COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Silverman and Councilmembers Leventhal, Perez, and Floreen

AN ACT to:
(1) establish a Local Small Business Reserve Program;
(2) designate the types of procurements subject to the requirements of the Program;
(3) require using departments to achieve a certain percentage of local small business procurement contracts under the Program;
(4) require certain procedures to assist local small businesses;
(5) require using departments to report to the [[Office of Procurement]] Department of Economic Development by a certain date;
(6) require the Director of Economic Development to report to the Council by a certain date;
(7) implement Internet posting requirements for certain purchases;
(8) provide a sunset date for the Program; and
(9) generally amend the law governing contracts and procurement.

By adding
Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-17A, Internet Posting Requirements and
Article XV. Local Small Business Reserve Program
Sections 11B-65 through 11B-7111 11B-70

The County Council for Montgomery County, Maryland approves the following Act:
Section 1. Section 11B-17A is added as follows:

11B-17A. Internet Posting Requirements.

(a) Each using department must post each planned purchase of

[[construction goods or professional and non-professional services]] goods, services, and construction valued at $1,000 to $25,000 on a County web site for 5 business days before making a purchase or entering into a contract. Each purchase must be made as provided under Section 11B-13.

(b) Each posting must contain:

(1) the name and a brief description of the [[construction goods or services]] goods, services, or construction being procured;

(2) the dollar amount and quantity of the potential purchase or contract;

(3) the delivery schedule;

(4) contact information for the department employee responsible for the purchasing; and

(5) any other applicable performance requirement.

(c) The Director may waive this posting requirement when a purchase is necessary to meet an imminent threat to public health, welfare, or safety. The Director must keep records on the number of waivers issued and the reason for each waiver, and must report this information to the Director of Economic Development, who must include this information in [[Council with]] the annual report on the Local Small Business Reserve Program under Section 11B-69(b).

* * *
Section 2. Sections 11B-65 through 11B-70 are added as follows:

Article XV. Local Small Business Reserve Program.

11B-65. Definitions.

In this Article the following words have the meanings indicated.

(a) Department means the Department of Economic Development.

(b) Director means the Director of the Department of Economic Development.

Local Small Business means a [[minority owned]] business, other than a broker, that:

1. generates a significant amount of economic activity in the County;
2. is independently owned and operated;
3. is not a subsidiary of another business; and
4. meets [[the]] criteria, size limits, and gross sales amounts [[as]] established by method 2 regulations [[as defined in Section 11B-58(a)] that meets the criteria in paragraph (1) and the size limits in paragraph (2), or a business, other than a broker, that meets the criteria in paragraph (1) and the size limits in paragraph (2)].

[[(1) A small business must meet the following criteria:]]

(A) The business is independently owned and operated;
(B) The business is not a subsidiary of another business;
(C) The business is not dominant in its field of operation;
(D) The business has a principal place of business in the County;
(E) At least 50 percent of its employees work in the County; and
(F) The business [[paid]] pays personal property taxes to the
County for the fiscal year [(before receiving)] in which it receives a contract award under the Program and continues to pay personal property taxes for the term of the contract.

(2) A small business must meet the following size requirements:

(A) The wholesale operations of the business, if any, did not employ more than 50 persons, and the gross sales of the business did not exceed an average of $2,000,000 in its most recently completed 3 fiscal years:

(B) The retail operations of the business, if any, did not employ more than 25 persons, and the gross sales of the business did not exceed an average of $2,000,000 in its most recently completed 3 fiscal years:

(C) The manufacturing operations of the business, if any, did not employ more than 100 persons, and the gross sales of the business did not exceed an average of $2,000,000 in its most recently completed 3 fiscal years:

(D) The service operations of the business, if any, did not employ more than 100 persons, and the gross sales of the business did not exceed an average of $2,000,000 in its most recently completed 3 fiscal years: and

(E) The construction operations of the business, if any, did not employ more than 50 persons, and the gross sales of the business did not exceed an average of $7,000,000 in its most recently completed 3 fiscal years.]

[[b]] (d) Local Small Business Reserve means any procurement that is limited to responses from local small businesses.
11B-66. Local Small Business Reserve Program.

(a) Except as provided in Subsection (c), this Article applies to all procurements by a using department.

(b) A using department's procurement procedures must [[achieve]] award a minimum of 10 percent of the using department's [[combined total dollar value for all]] combined dollar value of contracts issued for goods, [[supplies. services. maintenance. construction. construction-related services. architectural service. and engineering service contracts]] services or construction to [[be made directly to]] local small businesses subject to method 2 regulations.

(c) The total dollar value of procurements by a using department does not include:

(1) the value of any contract to which this Article does not apply because of a conflict with state or federal law or a grant requirement information;

(2) a preexisting contract executed by the County;

(3) a non-competitive contract award made under Section 11B-14;

(4) [[a sole source selection approved by the Contract Review Committee; or]]

(5) (4) a public entity or emergency procurement;

(5) any waiver[[s]] made under Section 11B-67(f): [[or]]

(6) any procurement where no local small business is qualified or able to perform the contract; or

(7) any single procurement that is estimated to exceed $10 million, [[would cause the using department to exceed the dollar limit set under 11B-68(a)(3)]]

(a) Any procurement by a using department of goods, [[supplies.]] services, or [[maintenance.]] construction[], construction-related services, architectural services, and engineering services] is eligible for designation for the local small business reserve by the using department director or a designee, except any procurement that would be excluded under Section 11B-66(c).

(b) A solicitation for a procurement that has been designated for a local small business reserve must be published in the same manner as required for other solicitations under Article III.

(c) The procurement officer of a designated procurement unit must award a procurement contract designated for a local small business reserve to the responsible local small business that submits an [[responsible bid]] offer that:

(1) is the lowest bid price;

(2) if the invitation for bids so provides, is the lowest evaluated bid price; or

(3) is the bid or proposal most favorable to the County within the local small business reserve.

(d) A business must affirm and provide supporting documentation to the Director to show that it is a local small business as defined in Section 11B-65[[[(a))]](c).

(e) A local small business is no longer eligible for a procurement under this Article if the business has been awarded $10 million in County contracts and at least 10 separate contracts, as either a prime contractor or a subcontractor, since January 1, [[2005]] 2006. The Director must provide written notice to the business when it is no longer eligible.
The Chief Administrative Officer may waive the application of this Article to a specific contract if the Chief Administrative Officer finds that the application of this Article conflicts with the overall objectives and responsibilities of the Chapter. The Chief Administrative Officer must keep records on the number of waivers issued and the reason for each waiver. This information must be reported to the Council in the annual report on the Program under Section 11B-69(b).

This Article does not give any person, including a local small business, any right or status, including standing, to challenge the award of a contract or subcontract under the County procurement system. This Article is enforceable only through the oversight function of the Chief Administrative Officer and the Council.

**11B-68. Regulations.**

(a) The County Executive must adopt method 2 regulations to implement this Article.

The regulations must:

1. require the Director to compile and maintain a comprehensive bidder's list of qualified local small businesses and post that list on the appropriate website;
2. specify the criteria, size requirements, and gross sales amounts for a local small business;
3. [[limit the total dollar amount of individual contract awards that are eligible for the program]] define what constitutes a significant amount of economic activity; and
4. identify outreach methods and marketing strategies to inform local small businesses of the program; and
5. limit the total dollar amount of individual contract awards that are
Each using department must comply with the regulations.

11B-69. Reports.

(a) By September 30 each year, each using department must submit to the Director a report on the number, type, and dollar amount of contracts issued under this Article.

(b) By November 30 each year, the Director must report to the Council on the Local Small Business Reserve Program. This report must include the number, type, and dollar amount of contracts awarded under this Article during the preceding fiscal year, the number, type, and dollar amount of each waiver, and information about how these numbers have changed from the preceding fiscal year and the extent of outreach efforts.

11B-70. Penalty.

(a) A person must not:

(1) willfully make a false statement to a County official or employee for the purpose of influencing participation in the Program; or

(2) fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain funds to which the person is not entitled to under this article.

(b) A violation of this Section:

(1) is a class A violation; and

(2) disqualifies the violator from doing business with the County for 2 years.

Section 3. This Act takes effect no later than January 1, [[2005]] 2006. [[Unless the Council takes action to extend this Act, this]] This Act and any regulations adopted under it expires on December 31, [[2008]] 2009. The Office.
of Legislative Oversight must begin a review of the Program one year after its implementation begins and must report to the Council about the effectiveness of the Program [[no later than July 1, 2007]].

Approved:

Thomas E. Perez, President, County Council

Approved:

Douglas M. Duncan, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council