

IV. PURCHASING PRACTICES, POLICIES, AND PROCEDURES

A. Introduction

The Purchasing Practices, Policies & Procedures Review has the following four (4) objectives:

- Provide an overview of the relevant and objective policies and procedures of the County's departments.
- Determine the level of knowledge and familiarity that the various departments have with regard to both the general practices, policies and procedures and those specifically geared toward ensuring fair access to the procurement process by MFDs.
- Evaluate whether the understandings and practices of the various departments align with stated policies and procedures.
- Ascertain whether the policies, practices and procedures, on their face, or in practice, present any barriers to MFDs.

To achieve the objectives, written statutes, policies, procedures and procurement directives were reviewed. Additionally, interviews were held with certain Montgomery County department management and staff who participate in the procurement process.

The scope of the review includes the following Montgomery County procurement categories: direct purchases, mini contracts, small purchases, informal contracts, requests for proposals, invitations for bid, and the utilization of prime contractors and MFD subcontractors.

B. Review of Statutes, Procedures and Other Written Documents

The examination of the statutes, procedures and other written documents produced the following concerns regarding the provisions below:

1. Procurement Regulation 1.8: *The CAO should issue a Procurement Manual to provide internal procedures to County employees and officials to follow in making a procurement. The manual is not part of these regulations. A violation of a procedure in the manual is not a basis for an offeror or contractor to challenge a procurement action by the County.*

Concern: The issuance of the Procurement Manual is optional and a failure to follow its procedures cannot be challenged by an offeror, yet it is the basis by which procurements are made.

This makes it unclear what processes offerors can depend upon the County for. Most agencies interviewed stated that they utilize the Procurement Manual as guidance in making their decisions. Procedures for including MFDs appeared to be unclear to Montgomery County staff, except that they were encouraged to include MFDs. However, there was a much clearer understanding among the Montgomery County staff of the requirements, processes and procedures for the Local Small Business Reserve Program.

2. Procurement Regulation 7.3.3.5: *The Director may waive in whole or in part an MFD subcontracting requirement imposed under Section 7.3.3 if the Director finds that:*
 - (a) *it is unusually difficult or impossible for the contractor to meet a subcontracting requirement because, for example, a qualified MFD owned business is not available for subcontracting or the contractor's good-faith efforts to subcontract with available MFD owned businesses have failed;*
 - (b) *reasonable grounds exist to waive a subcontracting requirement because, for example, the subcontracting requirement would undermine the purpose of a contract for personal services, subcontracting would be inconsistent with the requirements for confidentiality, or the contract is awarded under an emergency procurement; or*
 - (c) *the contractor belongs to a class of nonprofit entities for which the Director has determined that it would be impractical to require participation in the MFD Subcontracting Program.*

Concern: The issuance of waivers of the MFD subcontracting requirements has historically been a concern in the minority and women owned business communities.

Currently, the Director of DGS and his designee determine what is waived. This determination is supported by documentation. The waiver request justification is in Section F of the MFD performance plan. When the contract is signed, the MFD performance plan becomes part of the contract and is public information. MFD Office creates an annual report for each fiscal year. In the report's waiver section, each granted waiver is published along with the contract number, vendor name, percentage and dollar amount waived. Although, this is a transparent process,

there seems to be a disconnect in communicating the process to the business community. It is beyond the scope of this Study to conduct a review of the waiver process; however, GSPC recommends that the County review the possibilities of making the process more prominent in bid materials, web site placement and to make sure the process is reviewed in prebid meetings.

3. Procurement Regulation 7.3.4.8: *After receiving the Director's report, the CAO must set by September 30 of each year MFD subcontracting goals for the current fiscal year.*

Concern: The methodology utilized for determining availability of MFD companies to establish MFD subcontracting goals is questionable.

Several agencies interviewed were unclear if there were MFD subcontracting goals and what the MFD policies are and rely solely on the Office of Business Relations and Compliance for compliance. Therefore, it is unclear whether realistic MFD subcontracting goals are being developed in each purchasing category.

4. Procurement Regulation 7.5.2.1: *The Using Departments should request and use the most recent list of certified MFD owned businesses furnished by the Director to encourage certified MFD owned businesses for which a goal has been set to respond to Requests for Proposals, Requests for Expressions of Interest, and all other procurements.*

Concern: The Using Departments are not required to utilize the list furnished by the Director.

The ERP system and the Central Vendor Registration System both allow the contract administrators to identify MFD firms. The Using Departments have the ability also to reach out to the MFD Office or the Office of Procurement when they have questions regarding MFD. However, many of the Using Departments are not taking advantage of the tools for identifying MFD firms that are available to them. This might be resolved by requiring that User Departments confirm that they have accessed the Director's list in any procurement.

C. Management and Staff Interviews

Throughout the month of August 2013, Griffin and Strong, P.C. (GSPC) conducted interviews with management and procurement staff of Montgomery County agencies. The following top ten agencies, ranked by their amount of encumbrances and/or Purchase Orders (POs), were interviewed:

- Department of General Services
- Department of Transportation
- Department of Recreation
- Department of Liquor Control
- Department of Finance
- Department of Technology Services
- Department of Human Resources
- Department of Police
- Department of Environmental Protection
- Fire and Rescue Service

The purpose of these meetings was to determine the agency personnel's knowledge and familiarity with purchasing and procurement policies designed for inclusion and establishing the difficulty or challenges in administering these procedures. Additionally, the goal was to obtain their assessment of the success or lack thereof of Montgomery County's MFD program.

All of the agencies interviewed confirmed that they utilize the laws, directives and procedures established in the Montgomery County Code and the Code of Montgomery County Regulations (COMCOR). They also use the policies and procedures and templates established by the Office of Procurement, most of which are available on the Intranet. The agencies interviewed procure a wide range of goods and services including the following:

Table 4: Commodities and Services Purchased by Montgomery County

Types of Commodities and Services Purchased in Montgomery County		
Fuel	Advertising	Printing
Vehicles	Software	Temporary Services
Office Supplies	Uniforms	Bags for Retail Stores
Computer Equipment	Weapons	Maintenance services
Professional Consulting Services	Portable computers	Credit Card Processing
Cleaning/janitorial	Specialized Crime equipment	Fitness Instructors
Engineering Services	Professional Services	Training
Snow Removal	Telephony	EAP Benefits
Cleaning Supplies	Shoes	Bullets
Safety Gear	Environmental Studies	Hauling
Landfill Operations	Barrels	Community Outreach/Education
Medical Supplies	Pharmaceuticals	Fire Trucks

Griffin & Strong, P.C. (2014)

The majority of the management and procurement staff interviewed had over five years of experience in their agencies, coupled with previous experience working in other Montgomery County government agencies. The interviewees had a wealth of Montgomery County government experience with an average of fifteen years. All interviewees touched the procurement process in some form, whether it was managing the agency’s operations and/or procurement staff, developing scopes of work, ensuring budget compliance, and determining the appropriate contracting vehicles. They all also worked closely in collaboration with the Office of Procurement

to meet the contracting needs of their agencies and to ensure compliance with the policies and procedures. When necessary, to refer to information or quotes received from a specific interviewee, alphanumeric designations assigned to each interviewee are used, beginning with PPS1.

It was expressed that sole source contracting is rarely utilized as a contracting vehicle by all the agencies interviewed. The exception is in instances when there is a specialized service or maintenance on an existing service or system. All the agencies had a clear understanding of the contracting vehicles available to them and had a process of determining which is the optimal method. All agencies interviewed mentioned that they collaborate with the user offices within their agencies or subject matter experts to draft the requirements to develop scopes of work.

Several procurement personnel expressed concern that many local, small and MFD companies do not know how to navigate the procurement process, starting with vendor registration. They believe that this problem extends to their not submitting proposals and bids. Although the Office of Business Relations and Compliance conducts many outreach and training events, there is at least a perception that more outreach is needed particularly to encourage MFDs to get certified and registered. Some of the agencies interviewed believed that outreach should be expanded in frequency and be focused on particular agencies, commodities and services. (PPS1, PPS2, PPS3, PPS4, PPS6, PPS7, PPS8, PPS10).

Although the Local Small Business Reserve Program (LSBRP) and the Minority, Female, Disabled program are enforced separately and have separate goals, it was suggested that the LSBRP and the MFD may be competing against each other, negatively impacting MFD firms. In fact for LSBRP awardees, if the contract is over \$50,000 and the vendor is non-MFD, they are still required to have MFD participation. Also, since many LSBRP vendors are also MFDs, there may actually be increased opportunities for MFDs. However, the perception still exists and should be addressed with this information emphasized in bid materials, outreach programs, and prebid conferences. (PPS4, PPS5). The County should do an analysis to demonstrate the types of services that lend themselves to MFD participation. (PPS4). It was also stated in an interview that the Living Wage law makes it difficult for local, small businesses that fit into the MFD category. (PPS1).

Several agencies expressed that they believe that Montgomery County's Office of Business Relations and Compliance is doing a good job of monitoring and ensuring compliance with the MFD Program objectives. The compliance process includes reviewing the subcontracting plans,

waiver requests, and ensuring that good faith efforts are being made to meet the objectives of the MFD program. (PPS11).

There are no established MFD goals. Prime contractors are still required to set a MFD goal. Three factors are considered while determining compliance:

1. The scope of the contact.
2. The availability of goods/services or subcontracting opportunities in support of the contract.
3. The dollar value of the contract.
4. The outreach effort conducted by the prime contractor.
5. The justification provided in the waiver request.

Once a notice has been sent verifying that a contract award has been made, the Minority, Female, Disabled Person Subcontractor Performance Plan will be sent. This form is included with each solicitation packet up front and under submissions is strongly encouraged to be submitted with each bid or proposal. It is not mandatory because if they miss it accidentally, the County does not want to throw out an otherwise legitimate bid.

Once the abovementioned form is received, the Office of Business Relations and Compliance verifies that the MFD is certified by one of the approved certification entities listed below:

- Maryland Department of Transportation MBE Program
- The DC/MD Minority Supplier Development Council
- Virginia Department of Small Women and Minority Owned Business, Small Women and Minority
- Women's Business Enterprise National Council, Women Business Enterprise
- Small Business Administration 8(a) Program
- City of Baltimore's Minority and Women's Business Opportunity Office

The MFD Report of Payments Received form is sent to the MFD subcontractors that are identified on the MFD plan of the contract awardee. This form is to be submitted quarterly upon request to document the payments received by the MFD subcontractor. (PPS11). Prime contractors cannot replace a MFD subcontractor without approval from the Office of Business Relations and Compliance. A written request has to be submitted that includes the issue, resolution attempted, and course of action. The MFD subcontractor and the contract administrator are consulted prior to a decision being made.

If a MFD subcontractor has a disagreement regarding MFD subcontracting utilization or payments, they must submit a written notification on company letterhead describing the issue and the steps for resolution taken. The project contract administrator and the prime contractor and the subcontractor are then scheduled to meet with the Office of Business Relations and Compliance. Once an understanding of the disagreement is deemed valid, it is expressed in the meeting that the prime contractor has five business days to work with the subcontractor to resolve the issue. Potential repercussions are also communicated including the possibility that liquidated damages may be assessed. (PPS11).

One interviewee suggested that the existing separation of the business compliance group from the Office of Procurement and reporting directly to the Director of the Department of General Services is beneficial because it helps to ensure that everyone is making good efforts to meet their goals. (PPS5, PPS11). They believe that this organizational change builds credibility for the MFD program.

All of the following recommendations were offered during interviews with the user departments to help improve the MFD Program:

<p align="center">MFD Program Recommendations from User Departments</p>
<p>Establish MFD subcontracting goals</p>
<p>Increase the budget of the Office of Business Relations and Compliance to conduct outreach functions and more interaction with the business community</p>
<p>Implement a prompt payment clause for MFD subcontractors</p>
<p>Create a restitution fund for instances when prime contractor does not pay the MFD firm</p>
<p>A member from the Office of Business Relations and Compliance should participate on the Qualification and Selection Committee</p>
<p>MFD prime contractors with a contract award of \$2.5 million or more shall be subject to MFD subcontracting requirements</p>
<p>Implement additional outreach efforts focused on the MFD certification process. Several using departments stated that the pool of MFD companies needs to be expanded and this is an avenue that may help achieve that goal</p>

<p align="center">MFD Program Recommendations (continued)</p>
<p>Targeted agency procurement days focused on the commodities and services for that particular agency</p>
<p>Strongly encourage that MFD goals be exceeded</p>
<p>More clarity on how Montgomery County quantifies MFD participation</p>
<p>Work closer in collaboration with the Maryland Department of Business and Economic Development to grow businesses</p>
<p>Advertise contracting opportunities in the MFD and larger business communities</p>
<p>Develop mentor protégé program for matching MFD firms with non-MFD firms</p>
<p>Create a one-stop shop for businesses to get assistance with paperwork for the procurement process, including the Wage and Requirements Paperwork and the MFD/ Disabled business forms</p>
<p>Streamline Montgomery County procurement process</p>
<p>Outreach and inform minority and women owned businesses that aren't certified, to get certified by the approved certifying entity</p>
<p>Provide more support in identifying capable MFD firms</p>
<p>Separate contracts for smaller firms, small business set-aside</p>