

Resolution No.: 18-245
Introduced: September 15, 2015
Adopted: September 15, 2015

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

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

Background

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

Action

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

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

This is a correct copy of Council action.


Linda M. Lauer
Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Local Small Business Reserve Program	Number 6-15
Originating Department Office of Procurement	Effective Date September 15, 2015

Montgomery County Regulation on

LOCAL SMALL BUSINESS RESERVE PROGRAM

Issued by: County Executive
Regulation No. 6-15
COMCOR Sec. 11B.65.01

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

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

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

Register Vol. 32 No. 3

Effective Date: September 15, 2015

Comment Deadline: March 30, 2015

Summary:

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

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

Staff contact:

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240-777-9959

Address:

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

Background:

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



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

11B.65.01.01 Authority

In accordance with the requirements of Montgomery County Code § 11B-17A, and the Program authorized under Chapter 11B, Article XV of the County Code, as codified at §§ 11B-65 through 70, this Executive Regulation establishes definitions, processes, and procedures to administer and implement the Local Small Business Reserve Program.

11B.65.01.02 Definitions

The Definitions noted in the County Procurement Law and related Regulation apply to this Regulation, unless stated otherwise.

- (a) Broker - A person that conducts business (other than real estate, investment, or insurance sales) on a pass-through basis and with respect to:
 - (i) Supplies:
 - a. Does not own, operate, or maintain a place of business in which supplies of the general character required under the contract are kept in stock in the regular course of business,
 - b. Does not regularly assume physical custody or possession of supplies of comparable character to those offered to the County, or
 - c. Exclusively acts as a middleman in the provision of supplies offered to the County; or
 - (ii) Services: does not regularly maintain the capability, capacity, training, experience, and applicable regulatory licensing to directly perform the principal tasks of a contract with the County, and acquires the services elsewhere, for the benefit of the County.
- (b) Combined Dollar Value of Contracts - A Using Department's total, combined dollar value of procurement contracts for goods, services, or construction during a given particular fiscal year. This has the same meaning as "total dollar value of procurements" as that term is used in County Code § 11B-66(b) and (c).
- (c) Director - For purposes of this Regulation related to the Local Small Business Reserve Program, the term "Director" means the Director of the Office of Procurement.



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- (d) Department - For purposes of this Regulation related to the Local Small Business Reserve Program, the term "Department" means the Office of Procurement.
- (e) Employment or Employ - The measurement of the number of people a business did or did not employ is calculated on a "Full-Time Equivalent" (FTE) basis. Any full-time, part-time, temporary, or contractual employee, who is not a broker, including an employee of a temporary help firm or a subcontractor, working for and receiving compensation from the business, will be included in determining the number of people a business did or did not employ for a particular period. The averaged sum of the specific FTE employment levels for a business at the end of each calendar quarter (i.e., March 31, June 30, September 30 and December 31) will determine the business's annual FTE employment level.
- (f) Gross Sales - The total documented value of sales, before deducting for expenses, customer discounts, allowances, or returns.
- (g) Independently Owned and Operated - Where those in possession of a controlling interest and those directing and managing the affairs of a business are free from the influence, control, and determination of others.
- (h) Local Small Business - A for-profit business, other than a broker, that:
- (i) has its principal place of business in the County;
 - (ii) is independently owned and operated;
 - (iii) is not a subsidiary of another business; and
 - (iv) meets criteria, size limits, and gross sales amounts noted in this Regulation, including those in 11B.65.01.03 below.
- (i) Local Small Business Reserve - Any procurement that is limited to responses from Local Small Businesses.
- (j) Local Small Business Reserve Application - An on-line based application system that resides in the County's web site, by which a Contractor completes an on-line application, and submits it to the Director for certification as a Local Small Business.
- (k) Local Small Business Reserve Database - A database that resides in the County's web site that stores the list of Local Small Business applicants, and enables search by the business name, industry sector, and the County commodity code.



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- (l) **Subsidiary of Another Business** - A business controlled by another business that owns all or a majority of its shares or interest.

11B.65.01.03 Criteria

To qualify as a "Local Small Business," a business must: meet the definition in 11B.65.01.02 above; provide, at a minimum, 51% of measurable work on the contract, measured by the dollar amount, unless the Director specifies, in writing, a lower percentage based on a particular contract's scope of work; and, meet the following size or gross sales criteria:

- (a) The wholesale operations (sale of goods in large quantities usually for resale) of the business, if any, did not employ more than 30 persons, or the gross sales of these business operations did not exceed an average of \$5,000,000 in its most recently completed 3 fiscal years.
- (b) The retail (sale of goods in small quantities directly to the ultimate consumer) operations of the business, if any, did not employ more than 30 persons, or the gross sales of these business operations did not exceed an average of \$5,000,000 in its most recently completed 3 fiscal years.
- (c) The manufacturing (producing goods from raw materials by hand or by machinery) operations of the business, if any, did not employ more than 40 persons, or the gross sales of these business operations did not exceed an average of \$14,000,000 in its most recently completed 3 fiscal years.
- (d) The services operations of the business, if any, did not employ more than 100 persons, or the gross sales of these business operations did not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years.
- (e) The construction operations of the business, if any, did not employ more than 50 persons, or the gross sales of these business operations did not exceed an average of \$14,000,000 in its most recently completed 3 fiscal years.
- (f) Gross sales for a business that has been in operation long enough to file a Federal income tax statement, shall be determined by the average of gross sales amounts contained on the tax form(s) for the most recently completed 3 fiscal years. In the absence of a federal income tax statement, the business must provide verification that it meets the definition of a Local Small Business, including the above size and sales criteria, through audited financial statements. If a business has not existed for three years, the employment and gross sales average(s) shall be the average for each year or part of a year during which the business has been in existence. For a newly formed business, the determinations regarding size and sales criteria will be based upon then-current employment levels



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as of the time of the Local Small Business Reserve Application, and projected gross sales for that fiscal year.

- (g) If a business operates in more than one of the above-noted business operations classifications (i.e., wholesale, retail, manufacturing, service, and construction), its combined business operations must meet the above-stated limitation of the more liberal size and sales criteria. For instance, the gross annual sales limit for wholesale businesses is \$5 million; for retail goods, and non-construction services the limit is \$5 million; and for construction services and manufacturing the limit is \$14 million. Therefore, the combined operation cannot exceed \$5 million annually in average gross sales. Further, regarding size, the employment limit for wholesale and retail business operations is 30 persons versus 100 for a service operation. Accordingly, a business with both wholesale and service classifications can have up to 100 employees.

11B.65.01.04 Contract Under Local Small Business Reserve Program

- (a) Except as provided in Subsection (c) of this 11B.65.01.04, this Regulation applies to all procurements by a Using Department. Any procurement under this Program is subject to all requirements and procedures otherwise applicable to the procurement under the Procurement Regulations. Except as otherwise provided by law, the provisions of this Regulation supplement, but do not replace, other provisions of, and definitions in, the County's Procurement Regulations and Procurement Law.
- (b) A Using Department must award a minimum of 20 percent of the Using Department's combined dollar value of contracts issued for goods, services, or construction to a Local Small Business. A Using Department need not designate a contract or a solicitation as a Local Small Business Reserve in order for it to count towards the immediately preceding requirement to award a minimum of 20 percent of the Using Department's combined dollar value of contracts awarded for goods, services, or construction to a Local Small Business. The dollar amount of a contract that is solicited through the regular Procurement process that is awarded to a certified Local Small Business counts toward the 20 percent requirement.
- (c) The combined dollar value of procurements by a Using Department under this section does not include:



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- (1) the value of any contract to which this Regulation does not apply because of a conflict with a State, federal, or local law or a grant requirement;
 - (2) a preexisting contract or extension(s) of a preexisting, multi-year, contract executed by the County;
 - (3) a non-competitive contract;
 - (4) a public entity procurement;
 - (5) an emergency procurement;
 - (6) a bridge contract;
 - (7) a cooperative procurement;
 - (8) any waiver made under Montgomery County Code § 11B-67(f);
 - (9) any procurement where no Local Small Business is qualified or able to perform the contract as determined by the Director; or
 - (10) any single procurement that is estimated to exceed \$10 million.
- (d) In determining whether a Contractor is “qualified or able to perform the contract” under 11B.65.01.04(c)(6), the Using Department must make a recommendation as of the time of a business’s offer in response to a solicitation based on a Contractor’s reputation, past performance, business and financial capability and other factors that demonstrate the Contractor is capable of satisfying the County’s needs and requirements for a specific contract. This requirement is in addition to those stated in Section 6.3 of the Procurement Regulations regarding responsibility.
- (e) In order for a business to be eligible to respond to a solicitation under the Local Small Business Reserve Program, a business must complete and submit the on-line vendor registration, including the Local Small Business Reserve Application on the County’s web site, prior to the applicable solicitation due date and time. The business must receive the Director’s certification as a Local Small Business prior to any contract award.



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11B.65.01.05 Procedures and Program Operations

- (a) Any procurement of goods, services, or construction by a Using Department is eligible for designation for the Local Small Business Reserve Program by the Using Department director, or designee, except any procurement that is excluded under County Code § 11B-66(c), the items of which are reiterated in 11B.65.01.04(c) above:
- (b) A solicitation for a procurement that has been designated under the Local Small Business Reserve Program must be published in the same manner as required for other solicitations under County Code, Chapter 11B, Article III.
- (c) The Director will award a procurement contract designated as a Local Small Business Reserve in accordance with County law and Procurement Regulations, except to the extent stated otherwise in this Regulation.
- (d) A business must affirm and provide supporting documentation to the Director to show that it is a Local Small Business as defined in County Code § 11B-65(a) when required or requested by the Director. The Local Small Business must complete any required Local Small Business Reserve Application and any supporting affidavit required by the Director to demonstrate to the Director that it is a Local Small Business.
- (e) The Local Small Business must be in compliance with applicable Federal, State and County laws and regulations, including those relating to permits, licenses, and zoning that apply to operating the business. In addition, the business must operate in or from a physical location, and, among other things, reference by the business to a post office box or virtual office is insufficient to substantiate a physical location from which the business operates.
- (f) Eligibility as a Local Small Business ends if the business has been awarded \$10 million in the aggregate in County contracts and at least 10 separate contracts, as either a County prime contractor or subcontractor, beginning January 1, 2006. The Director will provide written notice to the Local Small Business when the Local Small Business is no longer eligible for the Program and the Director will remove the Local Small Business from the Local Small Business Reserve Database.
- (g) The Chief Administrative Officer may waive the application of Montgomery County Code, Chapter 11B, Article XV, to a specific procurement if the Chief Administrative Officer finds that the application of that Article conflicts with the overall objectives and responsibilities of the Chapter. The Chief Administrative Officer must keep records on the number of waivers issued and the reason for each waiver. This information must be reported to the Council by the Department in the annual report on the Program under Code § 11B-69(b).



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- (h) Montgomery County Code, Chapter 11B, Article XV, does not give any person, including a Local Small Business, any right or status, including standing, to challenge the award of a contract or subcontract under the County procurement system. That Article is enforceable only through the oversight function of the Chief Administrative Officer and the County Council.
- (i) Administration and Implementation: The following delineates the departmental responsibilities to administer and implement the Program:
- (i) The Department administers and implements the Program. It must compile and maintain a comprehensive bidder's list of Local Small Business applicants that have completed and submitted the on-line Local Small Business Reserve Application, and post that list on the County's web site. To accomplish these objectives, the Department will:
- a. With cooperation from the Department of Technology Services (DTS), develop an Internet-based Local Small Business Reserve Database (Database) housed in the County's web site that will, at a minimum, have the following features:
1. Local Small Business Reserve Program description;
 2. Local Small Business Reserve Application module;
 3. Local Small Business applicant database that can be sorted according to the commodity code used by the County procurement process;
 4. Local Small Business applicant profile update module; and
 5. Local Small Business applicant renewal module.
- b. Maintain the Database by:
1. Enhancing the efficiency of the database by incorporating advancements in database technology;
 2. Requiring each Local Small Business applicant, before being awarded a County contract designated as for this Program, to submit documentation to the Department that satisfactorily demonstrates that it meets all of the requirements of a Local Small Business as of the solicitation due date and time for that procurement.



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3. Tracking the number and the dollar amount of County contracts awarded to each Local Small Business in the Database, in coordination with other Using Departments.
 4. Removing a Local Small Business from the Local Small Business Reserve Database when the Local Small Business has received \$10 million dollars in County contracts in the aggregate and at least 10 separate contracts, as specified in 11B.65.01.05(f).
 5. Removing a Local Small Business from the Local Small Business Reserve Database when the Local Small Business fails to meet the definition of Local Small Business as defined in this Regulation. A removed Local Small Business will subsequently be added to the Local Small Business Reserve Database by the Director only after the business submits an appeal letter and sufficient supporting documents to the Director within fifteen (15) days after removal from the list by the Department. The business's letter must evidence that the business meets the definition of Local Small Business as defined in 11B.65.01.02(h) of this Regulation. The review and approval of the appeal letter is within the sole discretion of the Director.
 6. Assigning a unique County Vendor Identification number to each Local Small Business in the Database.
- c. Market the Program and Provide Outreach Efforts to Local Small Businesses by:
1. Advertising the Program in the media, as deemed necessary by the Director, to increase the public awareness of the Program.
 2. Preparing a Program brochure and other necessary collateral material, and distributing these materials in strategic locations, as determined by the Director, to enable easy and timely access by businesses in the County.
 3. Participating in County business events, at least three times a year, to market the Program.
 4. Working with small business resource groups in the County such as the Chambers of Commerce, Small Business Development Centers, Women's Business Organization, etc., to disseminate Program information to the member businesses.



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5. Preparing a press release once a year to publicize the Program results.
 - d. Reporting: By November 30 each year, the Director must report to the Council on the Local Small Business Reserve Program. This report must include: the number, type, and dollar amount of contracts awarded under this Regulation during the preceding fiscal year; the number, type, and dollar amount of each waiver from the Internet posting requirement granted by the Director; the number, type, and dollar amount of each waiver pertaining to the Program that is granted by the Chief Administrative Officer; information about how these numbers have changed from the preceding fiscal year; and, the extent of outreach efforts by the Director. The Director will work with the Office of Legislative Oversight to ensure that the data needed to conduct a comprehensive evaluation of the program are collected.
 - e. Take any other action necessary to administer or implement this Program.
- (ii) The Using Department: The Using Department will:
- a. Award a minimum of 20 percent of the Using Department's combined dollar value of contracts issued for goods, services, or construction to Local Small Businesses, except as noted in 11B.65.01.04(c), above.
 - b. Notify the Office of Procurement upon designating a procurement as a Local Small Business Reserve.
 - c. Search the Local Small Business Reserve Database before conducting a solicitation process and before recommending a vendor for award, in a contract that has been designated for this Program. The Using Department must obtain verification from the Director, prior to recommending the vendor for award, that the vendor is an eligible Local Small Business.
 - d. Track and report to the Director, by September 30 of each year, the procurement activities under the Program during the previous fiscal year, in accordance with County Code Section 11B-69(a) and (b), including:
 1. Number, type, and combined dollar value of contracts awarded;
 2. Number, type, and combined dollar value of contracts that are not included under this Regulation, in accordance with County Code Section 11B-66(c);



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3. Number, type, and combined dollar value of contracts awarded to Local Small Businesses.
 4. Number, type, and combined dollar value of contracts that were initially designated under the Program but were not awarded to a Local Small Business, and the reason they were not awarded to a Local Small Business.
 5. Procedural changes and other related administrative efforts made to comply with this Regulation, and the associated fiscal impact of such changes.
- e. Take any other action necessary to comply with this Regulation.
- (iii) The Department will:
- a. Develop a process to ensure that in any Informal Solicitation, the vendor selection process used by the Office of Procurement to generate the five random vendor selections required under the Procurement Regulations includes vendors from the Local Small Business Reserve Database.
 - b. The Director must keep records on the number of waivers of a Using Department's Internet posting requirement issued in accordance with County Code Section 11B-17A(c), during a given fiscal year, and the reason for each waiver. The Director must report this information to the Chief Administrative Officer (CAO) by October 30 of each year.
- (iv) Department of Technology Services - The Department of Technology Services will assist the Department in administering and implementing the Program, including that which is indicated in 11B.65.01.05(i).
- (v) The Chief Administrative Officer will:
- a. Have the authority to waive the application of this Regulation to a specific contract if the Chief Administrative Officer finds that the application of this Regulation conflicts with the overall objectives and responsibilities of Article XV of Chapter 11B of the County Code. The Chief Administrative Officer must keep records on the number of waivers the Chief Administrative Officer issues and the reason for each waiver. This information must be reported to the Director so this information can be included in the annual report to the County Council on the Program, as required under County Code Section 11B-69(b).
 - b. Provide the oversight function to enforce the Regulation.



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11B.65.01.06 Penalty; Enforcement

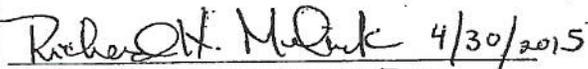
In addition to that stated under County Law, or a particular contract, any person who willfully makes a false statement to a County official or employee for the purpose of influencing participation in the Program; or fraudulently obtains, attempts to obtain, or aid another person in fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under this Regulation constitutes a material breach of the contract. Accordingly the County may then exercise any available remedy, including, terminating the contract for default.

11B.65.01.07 Effective Date

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


Isiah Leggett
County Executive

Approved as to form and legality:

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