

Economic Impact Statement

Montgomery County, Maryland

Expedited Bill 37-23

Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 37-23 would have a positive impact on economic conditions in the County. By extending the County’s Minority, Female, and Disabled-Owned Businesses (MFD) Program, more local businesses likely would receive County procurement contracts than otherwise would occur without the continuation of the program, which would prevent capital outflow in County spending. 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.

BACKGROUND AND PURPOSE OF EXPEDITED BILL 37-23

According to the Office of Procurement, the County’s Minority, Female and Disabled-Owned (MFD) Businesses Program “assists certified minority firms in gaining access to prime contractor and subcontractor opportunities with County government agencies.”¹ Towards this end, the MFD Program establishes goals for MFD participation in the purchasing categories of construction, professional services, non-professional services, and goods.² County law establishing the minority owned business purchasing program states the program “is intended to remedy the effects of discrimination on minority owned businesses.”³ The MFD Program has been in existence in the County for over 25 years.

County law includes a sunset date for the minority owned business purchasing program and requires the Office of Procurement to continually evaluate the need to extend the program.⁴ The purpose of Bill 37-23 is to extend the current sunset date for the program by one year from December 31, 2023, to December 31, 2024.⁵

The Introduction Staff Report notes that a disparity study is currently underway to assess the minority owned business purchasing program and the County’s contracting policies relative to MFD businesses. Extending the sunset date by one year would prevent the expiration of the program while the disparity study is completed.

The Council introduced Expedited Bill 37-23, Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments, on September 26, 2023.

¹ “Minority, Female and Disabled-Owned Businesses (MFD) Program.”

² Ibid.

³ Article XIV. Purchases from Minority Owned Businesses.

⁴ Ibid.

⁵ “Introduction Staff Report on Expedited Bill 37-23.”

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Expedited Bill 37-23 on residents and private organizations in terms of the Council’s priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.⁶

The focus of this analysis is to evaluate the extent to which extending the MFD Program would direct County spending towards local businesses. If the program directs County spending to local businesses, then it would prevent “leakages” in County spending (i.e., spending that occurs outside the County) and generate local multiplier effects—assuming the MFD Program is funded through taxpayer revenues (as opposed to external grants). To evaluate the program’s impact on County spending, performs a qualitative assessment based on the following sources of information:

- Economic Impact Statement for Expedited Bill 29-21, which had previously extended the sunset for the MFD program; and
- FY23 MFD Annual Report.

This analysis does not consider the positive or negative opportunity cost of alternative uses of County spending nor the program’s impact on County contracting costs – either reducing or increasing costs relative to what they would otherwise be without the program.

VARIABLES

The primary variables that would affect the economic impacts of extending the MFD program through enacting Expedited Bill 37-23 are the following:

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

IMPACTS

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

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that enacting Expedited Bill 37-23 would have a positive impact on private organizations in the County in terms of the Council’s priority indicators.

If the MFD Program directs County spending to local businesses, then extending the current sunset date for the program would positively impact local businesses who otherwise would not work as prime or sub-contractors on County projects

⁶ Montgomery County Code, Sec. 2-81B.

in the absence of the change in law. While the Office of Procurement publishes a range of metrics to assess the impact of the MFD program in its annual reports, the reports do not include the location of MFD firms. The Office of Procurement can prepare the data on business location, but OLO was unable to attain the reports prior to the deadline for this impact statement.⁷ Despite this data limitation, OLO believes it is possible 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."⁸ 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 the interaction between the LSBRP and MFD programs increases participation of local MFD firms as sub-contractors. In fact, the FY20 MFD Annual Report 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."⁹

Local businesses that otherwise would not work as prime or sub-contractors in the Bill's absence likely would increase in business income and earnings and/or the size of their workforce.

Directing County spending to local businesses would benefit other businesses in the County through a local multiplier effect. Indeed, local businesses that participate in the MFD program and their workforces would be more likely to purchase goods and services from other local firms. If so, these businesses would experience increases in business income and workforce earnings and/or size.¹⁰

Due to lack of data on the location and other characteristics of MFD business participants, OLO is unable to evaluate the impact of Expedited Bill 37-23 on the Council's other priority indicators.

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 37-23 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.

⁷ Correspondence with Office of Procurement staff, October 13, 2023.

⁸ "Local Small Business Reserve Program (LSBRP)."

⁹ "FY20 MFD Annual Report."

¹⁰ 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.

Net Impact

OLO anticipates that Expedited Bill 37-23 would have a positive impact on economic conditions in the County in terms of the Council's priority economic indicators. However, OLO is unable to anticipate the magnitude of the Bill's economic impact for the following reasons.

First, although the MFD Program is significant in size, OLO lacks information to determine the extent to which it directs County spending to local businesses.¹¹

Second, 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.¹² 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."¹³ **Table A1** in the Appendix presents the full language of monitoring procedures for the MFP Program from COMCOR and the enforcement requirements from the County Code for the Wage Requirement Law Program.

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.

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.

¹¹ According to the FY23 annual report on the program, the total dollars awarded to certified MFD firms were \$246,374,095, which represents "an unprecedented amount since the inception of the program."

¹² 11B.04.01.07 Minority Owned Business Contracting.

¹³ Sec. 11B-33A. Wage requirements.

WORKS CITED

[11B.04.01.07 Minority Owned Business Contracting](#), Code of Montgomery County Regulations (COMCOR).

[Article XIV. Purchases from Minority Owned Businesses](#), Montgomery County Code.

[“Economic Impact Statement: Expedited Bill 29-21, Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments.”](#) Office of Legislative Oversight, Montgomery County Council.

[“FY20 MFD Annual Report.”](#) Office of Procurement, Montgomery County Government.

[“FY23 MFD Annual Report.”](#) Office of Procurement, Montgomery County Government.

[“Introduction Staff Report on Expedited Bill 37-23, Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments.”](#) Montgomery County Council, September 26, 2023.

[“Local Small Business Reserve Program \(LSBRP\).”](#) Accessed October 11, 2023.

[“Minority, Female and Disabled-Owned Businesses \(MFD\) Program.”](#) Accessed October 10, 2023.

[“RIMS II: An Essential Tool for Regional Developers and Planners.”](#) U.S. Bureau of Economic Analysis. December 2013.

[Sec. 11B-33A. Wage requirements](#), Montgomery County Code.

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.

AUTHOR

Stephen Roblin (OLO) prepared this report.

APPENDIX

Table A1. MFD Program Monitoring Procedures and Wage Requirement Law Program Enforcement

MFD Program Monitoring – COMCOR § 11B.04.01.07.5
<p>7.5 Monitoring Procedures</p> <p>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.</p> <p>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.</p>
Wage Requirement Law Program – Montgomery County Code § 11B-33A(i)
<p>(i) <i>Enforcement.</i></p> <p>(1) The Chief Administrative Officer must require each covered employer to:</p> <p>(A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;</p> <p>(B) keep and submit any records necessary to show compliance; and</p> <p>(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.</p> <p>(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:</p> <p>(A) pay each employee of the contractor or subcontractor the full amount of wages due under this Section;</p> <p>(B) satisfy a liability of a contractor for liquidated damages as provided in this Section; and</p> <p>(C) reimburse the County for the cost of the audit.</p>

(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.