



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Local Business Subcontracting Program	Number 21 - 14
Originating Department Department of General Services	Effective Date

Montgomery County Regulation on

Local Business Subcontracting Program

Department of General Services

Issued by: County Executive
Regulation No. 21-14
COMCOR Sec. 11B.78.01 through 11B.78.09

Authority: Montgomery County Code (2004, as amended) Sec. 11B-78 through 11B-83

Supersedes: Executive Regulation N/A

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

Comment Deadline: 1/30/2015

Summary: This regulation establishes a program and procedures to facilitate the goal that each prime contractor in a High Dollar Value Contract should subcontract with a Local Business for at least 10% of the value of the High Dollar Value Contract.

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11B.78.01 Purpose.

The purpose of this Regulation is to implement Article XVI of Chapter 11B of the Montgomery County Code by establishing a program and procedures to facilitate the goal in each High Dollar Value Contract for the Contractor to subcontract with a Local Business to perform and receive compensation for at least 10% of the value of the High Dollar Value Contract.

11B.78.02 Policy.

- 2.1 The Director, with the assistance of Using Departments, must encourage Local Businesses to participate in providing goods, services or construction to the County in a High Dollar Value Contract, and to require Contractors that are awarded County contracts to subcontract with Local Businesses, so that Local Businesses receive 10% or more of the dollar value of each High Dollar Value Contract, consistent with the goal of this Regulation.
- 2.2 This Regulation contains the County's procedure for the certification and decertification of a Local Business.
- 2.3 Using Department Heads should seek the advice and concurrence of the Director in the development of internal operating procedures to implement the provisions of this Regulation.

11B.78.03 General.

- 3.1 To participate as a subcontractor in the Local Business Subcontracting Program, a business must be certified by the Director as a Local Business under Section 11B.78.06 of this Regulation.
- 3.2 Local Business Subcontracting Program.
 - 3.2.1 Definitions. Unless the context indicates otherwise, a term used in this Regulation is to be used in a manner consistent with the definitions contained in Montgomery County Code, Chapter 11B, Section 11B-1 and Section 11B-78, and this Regulation.
 - 3.2.2 A Contractor must subcontract a minimum of 10% of the contract price of each High Dollar Value Contract to Local Businesses.
 - 3.2.3 Each Contractor must submit a Local Business subcontracting plan prior to undertaking



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performance under the High Dollar Value Contract, or at such earlier time as required by the Director. A Local Business subcontracting plan must:

- (a) identify each Local Business subcontractor;
- (b) identify the amount the Contractor has agreed to pay each Local Business subcontractor; and
- (c) be made a part of the contract between the Contractor and the County. County approval of the Local Business subcontracting plan must not establish a contractual relationship between the County and the Local Business subcontractor.

3.2.4 A High Dollar Value Contract between the Contractor and the County must require:

- (a) the Contractor to notify the Director of any proposed change to the Local Business subcontracting plan;
- (b) that Contractor's failure to submit documentation showing compliance with the Local Business subcontracting plan is grounds for the County to withhold payment or impose liquidated damages, unless Contractor's failure to comply with the subcontracting plan is the result of a waiver granted by the Director.

3.2.5 The Director may waive in whole or in part a Local Business Subcontracting Program requirement, if the Director finds that:

- (a) it is unusually difficult or impossible for the Contractor to meet a subcontracting requirement because, for example, a qualified Local Business is not available for subcontracting or the Contractor's good-faith efforts to subcontract with available Local Businesses have failed;
- (b) reasonable grounds exist to waive a subcontracting requirement because, for example, the subcontracting requirement would undermine the purpose of a contract for personal services, subcontracting would be inconsistent with the requirements for confidentiality or the purposes of this Regulation; or
- (c) the Contractor belongs to a class of entities for which the Director has determined



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that it would be impractical to require participation in the Local Business Subcontracting Program.

- 3.2.6 The Director has sole discretion to determine the estimated value of a High Dollar Value Contract.
- 3.2.7 The Local Business subcontracting goal is 10% of the dollar value of each High Dollar Value Contract.

11B.78.04 Authority.

- 4.1 The Director may certify or decertify an entity as a Local Business, in accordance with the procedures established in this Regulation. The person must affirmatively demonstrate that it is a Local Business.
- 4.2 The Director may deny a request for certification as a Local Business, or may decertify a Local Business, for any of the following reasons:
 - 4.2.1 Failure to provide sufficient and timely information for the Director to make a certification or decertification determination.
 - 4.2.2 Refusal to permit an on-site inspection by the Director.
 - 4.2.3 Failure to comply with a request by the Director for information or access to records.
 - 4.2.4 Failure to affirmatively demonstrate to the Director that the person is a Local Business.
- 4.3 In addition to the requirements in Section 4.3 above, certification as a Local Business by the County may be revoked by the Director for any one of the following reasons:
 - 4.3.1 Fraud, deceit or misrepresentation in obtaining certification.
 - 4.3.2 Failure to report in writing to the Director, within 30 days of the date of the occurrence, any changes in the status of the certified Local Business that are relevant to the person's certification.
 - 4.3.3 Failure to demonstrate, at the request of the Director, that the person continues to be a



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Local Business.

11B.78.05 Responsibilities.

5.1 Director

- 5.1.1 The Director must identify and encourage participation of Local Businesses as subcontractors of Contractors on High Dollar Value Contracts, and oversee Local Business certification. This includes providing notification of the Local Business subcontracting goal in all solicitations that will result in a High Dollar Value Contract.
- 5.1.2 The Director maintains a searchable vendor registration database and other reference materials that identify Local Businesses.
- 5.1.3 The Director should provide training to ensure that contract administrators receive appropriate guidance in implementing the provisions of this Regulation.

5.2 Using Departments

- 5.2.1 A Using Department should direct a Contractor to use the Director's searchable vendor registration database of Local Businesses and encourage a Contractor to subcontract with Local Businesses to meet the Local Business subcontracting goal of this Regulation.
- 5.2.2 A Using Department must notify the Director when an initial Contract Award is expected to result in a High Dollar Value Contract. The Using Department's notification to the Director of a High Dollar Value Contract should occur as early as possible, but no later than the Using Department's official request to the Director to enter into an initial Contract Award.

11B.78.06 Procedures for Certification or Decertification of a Local Business.

6.1 Certification

- 6.1.1 In order to be considered a Local Business under the Local Business Subcontracting Program, a person must be certified by the Director as a Local Business at the time of an initial Contract Award.



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6.1.2 The Director must determine whether to certify or decertify a Local Business. Factors the Director may consider include the following:

6.1.2.1 Evaluation of the documentation submitted by the person to the Director.

6.1.2.2 A site visit to the office of the proposed Local Business.

6.1.2.3 The nature and extent of the person's on-going and continuous exchange of goods and services for money.

6.1.2.4 The nature and extent of the Regular Course of Business Commerce in the County.

6.1.2.5 The location of the person's Principal Place of Business.

6.1.2.6 Any additional information or supporting documentation requested by the Director.

6.1.3 A person may seek Local Business certification by submitting an application through the County's on-line vendor registration system.

6.1.4 The Director may request additional supporting documents from the person.

6.1.5 The Director reviews the information submitted through the on-line vendor registration system to determine, in accordance with this Regulation, whether the person should be certified as a Local Business.

6.1.6 Upon determination that a person is a Local Business, the Director certifies the person as a Local Business.

6.1.7 The Director will send written notice of the approval or denial of the Local Business certification to the person, within 60 calendar days of the submission of the application.

6.2 Decertification

6.2.1 The Director may decertify a person that is no longer a Local Business.

6.2.2 Prior to decertifying a Local Business, the Director must notify the person, in writing, of the



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proposed decertification. The Director will indicate a date by which the person must submit a response, if any, including information to support its continued certification as a Local Business.

- 6.2.3 After the expiration of the time specified by the Director for the person to submit written information to support its certification as a Local Business, the Director reviews the proposed decertification and any information submitted by the person that is the subject of decertification, and decides whether to decertify the person's Local Business status.
- 6.2.4 Within 60 calendar days after receipt of the response submitted by the person under Section 6.2.3 above, the Director must send written notice of the final determination regarding the proposed decertification.

11B.78.07 Solicitation Requirements.

- 7.1 The Director must include in all solicitations that may result in a High Dollar Value Contract, Local Business contracting conditions in a form created by the Director and approved by the Office of the County Attorney.
- 7.2 The Local Business contracting conditions must include the following provisions.
- 7.2.1 Notice of the Montgomery County Local Business Subcontracting Program and its associated goals.
- 7.2.2 A requirement to subcontract with Local Businesses, or to request a waiver, in a manner consistent with this Regulation.
- 7.2.3 Notice of both the requirement to comply with the Local Business subcontracting plan, and the County's authority to withhold payment or to impose liquidated damages for the contractor's failure to comply with the Local Business subcontracting plan.
- 7.2.4 A specification of all documentation required to be submitted by the successful offeror, including information required under Section 11B.78.08 below, that the Director requires the Contractor to submit, and time requirements for those submissions.
- 7.2.5 Notice that a person will not be awarded a High Dollar Value Contract if it fails to submit required documentation or meet Local Business subcontracting goals, unless waived.



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11B.78.08 Reporting Requirements.

The Director may require each Contractor to provide the County with information concerning utilization by the Contractor of Local Businesses in County contracts. The Director may also require each Local Business to provide the County with information concerning contracts in which it is utilized by a Contractor in providing goods, services or construction to the County under this Regulation.

11B.78.09 Monitoring Procedures.

- 9.1 The contract administrator, in conjunction with the Local Business Program Manager, must monitor all contracts subject to the Local Business Subcontracting Program to ensure compliance by Contractors with the requirements of this Regulation. Monitoring may include site visits, audits of a Contractor's books and records relative to County contracts, the submission of copies of invoices from the Local Business subcontractor to the Contractor, submission of reports by the contract administrator, and other procedures that the Director may require.
- 9.2 The Director must notify Local Businesses of their responsibility to report to the Local Business Program Manager in a timely manner any changes in status that affects the entity's eligibility for certification as a Local Business. The failure of the Local Business to report any relevant change in a timely manner constitutes sufficient grounds for decertification.

Isiah Leggett
County Executive

Approved as to form and legality:

Robert H. Melnick 12/22/14
Office of the County Attorney/Date