Economic Impact Statement

Office of Legislative Oversight

Expedited Bill 29-21 — Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 29-21 would have a net positive impact on economic conditions in the County. By extending the County's Minority, Female, and Disabled-Owned Businesses (MFD) Program, OLO anticipates the likelihood that more local businesses would receive County procurement contracts than otherwise would occur without the continuation of the program, which would stimulate economic activity in the County. However, OLO cannot estimate the magnitude of the MFD Program's economic impacts due to data limitations and uncertainty regarding prime contractor compliance with program requirements. Finally, it should be noted this analysis does not consider the potential economic impacts of alternative uses of gained or forgone County revenue due to the MFD Program's impact on County contracting costs.

BACKGROUND

Expedited Bill 29-21 would amend the County's Minority, Female, and Disabled-Owned Businesses (MFD) Program. According to the County Code, the purpose of the MFD Program is "to establish procedures to facilitate the goal of the County to remedy the effects of discrimination by making efforts to contract with minority owned businesses (MFD owned business or MFD, as defined in Chapter 11B of the County Code) and encouraging contractors to subcontract with MFD businesses."[1] The MFD Program assists businesses owned by socially disadvantaged groups gain opportunities as contractors for County contract awards with an estimated dollar value of $50,000 or more. Eligible businesses include those owned by vendors in the following groups: African American, Hispanic American, Asian American, Native American, Female, and Persons with Disabilities.[2]

The MFD Program is set to expire on December 31, 2021. If enacted, the Bill would extend the sunset date for the program until December 31, 2023.[3]

[1] Montgomery County Code, Section 11B.04.01.07, https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_comcor/0-0-0-65371.

[2] Office of Procurement, FY20 Annual Report: Minority, Female and Disabled-Owned Businesses (MFD) Program, Montgomery County Government, https://www.montgomerycountymd.gov/PRO/Resources/Files/Reports/MFDReport_FY20.pdf.

[3] Montgomery County Council, Expedited Bill 29-21, Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments, Introduced on July 13, 2021. See Bill in Introduction Staff Report, https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=2720_1_15580_Bill_29-2021_Introduction_20210713.pdf.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

The goal of the MFD Program is to increase the participation in County contracting of minority, female, and disabled-owned businesses, whether based inside or outside the County. OLO believes the economic impact of enacting Expedited Bill 29-21 would be based on the MFP Program's "opportunity cost" and "local multiplier" effects, as well as the quality of enforcement.

Opportunity Cost Effect: This refers to the effect of the MFD Program on County contracting costs – either reducing or increasing costs relative to what they would otherwise be without the program – and the economic impact of alternative uses of gained or forgone County revenue. It is beyond the scope of this analysis to estimate the opportunity cost of the MFD Program. Therefore, this analysis focuses on the potential local multiplier effect.

Local Multiplier Effect: Although not the program's goal, this effect refers to the extent to which the MFD Program directs County spending to local businesses, rather than businesses based outside the County, and its impact on local economic activity. The MFD Program could have a significant impact on economic conditions in the County given its scale. According to the most recent annual report on the program, the County awarded $182,699,735 to certified MFD-owned businesses in FY20, which equated to 23% of total procurement dollars subject to the program ($797,894,633).[4] If more local businesses would receive County procurement contracts than otherwise would occur without the MFD Program, then it would increase the local multiplier effect of County spending. To illustrate, a County contract awarded to an IT firm based locally would have a greater effect on subsequent rounds of spending in the County than a firm based in San Francisco, for example. Employees at a local firm would be more likely to spend their earnings on goods and services provided by local businesses than employees at an external firm.[5]

Does the MFD Program increase County procurement to local firms? While the Office of Procurement publishes a range of metrics to assess the impact of the MFD program in its annual reports, no data on the location of MFD firms is included in the reports.

Despite this data limitation, OLO believes it is possible that the MFD Program increases spending to local businesses through its interaction with the County's Local Small Business Reserve Program (LSBRP). LSBRP "ensures that County departments award 25 percent (with specified exceptions) of their procurements for goods, services and construction to registered and certified local, small businesses."[6] Local, small businesses awarded prime contracts with the County must also comply with the MFD Program requirements and include MFD businesses in their contracting proposals. If local, small business prime contractors are more likely to have business connections with local MFD firms than external MFD firms, then a potential byproduct of the interaction between the LSBRP and MFD programs is to increase participation of local MFD firms as sub-contractors. In fact, the FY20 Annual Report on the MFD Program suggests this much when it states,

> "[LSBRP] continues to be instrumental in the participation of minority firms as many of Montgomery County local small businesses are also minority or female owned businesses. The continued implementation of Bill 48-14 (adding MFD participation evaluation points in RFPs) provides an incentive for prime contractors to include minority businesses in their proposals."

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[4] Office of Procurement, FY20 Annual Report.

[5] For more on the multiplier effect, see U.S. Bureau of Economic Analysis, *RIMS II: An Essential Tool for Regional Developers and Planners*, December 2013.

[6] For details on the program, see Montgomerycountymd.gov, Local Small Business Reserve Program (LSBRP), Office of Procurement, https://www.montgomerycountymd.gov/PRO/DBRC/lsbrp.html.

OLO was unable to empirically verify whether the MFD Program induces a local multiplier effect through its interaction with LSBRP, much less the magnitude of this effect. OLO requested data on the location and industry of businesses that receive County contracts through the MFD Program from the Office of Procurement. This data is currently unavailable. According to the Office of Procurement, data on the location of MFD businesses will be included in the upcoming FY21 Annual Report on the program.[7] Although OLO was unable to empirically verify the local multiplier effect, we believe it is a likely outcome due to the programs' requirements. For this reason, the analysis in subsequent sections of this report is based on this potential.

Before proceeding, it is important to note the potential for noncompliance among prime contractors with MFD Program requirements may undermine its local economic impacts. Compared to other programs administered by the Office of Procurement, the MFD Program has relatively weaker enforcement requirements. For example, where the MFD law instructs the Chief Administrative Officer to develop "monitoring" procedures for program compliance (adopted as a regulation in the Code of Montgomery County Regulations (COMCOR)), the Wage Requirement Law outlines much more detailed "enforcement" requirements in the Montgomery County Code. Where the MFD Regulations say program monitoring "may include … audits of contractors' books and records relative to County contracts," random or regular audits are not required. By contrast, the Wage Requirement Law requires the Chief Administrative Officer or a designee to "perform random or regular audits and investigate any complaint of a violation." **Table 1** presents the full language of the monitoring procedures for the MFP Program from COMCOR and the enforcement requirements from the County Code for the Wage Requirement Law Program.

[7] Correspondence with personnel from the Office of Procurement.

Table 1. MFD Program Monitoring Procedures and Wage Requirement Law Program Enforcement

MFD Program Monitoring – COMCOR § 11B.04.01.07.5
7.5 Monitoring Procedures 7.5.1 The contract administrator must monitor all contracts with an MFD plan to ensure compliance by contractors with the requirements of the contract. Monitoring may include site visits, audits of contractors' books and records relative to County contracts, the submission of copies of invoices from minority subcontractors to the prime contractor, submission of Contract Monitoring Reports at scheduled intervals during the life of the contract, and other procedures that the Director may require. 7.5.2 The Director must notify certified MFD owned businesses of their responsibility to report to the contract administrator in a timely manner any changes in status that affects the entity's eligibility for certification as an MFD owned business. The failure of the MFD owned business to report any relevant change in a timely manner constitutes sufficient grounds for de-certification.
Wage Requirement Law Program – Montgomery County Code § 11B-33A(i)
(i) *Enforcement.* (1) The Chief Administrative Officer must require each covered employer to: (A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section; (B) keep and submit any records necessary to show compliance; and (C) conspicuously post notices informing employees of the requirements of this Section, and send a copy of each such notice to the Chief Administrative Officer’s designee. (2) The Chief Administrative Officer or a designee must perform random or regular audits and investigate any complaint of a violation of this Section. If the Director determines that a provision of this Section has been violated, the Director must issue a written decision, including imposing appropriate sanctions, and may withhold from payment due the contractor, pending a final decision, an amount sufficient to: (A) pay each employee of the contractor or subcontractor the full amount of wages due under this Section; (B) satisfy a liability of a contractor for liquidated damages as provided in this Section; and (C) reimburse the County for the cost of the audit. (3) An employer must not discharge or otherwise retaliate against an employee for asserting any right under this Section or filing a complaint of violation. Any retaliation is subject to all sanctions for noncompliance with this Section. (4) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage requirements of this Section. (5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify: (A) that liquidated damages may be imposed on the contractor in the event that a covered employer violates the wage reporting or payroll records reporting requirement in subsection (g), including for providing late or inaccurate payroll records; and (B) that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation for asserting any right under this Section. (6) If a contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under this Section, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records or reports, and may postpone processing payments due under the contract or under an agreement to finance the contract.

VARIABLES

The primary variables that would affect the economic impacts of extending the MFD program through enacting Expedited Bill 29-21 are the following:

- change in total County contracting costs;
- change in total County contracting allocation to local businesses;
- industrial composition of local businesses awarded contracts; and
- prime contractor compliance with MFD requirements.

As previously discussed, OLO restricts the subsequent analysis to the local multiplier effect and does not investigate the potential economic impact of alternative uses of gained or forgone County revenue due to the MFD Program's effect on total County contracting costs.

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

If the MFD Program increases County spending to local businesses than would occur otherwise without the program, then OLO anticipates that enacting Expedited Bill 29-21 would have a positive impact on private organizations in the County in terms of several of the Council's priority indicators.[8] Local firms that receive County contracts would likely experience an increase in business income and earnings and/or the size of their workforce. Depending on the characteristics of the procurement, these firms may purchase goods and services from other local firms, which may also experience increases in business income and workforce earnings and/or size. Similarly, any increase in earnings for workers in the affected businesses would likely increase spending in the County, thereby benefiting other businesses.

To assess the potential impact of Expedited Bill 29-21 on the Council's other priority indicators (e.g., private sector capital investment, economic development, and competitiveness) would require an estimate of the change in total County contracting allocation to local businesses and the industrial composition of local businesses awarded contracts due to the MFD Program. Due to data limitations previously described, assessing the Bill's impacts on these indicators is beyond the scope of this analysis.

Residents

If the MFD Program increases County spending to local businesses above what would occur otherwise without the program, then OLO anticipates that enacting Expedited Bill 29-21 would have a positive impact on County residents in terms of several of the Council's priority indicators. The primary residents impacted by the Bill would be owners and employees of the affected businesses who reside in the County and experience an increase in earnings and household income. It is beyond the scope of this analysis to investigate the Bill's impacts on residents in terms of the Council's other priority indicators.

[8] Montgomery County Code, Sec. 2-81B, Economic Impact Statements, https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-80894.

DISCUSSION ITEMS

For a better understanding of the MFD Program's effect on economic conditions in the County, Councilmembers may want to consider requesting the Office of Procurement to provide data on the location and industry of businesses that are part of the MFD Program by September 30, 2021.

Councilmembers may want to consider discussing with the Office of Procurement whether the MFD Program's enforcement procedures should be strengthened to increase program compliance among prime contractors.

Finally, Councilmembers may want to consider reviewing how County contracting policies could further incentivize prime contractors to include MFD-owned businesses based in the County to optimize the program's local economic impacts.

WORKS CITED

Montgomery County Code. Sec. 2-81B. Economic Impact Statements.

Montgomery County Council. Expedited Bill 29-21, Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments. Introduced July 13, 2021.

Montgomerycountymd.gov. Local Small Business Reserve Program (LSBRP). Office of Procurement. https://www.montgomerycountymd.gov/PRO/DBRC/lsbrp.html.

Montgomery County Office of Procurement. FY20 Annual Report: Minority, Female and Disabled-Owned Businesses (MFD) Program.

U.S. Bureau of Economic Analysis. *RIMS II: An Essential Tool for Regional Developers and Planners*. December 2013.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.