for local-MFD firms when they are bidding as the prime contractor. Bill 48-14 awards points in Request for Proposals (RFPs) for MFD offerers, regardless of whether they are local. The Task Force is also recommending enhancements to the LSBRP to establish a set-aside for MFD firms, however this would only be for LSBRP eligible contracts. The Task Force recommends permitting preference points in certain contracts for local MFDs when bidding as the prime contractor.

5. Strengthen MFD program compliance and monitoring.

Compliance requires prime contractors to meet the stated participation goals, or if not feasible, attest to the good faith/best efforts made by the prime contractors that are confirmed independently, as well as making sure that the subcontractor agreement requirements at the time of the contract are locked in. In the Disparity Study, Griffin and Strong found that goals were being applied during the procurement process, but again had no "teeth" or little follow-up when it came to contract administration.

Alvin Boss, MFD Program Manager, has fought tirelessly with both contract administrators and prime contractors who have not fully performed their due diligence or enforced the Subcontractor Performance Plan. The only leverage Mr. Boss has had was holding up funding for a contractor that has not shown good faith in seeking and addressing the implementation of the Subcontractor Performance Plan.

Monitoring assures that the subcontractors are actually performing the percentage of work that is set aside or required in the agreement and ensures that if a prime contractor receives a change order, the subcontractor's percentage reflects the inclusion of the change order. Griffin and Strong found that there was little monitoring of contracts once they were awarded. The Task Force recommends that monitoring and compliance requirements be strengthened with enforceable requirements. Prime contractors should be required to report on a monthly or at least quarterly basis.

In order for improvements to reporting and monitoring to occur, the MFD program must be staffed adequately to bring accountability to the program. Increased staffing will help the program meet its stated goals and improve functionality through adequate monitoring and compliance. The current staffing (one FTE) for the program is insufficient for the program to be effective and compliant. The MFD program needs more staff dedicated to the program. The Task Force recommends Procurement look at what improvements could be made with the addition of one, two or three FTEs. Additionally, Procurement could leverage contractors to help implement and expedite new policies needed to address the report's recommendations.

Recommendation #5 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	131	87.9%
No	18	12.1%

6. Institute a prompt payment clause for subcontractors.

The Task Force agrees with this recommendation suggested by User Departments in the Disparity Study. This would add financial protections for subcontractors. The County should require prime contractors to report prompt payments on a monthly or quarterly basis to the contract administrators or MFD Program Manager. Additionally, the County must ensure that prompt payment is being made to prime contractors.

Recommendation #6 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	141	94.0%
No	9	6.0%

7. Increase number of firms obtaining certification and streamline the County's MFD certification process.

Some certifications are very costly to MFD companies and may be prohibitive to obtain. The current six certifications accepted by the County should be reviewed to determine if the process can be streamlined, while maintaining the integrity of the program. It benefits the County to encourage MFD certification, so the County can better assess whether it is meeting its goals. Given the growth of minority owned businesses, the County should be seeing annual growth in the number of MFD certified firms.

Recommendation #7 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	133	91.1%
No	13	8.9%

8. Create a Standard Operating Procedure manual for the MFD program.

An area of concern included in the Disparity Study dealt with the Standard Operating Procedure Manual. Griffin and Strong stated "issuance of the Procurement Manual is optional and failure to follow it is not a basis for a challenge by an offeror". However, Using Departments said they use it as guidance for making decisions. Additional concern expressed involved the lack of procedures for including MFDs, which are unclear to County staff. There is clearer understanding about the LSBRP. The County Procurement Regulations for the LSBRP offer more guidance than what is available for the MFD program. The Griffin and Strong Disparity Study found Montgomery County was perceived as a closed, exclusionary, informal network. Griffin and Strong believes this is the result of a lack of standardized organization and training, as well as, a lack of transparency.

Griffin and Strong recommends, and the Task Force supports, the production of a Standard Operating Procedure manual that incorporates MFD participation goals and efforts that demonstrate the desire for new MFD engagement with the County. This manual is referenced in Sec. 1.8 if the Procurement Regulations, and is critical if Using Department staff are to properly understand and administer the MFD program. The 2010 Procurement Guide offers broad, but no applicable guidance on how the MFD program is administered. Additionally, the Standard Operating Procedure manual should be a public document. This will illustrate the County's commitment to rectify negative perceptions about the County's utilization of MFD firms.

Recommendation #8 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	138	94.5%
No	8	5.5%

9. Require minimum number of bids from minority firms.

The Task Force recommends that the County create a policy requiring a minimum number of bids from African American, Hispanic American, and other minority firms for the next five years to improve underutilization. This recommendation is based on an informal policy that was used at the Rockville Economic Development Corporation to help show a commitment to improving utilization of Rockville based businesses on their contracts. This would encourage County contract administrators to build relationships with more minority firms, and empower minority firms to be responsive and responsible bidders on County solicitations.

Recommendation #9 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	103	72.0%
No	40	28.0%

II. Local Small Business Reserve Program Improvements

10. Require headquarters to be based in Montgomery County.

The Task Force recommends that businesses have their headquarters based in Montgomery County in order to be eligible for the program. Additionally, 50% of income taxes must be paid to Montgomery County. This would increase restrictions on the current LSBRP eligibility requirements, which require businesses to "generate a significant amount of economic activity in the County" and have its "physical business location(s) only in the County; or 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"[12]. The goal of this recommendation is to limit non-local firms, headquartered outside of the County–with few County-based employees, from constantly winning LSBRP contracts.

Recommendation #10 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	88	73.9%
No	31	26.1%

[12] Bill 23-15 (Contracts - Local Small Business Reserve Program – Amendments) replaces "generates a significant amount of economic activity in the County" with "Principle Place of Business". This does not change how the LSBRP is implemented.

11. Establish a 50% set-aside in the LSBRP program for MFD small businesses.

Many people believe the LSBRP is tailored to minority firms, however, the Task Force was informed that the Office of Procurement does not track data on how many LSBRP awards go to MFD firms. A goal of the LSBRP program is to allow small businesses to be prime contractors instead of performing as a subcontractors. However, for awards over $50,000, a Subcontractor Performance Plan is requested. These firms must show and prove past performance in the services that are requested by the Using Department.

In the LSBRP program, 20% of eligible contracting dollars are set-aside for awards to local small businesses. The Task Force recommends that the County establish a 50% set-aside under LSBRP specifically for minority firms. Set aside numbers must be adjusted as sub-goals for each minority group based on the utilization and availability for each category of service. However, special attention would be focused at addressing the disparities of African American firms.

As a result of implementing this recommendation, Montgomery County will successfully establish a program to develop minority prime contractors within their local small contracting program. If approved, the Office of Procurement should provide data on the percentage of MFD contractors awarded contracts within the LSBRP program in its annual LSBRP report. This initiative should sunset after five years.

Recommendation #11 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	81	70.4%
No	34	29.6%

12. Exercise greater scrutiny in approving bridge contracts.

Currently, there is no due diligence regarding the availability of local small businesses capable of providing the goods and/or services if a bridge contract is in place. While Montgomery County's terms and conditions are added to bridge contracts, which were originally competed by another jurisdiction, it is difficult to impose and enforce expectations regarding MFD utilization. Bridge contracts are viewed by local small and minority businesses as just one more way for Using Departments to get around LSBRP and MFD requirements. Overuse of bridge contracts take away competitive opportunities that may have resulted in awards to local or minority owned businesses.

The Task Force recommends that greater scrutiny be exercised when approving bridge contracts. More effort should be taken on the part of the County to utilize local businesses providing goods and services in lieu of bridge contracts, especially in cases where the price and value are competitive. If subcontractors are part of the bridge contract, the County should use local subcontractors to meet the MFD requirements.

III. Outreach Improvements

13. Expand County outreach programs.

The Task Force recommends that the County undertake a campaign that emphasizes that Montgomery County is open to doing business with a diverse business community. Seminars that support small and MFD firms are also a great way to make firms feel welcomed to do business. Seminars on bonding, credit, and certification may prove to be popular topics. The County must consider holding events that will bring vendors, prime contractors and users together, such as those held by the State of Maryland and City of Baltimore.

Recommendation #13 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	95	86.4%
No	15	13.6%

14. Invite potential MFD prime and subcontractors to attend pre-bid conferences for high value contracts.

These events will allow prime contractors to engage with potential subcontractors, which will lead to increased utilization of local small and MFD businesses.

Recommendation #14 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	103	96.3%
No	4	3.7%

15. Increase formal interaction between the County and Chambers of Commerce to improve outreach and correct negative perceptions.

With such a robust and ample number of County Chambers of Commerce, the County should offer training and certification, so that Chamber staff can be certified/authorized as providers of information. In addition, the County, and if appropriate the new Economic Development Corporation, should provide professional development training grants for the local Chambers to participate in such training and certification. In order for this recommendation to be effective, incentives and resources need to be established in a systematic approach requiring Chambers and other non-profit business groups attend County events and trainings for continued funding.

To promote this effort, the County should consider holding an annual or bi-annual Small Business Resource Industry Day, whereby, having ALL Chambers exhibiting and allowing contractors to meet with these groups to establish relationships and contacts.

Recommendation #15 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	92	84.4%
No	17	15.6%

IV. Accountability Improvements

16. Establish and appoint an oversight commission.

The Task Force recommends the County appoint a dedicated commission, within the Office of Procurement, to oversee these procurement improvement recommendations through implementation and the ongoing programs.

Members from the Office of Procurement provided an overview of the procurement process to the Task Force. Their presentation was very informative, but it has been the experience of many minority firms that some Procurement staff and contract administrators don't practice or follow the rules that are outlined. Therefore, the commission should also be responsible for reviewing procurement trainings to ensure that they include more extensive training on non-discriminatory practices with MFD participation to meet the outlined goals.

The commission should provide an annual report to the County Executive and County Council. This report should include a plan that would address the need for continued interaction between the Using Departments, Chambers of Commerce, the new Economic Development Corporation, and minority businesses in Montgomery County.

The County Council may also want to task this commission with overseeing the recommendations in the Disparity Study and the report of the Procurement Policies and Regulations Task.

Recommendation #16 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	90	82.6%
No	19	17.4%

17. Retroactively apply adopted recommendations.

All adopted policy changes should be retroactive for existing contracts upon renewal and not just apply to new or expiring contracts.

Recommendation #17 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	74	69.2%
No	33	30.8%

18. Tie diversity goals to performance.

Performance reviews and evaluations would be tied to diversity/inclusion goals being met or exceeded for program managers/contract administrators and Department Directors. The Director of each Using Department, and key employees, should to be evaluated based on quality, transparency, and overall effectiveness of their internal processes to enhance and promote minority business. Each Using Department project manager/contract administrator

would be evaluated on how well they are meeting goals to enhance minority participation when seeking goods and services.

Recommendation #18 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	90	84.1%
No	17	15.9%

19. Create an Office of Procurement Accountability within the Office of the Chief Administrative Officer.

The Griffin and Strong study cited a concern that "Using Departments are not required to use the most recent list of certified MFD vendors furnished by the Director of Procurement. Many of the Using Departments are not taking advantage of the tools for identifying MFD firms that are available to them." To ensure that key staff are aware of MFD firms, the Task Force recommends the creation of the Office of Procurement Accountability. The Office would be responsible for increasing awareness among Using Departments of minority underutilization and availability goals. Many jurisdictions champion minority contracting, such as the City of Baltimore, State of Maryland and the City of Atlanta. These offices are separate from the purchasing office and report directly to the mayor, governor, or executive.

Recommendation #19 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	76	71.0%
No	31	29.0%

20. Simplify RFP boilerplate forms.

The Office of Procurement's boilerplate template is around 40 pages long, generic, and can increase depending on the type of procurement and attachments needed. Procurement should revise the template to simplify the documents, which would be based on the type of solicitation.

Recommendation #20 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	103	93.6%
No	7	6.4%

21. Prevent unjustified contract bundling.

Contract bundling has been a practice that continues to hurt small and MFD businesses. Some of the underutilization figures are a result of the County bundling contracts. As the anecdotal evidence in the Disparity Study provides, the "practice places the contract out of the reach of small business and relegates them to the status of a subcontractor" or makes it "virtually impossible for diverse suppliers to meet the requirements".

The Task Force recommends that the Office of Procurement review its own policies of the current acquisition system and immediately take the necessary steps to develop techniques for mitigating the negative effects of contract bundling on small and minority businesses. Additionally, the County should explore the possibility of Blanket Purchase Agreements and move to discontinue contracts that are currently bundled unnecessarily.

V. Increasing Capacity of Local Small and Minority Firms

22. Establish a mentorship program.

In order to encourage participation on larger contracts, the County should look for instances in which MFD capacity can be increased to match contract size. This would create a prime contractor pipeline so companies can grow from subcontractors to prime contractors. Many MFD's provide goods and services, such as construction and professional services, but don't have the proper infrastructure to handle larger contracts or experience to lead as the prime contractor. Having the capability for a MFD firm with past performance to prime a contract and team with larger firms provides great opportunities to grow. Additionally, allowing MFD firms to team with other firms provide additional avenues for MFD firms to share in a wider array of opportunities.

The County has a forecast of upcoming high value opportunities and the type of companies that may be bidding. The County should review all upcoming high value opportunities and adapt a program, such as that offered in the City of Atlanta, and pilot a Mentor-Protégé and Joint Venture Contract Program to qualified companies that have the capacity to perform the services. The contracts could be offered exclusively to businesses that have entered in a mentor-protégé or joint venture relationship. Alternatively, the program could be incentivized as a preference program. The firms should be limited to local and minority firms.

Recommendation #22 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	89	81.7%
No	20	18.3%

23. Establish private sector initiatives.

Griffin and Strong recommends, and the Task Force supports that the County consider private sector initiatives, such as including MFD goals in their economic development contracts and measuring MFD participation on private sector projects performed by prime contractors who currently do business with the County. Montgomery County could task the newly created Economic Development Corporation with collecting information on private sector vendor diversity.

The Task Force also recommends that Montgomery College, Montgomery County Public Schools, the Maryland-National Capital Park and Planning Commission, the Housing Opportunities Commission, and the Washington Suburban Sanitary Commission, who are all members of the Interagency Procurement Coordinating Council, discuss and report to the

Council on how they can collaborate with County Government to improve participation of MFD firms.

Recommendation #23 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	90	85.7%
No	15	14.3%

24. Improve financing options.

As approved in Bill 25-15, the new Economic Development Corporation's program must include activities "supporting minority, female, and disabled owned businesses, including assisting minority, female, and disabled owned businesses to gain access to capital". The Task Force has identified a number of County, State, and Federal programs geared towards providing MFD firms with capital. However, the Task Force recommends better promotion of these programs and ask the new Economic Development Corporation to identify gaps in financing options.

Recommendation #24 Survey Response	Number (#) Respondents	Percent (%) Respondents
Yes	90	82.6%
No	19	17.4%

OFFICE OF PROCUREMENT
DIVISION OF BUSINESS RELATIONS AND COMPLIANCE

MINORITY, FEMALE, AND DISABLED PERSONS (MFD) PROGRAM

ANNUAL(REPORT)
FISCAL YEAR 2015

(19)

Table of Contents

Executive Summary ..... Page 3

Section I. MFD Procurement Participation Report ..... Page 10

Section II. MFD Participation by Requests for Proposals (RFPs) ..... Page 16

Section III. MFD Participation by Invitation for Bids (IFBs) ..... Page 19

Section IV. MFD Participation by Selected Departments ..... Page 22

Section V. MFD Exclusions and Waivers ..... Page 25

Executive Summary

For FY15, **18.52%** of the total amount of procurement dollars subject to the Minority, Female and Disabled Persons (MFD) program requirements were awarded to Certified MFD businesses. MFD vendors were awarded $191,506,372 of the $1,034,061,757 in procurement dollars subject to MFD requirements. Certified MFD vendors received 2,030 Purchase Orders (POs) or 36.54% of the total number of POs issued that were subject to MFD requirements (5,556). Additionally, in FY15, MFD businesses were awarded 35% of purchase orders in the non-professional services category.

Important FY 15 Developments

In May 2013, the County retained Griffin & Strong, P.C. (GSPC) to conduct a comprehensive disparity study (hereafter "GSPC disparity study"). GSPC examined and analyzed the policies and practices of the County regarding the use of Minority, Female, and Disabled owned businesses (MFD) on County contracts for goods and services. GSPC conducted a quantitative analysis of the County's contracting history between July 1, 2007 and June 30, 2012. This analysis started with a determination of the relevant geographic market area for each of the 4 categories of procurement contracts. Within each relevant market, GSPC compared the percentage of firms in each race, ethnicity, gender, and disability group that are qualified, willing and able to perform services used by the County with the percentage of dollars spent by the County on firms in each MFD group. GSPC used this analysis to determine if each MFD group was under-utilized or over-utilized in each relevant market. GSPC analyzed the results to determine if the underutilization observed was statistically significant and if the underutilization could be attributed to the MFD status of the firms. Based upon its analysis, GSPC found a statistically significant underutilization of some MFD groups in each procurement category that can be attributed to discrimination in the marketplace. GSPC did not find a statistically significant underutilization for all MFD groups in each category. However, they did find that African American owned firms were underutilized in each procurement category each year of the study. Further, GSPC concluded that evidence suggested that "absent affirmative measures" the County would be a passive participant in a pattern of exclusion of MFD firms.

In an effort to address underutilization concerns raised in the GSPC disparity study, the County Council passed and the County Executive signed Bill 48-14. The bill adds additional points in the evaluation criteria to all RFPs with a maximum value of 10% of the total evaluation points to vendors with MFD status or participation. To increase the participation of MFD firms, Bill 48-14 requires an evaluation factor in a Request For Proposals (RFP) in certain procurement contracts and authorizes the award of additional points to a proposal submitted by a contractor for whom a goal has been set under the MFD program or a proposal submitted by a contractor for whom a goal has not been set but who proposes to exceed the established MFD procurement subcontracting goal.

(12)

Based on the GSPC disparity study, MFD participation goals were established by the Chief Administrative Officer (CAO) for the four (4) procurement purchasing categories. These goals will be effective for all procurement activity during FY16. The relevant categories are:

- Professional Services 15%
- Non-Professional Services 22%
- Construction 21%
- Goods 15%

As an additional mechanism to address concerns raised about transparency and accountability in the procurement process as well as MFD and LSBRP participation rates, the County Executive sought passage of Expedited Bill 7-15. The measure was passed by the County Council and signed by the County Executive in March 2015. It established the Office of Procurement as a principal Office of the Executive Branch. Through this reorganization, the Office of Procurement became a cabinet-level entity within the Executive Branch of Montgomery County government. In addition to fulfilling the procurement function, the new organizational structure provided renewed focus on the Division of Business Relations and Compliance — the office which ensures vendor compliance with wage laws and contracting programs designed to increase participation of MFD and local small businesses within county contracting programs.

Additionally, on October 28, 2014, the Montgomery County Council approved Resolution 17-1253, which established the Minority Owned and Local Small Business Task Force. On September 15, 2015, the task force issued a final report[1]. The Task Force report contained 24 recommendations which would affect contracting and procurement practices. To date, the County Council has not enacted recommendations contained in the report.

BACKGROUND

Within the Office of Procurement, the Division of Business Relations and Compliance compiles an annual report on the Minority[2], Female and Disabled Persons Owned Business Program (MFD) which provides information required in accordance with Section 11B-61 of the Montgomery County Code and the Montgomery County Procurement Regulations.

The MFD Program assists registered vendors that hold at least one county-recognized certification (see Chart 1) in gaining opportunities as either prime contractors or sub-contractors for County contract awards in the amount $50,000 or greater. [3]

---

[1] The Report of the Minority Owned and Local Small Business Task Force may be found here: www.montgomerycountymd.gov/council/.../MOLSBFinalReport.pd

[2] Businesses owned by vendors in several socially disadvantaged groups may be eligible for certification and participation in the MFD program, including African American, Hispanic American, Asian American, Native American, Female and Persons with Disabilities

3 Grants, utilities, intra/inter-governmental procurements and non-profit organizations are not subject to the MFD requirements.

22

Minority Certifications Recognized By the County

Agency	Program	Description	Website
Maryland Department of Transportation	Minority Business Enterprise	MDOT Certified MBE and/or DBE Businesses (MDOT-MBE)	http://mbe.mdot.state.md.us
Virginia Department of Small, Women and Minority Owned Business Program	Small, Woman and Minority	Virginia Small, Women, Minority Businesses(SWAM)	http://www.dmbe.virginia.gov/swamcert.html
Federal Small Business Administration	8(a) Program	8(a) Certified Businesses (SBA-8a)	http://dsbs.sba.gov
Women's Business Enterprise National Council	Women's Business Enterprise	Women's Business Enterprise (WBENC)	http://www.wbenc.org
Maryland/District of Columbia Minority Supplier Development Council	Minority Business Enterprise	Minority Business Enterprise(MSDC)	http://affiliate.nmsdc.org/mddc/
City of Baltimore	Minority and Women's Business Opportunity Office	Minority and Women's Business Opportunity Office (MWBOO)	http://cityservices.baltimorecity.gov/mwboo/

Section 11-B of the Montgomery County Code sets forth the procedures to facilitate the goal of the County Government to remedy the effects of discrimination by awarding a percentage of County contracts to MFD businesses and requires the Director of Procurement, with the assistance of the Using Departments to **"actively and aggressively recruit certified MFD owned businesses for which a goal has been set."** Opportunities for MFD participation are tracked and monitored according to procurement purchasing categories.

Those purchasing categories are:

- ☐ Professional Services
- ☐ Non-Professional Services
- ☐ Goods
- ☐ Construction

23

To qualify to participate in the MFD subcontracting program, an MFD owned business must:

1) belong to an MFD group for which a goal has been set in the purchasing category and source selection method covering the work that is the subject of the subcontract;

2) be certified as an MFD owned business.

MFD Subcontracting Program

When a contract falls within the requirements of the MFD subcontracting plan, a contractor must subcontract a minimum percentage of the contract price to certified MFD owned businesses that are eligible to participate in the subcontracting program. Each contractor must submit a Subcontractor Performance Plan prior to undertaking performance under the contract, or at such earlier time as required by the Director.

An MFD Subcontractor Performance Plan must:

(a) identify each MFD subcontractor;

(b) identify the amount the contractor has agreed to pay each MFD subcontractor;

(c) provide a copy of the language used in each MFD subcontract

County approval of the Subcontractor Performance Plan does not establish a contractual relationship between the County and the MFD subcontractor. In submitting the subcontracting performance plan to the county, the contractor agrees to notify the County regarding any proposed change to the subcontracting performance plan. Failure to submit documentation showing compliance with the Subcontracting Performance Plan is grounds for imposing liquidated damages unless failure to comply with the Plan is the result of an arbitration decision in favor of the contractor or a waiver granted by the Director. Liquidated damages under this provision should equal the difference between all amounts the contractor has agreed under its plan to pay MFD subcontractors and all amounts actually paid MFD subcontractors considering any relevant waiver or arbitrator's decision. Additionally, failure to show compliance with a Subcontractor Performance Plan must result in finding the contractor non-responsible for purposes of future procurements with the County during the next 3 years.

Waivers

The Director may waive in whole or in part an MFD subcontracting requirement imposed under Section 7.3.3 if the Director finds that:

(a) it is unusually difficult or impossible for the contractor to meet a subcontracting requirement;

(b) reasonable grounds exist to waive a subcontracting requirement;

(c) the contract is awarded under an emergency procurement; or

(d) the contractor belongs to a class of nonprofit entities for which the Director has determined that it would be impractical to require participation in the MFD Subcontracting Program.

The MFD subcontracting goal is set by October 1 of each year based upon the most recent report that the County Executive submits under Section11B-61(b) of the County Code to determine the availability of MFD owned businesses in the relevant geographic market area to perform work under County contracts. The Goals are posted on the County's MFD website: www.montgomerycountymd.gov/MFD

25

Outreach Efforts

A. In 2015, the position of outreach program manager was added to the DBRC. This additional position is designed to enhance outreach efforts to the MFD business community and LSBRP business community by providing a dedicated resource responsible for developing and implementing networking events, developing partnerships with other departments/organizations to expand outreach capacity, and increase vendor awareness through in-person contacts and various social media platforms.

B. Targeted Outreach events: These events are designed to assist MFD and LSBRP vendors in obtaining County contracting opportunities hosted by the Office of Procurement, DBRC and the Procurement Division in FY15 include:

- Sep 24, 2014 – OBRC Presentation at DED
- Oct 15, 2014 -- Meet the Primes (Minority vendors met with multiple prime contractors for County construction projects)
- Feb 25, 2015 – Local, Small and Minority Vendor Meet and Greet on two major projects:
  Multi Agency Services Park Depots (MASP) and Solar Installation on County Facilities.
- Mar 31, 2015 – Joint event with African American Chamber of Commerce (AACC) – MFD certification workshop
- June 29, 2015 -- MFD Outreach and Networking Event with Hensel Phelps

C. Networking Events: These events help provide access to the local and minority vendors. Through panel discussions, seminars and match making sessions, vendors have an opportunity to gain detailed and individualized information regarding procurement processes and requirements, learn about particular procurement opportunities and obtain business development information. In FY15, the Office of Procurement, DBRC and the Division of Procurement participated as panelists or key speakers in the following events:

- July 9, 2014 -- Ruppert Landscape Networking Event
- July 10, 2014 -- Comprehensive Economic Strategy Pre-submission Conference
- July 17, 2014 -- ProBiz event
- July 30, 2014 -- Minority Business Economic Council
- Aug 14, 2014 -- American Express OPEN for Government Contracts: Summit for Success
- Aug 28, 2014 -- Women Power Conference
- Sep 2, 2014 -- 2014 Maryland Hispanic business conference
- Sep 18, 2014 -- Maryland Marquee Hispanic Gala
- Oct 7, 2014 -- GSA Construction and Building Services Procurement Program
- Oct 15, 2014 -- Baltimore County Meet the Primes Meet & Greet
- Nov 19, 2014 -- Baltimore Washington Chamber of Commerce 23rd Annual Government Procurement Fair
- Dec 12, 2014 -- Small Business & Economic Development Summit III

- Dec 15, 2014 – African American Chamber of Commerce(AACC) -- MDOT Certificate Seminar
- Jan 29, 2015 -- Green Purchasing Vendors' Fair
- Feb 26, 2015 -- 2015 Minority Business Economic Council Black History Month Business Reception
- Mar 10, 2015 -- Business Innovation Network lunch and learn at Wheaton
- Mar 18, 2015 -- Breakfast talk for the Team Network
- Mar 21, 2015 -- Minority Small Business Construction Conference
- Mar 24, 2015 -- Hispanic Chamber of Commerce 6th Annual Business Expo
- Mar 31, 2015 -- African American Chamber of Commerce(AACC) -- MDOT Certificate Seminar
- May 8, 2015 -- Maryland Washington Minority Companies Association Business Showcase Expo
- May 15, 2015 -- Montgomery County Chamber, GovConNet Procurement Conference
- May 19, 2015 -- Bethesda Green Incubator reverse trade show
- May 21, 2015 -- State GOMA "Ready, Set, GROW!" event in Montgomery County
- June 4, 2015 -- Asian Pacific American Chamber of Commerce (APACC) seminar on MFD and LSBRP
- June 25, 2015 -- Korean Businesses Networking Event with Maryland Korea Development Center

Awards

Division of Business Relations and Compliance received the "Most supportive County Administrator of the Year" award from the Maryland Washington Minority Companies Association on May 8, 2015.

OFFICE OF PROCUREMENT
DIVISION OF BUSINESS RELATIONS AND COMPLIANCE

SECTION(I)
MFD PROCUREMENT PARTICIPATION REPORT

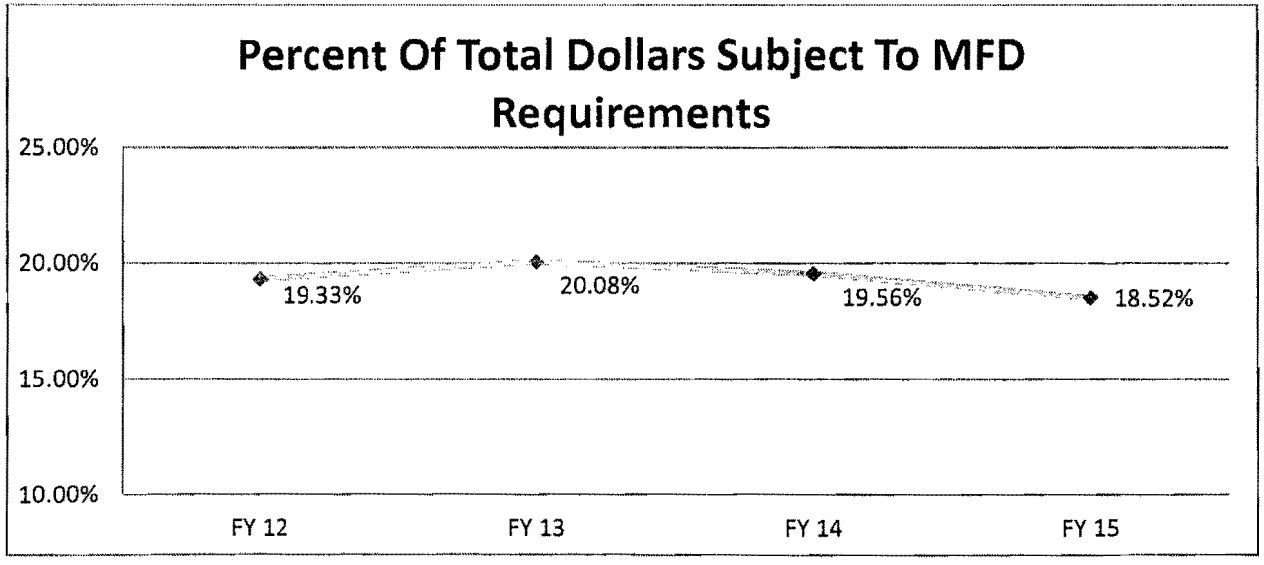
FISCAL YEAR 2015

28

FY12 – FY15 Comparison of MFD Contract Activity

Fiscal Year	Total $ Subject to MFD	Total $ Encumbered to MFD	Total # of Purchase Orders	Total # of Purchase Orders to MFD	% of Total $ Encumbered to MFD	% of # of Purchase Orders to MFD
FY 15	$1,034,061,757	$191,506,372	5,556	2,030	**18.52%**	**36.54%**
FY 14	$750,190,650	$147,501,193	6,301	2,233	**19.66%**	**35.44%**
FY 13	$732,997,158	$149,265,124	6,359	2,346	**20.36%**	**36.89%**
FY 12	$658,563,269	$128,051,999	5,305	1,713	**19.44%**	**32.29%**

Chart 1: 4-year Comparison on MFD Encumbrances



29

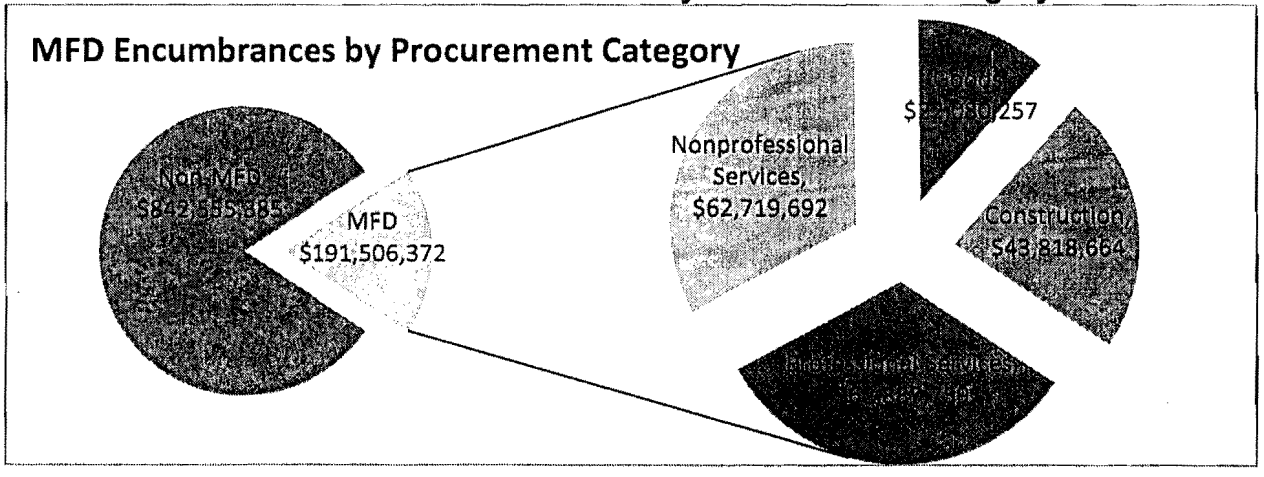
FY15 MFD Contract Activity Summary by Procurement Category

MFD participation is measured in the following four procurement categories:

- Professional services
- Non-professional services
- Goods
- Construction

Procurement Category	Total $ Subject to MFD	Total $ Encumbered to MFD	Total # of Purchase Orders	# of Purchase Orders to MFD	% of Total $ Encumbered to MFD	% of # of Purchase Orders to MFD	% of each Procurement Category
Professional Services	$394,369,329	$62,887,759	1,837	705	32.84%	34.73%	--
Non-Professional Services	$203,267,745	$62,719,692	2,020	713	32.75%	35.12%	--
Goods	$122,188,456	$22,080,257	1,426	463	11.53%	22.81%	--
Construction	$314,236,227	$43,818,664	273	149	22.88%	7.34%	--
TOTAL	**$1,034,061,757**	**$191,506,372**	**5,556**	**2,030**	**18.52%**	**36.54%**	

Chart 2: MFD Encumbrances by Procurement Category



30

Dollar Value to MFD Firms by Group, FY15

Professional Services

Total Dollars Subject to Goal: $394,369,329 Total Actions: 1,837

Group	Total $ Encumbered to MFD	% of Total $ Encumbered to MFD	Total # of Actions to MFD Group	% of Total Actions by MFD Group
African American	$6,874,366	1.74%	107	5.82%
Asian American	$38,726,761	9.82%	220	11.98%
Female	$13,554,080	3.44%	284	15.46%
Hispanic American	$3,402,160	0.86%	79	4.30%
Native American	$164,037	0.04%	5	0.27%
Person with Disability	$166,355	0.04%	10	0.54%
Total	$62,887,759	15.95%	705	38.38%

Non-Professional Services

Total Dollars Subject to Goal: $203,267,745 Total Actions: 2,020

Group	Total $ Encumbered to MFD	% of Total $ Encumbered to MFD	Total # of Actions to MFD Group	% of Total Actions by MFD Group
African American	$15,976,912	7.86%	179	8.86%
Asian American	$3,226,336	1.59%	35	1.73%
Female	$25,125,522	12.36%	287	14.21%
Hispanic American	$17,737,871	8.73%	202	10.00%
Native American	$494,386	0.24%	3	0.15%
Person with Disability	$158,664	0.08%	7	0.35%
Total	$62,719,692	30.86%	713	35.30%

31

Goods

Total Dollars Subject to Goal: $122,188,456 Total Actions: 1,426

Group	Total $ Encumbered to MFD	% of Total $ Encumbered to MFD	Total # of Actions to MFD Group	% of Total Actions by MFD Group
African American	$4,303,070	3.52%	109	7.64%
Asian American	$1,758,580	1.44%	50	3.51%
Female	$14,485,601	11.86%	291	20.41%
Hispanic American	$817,953	0.67%	12	0.84%
Native American	$715,052	0.59%	1	0.07%
Person with Disability	$0	0.00%	0	0.00%
Total	$22,080,257	18.07%	463	32.47%

Construction

Total Dollars Subject to Goal: $314,236,227 Total Actions: 273

Group	Total $ Encumbered to MFD	% of Total $ Encumbered to MFD	Total # of Actions to MFD Group	% of Total Actions by MFD Group
African American	$3,716,958	1.18%	21	7.69%
Asian American	$2,652,523	0.84%	8	2.93%
Female	$8,487,714	2.70%	26	9.52%
Hispanic American	$28,961,470	9.22%	94	34.43%
Native American	$0	0.00%	0	0.00%
Person with Disability	$0	0.00%	0	0.00%
Total	$43,818,664	13.94%	149	54.58%

FY15 MFD Utilization and Availability

	Prime Contractor		Sub-Contractor		Total Contractor		FY15 Utilization	FY15 Availability*	FY16 Goal
Professional Services	**Subject to MFD Requirements:**				**$394,369,329**	**1,837**			
African American	$4,982,612	26	$1,891,754	81	$6,874,366	107	2%	8.25%	8.25%
Asian American	$23,477,168	144	$15,249,593	76	$38,726,761	220	10%	4.11%	--
Female	$7,817,263	171	$5,736,817	113	$13,554,080	284	3%	4.26%	4.26%
Hispanic American	$975,170	19	$2,426,990	60	$3,402,160	79	1%	1.24%	1.24%
Native American	$0	0	$164,037	5	$164,037	5	0%	0.11%	0.11%
Person with Disability	$166,355	10	$0	0	$166,355	10	0%	0.80%	0.80%
Sub Total	$37,418,568	370	$25,469,191	335	$62,887,759	705	15.95%	18.77%	**14.66%**
Non-Professional Services	**Subject to MFD Requirements:**				**$203,267,745**	**2,020**			
African American	$8,737,849	28	$7,239,063	151	$15,976,912	179	8%	12.57%	12.57%
Asian American	$3,203,817	29	$22,519	6	$3,226,336	35	2%	3.49%	3.49%
Female	$23,841,812	189	$1,283,710	98	$25,125,522	287	12%	5.46%	5.46%
Hispanic American	$15,954,884	131	$1,782,987	71	$17,737,871	202	9%	2.58%	--
Native American	$0	0	$494,386	3	$494,386	3	0%	0.08%	0.08%
Person with Disability	$0	0	$158,664	7	$158,664	7	0%	0.62%	0.62%
Sub Total	$51,738,362	377	$10,981,330	336	$62,719,692	713	30.86%	24.80%	**22.22%**
Goods	**Subject to MFD Requirements:**				**$122,188,456**	**1,426**			
African American	$285,000	8	$4,018,070	101	$4,303,070	109	4%	5.79%	5.79%
Asian American	$93,724	3	$1,664,856	47	$1,758,580	50	1%	2.01%	2.01%
Female	$6,035,299	114	$8,450,302	177	$14,485,601	291	12%	6.57%	6.57%
Hispanic American	$0	2	$817,953	10	$817,953	12	1%	1.51%	1.51%
Native American	$0	0	$715,052	1	$715,052	1	1%	0.11%	0.11%
Person with Disability	$0	0	$0	0	$0	0	0%	0.75%	0.75%
Sub Total	$6,414,023	127	$15,666,234	336	$22,080,257	463	18.07%	14.68%	**14.68%**
Construction	**Subject to MFD Requirements:**				**$314,236,227**	**273**			
African American	$1,443,381	3	$2,273,577	18	$3,716,958	21	1%	11.00%	11.00%
Asian American	$408,987	3	$2,243,536	5	$2,652,523	8	1%	3.29%	3.29%
Female	$6,287,711	19	$2,200,003	7	$8,487,714	26	3%	5.54%	5.54%
Hispanic American	$27,336,130	78	$1,625,340	16	$28,961,470	94	9%	6.14%	--
Native American	$0	0	$0	0	$0	0	0%	0.49%	0.49%
Person with Disability	$0	0	$0	0	$0	0	0%	1.00%	1.00%
Sub Total	$35,476,209	103	$8,342,455	46	$43,818,664	149	13.94%	27.46%	**21.32%**
Total Subject to MFD Requirements					**$1,034,061,757**	**5,556**			
Total MFD Procurement					**$191,506,372**	**2,030**		**18.52%**	

* The availability of minority businesses is based on the 2014 Disparity Study conducted by Griffin & Strong, Inc.

** According to County Code 11B.00.01.07.3.4.8(c), this category showed underutilization in at least one out of the last 4 years, a set goal is warranted.

33

OFFICE OF PROCUREMENT
DIVISION OF BUSINESS RELATIONS AND COMPLIANCE

SECTION(II)
MFD PARTICIPATION BY REQUEST FOR PROPOSALS (RFPs)

FISCAL YEAR 2015

(34)

Total Dollars and Percent Value of Request for Proposals (RFPs) for Each MFD Group

The RFP section of the MFD report is a result of proposals submitted in response to formal Requests for Proposals (RFPs) issued by the County during FY15. The report tracks the following information:

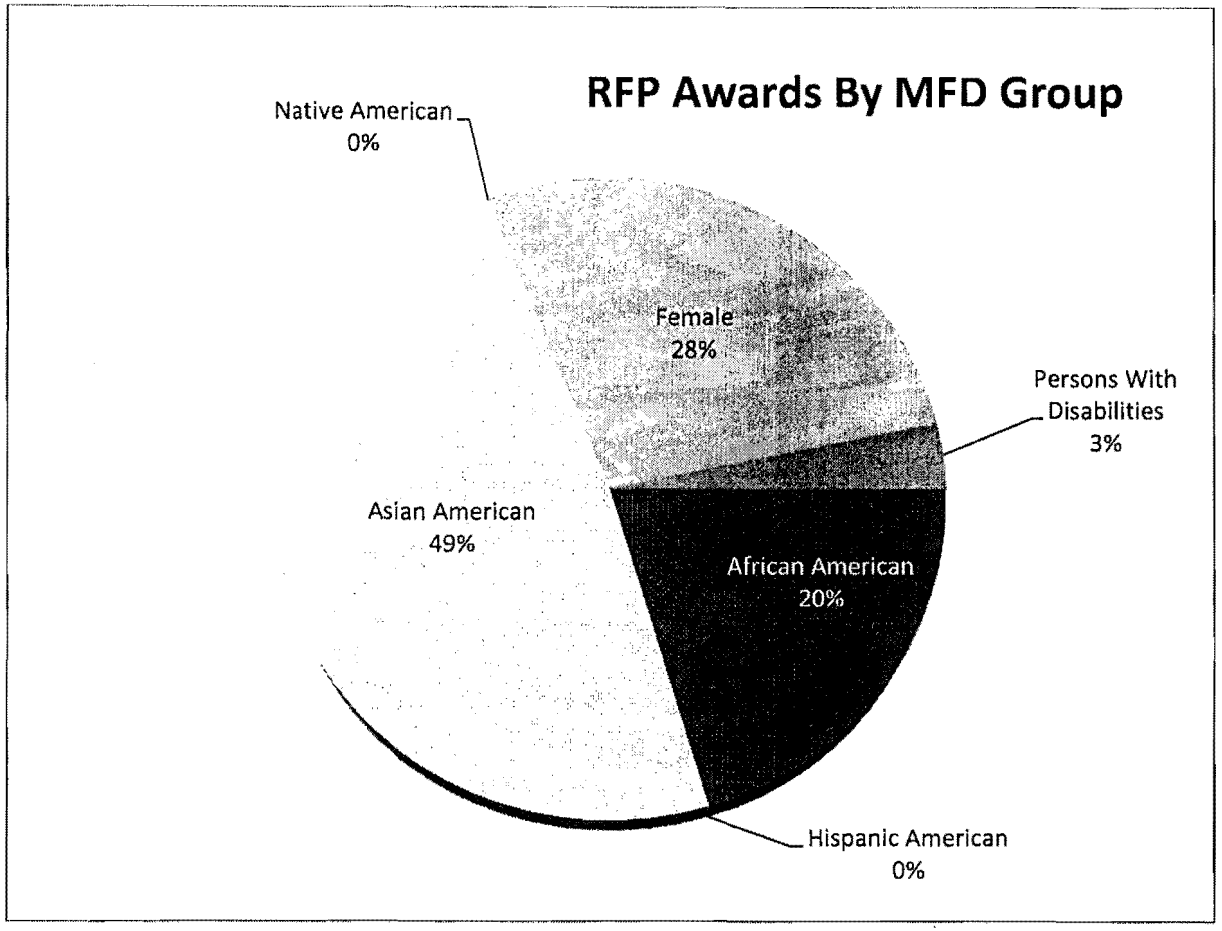
- Minority business groups and Non-minority businesses participating in the process only as prime contractors
- Break down of number of awards
- Dollar values for each group
- Number of proposals submitted by each group

The total dollar value for RFPs issued in FY15 was $541,247,964. Of that amount MFD businesses were awarded **$106,423,673** or **19.66%.** Out of 214 total RFP proposals submitted, 79 (36.92%) proposals were submitted by MFD businesses. A total of 70 RFP contract awards were issued. MFD businesses RFP contract award was 25 (35.71%).

	# of Awards	% of # of Awards	Award Dollar Value	% of Dollar Value	% of Total MFD Dollar Value	# of Proposals Submitted	% of Proposals Submitted
African American	4	5.71%	$21,500,000	3.97%	20.20%	19	8.88%
Hispanic American	1	1.43%	$189,270	0.03%	0.18%	3	1.40%
Asian American	8	11.43%	$51,650,000	9.54%	48.53%	24	11.21%
Native American	0	0.00%	$0	0.00%	0.00%	0	0.00%
Female	8	11.43%	$29,560,000	5.46%	27.78%	29	13.55%
Person with Disabilities	4	5.71%	$3,524,403	0.65%	3.31%	4	1.87%
Total MFD Businesses	**25**	**35.71%**	**$106,423,673**	**19.65%**	**100.00%**	**79**	**36.91%**
Non-MFD	45	64.29%	$434,824,291	80.34%	----	135	63.08%
Total Businesses	**70**	**100.00%**	**$541,247,964**	**99.99%**	**----**	**214**	**99.99%**

35

Chart 3: RFP Award Dollars by MFD Group



36

OFFICE OF PROCUREMENT
DIVISION OF BUSINESS RELATIONS AND COMPLIANCE

SECTION(III)
MFD PARTICIPATION BY INVITATION FOR BIDS
(IFBs)

FISCAL YEAR 2015

37

Total Dollars and Percent Value of Invitation for Bids (IFBs) for Each MFD Group

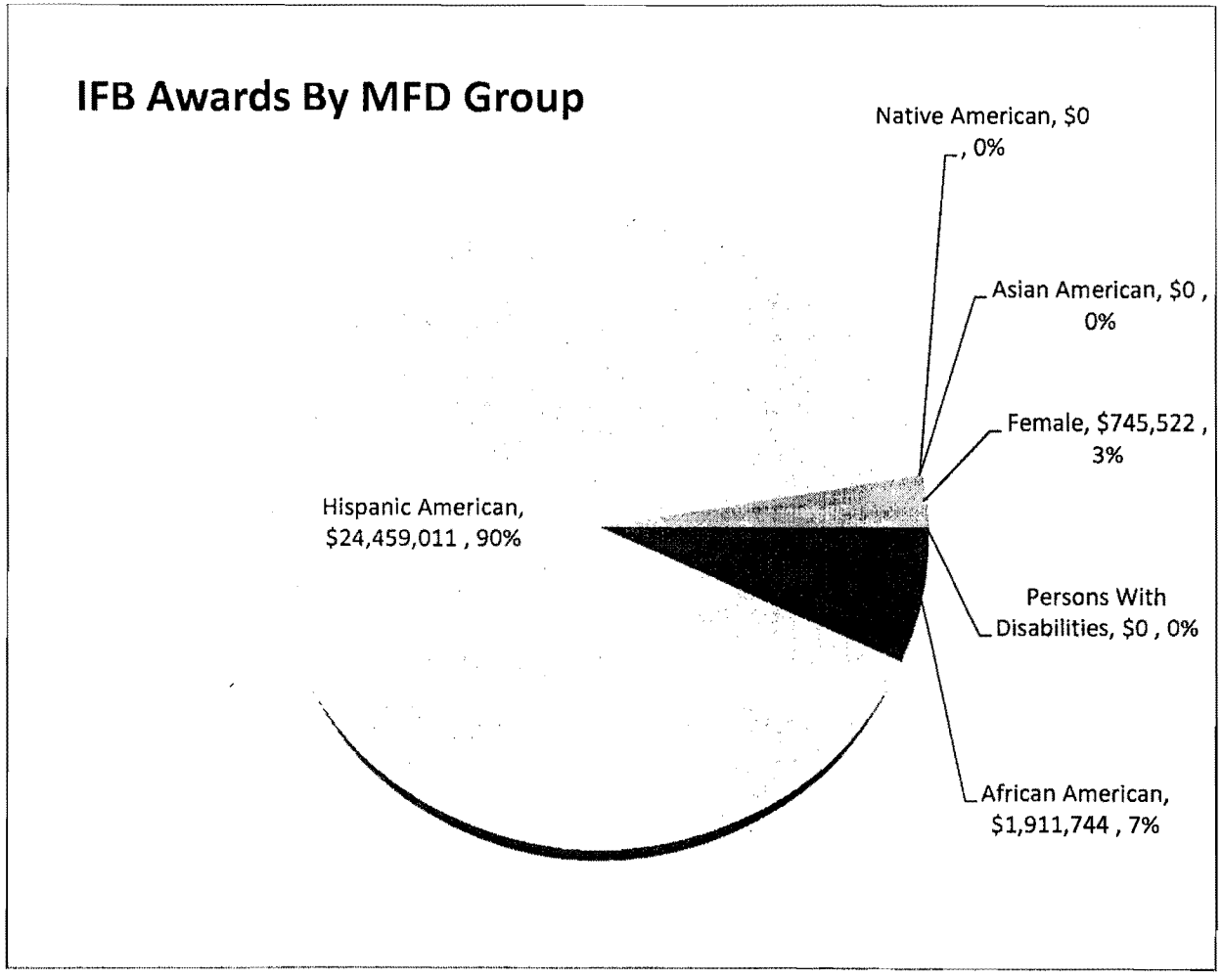
The IFB section of the MFD report is a result of bids submitted in response to formal Invitation for Bids (IFBs) issued by the County during FY15. The report tracks the following information:

- Minority business groups and Non-minority businesses participating in the process only as prime contractors
- Break down of number of awards
- Dollar values for each group
- Number of bids submitted by each group

The total dollar value for IFBs issued in FY15 was $226,570,540. Of that amount MFD businesses were awarded **$27,116,276** or **11.97%.** Out of 175 total bids responding to the IFBs, 23 (13.14%) bids were submitted by MFD businesses. A total of 62 IFB contract awards were issued. MFD businesses were awarded 7 (11.29%).

	# of Awards	% of # of Awards	Award Dollar Value	% of Dollar Value	% of Total MFD Dollar Value	# of Bids Submitted	% of Bids Submitted
African American	2	3.23%	$1,911,744	0.84%	7.05%	7	4.00%
Hispanic American	3	4.84%	$24,459,011	10.80%	90.20%	7	4.00%
Asian American	0	0.00%	$0	0.00%	0.00%	1	0.57%
Native American	0	0.00%	$0	0.00%	0.00%	0	0.00%
Female	2	3.23%	$745,522	0.33%	2.75%	8	4.57%
Person with Disabilities	0	0.00%	$0	0.00%	0.00%	0	0.00%
Total MFD Businesses	**7**	**11.30%**	**$27,116,276**	**11.97%**	**100.00%**	**23**	**13.14%**
Non-MFD	55	88.70%	$199,454,264	88.03%	----	152	86.86%
Total Businesses	**62**	**100.00%**	**$226,570,540**	**100.00%**	**----**	**175**	**100.00%**

Chart 4: IFB Award Dollars by MFD Group



39

OFFICE OF PROCUREMENT
DIVISION OF BUSINESS RELATIONS AND COMPLIANCE

SECTION(IV)
MFD PARTICIPATION BY SELECTED DEPARTMENTS

FISCAL YEAR 2015

FY15 Department MFD Participation Summary *

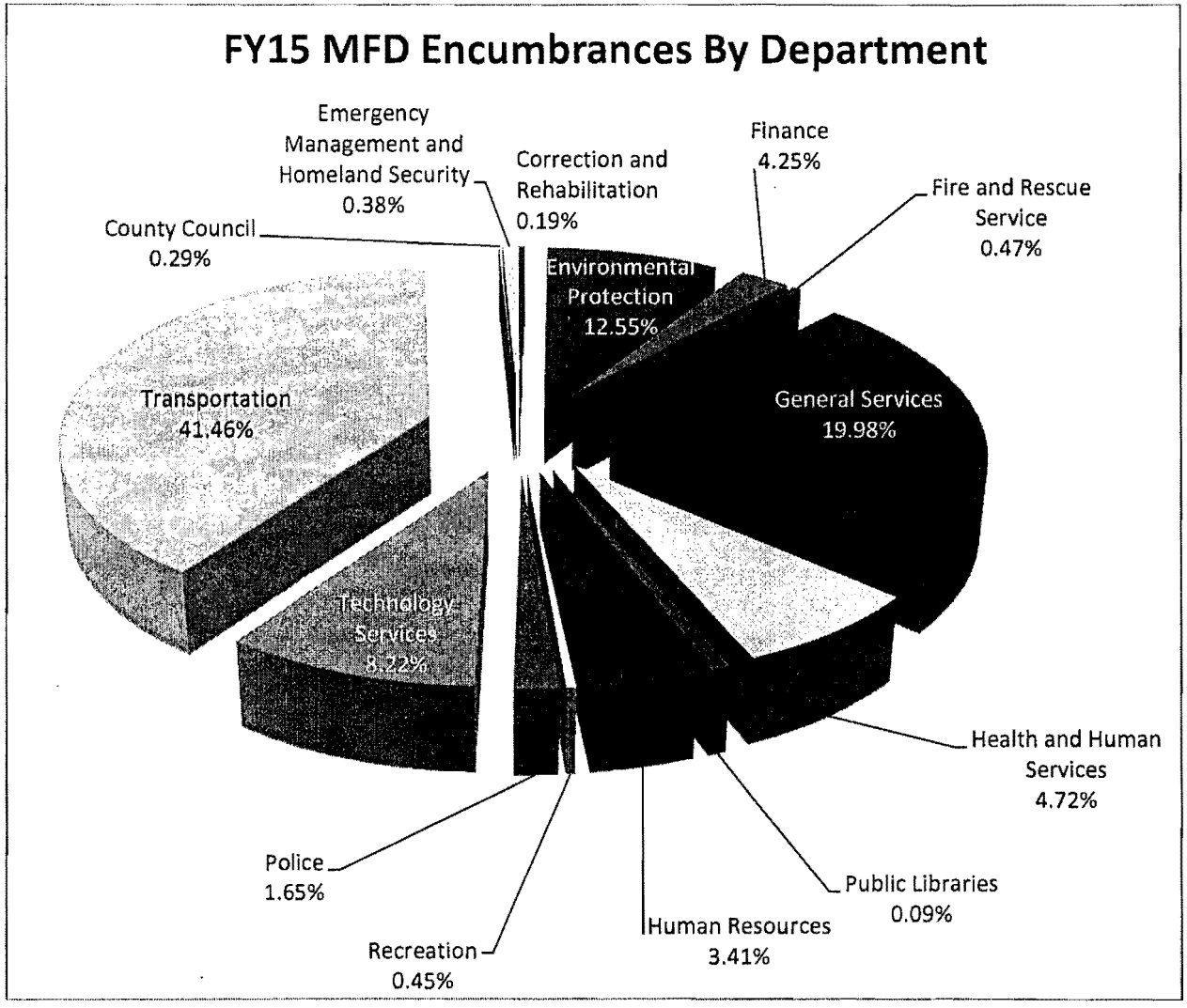
MFD participation by selected departments focuses on those departments that have procurements of any type exceeding $5 million in the aggregate or procurements for professional services exceeding $1 million in the aggregate. For FY15, 14 departments met the criteria. The data reports for each of these departments on total dollars encumbered in all purchasing categories subject to MFD participation. Listed below is a summary of the 14 departments and their MFD utilization in FY15. Note that non-profit businesses are excluded from the MFD participation requirements.

Departments	FY15			
	Total $ Subject to MFD ($)	MFD Utilization ($)	% of MFD Utilization	% of Total MFD $ (Chart 5)
Transportation	$315,468,257	$73,727,385	23.37	39.45%
Technology Services	$45,337,243	$17,660,004	38.95	9.45%
Recreation	$7,063,670	$654,781	9.27	0.35%
Public Libraries	$2,340,453	$1,332,421	56.93	0.71%
Police	$22,951,669	$3,084,614	13.44	1.65%
Permitting Services	$1,991,848	$1,271,959	63.86	0.68%
Human Resources	$214,936,567	$7,345,069	3.42	3.93%
Health and Human Services	$54,620,255	$13,496,281	24.71	7.22%
General Services	$262,955,302	$45,644,713	17.36	24.43%
Fire and Rescue Service	$11,496,683	$783,719	6.82	0.42%
Finance	$14,311,847	$4,796,822	33.52	2.57%
Environmental Protection	$64,609,548	$16,264,257	25.17	8.70%
Economic Development	$781,056	$195,489	25.03	0.10%
Correction and Rehabilitation	$2,946,180	$607,777	20.63	0.33%
TOTAL	**$1,021,810,578**	**$186,865,290**	**18.29%%**	**100.00%**

* Detailed department reports can be viewed at the MFD website: www.montgomerycountymd.gov/mfd under MFD Annual Report FY15, as attachment 1.

(14)

Chart 5: FY15 MFD Encumbrances by Department



42

OFFICE OF PROCUREMENT
DIVISION OF BUSINESS RELATIONS AND COMPLIANCE

SECTION(V)
MFD EXCLUSIONS AND WAIVERS

FISCAL YEAR 2015

(43)

Procurements Excluded From Requirement: FY15

1. **Exclusion By Regulations:**

The total dollar value of all procurement transactions in FY15 which by regulation were not subject to the minority business requirements were:

Category of Procurement	Dollar Value
Grants	$70,149,332
Public Entities	$131,609,662
Total	$201,758,994

(44)

Exclusion By Waiver:

The total dollar value of contracts awarded with a waiver from minority business contracting requirements was **$0**

Compliance Waiver Summary – FY15

A.	Total Value Subject to MFD Requirement	$1,034,061,757
B.	Total MFD Dollars Waived	$217,993,585
C.	Total Dollar Value of MFD Awards	$191,506,372
D.	Total Number of MFD Purchase Orders	2,030
E.	Waiver Actions	211
F.	Percent of Contract Dollars Waived (B Divided by A)	21.08%
G.	Percent of Total Dollars to MFDs (C Divided by A)	18.52%

Waiver Process

The Director, Office of Procurement, may determine that a contractor has or has not satisfied the MFD requirements. The determination to waive the MFD requirements is based on the rationale that subcontracting cannot be effected. Examples of reasons for each type of waiver are provided on this page. On the next page, a number corresponding to the number of the reason for waiver given below (1 to 3) is used in the summary table of FY15 waivers.

The goal-setting process is intended to determine in advance of a contract the reasonable expectation that the awardee shall exercise good faith. At any time, the Director, Office of Procurement, may request a waiver, or the prospective contractors on their own initiative may request a waiver. The contractor must explain in writing to the Director why the goal could not be achieved. This explanation must demonstrate that the prime contractor's failure to meet the goal is for reasons beyond the contractor's control.

Waivers are granted for one of the following reasons:

1. Individuals contractors including Recreational Instructors, Doctors, Nurses, etc., where subcontracting is impractical.
2. MFD firms listed on the subcontracting plan hold certifications not accepted by Montgomery County or not CVRS registered.
3. Manufacturers or their certified distributors for certain products that are not available for contracting otherwise.
4. Proprietary services or products owned and controlled by the prime contractor.
5. Economically impracticable.
6. Vendor claims that they have in-house capacity to perform the services.

Purchasing Categories	Reason For Waiver						Total Waivers
	1	2	3	4	5	6	
Professional Services (PS)	32	0	3	18	1	37	91
Non-profession Services (NPS)	1	0	16	6	1	23	47
Goods	0	0	64	5	1	0	70
Construction	0	0	0	1	0	2	3
Total Number of Waivers:	33	0	83	30	3	62	211
Total Value of Waivers:	$4,606,524	$0	$83,388,491	$114,427,980	$230,000	$15,340,592	$217,993,585

OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

Procurement Innovation Project
January 2016 Status Update

Montgomery County government spends nearly $1 Billion annually to procure goods and services. Recognizing the impact of this spending on the community, County Executive Isiah Leggett has made procurement in Montgomery County a priority in his administration. He currently has two main priorities regarding procurement: increasing the speed of the procurement process and increasing the utilization of minority, female, and disabled-owned (MFD) businesses and the Local Small Business Reserve Program.

The County Executive created the Procurement Innovation Project (PIP) as an internal advisory group to develop recommendations with respect to the County Executive's Priorities. PIP's tasks were to:

- *Identify the Current State of Procurement Processes*
- *Pinpoint and Validate Key Issues and Root Causes*
- *Develop Recommendations*

The PIP work group consisted of representatives from the Office of Procurement (PRO), CountyStat, and using departments. Their work was supported by a consultant. This work group synthesized data collected from individual stakeholder interviews, PRO data, and external reports (e.g., Griffin and Strong). The recommendations reflect the input put of department representatives. PIP also met with the county council task force groups and frequently attended their meetings in order to ensure collaboration and collect additional context. At this time, we are pleased to provide information on recommendations that have been fully validated. Some recommendations are still under consideration but need further legal review and are not ready for a broader discussion at this time. The recommendations that we're currently working on implementing are:

1. **The Procurement Tech Surge Initiative**: The Procurement Tech Surge Initiative provides short term surge support to clear the backlog of new and existing IT needs. There is no shortage of either basic digitization or more sophisticated systems enhancements that need to occur in order to enable a faster, less labor intensive procurement process. Currently a backlog stretching into FY19 for system enhancements exists ranging from changes to meet new regulatory requirements or database changes to support new performance metrics. In this recommendation we are asserting that there is no one innovative "silver bullet" to address what in many cases are basic digitization and workflow needs for PRO. All other recommendations will be less effective if the current lack of IT support is not addressed. This recommendation is also supported by and aligns closely with the assertions of the procurement process task force convened by the County Council. PRO has developed a pipeline of enhancements and is working to get the needed support through the Department of Technology Services Local Small Business Reserve Program Consulting and Technical Services vehicle.
2. **Enhance PRO's Guidance for Departments**: PIP initially recommended more formal stage gates in the procurement process during which PRO would provide additional guidance and support for Departments. This need came directly from interviews with department representatives. Due to some concern that this would add time to procurement actions, PRO recommended an alternative. PRO will convert existing checklists and written procedures into a more dynamic web-based learning tool for departments who need additional guidance. This tool would be an enhancement developed via recommendation one and would

focus on departments who process procurement actions less frequently. Additionally, PRO will revamp existing boilerplate materials with an eye towards simplicity, a step-by-step guide for the QSC process, and additional training for the debriefing process.

3. **Enhanced Direct Purchase Orders Reporting and Analysis**: Direct Purchase Orders (DPOs) represent an opportunity to increase competition and improve MFD/LSBRP inclusion. Improved access to DPO data also represents an opportunity to avoid misuse of DPOs. Analytical tools that provide insights for PRO regarding DPO purchases as well as alerts when potential misuse occurs will reduce the level of effort put into DPO oversight. It would also create opportunities to establish pools of MFD/LSBRP vendors in similar categories and combine the purchasing power of using departments. PRO has developed a series of implementation steps for this recommendation. These recommendations involve improved data analysis and reporting for DPO transactions.
4. **Government Services Cohort Program (GSCP)**: GSCP is a program designed to connect new/growing LSBRP/MFD businesses in key service categories to solicitations throughout the county. GSCP will foster partnerships between these businesses and the county, help talented entrepreneurs scale their businesses, and increase the profile of Montgomery County as a destination for MFD Small Businesses. PRO would actually not be the implementer of this recommendation. The recommendation involves an incubation/acceleration function for LSBRP/MFD businesses and would help them find opportunities and contract vehicles within County government. PRO has pointed out that some of these types of contract vehicles already exist (LCATS and JOC contracts). The Innovation Program is in talks with the Small Business Navigator about how this program could operate in practice. Coordination with the new economic development authority will also be required. For that reason, we do not feel that recommendation will be implemented until fall of 2016 at the earliest.

As mentioned earlier, some other recommendations are still under consideration and we look forward to sharing them with you at a later date. The County Executive and PRO will continue to proactively look at opportunities to continuously improve procurement. We attended and listened to the issues and concerns raised by the two Council task forces and found that context valuable. Although the perspective of PIP recommendations stems from county departments, we have attempted to enter into these recommendations with a balanced approach. Although some recommendations might not be feasible at this time, we are moving forward ambitiously.