Agenda Item #2
January 22, 1985

Montgomery County Government

MONTGOMERY COUNTY COUNCIL
OFFICE OF LEGISLATIVE OVERSIGHT

REPORT #84-4

JANUARY 22, 198~~4~~5

TITLE

An Evaluation of the County Government's Legislated Program to Encourage Purchases from Businesses Owned by Minorities, Females and the Disabled (MFD)

CONTENTS

Office of Legislative Oversight

100 Maryland Avenue, Rockville, Maryland 20850, 301/251-7990

I. SUMMARY AND MAJOR CONCLUSIONS AND RECOMMENDATIONS

In June 1982, the County Council enacted legislation directing the Chief Administrative Officer to establish procedures to facilitate the purchase by the County of materials, supplies, equipment and services, including construction services, so that a minimum of 10% of the total dollar value of all such purchases are made from minority businesses.

The law defines a minority business as any legal entity, except a joint venture, which is at least 51% owned and controlled by one or more minority persons, or a non-profit entity organized to promote the interests of persons who have a handicap. The law further defines a minority person as a member of a socially or economically disadvantaged minority group, a woman, or one who is mentally and physically disabled (abbreviated as MFD).

The law includes a sunset provision for July 1, 1985.

The overall conclusion of this evaluation is that the County government is making a concerted effort to carry out the legislative goal of awarding 10% of the County's purchases to MFD businesses. However, the evaluation also concludes that there are several shortcomings in the original MFD legislation, in the formal Administrative Procedure on MFD contracting and in the Purchasing Division's procedures for the operation of the MFD program.

The report recommends improvements in the basic law and in the administrative and operating procedures to include:

- Clarifying the legislative intent of the law.

- Requiring that MFD businesses be owned, controlled and daily operated by the MFD person or persons.

- Removing the prohibition against joint ventures.

- Providing for the exclusion of MFD businesses which have reached a specified level of growth and success.

- Including a provision for penalties for fraudulently obtaining an MFD certification.

- Developing written regulations and procedures on collecting and reporting statistical data used to compute the 10% MFD business participation.

- Strengthening the procedures dealing with certification and including a requirement for verification.

II. AUTHORITY, SCOPE AND METHODOLOGY

1. Authority. Council Resolution 10-559, subject: CY 1984 Work Program of the Office of Legislative Oversight, adopted January 31, 1984.

2. Scope. To evaluate the effectiveness of the program to encourage purchases from minority owned businesses (racial minorities, women and disabled) as contained in Sections 11B-23A through 11B-23E of Chapter 11B, Montgomery County Code, 1972, as amended, and make recommendations to the County Council on the program prior to its statutory termination on July 1, 1985.

3. Methodology. This evaluation was conducted during the months of October and November 1984 using a variety of fact finding techniques to include review of the legislative history and file of the basic law (Bill 54-81); interviews with management and staff responsible for the operation of the program; interviews with personnel of other County public agencies and jurisdictions with similar programs; and a review of a GAO report on the Washington, D.C. minority contracting program.

III. BACKGROUND AND DESCRIPTION OF MFD PROGRAM

1. Background. In January 1981, the County Executive issued a policy memorandum on minority procurement in which he stated that his administration would "... actively and aggressively recruit women and/or minority-owned firms for the provision of goods and service required for the performance of our governmental obligations".

2. To accomplish this policy, the Executive directed the Purchasing Division (in the Department of Finance) to implement, operate and monitor a program which would accomplish the following for women and minority entrepreneurs:

a) Develop and maintain an outreach program to promote access to contracting and procurement opportunities.

b) Aggressively recruit and provide technical assistance on contracting and the procurement process.

c) Inform and assist County government departments to ensure women and minority participation in negotiated mini-contracts and all departmental contracting and procurement actions.

d) Maintain a list of goods and services provided by women and minority-owned businesses.

e) Monitor the internal operation of the contracting and procurement system to assure equitable participation of women and minority-owned businesses.

f) Maintain statistical data on the program and submit reports on a periodic basis.

3. In addition, the Executive established an Intergovernmental Committee on Minority Procurement with representation from all County public agencies and bi-County agencies, the cities of Rockville, Takoma Park and Gaithersburg, and the Maryland State Office of Minority Business Enterprise.

4. Council Legislation. In June 1982, the Council enacted Bill 54-81 which amended Chapter 11B, Contracts, Procurement Matters and Public Ethics, to provide for a new Division IV, Purchases from Minority Businesses. That bill was codified as Sections 11B-23A through 11B-23E, inclusive, of Chapter 11B (See Exhibit A).

5. The new provisions of the law were modeled after Section 8-601 of Chapter 21, Annotated Code of Maryland, in its definition of a minority business enterprise, its targeted goal of awarding at least 10% of all contracts to minority-owned businesses and in its general procedures.

6. The highlights of the County's minority procurement law are as follows (See Exhibit A for details):

a) Directs the Chief Administrative Officer (CAO) to establish procedures for purchasing materials, supplies, equipment and services, including construction services, so that a minimum of 10% of the total dollar value of all such purchases are made from minority businesses.

b) Stipulates that the purchasing procedures may also include provisions for a minority cost preference in competitive bidding for contracts between $7,000 and $500,000.

c) Defines a minority business as any legal entity, except a joint venture, which is at least 51% owned and controlled by one or more minority persons or a non-profit entity organized to promote the interests of persons who have a handicap.

d) Defines a minority person as any member of a socially or economically disadvantaged minority group, which includes blacks, hispanics, American indians, Alaska natives, Asians, Pacific islanders, women, and the mentally and physically disabled.

e) Directs the CAO, by July 31 of each year, to report to the County Council on the percentage of minority business purchases for the preceding financial year.

f) Stipulates that the law ceases to have any further force or effect after July 1, 1985.

7. Administrative Procedure. In December 1982, the CAO approved interim Administrative Procedure 3-8, Minority Contracting, which set forth policies and procedures to accomplish the goal of awarding 10% of the total volume of County contracts to minority, female and disabled-owned businesses (abbreviated as MFD businesses). In April 1983, the CAO approved a revised interim procedure which is currently in effect.

8. The Administrative Procedure (AP) outlines the basic policy, definitions, and procedures and assigns responsibilities to various governmental departments in carrying out the program. The AP includes a provision requiring businesses that are awarded prime contracts for more than $100,000 to subcontract at least 10% of the prime contract to MFD businesses. The 10% can also be satisfied by obtaining supplies and

materials from MFD suppliers and manufacturers. This requirement to subcontract 10% of the prime contract can be waived by the Finance Director when the prime contractor demonstrates that a good faith effort has been made to subcontract.

9. Also included in an appendix to the Administrative Procedure is a form which vendors can use to apply for MFD status. In another appendix are forms for a vendor to schedule the type and percentage of MFD participation as a prime or a subcontractor and for the MFD contractor to indicate an intent to perform as a subcontractor.

10. Division of Purchasing and Material Management's Operating Procedures. The Chief, Division of Purchasing and Material Management (commonly referred to as the Purchasing Director) has overall responsibility for carrying out the County government's MFD program of meeting the goal of awarding 10% of all contracts to MFD businesses. While all personnel of the Division are involved to some degree with the program, there is assigned a Program Assistant II who serves as the Minority Procurement Officer and is responsible to the Purchasing Director for carrying out the specific activities relating to the program such as assembling and distributing a directory of minority vendors, MFD certification and recertification, and providing information and assistance to departments, MFD contractors and other vendors.

11. Other County Government Elements Involved in MFD Program. Other elements of the County Government which are occasionally involved in the MFD program include:

a) Office of Economic Development. The Office of Economic Development (OED) is responsible for conducting small and minority-owned business seminars and workshops in which government contracting and the County government's MFD program are explained.

b) Contract Review Committees. For contracts over $100,000 which come before the Contract Review Committee, special emphasis is placed on reviewing the contract for MFD participation.

c) Commission for Women. In the last year, the New Phase Career Center of the Commission has held two seminars for women wishing to enter the business world. Although the seminars do not specifically concentrate on the MFD program, the Minority Procurement Officer has participated in the seminars.

IV. EVALUATION OF THE MFD PROGRAM

1. General. The overall conclusion of this evaluation is that the County government, primarily through the Division of Purchasing and Material Management, is making a concerted effort to carry out the legislative goal of awarding 10% of all contracts and subcontracts to MFD businesses. Furthermore, the program continues to have the active, visible support of the County Executive. Annual reports submitted by the Department of Finance to the Chief Administrative Officer for fiscal years 1983 and 1984 reflect MFD business participation in excess of 10% of the reported total purchases for both years.

However, this evaluation has revealed several shortcomings in the basic law, in the Administrative Procedure on minority contracting and the Purchasing Division's operating procedures. While these shortcomings have not rendered the MFD program ineffective, they have inhibited the program's ability to reach its maximum potential, and have precluded any reliable statistical assessment of MFD business participation.

This section of the report identifies these shortcomings and recommends changes to both the basic law and the procedures which should contribute to the overall improvement of the County's MFD program.

2. Recommended Improvements in the Basic Law

a) General. Sections 11B-23A through 11B-23E of the Montgomery County Code, 1972, as amended (Exhibit A), directs the establishment of a program to encourage participation by minority, female and disabled (MFD) owned businesses. Should the Council decide to legislate an extension of the MFD program beyond the termination date of July 1, 1985, the Code should be strengthened and clarified by including the recommended improvements discussed below.

b) Clarify the legislative intent of the law.

The present law states in Section 11B-23A, Legislative Findings, that "...minority businesses may have experienced the effects of past discrimination in the awarding or letting of contracts or subcontracts...the effect of which may have been to impede the economic development and expansion of minority businesses." The law then proceeds to direct the CAO to structure the contract procedures to facilitate and encourage the letting of contracts to minority businesses.

These legislative findings appear to not clearly state the intent of the Council in establishing this goal. One could infer from the legislative findings that the Council's action was a form of reparation for past injustices to the three identified classes (minorities, women and the disabled).

A review of the legislative history suggests that the Council had a broader purpose for enacting the law; namely, to establish a process to encourage the economic development and to increase the business opportunities of minority, female and disabled-owned businesses. However, by establishing in the law a specific goal of 10% MFD business participation, the process was narrowed to one of simply concentrating on accomplishing that statutory 10% goal and not on developing a broad program of technical assistance to MFD businesses so that at some future time they could be capable of competing without any special treatment.

c) Clarify the confusion regarding the base from which the 10% goal is computed.

In Section 11B-23A, Legislative Findings, the CAO is directed to structure the County's contract procedures so that "... at least ten percent of County contracts and the subcontracts which flow therefrom..." are awarded to competent MFD businesses (emphasis added).

However, Section 11-23C, Procedures, directs the CAO to structure the County's contract procedures for "...purchasing materials, supplies, equipment and services, including construction services, to attempt to achieve, as a result, that a minimum of ten percent of the total dollar value of such purchases..." are made from MFD businesses (emphasis added).

From the legislative history it would appear that the Council's intent was that the goal be 10% of the total dollar value of all purchases and not 10% of the contracts. (Note: In the context of the purchasing and contracting law, Chapter 11B, purchasing includes the obtaining of goods (supplies, materials, equipment and all tangible commodities, except real estate), services, construction, and insurance.

d) Require that MFD businesses must be owned, controlled and daily operated by the MFD person or persons, and that the MFD business must demonstrate that it is a competent, reliable and responsive firm.

As presently required in the law, an MFD business must be at least 51% owned and controlled by one or more minority persons. There is no requirement that the MFD person or persons be involved in the daily operations of the firm. The law should require active participation of the MFD person or persons to prevent an MFD firm from obtaining a contract and then serving as a middleman or broker for non-minority firms. The discovery of middlemen was made by the GAO in a 1981 audit of the Washington, D.C. minority contracting program.

Likewise, the law should emphasize that, to be awarded a County contract, an MFD business must be able to demonstrate that it is competent, reliable and responsive. Presently the law makes only a single reference that a minority business must be "competent."

e) Reevaluate the prohibition against joint ventures in the MFD program.

Section 11B-23B, Definitions, defines a minority business as "...any legal entity, other than a joint venture, organized to engage in commercial transactions ..." (emphasis added). This prohibition against the County entering into a contract with a joint venture is not found anywhere else in the chapter of the Code on contracting and purchasing (Chapter 11B). Apparently, the prohibition was included in the section of the Chapter dealing with MFD businesses because of a concern that a joint venture provided an opportunity for non-minority business to circumvent the law by joining with a "front" MFD business. Unfortunately, the prohibition works against the intent of the MFD program in that it prevents several small MFD businesses from joining together to combine their capacity and capital and bid on projects that would be beyond their individual capacity to compete.

f) Authorize the CAO to introduce other programs to encourage MFD business participation in County government procurement.

The present law directs the CAO to structure the purchasing procedures so as to achieve a minimum of 10% participation by MFD

businesses in purchases from the County government. In addition, the law also requires the CAO to include provisions in the contract procedures to institute an MFD business preference of up to 120% of the lowest responsible bid in competitive bidding for contracts between $7,000 and $500,000. To date, the County has not used the minority preference provision of the law.

There are other programs which could also be included in the law so as to give the administration a range of options to encourage MFD business participation. For instance, the use of set asides or sheltered market areas have been used effectively in other jurisdictions. Another option would be the introduction of a range of activities under the general heading of business development assistance. Included in this category would be assisting MFD businesses to obtain loans for capital equipment and surety bonding; providing direct technical assistance in preparing and submitting bids and proposals; and training and counseling MFD businesses on all aspects of management, finance and business operations.

g) Provide for the exclusion of MFD businesses which have exceeded a specified level of growth and success.

As presently written, the law does not provide for an MFD business to "graduate" out of the special class once the firm has achieved a level of growth and business success which places the firm on a competitive par with non-minority businesses.

The original purpose of the law was to foster minority participation by "...socially or economically disadvantaged" minority groups in purchases from the County government. It is this writer's opinion that the law should not establish a permanent entitlement program for MFD businesses regardless of their size and economic success.

h) Provide penalties for fraudulently obtaining or retaining an MFD certification.

Article 21, Section 8-601, Annotated Code of Maryland, from which the County's law was generally modeled, includes language concerning fraudulently obtaining and retaining certification.

i) Change the reference to purchasing "procedures" to Executive "regulations" on MFD business purchases.

Throughout Chapter 11B, Contracts, Procurement Matters and Public Ethics, there are references to the Executive developing regulations. The recently enacted Bill 46-83 on the promulgation of Executive regulations emphasizes that purchasing regulations are required in addition to any administrative procedures on the internal management of the purchasing and contracting programs.

j) Change the reports section of the law (11B-23D) to require reporting MFD participation by categories of minority, female and disabled.

Presently the law requires an annual report from the CAO on the total number and value of purchases from MFD businesses and the percentage which those purchases represent to the total number and value of purchases for the preceding fiscal year.

While that information is of value, the annual report should also include the total number and value of purchases from each category of minority, and from women and disabled-owned businesses so as to facilitate a thorough evaluation of the program.

3. Recommended Improvements in the Current Administrative Procedure and any Future Executive Regulation on Minority Contracting and the Purchasing Division's Operating Procedures.

a) General. Administrative Procedure 3-8, Minority Contracting, was first published as an interim directive in December 1982. A revised (but still interim) procedure was published in April 1983. Within the Purchasing Division, there are no written internal operating procedures covering the administration of the MFD program. In this section of the report, a number of shortcomings in the formal and unwritten procedures--some of which stem from shortcomings in the basic law--are identified; and changes to improve the administration of the MFD business program are presented.

b) Eliminate the confusion over what constitutes the base from which the 10% goal is computed.

Reflecting the confusion which exists in the basic law, para 1.0 of AP 3-8 states that the goal of the program is to have MFD business participation equal to 10% of the total dollar value of County contracts and subcontracts therefrom. However, para 3.0 of the AP states that the goal is to award 10% of the contracts and subcontracts therefrom to MFD businesses. A clarification in the law should permit a clarification in the AP and eliminate the confusion.

c) The AP should specify what categories of contracts and purchases are to be included in the base when computing the percentage of MFD business participation.

Presently, the AP includes no instructions on what purchases are included on the base when computing the percentage of participation by MFD businesses. The unwritten operating procedures of the Purchasing Division excludes several categories of contracts and purchases from that base. For example, when determining the base dollar value of contracts and purchases for the FY 83 and FY 84 reports on MFD business participation, the following categories were excluded.

- Sole source/proprietary contracts
- Pass-through of Federal/State funds
- Sub-grantee contracts
- Inter-agency contracts
- Purchases made by purchase order
- Call order purchases

- Change orders (except those reviewed by the CRC)
- Renewal contracts

The primary reason given for excluding contracts and purchases in these categories is that the County does not have total discretion over who will be awarded the contract. The examples often cited are contracts involving pass-through funds in the health and human services area and renewals and change orders to contracts already in force. While the argument may have some validity, it cannot be applied to all contracts and purchases in the above categories. For example, purchase orders and call orders constitute a significant number of purchases and the County has wide discretion as to the choice of vendors.

In the opinion of this writer, the exclusion of contracts and purchases in the above categories is contrary to the intent of the law. The statutory goal is 10% of the total dollar value of all purchases of materials, supplies, equipment and services, including construction services, made by the County government. If the nature of some purchases are such that MFD businesses are not available or capable of competing, then, it can be argued, purchases for other categories of procurement should be higher than 10% in order to reach the 10% overall goal (see d) below).

There is also an inconsistency in excluding from the base contracts and purchases in the above categories. When a contract or purchase in any of the above categories involves an MFD business, the dollar value of that contract is credited in reports as MFD business participation. As an example, a sole source consulting contract for $50,000 would be excluded in the base figure of total County contracts and purchases. However, if the selected firm happened to be an MFD business, the dollar value of that sole source contract would be recorded and credited in the report under the category of MFD business participation.

In summary, the reports on MFD business participation for FY 83 and FY 84 which the Purchasing Division have submitted to the Chief Administrative Officer do not accurately reflect the percentage of MFD business participation or the total value of County purchases. The data on the number and value of MFD business contracts had not been accurately recorded and the many exclusions described above seriously distort the total dollar value of County purchases.

d) <u>The percentage of prime contracts which non-MFD firms are required to subcontract to MFD businesses should be increased.</u>

Since the overall goal of the law is to achieve 10% MFD participation in County procurement, and because there are many County contracts for which MFD businesses are unable to compete due to the size or nature of the service to be provided, it would appear that an extra effort would be necessary in subcontracting with MFD businesses. To require subcontracting of 15% rather than the present 10% of the overall contract price to MFD business would increase the probability of achieving the statutory goal of 10% MFD business participation in all County purchases.

e) The section of the AP dealing with certification needs to be strengthened and a provision included on verification.

Para 5., Certification, of AP 3-8 is weak in that it contains no comprehensive system for verifying whether MFD businesses are in fact owned, controlled and operated by an MFD person or persons. In addition, the requirement in the AP for biennial recertification as an MFD business is not being enforced because of staff limitations.

f) Provisions in the AP which emphasize departmental actions to solicit MFD business participation for contracts under $10,000 and over $100,000 convey the impression that contracts between $10,000 and $100,000 are not subject to MFD businesses solicitation.

The Administrative Procedure to implement the basic law, (paras 4.2A and 6.3C) provide that invitations for bids, requests for proposals and requests for expressions of interest on contracts having a dollar value of $100,000 or more include a notice that the contractor must make a good faith effort to subcontract a minimum of 10% of the overall contract price to certified MFD businesses.

Also, para 6.3B of the AP provides that when departments invite proposals for services with a dollar value of less than $10,000 (mini-contract) an effort must be made to afford certified MFD businesses an opportunity to participate in the award of the contract.

Because the AP does not contain any specific reference to MFD business participation in contracts and purchases in the $10,000 to $100,000 range, there is a mixed effort toward encouraging MFD business participation in contracting and subcontracting in that dollar range. For example, when the Purchasing Division buyers issue invitations to bid on contracts for goods and commodities (non-professional) of a value of $7,000 or more, a standard form which alerts the potential contractor to the County's MFD business program is included in the bid package. However, when another element of the Purchasing Division issues requests for proposals or requests for expressions of interest for professional services where the cost of the services is not expected to exceed $100,000, no information is included to alert the potential contractors to the County's MFD businesses program.

g) The AP should include a requirement for maintaining statistics on MFD business participation and for preparing an annual report as required by Section 11B-23D of the Code.

Currently, Administrative Procedure 3-8 makes no reference to the legislative requirement to maintain statistics and submit reports on the MFD program to the County Council.

V. MFD Programs in Other County Public Agencies and Local Jurisdictions

1. WSSC. The Washington Suburban Sanitary Commission recently issued revised procedures governing its Mandatory Minority Business

Enterprise (MBE) program. Under this program, a successful bidder on a construction contract or on architectural and engineering consulting contracts of a value of $75,000 or more is required to subcontract a minimum of 10% of the overall contract price to a minority business enterprise. (WSSC uses the definition of a minority business contained in Section 8-601 of Act 21, the Annotated Code of Maryland.)

As this is a minority subcontracting program, even MBE prime contractors must subcontract the minimum 10% to a minority business. The program is new and no reports on the results of the program have been published.

2. Montgomery College. The College has for some time had an unwritten policy to encourage minority, female and disabled businesses to participate in the procurement process. Under this unwritten program, the College awarded almost 11% of FY 83 contracts to MFD firms and between 7%-8% of FY 84 contracts. Most recently, written policies and procedures have been developed which require the Director of Procurement to attempt to achieve a minority participation of 10% of the total dollars awarded through the procurement process. This policy was approved by the Board of Trustees in November 1984.

3. MCPS. Minority business enterprise procurement practices and procedures in public school construction projects were formally adopted by BOE action in November 1979 in order to comply with State law. MCPS procurement procedures for construction and other supply contracts are also governed by the Maryland State Education Law which prescribes competitive bidding after advertisement and award to the lowest responsible bidder. However, within these provisions, MCPS has acted to encourage minority participation in its contracts. Price incentives are not a course of action open to MCPS, but the overall goal of 10 percent minority participation in both construction and other contractural activity in sought.

In construction contracts, an active attempt is made to purchase a minimum of ten percent of the value of all materials, supplies, equipment, and services, including construction services, directly or indirectly from minority business enterprises. Specific procedures and certification requirements are included in bids for State and locally funded projects in excess of $100,000. An annual report is also sent to the State and, generally, the ten percent goal has been reached by Montgomery County Public Schools.

The MCPS procurement program for other equipment and supplies is currently undergoing computer modernization. Automation provides a capability to expand the data base of minority vendors (MCPS uses the County's Minority Vendors Directory) and match these vendors with commodities. Additionally, automation will provide analysis and feedback to minority vendors and technical assistance about the needs and specifications used by MCPS.

4. HOC. The Housing Opportunities Commission has a written policy of seeking minority/women/disabled owned firms. To this end, HOC relies heavily on the County's Minority Vendors Directory. HOC is

required to follow HUD directives when considering bids for HUD financed Comprehensive Improvement Assistance Programs which sets a goal of at least 20% of the dollar value of construction, architects/engineers, consulting and purchases be directed to minority and women-owned businesses.

5. M-NCPPC. The goal of the Maryland-National Capital Park and Planning Commission's MFD business procurement program is that purchases from minority, female and disabled businesses equal 10% of the dollar value of all purchases. To accomplish this goal, the Commission has instituted a policy of bid preferences to MFD businesses.

Specifically, the M-NCPPC policy requires that purchases of materials, supplies, equipment and services include purchases from minority owned and operated businesses equaling 10% of the dollar value of all purchases. Accomplishment of the goal is facilitated in that the 10% is applied to all procurement of goods and service made by the Commission regardless of the nature of the expenditure. The policy emphasizes that if MFD firms are not available for certain classes of procurement, then expenditures in other classes must be raised above 10% so as to reach the 10% overall goal.

To reach the 10% goal the Commission has established a policy that an MFD firm need not be the low bidder in order to receive the award. An MFD firm can qualify as low bidder when each of the following four conditions are satisfied:

a) The MFD bid is no more than 5% higher than the lowest acceptable bid for the first $100,000 of procurement and no more than 3% higher for any amount over $100,000 of procurement than the lowest acceptable bid received.

b) The MFD firm is certified by M-NCPPC.

c) The MFD firm is responsive and responsible .

d) The MFD firm did not exceeded $5 million in average gross annual receipts for the past three years for the categories of manufacturing and retail; and did not exceed $2.5 million for the categories of wholesale, services and construction.

A non-MFD firm may be treated as an MFD bidder if the firm agrees to subcontract a minimum of 15% of the dollar value of the contract to certified MFD companies.

In summary, the MFD program of M-NCPPC has two characteristics which sets it apart from every other MFD program this office examined. First, it recognizes that there are some procurement transactions for which MFD firms may not be available. Accordingly, the M-NCPPC program requires a higher than 10% effort in the other categories of expenditures where MFD firms can compete. The second characteristic of the M-NCPPC's program is the imposition of dollar limits on gross annual receipts in the various categories of business activity which an MFD business cannot exceed and still retain the MFD business favored status.

Under these procedures, MFD business participation in FY 84 equated 10.1% of the total dollar value of all M-NCPPC purchases. For the 1st Quarter, FY 85, participation was 13.2%.

6. Arlington County and Fairfax County, Virginia.

The Commonwealth of Virginia has no statutory requirement for special programs to encourage MFD participation. Arlington County, however, has an unwritten policy that MFD firms will be solicited and encouraged to submit bids and proposals.

Fairfax County has gone further by establishing a program for small and minority business enterprises. Although the program has no stated percentage goals for MFD participation, it does include an education and outreach effort to identify and register small and minority firms interested in supplying goods and services to the County. At the state level, the governor has encouraged his state agencies to establish individual agency goals of minority business participation. Of course, all state and local agencies in Virginia must meet the MFD goals established by the various Federal agencies (Transportation, HUD, etc.) when purchasing and contracting with Federal funds.

7. Prince George's County, Maryland. Currently, Prince George's County has established by law a program similar to Montgomery County's which has the goal of awarding at least 10% of the County's contracts to economically disadvantaged minority business enterprises. The PG law's definition of a minority includes the usual racial minority groups and females, but not disabled. The County has been meeting this 10% goal.

Recently the P.G. County Council enacted a bill which expands the program by raising from 10% to 30% the goal of County purchases of goods and services from minority firms and requires that at least 20% of the total dollar volume of every public works construction contract be awarded to minority business enterprises. Under this new bill, to qualify as a responsive bidder a non-minority business would be required to subcontract at least 20% of the contract price to a minority business enterprise.

8. Washington, D.C. Washington's minority procurement program provides the most aid and advantage to minority business enterprises. Under a program which began in 1977, the District has a sheltered market program which requires contracting departments to award at least 35% of the total dollar value of all contracts to minority business enterprises. For an enterprise to qualify as a minority business it must be one which is at least 51% owned by a racial or ethnic minority. The program does not make provisions for firms owned by female or the disabled. The District's Minority Business Opportunity Commission, which oversees the program, reports that the minimum goal of 35% minority participation has always been met and is usually exceeded.

VI. OTHER MATTERS

1. In the course of this evaluation, several matters relating to contracting and purchasing were noted and are presented in this section of the report.

2. Administrative Procedures on Contracting. In December 1978, the Council appointed an Ad Hoc Committee on Legislative Oversight issued its final Report. One of the major recommendations of that report was that the administration should develop administrative procedures on contracting in general and on the various special contracting requirements (professional service, cost principles, etc.). In 1979, the Council enacted a new contract law which included a requirement that the CAO publish regulations to promote efficiency in contracting operations and to comply with the new law. (See Sec 11B-25).

In January 1981, the administration published a series of APs on contracting as interim procedures. These procedures were to be evaluated and republished in final form in approximately a year. In August 1983, a revised set of draft administrative procedures on contracting was published; however, the procedures were not to take precedence over the set of interim procedures published in January 1981. As of this writing, neither set of administrative procedures on contracting has progressed beyond the interim stage. Even AP 3-8, Minority Contracting, which was published in April 1983, is still an interim procedure.

3. Total Dollar Value of Procurement. As previously stated, the County's MFD business program has a goal of MFD participation equal to 10% of the total dollar value of purchases of materials, supplies, equipment and services, including instruction services. During the course of this evaluation, an attempt was made to identify a total dollar value for one of the most recent fiscal years. Queries were made to the outside auditors, the Purchasing Division, and the Division of Accounting without success. The general reaction of those who were queried was that the amount could probably be derived by examining and comparing a number of reports which are developed by the FAMIS system; however, no single record or statement identifies the total dollar value of purchases for any fiscal year.

4. HUD Study on Montgomery County's MFD Business Program. The Department of Housing and Urban Development recently sponsored a case study of four jurisdictions with minority business enterprise programs. The study examined programs in Atlanta, Philadelphia, Washington, D.C. and Montgomery County, and issued a report dated May 11, 1984. Montgomery County was selected because it offered a suburban contrast to the three cities with their large minority populations.

Although the study is not an indepth examination of the County's MFD program, it does accurately reflect the County's efforts to promote MFD business participation and compliments the County's initiatives.

VII. CONCLUSIONS AND RECOMMENDATIONS

The following conclusion and related recommendations are presented for the overall improvement of the County's program to encourage the participation of minority, female and disabled-owned businesses in County contracts and purchases.

1. The County is making a concerted effort to carry out the legislative goal of awarding 10% of all contracts and subcontracts to MFD businesses. However, shortcomings in the basic law, the Administrative Procedure and the internal operating procedures of the Purchasing Division are inhibiting the program's ability to reach its maximum potential, and have precluded any reliable statistical assessment of MFD business participation.

It is recommended that the MFD program be continued after modifications are made to the original law, the current Administrative Procedure, future Executive regulations, and the Purchasing Division's internal operating procedures.

2. Improvements to the basic law, Section 11B-23A through 11B-23E, are recommended as follows:

- Clarify the legislative intent of the law.
- Clarify what constitutes the base from which the percentage of MFD business participation is computed.
- Require that MFD businesses be owned, controlled and daily operated by the MFD person or persons.
- Reevaluate the prohibition against joint ventures.
- Authorize additional programs and types of assistance to encourage MFD business participation.
- Provide for the exclusion of MFD businesses which have reached a specified level of growth and success.
- Provide penalties for fraudulently obtaining MFD certification.
- Require that Executive regulations on the MFD business program be developed.
- Require more detail in the annual report to the Council.
- Include a sunset provision of at least three years hence to insure a future review and evaluation of the MFD legislation and program.

3. Improvements to Administrative Procedure 3-8, Minority Contracting, any future Executive regulations, and the Purchasing Division's operating procedures are recommended as follows:

- Specify what categories of contracts and purchases are to be included in the base when computing the percentage of MFD business participation.

- Develop written internal operating procedures on the collecting and reporting of statistical data relating to total County purchases and MFD business participation.

- Consider increasing the required percentage of subcontracting to MFD businesses by non-MFD contractors.

- Strengthen the procedures dealing with certification and recertification and include a requirement for verification.

- Reevaluate the emphasis currently placed on requiring formal MFD business solicitation on contracts under $10,000 and over $100,000.

VIII. AGENCY COMMENTS

Before submitting this report to the County Council, a draft copy was sent to the Chief Administrative Officer and the heads of all affected departments. Responses were received from several agencies. Those responses are included in their entirety in this section of the report.

1. Comments of the Director, OMB.

M E M O R A N D U M

December ~~11~~, 1984

TO: Robert K. Kendal,
Assistant Chief Administrative Officer

FROM: Jacqueline H. Rogers, Director
Office of Management & Budget

SUBJECT: Comments on Office of Legislative Oversight Draft Report 84-4, An Evaluation of the County Government's Legislated Program to Encourage Purchases from Businesses Owned by Minorities, Women and the Disabled (MFD)

Taken as a whole, I concur with the evaluation and recommendations in the Office of Legislative Oversight's report evaluating the MFD Program. The report's recommendations will serve to strengthen the MFD program and facilitate more effective and efficient administration.

Specifically, I would like to comment on the following recommendations in the report.

Recommendation 2 (i), page 8: "The report section of the law (11B-23D) should be changed to require reporting MFD participation by categories of minority, female and disabled."

I strongly agree that additional statistics should be reported by the Purchasing Division concerning the number and value of purchases from each category of minority, female, and disabled firms to facilitate a thorough evaluation of the program. Currently, the MFD program collects statistics on purchases for the following categories: Black, Hispanic, Asian, Indian, Female, Disabled businesses.

These statistics should be included in performance indicators required in the annual budget review process as well. In the future, OMB will be working with the Purchasing Division and Department of Finance on refining performance indicators which are reported in the printed budget document, as well as improved techniques for aggregating such statistics through expanded office automation. It would also be helpful to correlate the percentage of firms participating in the MFD program to the total number of MFD firms registered with the County.

Recommendations 3 (a-g), pages 8-11: "Recommended Improvements in the Administrative Procedure on Minority Contracting and the Purchasing Division's Operating Procedures."

At the present time, an overall set of Administrative Procedures concerning contracting is undergoing revision. The Administrative Procedure on the MFD program was originally scheduled for revision in December,

review by the County Executive, and submittal to the County Council for approval. However, if the Council is planning to review the enabling law for the MFD program shortly, I suggest that any revisions to the MFD Admnistrative Procedure be postponed until a new law is enacted. At that time, the Administrative Procedure will be comprehensively revised to incorporate all Council-mandated changes.

Recommendation 3(e), page 10: "The section of the AP dealing with certification needs to be strengthened and provisions included on verification."

In view of the fact that approximately 1,200 minority, female, and disabled-owned businesses are on file with the Purchasing Division, it would be very time-consuming to verify through site visits or examination of financial and legal documents whether each MFD business is in fact owned, controlled and operated by an MFD person or persons. Inasmuch as the Purchasing Division must administer a pressing workload and additional staff would have to be hired to conduct certification duties, I recommend that each firm's application contain a signed affidavit from the MFD firm which would be legally-binding, without extensive verification on the part of the Purchasing Division. Subsequently, if a violation of the MFD requirement is discovered, the firm in question would be disqualified from further participation in the MFD program. Furthermore, from time to time, the MFD officer could audit a sample of MFD firms for adherence to MFD requirements.

Other Matters 3, page 15: "Total Dollar Value of Procurement."

The report also mentions that it was impossible to obtain a single record or statement that identifies the total dollar value of purchases for any fiscal year. OMB is working with the Purchasing Division and Finance Department in setting up an efficient automated record-keeping system for County purchasing. Developing a meaningful, useful system will take time, but is essential for management oversight and evaluation of the overall Purchasing program. The Purchasing Division's manual record system needs to be updated and redesigned to provide prompt information for decision-making.

JHR:ak/0987Q

2. Comments of the Minority Affairs Advisor.

MEMORANDUM

December 11, 1984

TO: Robert Kendal
Assistant Chief Administrative Officer

FROM: DeVance Walker, Jr.
Minority Affairs Advisor

SUBJECT: Review of the Office of Legislative Oversight Report on An Evaluation of the County Government's Legislated Program to Encourage Purchases from Businesses Owned by MFD

The purpose of this memorandum is to respond to the Office of Legislative Oversight evaluaton of the County Government's Legislated Program to encourage purchases from Businesses Owned by Minorities, Women and the Disabled (MFD). My reaction to the report is that it is on target with sound recommendations.

I do, however, offer some suggestions. These are as follows:

- Item IV 2(b) There has been considerable attention on the goal of 10% rather than technical assistance of MFD businesses. Many of the MFD businesses are capable of competing. However,there seems to be an inherent or historical lack of confidence in the capabilities of MFD firms by our manager.

- Item IV 2(c) The total dollar value of all purchases of goods and services have not been counted. We have not been able to obtain the actual amount of all purchases. The Department of Finance needs to clarify why all purchases of goods and services are not counted .

- Item IV 2(d) Unfortunately, some businesses have changed their percentage of ownership to meet the 51% requirement by giving their spouse the majority of control after the firm has been contacted by a potential prime contractor. In most situations it appears that the spouses are not active participants in the daily activities of the businesses.

- Item IV 2(e) Joint ventures need to be closely examined to ensure that MFD businesses will benefit rather than adversely be affected.

- Item IV 2(f) All of these suggestions will benefit the program.

- Item IV 2(g) I disagree that MFD businesses should graduate out of the program. The section eliminates any good faith efforts by the county government. In the previous years the county has excluded these firms. To maintain continuity and commitment to offer economic opportunities to all businesses, MFD firms must be retained in the program regardless of their size and economic success.

- Item IV 2(h) This provision for penalties is good.

- Item IV 2(i) This information as stated in the recommendation is significant and valuable as a defendable tool to evaluate the success of MFD in our purchasing program.

- Item IV 3(b & c) These are good recommendations. Clarification is needed from the Department of Finance on why there are these exclusions. These items need to be addressed and carried out to eliminate confusion.

- Item IV 3(d, e & f) These recommendations should be implemented.

In summary, some of these recommendations should be referred for legal opinions. For purpose of discussion the use of the term competent implies that MFD are normally incompetent. Unless we have a criteria for competent MFD firms or use the term consistently for majority firms, we should eliminate this description.

To conduct a successful MFD program, appropriate staff support is necessary. Personally, I am pessimistic that we can accomplish as well as implement these needed recommendations due to lack of staff.

DW/dae

3. Comments of Executive Director, Commission for Women.

MEMORANDUM

TO: Robert Kendall
Assistant Chief Administrative Officer

FROM: Judith Vaughan-Prather, Executive Director
Commission for Women Judith Vaughan-Prather

DATE: December 13, 1984

SUBJECT: Response to the Draft Copy of Office of Legislative Oversight Report # 84-4

The staff of the Commission for Women has reviewed the above report entitled An Evaluation of the County Government's Legislated Programs to Encourage Purchases from Businesses Owned by Minorities, Women and the Displaced (MFD).

This office agrees with the report's recommendation to clarify the legislative intent of the basic law and to make improvements to Administrative Procedures on Contracting and the Purchasing Division's operating procedures to ensure that the intent is effectively implemented. It is important that the Council be asked to legislate an extension of the MFD program beyond the termination date of July 1, 1985 with the recommended improvements.

Of particular interest to this office are the following two recommendations:

- The law should specify that MFD businesses must be owned, controlled and daily operated by the MFD person or persons:

  It is important that the MFD firms obtaining contracts from the County are not only owned and controlled by MFD persons, but also practice hiring procedures that evidence daily involvement in the operation by women.

- The reporting section of the law should be changed to require that it specify MFD participation by categories of minority, female and disabled.

  The Commission for Women would find it of value that the annual report specifically address the breakdown of the total number, value, and percentages of purchases and contracts awarded to MFD businesses by categories of minority, female and disabled. This office agrees that without such a breakdown, evaluation of the program would be incomplete.

Thank you very much for the opportunity to comment on this very important issue. The "turnaround time" for review and comments was too short to permit consideration by the Commission itself. I would very much like to share the Draft report with appropriate commissioners and submit their comments to you, as well. Please let me know if this is possible.

4. Comments of the Director, Finance Division.

MEMORANDUM

December 14, 1984

TO: Robert K. Kendal, Assistant Chief Administrative Officer

FROM: Max R. Bohnstedt, Director, Department of Finance MRB

SUBJECT: OLO Report 84-4 - MFD Program

I have attached reviews done by John Battan and Frank Carpenter.

My reaction to the report follows:

1. I would agree that the program and enabling legislation should be extended.
2. I generally agree with the suggested clarification and procedural improvements.
3. I do not agree that the program should be converted to a mandated award or a set aside program. These actions would convert it from its intent, which was to change a cultural bias of conscious or unconscious decisions affecting access to a welfare dependency program.
4. I do not agree with the idea of graduating firms. We are attempting to develop access for a sector of the vendor market. To be successful, this sector, like all other sectors, needs to have its continuum of successful and unsuccessful firms. Truncating this development continuum throws us into a dependency welfare program mode.
5. I do not agree with the division of the program operation or reporting by ethnicity. The program is designed to eliminate discrimination, not divide and cause dissention among groups that have been discriminated against.

MRB/mla

Attachments

5. Comments of the Chief, Purchasing Division.

Prepared by J. A. Battan

BASIC LAW

Section IV

2. b) It may be appropriate to give the basic law a broader purpose, which may include encouraging economic development and increasing business opportunities for minority firms. From an implementation standpoint, however, significant participation by the Office of Economic Development would seem appropriate.

2. c) I agree that the ten (10) percent goal should be related to the dollars awarded and not to the contracts issued.

2. d) Although I understand the reason for a requirement that the firm be "daily operated", it may bring about a situation where MFD participation would be limited to relatively small firms.

There would be no particular problem if the law stated competent MFD firms must also be "reliable and responsive". However, the Contracting Officer already has a general responsibility to establish the responsibility of all prospective awardees whether or not they are minority firms.

2. e) Although I understand the reason for this recommendations, I have no basis for concluding that it would be beneficial for valid MFD firms.

2. f) Regarding the proposed "other programs",

1) Set asides may a useful approach provided at least three (3) minority firms are available for competition.

2) Assisting with loans and bonding may be useful, but this should not be made a responsibility of the procurement office.

3) Providing general assistance in the preparation of bids could be useful (and some of that is already being done) but we must be careful that the bid submitted is fully the responsibility of the minority firm and not a responsibility that is shared with the procurement office that receives the bid.

4) Training in management, finance and business operation could be useful, but this should not be made a responsibility of the procurement office.

2. g) Successful MFD firms may question the fairness of this recommendation. If this recommendations were adopted, it would make it more difficult for us to achieve the ten (10) percent goal.

2. h) I agree with this recommendation.

2. i) I agree with this recommendation.

ADMINISTRATIVE PROCEDURE

Section IV

3. a) I agree with this recommendation.

3. b) I agree with this recommendation.

3. c) I agree with with this recommendation, but I also feel that the basic law should give the CAO the authority to exclude certain categories of contracts.

3. d) I most strongly disagree with this recommendation. Montgomery County already has a relatively stringent ten (10) percent requirement. A better way to enlarge minority firm participation is to also make the law applicable to Montgomery College and to Montgomery County Public Schools.

3 e) A strengthening of the certification process would require more personnel resources.

3. f) I agree with the general thrust of this recommenadiion.

3. g) I agree with this recommendation.

6. Comments of the Minority Purchasing Officer.

DISCUSSION PAPER

Prepared by: Franklin Carpenter

EVALUATION SUBJECT:

AN EVALUATION OF THE COUNTY GOVERNMENT'S LEGISLATIVE PROGRAM TO ENCOURAGE PURCHASES FROM BUSINESSES OWNED BY MINORITIES, WOMEN, AND THE DISABLED (MFD)

EVALUATION QUESTION:

To what extent is the minority contracting program succeeding in reaching its goals?

PRIMARY CONCLUSION OF THE EVALUATION:

The Office of Legislative Oversight concludes that the County Government is "making a concerted effort to carry out the legislative goal of awarding 10% of its purchases to MFD businesses." There are, however, three significant elements of the program which require clarification to enable the MFD program to achieve its fullest expression:

-Legislation needs greater clarity as to purpose

-Administrative procedures for contracting with MFD firms require more specific definition and rule-making

- Operational procedures need to be defined and administered to assure greater continuity to the program

MINORITY PROCUREMENT OFFICER RESPONSE:

(A) Legislation needs greater clarity as to purpose

1. There is merit in seeking clarification on whether the goals of the program should be met on the basis of achieving 10% of the total dollar volume expended by the County. But the "goal" question is certainly a broader issue than this, even when the question is resolved by County Council action.

2. Absent from the OLO critique on this issue is the obvious concern of the tension which exists between program goals (number of firms served); kinds of services given; procurement transactions consumated and systems goals (those that help maintain the viability of the program in the County Government environment). OLO would do well to apply serious consideration to those elements of the program which effect the influence of systems goals on the program.

3. OLO quite predictably falls into the dilemma most evaluators experience--trying to sort out the many interpretations of the legislation. The evaluation incorrectly poses a dilemma which in fact does not exist: Are we supposed to be broadening the economic base of minorities through the strengthening of firms owned and controlled by minorities or are we simply trying to mold a procurement system which functions more equitably regardless of color, sex or the handicap of the minority person who seeks to do business with the County. I find this issue to be a distinction without a difference.

4. Provocative as the notion is, touched only so briefly by OLO, economic development and minority business expansion cannot be isolated from the more narrow consideration of developing greater access to the procurement system for minority firms. I doubt seriously whether "set-asides" as we have known them either help or advance the welfare of minority firms. The emphasis must be on access and how to capitalize on access once it is acquired.

5. We concur that the legislation should be extended three years. With that extension, should come recognition that the most minimal resources should be provided to the job.

(B) Administrative procedures for contracting with MFD firms require more specific definition and rule-making

1. There is no question in my mind that the administrative procedures and contractural practices must be structured to assure greater MFD activity and to assure that activity is accurately recorded. These are mechanical considerations which are presently being addressed. The Administrative Procedures for Minority Contracting, Revised, have been recommended.

2. The Interim Procedures (A.P. 3-8) permitted the Procurement Division the opportunity to go through a learning curve on this subject. The revised procedures reflect the results of what was learned and, more importantly, what is possible to implement, given the budget constraints and the political nuances.

(C) Operational procedures need to be defined and administered to assure greater continuity to the program

1. OLO's observations about how the MFD program is operated is based primarily on the manner in which statistical data is tracked. Improvement in this area is needed.

2. Operations of the program go beyond a singular concern with the "paper process.." We like to believe that what is said in reports and statistical data of one kind or another is a consequence of what actually took place to generate the data in the first place. No questions were asked about this to my knowledge.

OVERVIEW:

Part of the answer to advancing the cause of minority business lies in the potential utilization of the procurement system. We are effecting the minority contracting program to the extent that the minutiae of procurement practices does not pose the intimidation to small, minority firms many claim it does. How will the procurement system be applied to minority firms and which goals (among the many interpretations) are relevant to that decision has more to do with opening up the system than it does to promoting black firms, brown firms, handicapped firms or women-owned firms. The County; to my knowledge is not buying blackness, browness or sex. What it is buying is a commodity or service at a fair market value, delivered on time.

A tendency endemic to evaluators is to examine what is easy to examine (procedures, past reports, administrative practices, contractural transactions) rather than what ought to be examined. It is particularly important for OLO to avoid in its final report the easy review and to concentrate on key concerns of the program:

(1.) What are the good unanticipated consequences of the program as presently administered?

(2.) What are the interrelationships between minority contracting efforts and the overall system in which the program functions?

(3.) More clear attention to the standards of judgment as to what constitutes a "successful" program must not rely solely on comparative data. If the County Council is to decide more precisely what the purposes of the minority contracting program are, the measurement indicators should be clearly stated. Measurement indicators become both a form or program definition as well as a prescription of where the Council wants to go and how to get there. Admittedly, the development of measures is a demanding phase of evaluation. But the minority contracting program deserves no less than the kinds of demands such an exercise would impose on it.

For example, what are the possibilities of making comparisons about the relative effectiveness of our program compared against another.

Sometime the real changes that a program wants to produce lie far into the future and are not so much "goals" as unanalyzed hopes. I think this more or less defines what OLO described as a goal statement in the legislation.

The exercise of evaluating the minority contracting program can be enhanced by OLO considering additional elements of measures which their techniques apparently omitted in their draft report:

-Measure the effects of the MFD program on persons served

-Measure the effects of the MFD program on agencies involved

-Measure the effects of the MFD program on the public

-Measure the effects of the program on County Government administration as a whole

In conclusion, the OLO evaluation of the Minority Contracting Program raises several pertinent questions about its progress and recommends its continued activity. Further analysis of the program's purpose and function may serve to further the effective enforcement of the County's expressed intention to erode the consequences of past exclusion from the procurement system.

Extract of Chapter 11B, Contracts, Procurement Matters, Public Ethics

DIVISION IV. PURCHASES FROM MINORITY BUSINESSES.

Sec. 11B-23A. Legislative findings.

The county council finds that minority businesses may have experienced the effects of past discrimination in the awarding or letting of contracts or subcontracts for the purchase of materials, supplies, equipment and services, including construction services, for the benefit of the county, the effect of which may have been to impede the economic development and expansion of minority business.

The county council finds that it is in the best interests of the county to require the chief administrative officer to structure the contract procedures of county departments and agencies so as to facilitate and encourage the award or letting of at least ten (10) percent of county contracts and the subcontracts which flow therefrom to competent minority businesses; provided, however, that nothing contained herein shall be construed as intending to confer or as conferring upon any minority business or any group or individual representing a minority business any right, privilege or status cognizable by a court, including, but not limited to, standing to challenge the award of any contract by or on behalf of the county, its officials, employees or agents, it being the intention of the county council that this be a policy direction which is enforceable only through the oversight function of the county council. (1977 L.M.C., ch. 57, § 3.)

Sec. 11B-23B. Definitions.

Minority business means any legal entity, other than a joint venture, organized to engage in commercial transactions and which is (1) at least fifty-one (51) percent owned and controlled by one or more minority persons, or (2) a nonprofit entity organized to promote the interests of persons who have a handicap, as that term is defined in section 27-6A of the Code.

Minority persons means a member of a socially or economically disadvantaged minority group, which for the purposes of this section includes blacks (not of hispanic origin), hispanics, American Indians, Alaska natives, Asians, Pacific islanders, women, and the mentally or physically disabled. (1982 L.M.C., ch. 57, § 3.)

EXHIBIT A

Sec. 11B-23C. Procedures.

The chief administrative officer shall structure the county's procedures for purchasing materials, supplies, equipment, and services, including construction services, to attempt to achieve, as a result, that a minimum of ten (10) percent of the total dollar value of such purchases are made directly or indirectly from minority businesses. These procedures may include provisions for a minority preference in competitive bidding requirements for contracts between seven thousand dollars ($7,000.00) (as adjusted by the county executive) and five hundred thousand dollars ($500,000.00) to allow for selection of a minority bidder other than the lowest responsible bidder, provided the cost does not exceed an amount determined by the executive in his discretion, and specified in the invitations for bids, up to one hundred twenty (120) percent of the lowest responsible bid, and provided further that the invitation for bids for any contract where a minority preference is to be used shall state the intention to utilize minority preference procedures. (1982 L.M.C., ch. 57, § 3; 1984 L.M.C., ch. 24, § 15.)

Sec. 11B-23D. Reports.

The chief administrative officer shall report to the county council, by July 31 of each year, the total number and value of purchases from minority businesses, and the percentage which those purchases represent to the total number and value of purchases for the preceding fiscal year. The report shall include a description of any occasions on which the procedures required by this division were suspended by the chief administrative officer. (1982 L.M.C., ch. 57, § 3.)

Sec. 11B-23E. Termination.

This division shall have no further force and effect after July 1, 1985. (1982 L.M.C., ch. 57, § 3.)